

DEPARTMENT OF VETERANS AFFAIRS

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

Acquisition Plan Action ID: 36C242-20-AP-1362

1. **Contracting Activity:** Department of Veterans Affairs, VISN 2, James J. Peters VAMC, 130 West Kingsbridge Road, Bronx NY 10468 has submitted emergency purchase request number 526-20-2-3086-0134 to Network Contracting Office (NCO) 2.
2. **Nature and/or Description of the Action Being Processed:** This is a request for other than full and open competition under FAR 13 for ventilator units requested as **essential emergency medical devices as part of the Medical Center's efforts to combat the COVID 19 Pandemic**. NCO 2 intends to award a sole source contract to Covidien Sales, 15 Hampshire St., Mansfield, MA 02048.
3. **Description of Supplies/Services Required to Meet the Agency's Needs:** This is a request for other than full and open competition to purchase 30 Medtronic/Covidien Puritan Bennett™ 980 ventilator units required as essential emergency medical devices as part of the Medical Center's efforts to combat the COVID 19 Pandemic.
This will be a firm fixed price contract with an estimated price of \$1,286,115.30.
The period of performance will be the Date of Award to 6/30/2020 (*the current end date of the National Interest Action*).
4. **Statutory Authority Permitting Other than Full and Open Competition:**
() (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):**
On January 31st, the President declared a National Emergency for the United States as a result of the COVID 19/ Coronavirus global pandemic which became a National Interest Action on 3/13/2020 and activated the use of FAR 18 emergency procedures to expedite purchases of critical equipment. Medtronic/Covidien ventilators are currently in use at the facility, and medical personnel are trained and familiar with using them. The nature of the coronavirus to attack the respiratory system, has

created the critical need and “Unusual and Compelling Urgency” per FAR 6.302-2 for the stated ventilator units to be provided immediately. They are required on site as soon as possible to provide life saving medical treatment to projected COVID-19 cases.

The sources for these ventilators is limited to the Original Equipment Manufacturer (OEM) Covidien. Only OEM Covidien will be able to provide the ventilator units as expeditiously as possible.

The existing Strategic Acquisition Center (SAC) contract (36C10G19D0003) was considered but rejected because the SAC let NCO2 Contracting know their lead time of 6-8 weeks was likely to be considerably more than the lead time of an order placed directly with the OEM.

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

Research was conducted by email and phone communication with the original equipment manufacturer and the SAC national contract holder Marathon Medical Corp. (Contract No. 36C10G19D0003).

At this time actions to facilitate competition for this acquisition are not available. These medical devices are required on site as soon as possible as these ventilator units are essential emergency medical devices for our medical professionals to provide life saving assistance to projected COVID 19 cases. As we are in the midst of a global pandemic this is an emergency requirement and time is not available to use the existing SAC national contract or conduct full and open solicitation procedures.

7. Determination by the CO that the Anticipated Cost to the Government will be Fair and Reasonable: Covidien has provided discounted rates for the ventilator units in an effort to support medical facilities. The Covidien proposed quote of \$1,286,115.30. is more than \$200,000 less than the fair and reasonable rate negotiated under the SAC contract thru Marathon Medical Corp (36C10G19D0003) which provided a quote of \$1,487,156.70.

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

Market research was conducted by email and phone communication with the original equipment manufacturer (OEM) and the SAC national contract holder Marathon Medical Corp.(SDVOSB).

The existing mandatory SAC contract (36C10G19D0003) was not considered because the SAC let NCO2 Contracting know that their lead time of 6-8 weeks was likely to be considerably more than the lead time of an order placed directly with the OEM.

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

At this time actions to facilitate competition for this acquisition are not available. These medical devices are required on site as soon as possible as the ventilator units are essential emergency medical devices for our medical professionals to provide life saving assistance to projected COVID 19 cases. As we are in the midst of a global pandemic, this is an emergency requirement, and time is not available to conduct full and open solicitation procedures.

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

- 1) 36C10G19D0003 - MARATHON MEDICAL CORPORATION
15 HAMPSHIRE ST
MANSFIELD, MA 02048-1113
- 2) COVIDIEN SALES, LLC
15 HAMPSHIRE ST
MANSFIELD, MA 02048-1113

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:

None at this time. Under normal circumstances, ventilators would be ordered via the SAC National contract and there would not be a lead time of 6-8 weeks using that process. But during this time of crisis due to the coronavirus pandemic, VISN 2 has no choice but to procure these ventilators as a sole source under statute authority urgent and compelling emergency.

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.

[Redacted Signature] -04'00'

[Redacted Signature]

[Redacted Signature]

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.

[Redacted Signature] -04'00'

Gina Blum
Contracting Officer
NCO2 Supply 1

Date

VHAPM Part 806.3 Other Than Full and Open Competition (OFOC) SOP
Attachment 2: Request for Sole Source Justification Format >SAT
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- 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.

[Redacted Signature]

[Redacted Title]

- 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.

[Redacted Signature]