

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

Acquisition Plan Action ID: 36C261-19-AP-3961

- 1. Contracting Activity:** Department of Veterans Affairs, VISN 21, Network Contracting Office (NCO) for the VA Northern California Health Care System (VANCHCS).
- 2. Description of Action:** This is a request for approval of a task order under Veterans Affairs National Acquisition Center (VA NAC) contract VA797H-17-D-0022 for full service maintenance coverage on the Philips Healthcare imaging equipment currently in use at NCO 21 VISN Wide at the VA Medical Centers. This procurement will be conducted in accordance with Federal Acquisition Regulation (FAR) Part 16.5. The purpose of the service agreement is to reduce service costs and improve equipment turn-around time and reliability. This will be a firm-fixed price task order contract from VA NAC contract #VA797H-17-D-0022.
- 3. Description of Supplies or Services:** This is a service contract to cover the Xcelera system. The Xcelera system is a cardiac picture archiving system. It is used by a wide range of cardiology devices to store images that are vital to doctors and clinicians to treat, diagnosis, and monitor patient's health. The Xcelera system is a mission critical medical device that is a shared resource throughout VISN 21. This contract includes hardware support, software support, clinical education, and software upgrades. Since education and software upgrades are a requirement, only the original equipment manufacturers are authorized to provide those as this is a Food and Drug Administration (FDA) 510K regulated devices. The total estimated value of the proposed action is \$1,656,000.00 for one (1) base year plus four (4) option years.

Period of Performance	Amount
Base Year: (10/1/2019 – 9/30/2020)	\$360,000.00
Option Year 1 (10/1/2020 – 9/30/2021)	\$324,000.00
Option Year 2 (10/1/2021 – 9/30/2022)	\$324,000.00
Option Year 3 (10/1/2022 – 9/30/2023)	\$324,000.00
Option Year 4(10/1/2023 – 9/30/2024)	\$324,000.00
Grand Total:	\$1,656,000.00

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:

Philips Healthcare is the only company that can provide all the necessary original equipment manufacturers (OEM) parts and perform all the necessary repairs for the Philips.

6. Efforts to Obtain Competition:

Market research was conducted, details of which are in the market research section of this document. This effort did not yield any additional sources that can meet the Government's requirements. There is no competition anticipated for this acquisition. In accordance with 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:

In situations involving complex medical equipment, it is difficult to remove barriers to competition because the OEM is the only qualified company capable to provide the repair and maintenance of its own specialized medical equipment. This is especially true where proprietary software, specific diagnostics tools, and specialized electronics are used to maintain the Intellispace Xcelera equipment in accordance with OEM specifications. Unless the manufacturer chooses to license its software and authorize local service providers to maintain the Philips Medical equipment. 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:

Due to the proprietary nature, Philips Healthcare is the only authorized company able to perform maintenance on its Intellispace Xcelera. Intellispace Xcelera is a cardiac picture archiving system. They have the technical expertise to provide maintenance and service, as well as the only company with access to manuals and design specs of its imaging equipment. Philips Healthcare is the only authorized company that can access its systems remotely and offer certified parts that meet the original equipment manufacturer's specifications. Philips Healthcare technicians are the only authorized OEM trained and certified personnel to perform work on this high tech medical equipment (HTME). However, GSA and VetBiz were used to determine if there were any other vendors capable of providing service and/or maintenance on the Philips medical imaging equipment. Additionally, an intent to sole source was posted to FBO (FedBizOpps), no responses were received from any source. It has been determined that Philips Healthcare is the only company capable of providing these services on this highly-specialized equipment to the agency.

9. Other Facts: The use of these consolidated HTME contracts after first considering mandatory sources is strongly encouraged by the NAC.

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.

Name: Tocher Kellom
Title: Chief Biomedical Engineer

07/31/2019

Date

11. Determination that Anticipated Cost is Fair and Reasonable: A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable:

The anticipated cost to the government is considered fair and reasonable based upon adequate competition on the VA NAC contract requirements and negotiation of prices prior to contract award.

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

Name: Jason Hill
Title: Contracting Officer

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.

Name: Brooke C. Robison
Title: Director of Contracting

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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.

Name: Curtis M. Jordan
Title: Executive Director, Regional Procurement Office (RPO) West
Head of Contracting Activity (HCA)

Date