

DEPARTMENT OF VETERANS AFFAIRS
Justification and Approval
For
Exception to Fair Opportunity Memo

Acquisition Plan Action ID: 36C245-19-AP-2817

Purchase Request No. 688-20-1-078-0001

1. **Contracting Activity:** Department of Veterans Affairs, Veterans Health Administration, Regional Procurement Office East, Network Contracting Office 5.

2. **Description of Action:** Requesting approval to issue a one-year, firm-fixed price task order to a VA National Acquisition Center (NAC) High-Tech Medical Equipment (HTME) contractor, Philips Medical Systems North America Inc. (Contract Number VA797H-17-D-0022) (DUNS 050471416), without providing fair opportunity.

3. **Description of Supplies or Services:** The proposed task order is for the provision of service and maintenance on the Philips radiology and imaging systems at the Washington DC VA Medical Center including: Achieva 3T MRI scanner, Vereos PET/CT, BV Pulserar mobile x-ray, EPIQ 7 cardiology ultrasound, CX50 portable ultrasound, Digital Diagnost 3.0 and 3.1, Multi Diagnost Eleva, S7-3T transducers, X7-2T transducers, and Xcelera workstations. Contractor will also provide software & hardware licenses and updates to the IntelliSpace Essential systems as necessary and available. Contractor will provide a one-hour initial response time and a four-hour on-site response time from initial service inquiry. The total value of the proposed task order is \$998,780.64.

4. **Statutory Authority:** The statutory authority permitting an exception to fair opportunity is Section 41 U.S.C. 4106(c) as implemented by the Federal Acquisition Regulation (FAR) Subpart 16.505 Subpart 16.505(b)(2)(i):

() FAR Subpart 16.505(b)(2)(i)(A): The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(X) FAR Subpart 16.505(b)(2)(i)(B): Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

() FAR Subpart 16.505(b)(2)(i)(C): The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already

issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

() FAR Subpart 16.505(b)(2)(i)(D): It is necessary to place an order to satisfy a minimum guarantee.

() FAR Subpart 16.505(b)(2)(i)(E): For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source". The statutory authority permitting an exception to fair opportunity for this action is 38 U.S.C. 8127(c), known as the Veterans First Contracting Program which provides the authority to directly contract with a Service-Disabled Veteran-Owned Small Business (SDVOSB) or a Veteran-Owned Small Business (VOSB).

() FAR Subpart 16.505(b)(2)(i)(F) In accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in 19.000(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in part 19 apply.

5. **Rationale Supporting Use of Authority Cited Above:** The Washington DC VA Medical Center possesses various radiology and imaging systems manufactured by Philips that are vital in evaluating, diagnosing, and treating patients; the radiology and imaging systems are highly specialized and require immediate response and up-time when a failure occurs. Placing this equipment under an annual service and maintenance plan with Philips Medical Systems, that covers services and repairs throughout the year, is the most suitable solution to guarantee full functionality of the equipment. Philips is the original equipment manufacturer and is the only qualified source that can provide the technicians, service and parts necessary to keep the equipment up and running. Philips Medical Systems has satisfactorily performed the service and maintenance for the Washington DC VA Medical Center in previous years.
6. **Efforts to Obtain Competition:** An email was sent to three Veteran-owned businesses listed on the NAC HTME website asking if they were licensed/authorized/qualified to perform the services and maintenance on the Philips imaging and radiology equipment, but none of them responded. Afterwards, an email was sent to a Philips Account Manager to see if there were any Veteran-owned businesses licensed/authorized/qualified by Philips that could provide the services needed at the Washington DC VAMC; the Philips Account Manager responded saying that Philips uses no small or veteran owned business subcontractors to support/service Philips manufactured equipment. Philips does not offer biomedical training or authorize any small business to service its High-Tech Medical

Equipment. It uses its own factory trained engineers to maintain the equipment and, for each piece of equipment, Philips provides a primary engineer, a back-up engineer, and a tertiary, as well as its national support specialists. Thus, there is no competition anticipated for this acquisition and, in accordance with FAR 5.301 and 16.505(b)(2), this action will be synopsisized at award on the Federal Business Opportunities Page (FBO) and the justification will be made publicly available.

7. **Actions to Increase Competition**: The Government will continue to conduct market research to ascertain if there are changes in the market place that would enable future actions to be competed.
8. **Market Research**: Market research beyond the VA NAC's High-Tech Medical Equipment Contracts Portal was not conducted after learning that Philips Medical Systems is the only contractor that can provide the service and maintenance on the radiology and imaging systems required at the Washington DC VAMC.
9. **Other Facts**: The Washington DC VAMC has contracted with Philips Medical Systems to service its radiology and imaging systems & equipment for the last 7 years. Software updates can only be provided by the Original Equipment Manufacturer in order to be compliant with FDA regulations.
10. **Technical and Requirements Certification**: I certify that the supporting data under my cognizance, which are included in this justification, are accurate and complete to the best of my knowledge and belief. *(This signature is the requestor's supervisor, fund control point official, chief of service, someone with responsibility and accountability.)*

Kathleen M
Grunder
367495



Digitally signed by
Kathleen M Grunder
367495
Date: 2019.08.27
13:50:59 -04'00'

Kathleen Grunder
Chief Biomedical Engineer
Washington DC VA Medical Center

Date

11. **Determination that Anticipated Cost is Fair and Reasonable**: The task order prices for the service and maintenance to be performed by Philips will be in accordance with the prices stipulated in Philips Medical Systems' VA NAC HTME contract (Contract Number VA797H-17-D-0022), which were determined to be fair and reasonable by the VA NAC Contracting Officer.

12. Contracting Officer's Certification (required): I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

James A. Whisner 141678 Digitally signed by James A. Whisner
141678
Date: 2019.08.27 13:55:49 -04'00'

James Whisner
Contracting Officer
Network Contracting Office 5

Date

**13. Approvals in accordance with VHAPM Part 816.505 Indefinite Delivery Contracts:
Ordering:**

a. **One Level Above the Contracting Officer (Required over SAT but not exceeding \$700K):** I certify the justification meets requirements for other than full and open competition.

Scott A. Sands 405621 Digitally signed by Scott A. Sands
405621
Date: 2019.08.28 08:47:37 -04'00'

Scott Sands
Director of Contracting
Network Contracting Office 5

Date

HIGHER LEVEL APPROVAL (Required for orders over \$700,000):

b. **VHA SAO HCA REVIEW AND APPROVAL (over \$700,000 to \$13.5 million):** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and approve for other than full and open competition.

JOSEPH MALETTA Digitally signed by JOSEPH
MALETTA 1347841
1347841 Date: 2019.08.30 13:11:56 -04'00'

Joseph P. Maletta
Executive Director
VHA Regional Procurement Office East

Date