

## DEPARTMENT OF VETERANS AFFAIRS

### **Justification and Approval (J&A) For Other Than Full and Open Competition (>\$150K)**

**Acquisition Plan Action ID:** 36C261-19-AP-4855

**Purchase Request/2237 Number:** 612-20-1-1999-0013

#### **1. Contracting Activity:**

Department of Veterans Affairs, VISN 21, Network Contract Office (NCO) 21 for VA Northern California Health Care System (VANCHCS).

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

VISN 21's VA Northern California Health Care System, is in need of Community Nursing Home (CNH) services in Sacramento, California to replace Basic Ordering Agreement (BOA) VA261-15-G-0025, that will expire on 9/30/2019, with MEK Norwood Pines, LLC. The families of the three Veterans who are currently located at the facility who will be affected by the expiring BOA task order do not want to move their family members due to medical hardship on the patients, disruption in treatment plans, and disruption to family members in the local area.

In accordance with FAR 6.302-1, Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements, an open market sole source award will be made to MEK Norwood Pines, LLC, DUNS: 791405272. The type of contract will be an Indefinite Delivery Indefinite Quantity (IDIQ) contract consisting of three ordering periods.

**FAR 13.5 Simplified Procedures for Certain Commercial Items:** This procurement will be accomplished 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 Part 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:**

The proposed action is to award an IDIQ Contract with a Nursing home facility capable of furnishing the total medical, nursing, and psychosocial needs of VA beneficiaries.

- All nursing home facilities must have current Center for Medicare and Medicaid Services (CMS) certification (Medicare and/or Medicaid) and a State nursing home license.
- The VA requires CNHs to have bed capacity to ensure their ability to take referrals when requested. The CNH also must be able to accept VA referrals in a timely fashion (ideally within 24 hours of request).

- Provider visits must be provided at the rate of one (1) visit per month. Laboratory, x-ray, and other special services will be available to VA patients as needed. In addition, the care provided will include room, meals, nursing care, and other services or supplies commensurate with the VA-authorized level of care, without extra charge.
- The per diem rate(s) established in this IDC will include the cost of primary medical care, one (1) provider visit per month and needed consultation, drugs and routine supplies, laboratory, x-ray, and other special services authorized by VA, unless otherwise specifically excepted.
- Full attention shall be given to motivating and educating patients to achieve and maintain independence in the activities of daily living. Every effort shall be made to keep patients ambulatory and to achieve an optimal level of self-care.

The estimated annual value is \$350,000 with a total estimated value of \$1,050,000. The contract ceiling for the IDIQ will be \$3,900,000 to allow for increased needs over the government's estimate. The period of performance will consist of three one-year ordering periods.

4. **Statutory Authority Permitting Other than Full and Open Competition:** FAR 13.5 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).

- (X) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
- ( ) (2) Unusual and Compelling Urgency per FAR 6.302-2;
- ( ) (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
- ( ) (4) International Agreement per FAR 6.302-4
- ( ) (5) Authorized or Required by Statute FAR 6.302-5;
- ( ) (6) National Security per FAR 6.302-6;
- ( ) (7) Public Interest per FAR 6.302-7;

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

As prescribed in VHA Handbook 1143.2, for more than 35 years the CNH Program has maintained two cornerstones: some level of patient choice in choosing a nursing home close to the veteran's home and family, and a unique approach to local oversight of CNHs.

The quality of care for the veteran is accomplished through placement in a nursing home that is in close proximity to where the veteran and his/her family resides. Notably, in the VA's community nursing home program, the veteran's placement decision is made by VA, the veteran, and the veteran's family. The placement decision will be based on established VA contracts in the area. The geographic factor in these circumstances makes this requirement unique and, therefore, not subject to competition.

According to the nursing home Compare website, there are three nursing homes within a 5 mile radius, with same or lower star-ratings.

MEK Norwood Pines, LLC currently has three veterans being treated at its facility. The nursing home meets VA exclusion review quality of care standards. The nursing home has had a BOA in place with the VA for several years and has consistently provided excellent care to our Veterans. It would cause medical hardship on the patients to move them, may disrupt treatment plans, and may be disruptive to family members if relocated to a different facility.

The current veterans require continued care at the nursing home facility beyond the current BOA task order expiration date 9/30/2019, and for an unknown period of time in the future. To avoid disruption to the patients, the VA must enter into a new contract with the current contractor.

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

A query of Vet Biz using NAICS 623110 with “community nursing home” as a keyword, produced 0 Service Disabled Veteran Owned Small Businesses (SDVOSBs).

A notice of intent to sole source will be posted on FBO prior to the solicitation to notify other potential vendors for future consideration. In accordance with FAR 13.501(a)(1)(iii), this action will be synopsized at award on the FBO and the justification will be made publicly available.

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

Fair and reasonable pricing will be determined in accordance with FAR 13.106-3(a)(2). Pricing will be evaluated to be fair and reasonable based on a comparison to the Independent Government Cost Estimate (IGCE) and established Medicare Resource Utilization Group (RUG) rates and or Medicaid rates. The Government estimate was prepared based on established Medicare RUG rates for various levels of care and established VA nursing home rates based on VA national guidelines for determining cost for VA nursing home contracts.

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

The contract specialist conducted market research using Medicare’s website for nursing homes, reviewed available acquisition history and searched through the VA’s Veteran Information Pages. Another form of market research conducted by the VA, is the on-going, periodic outreach with local potential vendors conducted by the Contracting Officer Representative.

**9. Any Other Facts Supporting the Use of Other than Full and Open Competition:**

VHA Handbook 1143.2 allows for a level of veteran choice in choosing a nursing home close to the veteran’s home and family. While there is another CNH facility in Sacramento, this facility is able and willing to provide care for those Veterans. Since there are Veterans are currently residing in the incumbent’s facility, the VA does not intend on disrupting their care to place them at a different facility as it would not be in the Veterans’ best interest.

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

The current contractor, MEK Norwood Pines, LLC, is willing to continue to provide services for the veterans in place.

**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:**

Based on the inherent nature of the service and in line with VA policy where the veteran and his/her family plays a role in determining which nursing home facility will provide treatment for the veteran, the opportunity to increase competition is limited. Further, the recently enacted Mission Act is going to convert these services from requiring federal contracts to non-contract veteran care centers. Consequently, within the next few years after full implementation of the Mission Act, there will no longer be a need obtain competition in the context of the Federal Acquisition Regulation.

**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.

\_\_\_\_\_  
Donald Hull  
Supervisory Social Worker  
Northern California Health Care System

\_\_\_\_\_  
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.

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Felicia A. DeMita  
Contracting Officer  
Network Contract Office (NCO) 21

\_\_\_\_\_  
Date

- b. **One Level Above the Contracting Officer (Required over\$150K but not exceeding \$700K):**  
I certify the justification meets requirements for other than full and open competition.

26 JUL 19

\_\_\_\_\_  
Brooke C. Robison  
Director of Contracting  
Network Contract Office (NCO) 21

\_\_\_\_\_  
Date

- c. **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 recommend approval (if over \$68 million) or approve (\$700K to \$68 million) for other than full and open competition.

_____	_____
Curtis M. Jordan	Date
Executive Director, Regional Procurement Office West	
Head of Contracting Activity (HCA)	