

DEPARTMENT OF VETERANS AFFAIRS

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

Acquisition Plan Action ID: 36C249-19-AP-2346

1. **Contracting Activity:** Department of Veterans Affairs, VISN 09, Memphis VA Medical Center (VAMC), 1030 Jefferson Avenue, Memphis, TN 38104-2127. The Network Contracting Office (NCO) 9 is responsible for the proposed contracting action. The identifying purchase request is 614-20-1-069-0022.
2. **Nature and/or Description of the Action Being Processed:** Sole source award to the equipment and software manufacturer Varian Medical Systems, Inc. A new firm-fixed price contract with a base year and four 1-year options is desired.

FAR13.5 Simplified Procedures for Certain Commercial Items: This procurement is for the software and computer server support of the Varian Aria Oncology Information System located at VA Medical Center Memphis; in accordance with FAR 13.5 Simplified Procedures for Certain Commercial Items and specifically FAR 13.501 Special Documentation Requirements, where acquisitions conducted under Simplified Acquisition Procedures are exempt from the requirements of FAR 6, but still require a justification using the format of FAR 6.303-2.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:** This procurement is for the software and computer server support of the Varian Aria Oncology Information System connected to the Varian TrueBeam Radiotherapy System located at VA Medical Center Memphis. The Varian Aria Oncology Information System improves workflows and optimizes treatment plans by evaluating diagnosis-specific data, develop disease-specific clinical protocols, monitor radiation dose and review treatment images, and the use of embedded rule-based decision support. The Varian Aria support consists of: (1) Periodic maintenance; (2) Perform mandatory upgrades of equipment; (3) Software upgrades and associated training; (4) Maintenance releases and service packs training; (5) Interoperability upgrades maintenance for existing interfaces that are due to Varian software updates or upgrades; (6) On site field service support during standard and non-standard hours; and (7) On-site emergency labor. This support also covers parts coverage for IT equipment, help desk support technical, unlimited help desk support clinical, remote access and refresher training. The base year price is \$181,290.00, with a base year and four 1-year options priced at \$906,450.00. The period of performance for the base year and four 1-year options is from 10/1/2019 through 9/30/2024.

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

FAR13.5 Simplified Procedures for Certain Commercial Items: The authority for applying the Simplified Procedures for Commercial Items of FAR 13.5 is 41 U.S.C. 1901 and is implemented by for restricting competition on this procurement via FAR 13.106-1(b)(2).

5. **Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):** Varian Medical Systems, Inc. is the Original Equipment Manufacturer (OEM) of the software and the equipment. The software

provides the diagnosis-specific data to develop disease-specific treatments. The Varian Aria software and equipment is not commoditized and equipment parts, software upgrades, new version releases, troubleshooting of the software, and equipment repair is not provided by other vendors.

The letter from the manufacturer states Varian Medical Systems, Inc. is the sole provider of the software and computer server support of the Varian Aria Oncology Information System. There were no matches in VetBiz for Varian Aria. An Intent to Sole Source was posted to FedBizOpps with no response from industry. The Dynamic Small Business Search (DSBS) provided no matches for Varian Aria. GSA eLibrary did not provide matches for Varian Aria. Interagency Contract Directory did not provide matches to Varian Aria. FPDS revealed this service is only available from Varian Medical Systems, Inc.

Varian Medical Systems, Inc. is the only company capable of providing necessary equipment and software upgrades, maintenance, troubleshooting, helpdesk assistance, and training for the Varian Aria system. These services are required to keep the Varian Aria Oncology Information System updated, performing, and performing optimally.

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

Intent to Sole Source (36C24919Q0376) notice was posted to FedBizOpps from 7/8/2019 to 7/26/2019 requesting availability and capability of all qualified sources to perform service and support for the Varian Aria Oncology Information System. There were no responses to this sources sought from industry.

This survey of the market place has confirmed the VA's market research assumptions regarding the capability of industry not being able to meet the VA's needs. The VA will proceed with a sole source procurement of a support contract with Varian Medical Systems, Inc. (DUNS: 009120817).

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

The anticipated price is determined to be fair and reasonable based on FAR 13.106-3(a)(2):

(ii) Comparison of the proposed price with prices found reasonable on previous purchases at VAMC Indianapolis and VAMC Memphis' expiring contract from 2016. Comparison of National Institutes of Health pricing;

(vi) Comparison to the Independent Government Cost Estimate for the support of the Varian Aria System.

(vii) Federal facility prices are comparable to what commercial customers pay for the same services. Memphis VAMC has received further discounts for these services.

8. Description of the Market Research Conducted and the Results, or a Statement of the Reasons

Market Research Was Not Conducted: The letter provided by the manufacturer stated that Varian Medical Systems, Inc. is the sole manufacturer and provider of service and support for the Varian Aria equipment and software. Varian does not utilize any 3rd party distributors, dealers or service groups to offer their products or maintenance services for the Varian Aria Oncology Information System. Software upgrades and troubleshooting as well as equipment parts are only available from Varian Medical Systems, Inc. No other companies can provide support for the Varian Aria Oncology Information System.

Market research was conducted in accordance with FAR Part 10, using:

VetBiz – VIP was unable to find any SDVOSB or VOSB capable of providing support for the Memphis VAMC Varian Aria Oncology Information System. Keywords “Varian”, “Caviwave”, and “Varian Aria” were searched with either zero vendors displayed or vendors capability statements not matching the requirements. Therefore, it is determined that two or more veteran-owned small-businesses are not capable and are not likely to submit a quote at a fair and reasonable price.

Posted Intent to Sole Source Notice (36C24919Q0376) to FedBizOpps from 7/8/2019 to 7/26/2019, no replies received from industry.

DSBS – The Dynamic Small Business Search Tool was used to determine if any small businesses provided support services for the Varian Aria Oncology Information System. There were no capable vendors when searching for Varian Aria or NAICS 541511. No vendors when searching NAICS 541511 and Oncology.

GSA eLibrary searched “Varian” and “Aria” – both keywords do not return a listing of equipment or support service for the Varian Aria System.

FedBizOpps – Intent to sole source notice posted to FedBizOpps for the Varian Aria Oncology Information System. No responses received.

FPDS – FPDS search of Varian Aria reveals purchases of support services and equipment for Varian Aria Oncology Information System are being provided by Varian Medical Systems, Inc. only.

Interagency Contract Directory (www.contractdirectory.gov) produced zero (0) results. 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.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition: N/A

10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:

Varian Medical Systems, Inc.
3100 Hansen Way
Palo Alto, CA 94304-1030
DUNS: 009120817

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: The manufacturer has created barriers preventing third party vendors from maintenance work on the Varian Aria software and equipment. There is presently no other economical option available to maintain the current VAMC Memphis Varian Aria System. Replacing the system with another Oncology Information System connected to the Varian TrueBeam equipment is not feasible. Lack of required preventative maintenance and upgraded system software by a skilled professional will have a direct impact on system operation, equipment reliability and availability. This support agreement will cover preventative maintenance, software upgrade and repairs in addition to any equipment outages. Until the manufacturer allows third party vendors to maintain the equipment and provide software upgrades, the only available course of action is to continue market research and analysis, to monitor market changes.

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.

Kayla S. Griggs
643330

Digitally signed by
Kayla S. Griggs 643330
Date: 2019.08.27
08:28:02 -05'00'

08/27/2019

Kayla Griggs
Memphis VAMC - Biomedical Engineer
Intern, VHA

Date

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.

Craig S. Ziegemeier
343718

Digitally signed by Craig S.
Ziegemeier 343718
Date: 2019.08.27 08:38:14
-05'00'

8/27/2019

Craig S. Ziegemeier
Contracting Officer, NCO 9

Date

- 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.

Jackie L. Merriman 126679

Digitally signed by Jackie L. Merriman
126679
Date: 2019.08.27 14:53:52 -05'00'

Jackie L. Merriman
Branch Chief Services West, NCO 9

Date

- c. **Division II Chief**: I certify the justification meets requirements for other than full and open competition.

Robert M
Kellner 184085

Digitally signed by Robert M
Kellner 184085
Date: 2019.08.28 08:23:10
-05'00'

Robert M. Kellner
Division II Chief, NCO 9

Date

- d. **DoC NCO 9**: I certify the justification meets requirements for other than full and open competition.

Linda S. Greaves
Director of Contracting,
Network Contracting Office 9 (NCO 9)

Date

- e. **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 (\$700K to \$68 million) for other than full and open competition.

Terry L. Spitzmiller
Executive Director
Regional Procurement Office Central (VHA)

09/11/2019

Date