

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: 36C249-19-AP-2576

1. **Contracting Activity:** Department of Veterans Affairs, VISN 09, Tennessee Valley Healthcare System (TVHS). This is a Justification for Other Than Full and Open Competition. The applicable purchase requisition number for this proposed acquisition is 626-20-1-2171-0004.
2. **Description of Action:** The proposed sole sourced order is against a firm-fixed-price, high tech medical equipment (HTME) indefinite-delivery indefinite-quantity contract (IDIQ), SPE2D1-17-D-0022. The order is for one (1) base year + four (4) one-year option years. The service required is a preventative maintenance (PM) support of the high-tech medical equipment Canon X-ray equipment for TVHS with Canon Medical Systems USA, Inc. (Canon) located at 2441 Michelle Drive, Tustin, CA 92780.
3. **Description of Supplies or Services:** The Contractor shall perform PM service to ensure that the equipment listed immediately below in accordance with Section III, References, within the statement of work (SOW):
 - A. NAME/DESCRIPTION OF EQUIPMENT – S/P VASCULAR
MANUFACTURER - Toshiba
MODEL – INFINIX VC-I
SERIAL NUMBER – 99F07X2425
EQUIPMENT ID NUMBER – 90107
LOCATION – D24-1-NA, TVHS-Nashville
SID - 274241
 - B. NAME/DESCRIPTION OF EQUIPMENT – Kalare R/F Pulse System
MANUFACTURER - Toshiba
MODEL – 450F16A/PF
SERIAL NUMBER – 99B07732130
EQUIPMENT ID NUMBER - 86666
LOCATION – D54-1-NA, TVHS-Nashville
SID - 274126
 - C. NAME/DESCRIPTION OF EQUIPMENT –TRAD DR ORTHO
MANUFACTURER - Toshiba
MODEL – T8000-HS
SERIAL NUMBER – QG80G-07C-0302
EQUIPMENT ID NUMBER - 87506
LOCATION – D105O-1-NA, TVHS-Nashville
SID - 274258

The Contractor shall provide and utilize procedures and checklists with worksheet originals indicating work performed and actual values obtained (as applicable) provided to the COR at the completion of the PM. The contractor shall provide written description of Preventive Maintenance Inspections (PMI). This description shall include an itemized list of the procedures performed, including electrical safety.

The total estimated value of the proposed action is as follows:

Base Year – 10-1-2019 to 9-30-2020 - \$XXXXXXXX

Option Year 1 – 10-1-2020 to 9-30-2020- \$XXXXXXXX

Option Year 2 – 10-1-2021 to 9-30-2022 - \$XXXXXXXX

Option Year 3 – 10-1-2022 to 9-30-2023 - \$XXXXXXXX

Option Year 4 – 10-1-2023 to 9-30-2024 - \$XXXXXXXX

Estimated Total Value - \$XXXXXXXX

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:** Canon is the original equipment manufacturer (OEM) of the imaging equipment and maintains proprietary control over many parts and remote diagnostic /software update functions. Canon is the only company that has access to properly trained employees and the proprietary software needed to maintain and service Toshiba imaging equipment at TVHS.
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 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. Additionally, until the OEM allows other businesses to update, maintain, and repair its equipment, no known actions can be taken to increase competition.
8. **Market Research:** Market research was conducted in VetBiz and FedBizOps (FBO). A search of VetBiz for both SDVOSB and VOSB vendors was conducted using North American Industry Classification System (NAICS) 811219 and this returned 246 vendors that certified they could perform services, not necessarily these services, under said NAICS. A notice of intent to sole source (NISS) was posted to FBO on 7-18-2019, and responses were due on 8-2-2019. The NISS requested capability statements from any contractor that could perform the previously listed service. The undersigned contracting officer (CO) provided a copy of the statement of work (SOW) to ensure an understanding of the services required and on what equipment needed maintenance. No responses were received. **Other Facts:** But for acquiring this service from the OEM, warranty could be breached, service may end up not being rendered, and Veteran's general welfare would not be ensured.
9. **Other Facts:** But for acquiring this service from the OEM, warranty could be breached, service may end up not being rendered, and Veteran's general welfare would not be ensured.
10. **Determination that Anticipated Cost is Fair and Reasonable:** Pricing from the already established HTME IDIQ will be utilized which has already been determined to be fair and reasonable.

11. **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.

Tucker J. Scherger
642549

Tucker Scherger
Chief, Biomedical Engineer
TVHS

Digitally signed by Tucker J.
Scherger 642549
Date: 2019.09.13 14:40:58 -05'00'

Date

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

Stephen A.
Clabough 711859

Digitally signed by Stephen
A. Clabough 711859
Date: 2019.09.13 14:50:44
-05'00'

Stephen A. Clabough
Contracting Officer
Network Contracting Office 9

9-13-2019

Date

13. Approvals in accordance with [VHAPM Part 816.505 Indefinite Delivery Contracts: Ordering.](#)

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.

Thomas N.
Allman 709696

Digitally signed by Thomas N.
Allman 709696
Date: 2019.09.13 14:52:32 -05'00'

Thomas N. Allman
Branch Chief, Services East
Network Contracting Office 9

9-13-2019

Date