

JUSTIFICATION
FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)
Office of Procurement Acquisition and Logistics
Technology Acquisition Center
23 Christopher Way
Eatontown, NJ 07724

2. Description of Action: The proposed action is for a firm-fixed price delivery order issued under the National Aeronautics and Space Administration (NASA) Solution for Enterprise-Wide Procurement (SEWP) V Government Wide Acquisition Contract (GWAC) for the procurement of brand name Nuance software maintenance and support.

3. Description of the Supplies or Services: The Department of Veterans Affairs (VA) Veterans Integrated Service Networks (VISN) 8 has a requirement for brand name Nuance software maintenance and support. VISN 8 employees 188 Radiologists across seven facilities. In providing dictation of Radiology exams, Radiologists use electronic dictation integrated with the VISN Radiology Picture Archiving and Communications System (PACS). The VISN solution for dictation is Nuance PowerScribe 360 for all seven VISN facilities. VISN 8 also utilizes the Nuance MPower Analytics system as an enhancement tool to provide in-depth data analysis of the reports, exam codes, exam volume, etc. for business management. This effort shall have a base period of performance of October 1, 2019 through September 30, 2020 with two 12-month option periods for continued software maintenance and support, which includes phone and email support, on-line self-help, software patches, and upgrades, for the brand name Nuance PowerScribe and MPower Analytics system to ensure system availability and functionality for Radiologists throughout VISN 8.

4. Statutory Authority: Pursuant to Federal Acquisition Regulation (FAR) Subpart 16.505(a)(4), the following brand name requirement is being justified and approved as an exception to fair opportunity under the statutory authority of Section 41 U.S.C. 4106(c)(2) as implemented by FAR Subpart 16.505(b)(2)(i)(B), entitled "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".

5. Rationale Supporting Use of Authority Cited Above: Based upon market research, as described in section 8 of this justification, it was determined that limited competition is viable among authorized resellers for brand-name Nuance software maintenance and support services. Brand name Nuance PowerScribe 360 and MPower Analytics system is the currently installed Radiology Speech Recognition Dictation system for VISN 8 facilities. It is a centrally managed system and all facilities connect to and generate Radiology reports from this system. Due to the proprietary nature of this software, Nuance support staff with the technical knowledge of the software must be available to provide support. The PowerScribe 360 Nuance software and MPower Analytics system

is the currently fielded solution which provides efficient radiology reporting for patients. Only Nuance, or an authorized reseller, can provide the necessary software updates because of the propriety source code required to develop and implement software updates. No other source is capable of providing the required software maintenance or support services that meets VA's unique functional requirements, because no other source has the capability to develop and issue software updates and fixes for the existing brand name Nuance software necessary to support existing Nuance PowerScribe 360 and MPower Analytics system without access to Nuance proprietary software code. Further, if the renewal of Nuance software maintenance and support were not to be purchased, the time it would take the time it would take to install, test, and train VA staff on the use of new software would cause multiple project delays at least a minimum of six months. Renewal of Nuance software maintenance will ensure that all support services are performed and properly configured to the VA-owned Nuance software. If the software should not be properly maintained, the risk of failure would impact hundreds Radiologist depending on its functionality. If this award is not made, it would be impossible to modify the software code as necessary for these patches and updates, degrading the Government's ability to receive clinical reports from radiology exams in a timely manner, thereby negatively impacting patient care for the Veterans. No other license is compatible with or interoperable with the existing Nuance proprietary database structures, protocols, and software application programming interfaces. Therefore, only Nuance, or an authorized reseller, can provide the software maintenance and support services that meets the Government's requirements.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in section 8 of this justification. This effort did not yield any additional sources that can meet the Government's requirements. However, the undersigned VA technical representative determined that limited competition is available among authorized resellers for brand name Nuance software maintenance and support. In accordance with FAR 16.505(a)(4)(iii)(A)(1), this justification will be provided with the solicitation to all appropriate National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) V Governmentwide Acquisition Contract (GWAC) holders. Furthermore, in accordance with FAR 5.301, 16.505(b)(2)(ii)(D), and 16.505(a)(4)(iii), the award notice for this action will be synopsisized on the Federal Business Opportunities website and this justification will be made publicly available within 14 days of award.

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.

8. Market Research: Ongoing since January 2019, the Government's technical experts have conducted market research by reviewing similar software maintenance in the market place. Most recently, in August 2019, similar software maintenance and products reviewed included Agfa Talk, M*Modal, and Dolbey Fusion. Based on the review of these similar products, the Government's technical experts determined that none of the products or software maintenance can meet the Government's

requirements previously discussed in Section 5 of this justification. Unauthorized software maintenance providers do not have access to use the proprietary source code of the Nuance software licenses and are not able to provide troubleshooting, updates, fixes, patches, and upgrades. VA contacted Nuance in August 2019 to ascertain the required software maintenance is only authorized through its resellers.

In August 2019, additional market research was conducted through the use of the Provider Lookup Tool on the NASA SEWP V GWAC website which identified multiple Service-Disabled Veteran-Owned Small Business (SDVOSB) Value-Added Reseller GWAC holders in Group B(2) that provide the brand name Nuance software maintenance. Therefore, limited competition is expected among SDVOSBs for this proposed action.

9. Other Facts: None.