

DEPARTMENT OF VETERANS AFFAIRS
Justification and Approval (J&A)
For Other Than Full and Open Competition (>SAT)

Acquisition Plan Action ID: 36C263-19-AP-2672(NWI), 36C263-19-AP-2502(IC), 36C263-19-AP-3064 (CI), & 36C263-19-AP-2317(SF)

1. Contracting Activity:

Department of Veterans Affairs, Network Contracting Office 23, 2501 W 22nd Street, Sioux Falls, SD 57105

Requiring Activity:

Nebraska-Western Iowa VA Health Care System - Procurement ID 636-20-1-2301-0001

Iowa City VA Health Care System - Procurement ID 636-20-1-4045-0001

Central Iowa VA Health Care System - Procurement ID -636-19-4-3278-0215

Sioux Falls VA Health Care System - Procurement ID 438-19-4-723-0143(SF)

2. Nature and/or Description of the Action Being Processed:

This is a follow-on contract for annual maintenance for the Biomerieux Vitek Equipment for the Iowa City VA Health Care System, Central Iowa VA Health Care System, Nebraska-Western Iowa VA Health Care System & Sioux Falls VA Health Care System. The new procurement is an individual sole source justification for the annual maintenance of Biomerieux Vitek Equipment for the Iowa City VA Health Care System, Central Iowa VA Health Care System, Nebraska-Western Iowa VA Health Care System & Sioux Falls VA Health Care System. The Department of Veteran Affairs intends to award one firm fixed price contract for the services.

3. Description of Supplies/Services Required to Meet the Agency's Needs:

The procurement is for annual maintenance for the Biomerieux Vitek Equipment for the Iowa City VA Health Care System, Central Iowa VA Health Care System, Nebraska-Western Iowa VA Health Care System & Sioux Falls VA Health Care System. The estimated value of the proposed action is \$46,556.50 for Base Year with \$818,920.90 Total Contract. Base Period of Performance 09/01/2019 to 12/31/2019 then 01/01/2020 to 12/31/2020 plus three option years. The ultimate completion date is 12/31/2023.

4. Statutory Authority Permitting Other than Full and Open Competition:

The authority used to support this justification for other than full and open competition is 41 USC § 3304(a)(1), as implemented by FAR 6.302-1, Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1.

5. Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):

Biomerieux equipment is a specialized medical equipment that requires regular maintenance and inspection to ensure it functioning properly in order to ensure the safety of the veteran. Medical equipment is maintained by the original equipment manufacturer in order to obtain authorized parts and software updates. Biomerieux Equipment is manufactured by Biomerieux, Inc. and there are no authorized service providers.

6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:

A Pre-Solicitation Intent to Sole Source FBO Notice 36C26319Q0359 was posted on February 22, 2019. At the close of the Pre-Solicitation notice of March 01, 2019 we received zero responses. Biomerieux equipment has proprietary hardware and software that can only be obtained through the original equipment manufacturer. Biomerieux Inc is the only source for obtaining full service maintenance contracts and authorized to provide access to proprietary technical information to our Biomedical Technicians as part of the contract.

7. Determination by the CO that the Anticipated Cost to the Government will be Fair and Reasonable:

This procurement is a follow on contract and the pricing of the current Contracts (Contract 36C26318P3089 - Central Iowa VA Health Care System, Contract VA263-15-P-0257 – Iowa City VA Health Care System, Contract VA263-15-P-0011 - Iowa City VA Health Care System, Contract VA263-16-C-0134 - Nebraska-Western Iowa VA Health Care System, Contract VA263-16-C-0137 – Sioux Falls VA Health Care System, & Contract 36C26318C0025 - Sioux Falls VA Health Care System) which were found to be fair and reasonable at time of award. This prices for the service is in-line with the published catalog prices for maintenance service by Biomerieux, Inc. Prior to award of the follow-on contract, the VA Contracting Officer will determine the pricing to be fair and reasonable.

8. Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:

- Per PPM 2016-05, Implementation of the Veterans First Contracting Program as a Result of the U.S. Supreme Court Decision: §8127 a search on OSDDBU's VIP database using NAICS code 811219 and a keyword of Vitek yielded zero results of small businesses that are veteran owned and verified.
- In order to meet the VA Rule of Two, Market Research determine that there were no qualified and capable service-disabled veteran-owned businesses (SDVOSBs), veteran-owned small businesses (VOSBs) or Small Business available to provide the maintenance and support for the Biomerieux equipment as shown in the included market research.
- Service Maintenance for Biomerieux Equipment is not available on GSA's eLibrary.
- As described in Section 6 above, market research, in accordance with FAR Part 10, was conducted by synopsis of the proposed acquisition, advising industry of the pending acquisition and soliciting inquiries from interested parties. A Pre-Solicitation Intent to Sole Source FBO Notice 36C26319Q0359 was posted on February 22, 2019. At the close of the Pre-Solicitation notice of March 01, 2019 we received zero responses.
- Biomerieux equipment has proprietary hardware and software that can only be obtained through the original equipment manufacturer or an authorized service provider. Biomerieux Inc is the only source for obtaining full service maintenance contracts and authorized to provide access to proprietary technical information to our Biomedical Technicians as part of the contract.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition: None

10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition: Biomerieux , Inc, 100 Rodolphe ST, Durham, NC, 27712-

11. A Statement of the Actions, if any, the Agency May Take to Remove or Overcome any Barriers to Competition before Making subsequent acquisitions for the supplies or services required:

Unfortunately, the barriers to competition cannot be overcome for the service of the equipment as only the OEM is authorized to provide the maintenance for it. Other non-OEM companies would use gray market items and reverse engineering to service the equipment which would likely compromise the integrity of the equipment. Allowing any company, other than the OEM, to service the equipment would be a risk to VA and patient safety.

12. Requirements Certification: I certify that the requirement outlined in this justification is a Bona Fide Need of the Department of Veterans Affairs and that the supporting data under my cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.

CHASITY N
VIGLIOTTI 930819

Digitally signed by CHASITY N
VIGLIOTTI 930819
Date: 2019.05.13 09:46:47
-05'00'

5/13/19

Signature

Date

Chasity Vigliotti, Lab Manager, Sioux Falls VA Health Care System

13. Approvals in accordance with the VHAPM Part 806.3 OFOC SOP:

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

TRAVIS A.
JOHNSON 306615

Digitally signed by TRAVIS A.
JOHNSON 306615
Date: 2019.05.13 10:33:24
-05'00'

5/13/19

Signature

Date

Travis Johnson, Contracting Officer, Sioux Falls Service Contracting Team

- b. **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.

Kelly E.
Nussbaum 246222

Digitally signed by Kelly E.
Nussbaum 246222
Date: 2019.05.15 21:25:47
-05'00'

5/15/19

Signature

Date

Kelly Nussbaum, Branch Chief, Sioux Falls Service Contracting Team

- c. **NCO 23 Review and Approval:** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and recommend approval for other than full and open competition.

Daryl A. Berg
429170

Digitally signed by Daryl A.
Berg 429170
Date: 2019.05.24 07:44:49
-05'00'

5/24/19

Signature

Date

Mr. Daryl A. Berg
Director of Contracting
Network 23 Contracting Office (NCO 23)

- d. **VHA SAO HCA Review and Approval:** 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.

Randy L. Hays
534204

Digitally signed by Randy L.
Hays 534204
Date: 2019.05.29 07:29:44
-07'00'

5/29/19

Signature

Date

Mr. Randy L. Hays
Acting Executive Director
VHA Regional Procurement Office Central