



**DEPARTMENT OF THE NAVY  
SPACE AND NAVAL WARFARE SYSTEMS COMMAND  
4301 PACIFIC HIGHWAY  
SAN DIEGO, CA 92110-3127**

**JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION**

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**J&A NUMBER #17,861**

Upon the basis of the following justification, which I hereby approve as the Head of the Contracting Activity, the contract action described below may be solicited and awarded without full and open competition pursuant to the authority of 10 USC 2304 (c)(1).

(1) Contracting Activity

Space & Naval Warfare Systems Command (SPAWAR), San Diego, California.

(2) Description of the Action Being Approved

This Justification & Approval supports a modification to contract N00039-15-D-0044 with Leidos, Inc. to add additional scope, described in Paragraph 3, which is necessary to procure operational management services in support of hosting the Electronic Health Record solution procured by the contract.

(3) Description of Supplies/Services

Contract N00039-15-D-0044 was awarded on July 29, 2015 to Leidos, Inc. after a full and open competition. The total award ceiling was \$4,336,822,777 across a potential 10-year ordering period, if all optional ordering periods are exercised and award terms are earned. The contractor will provide an off-the-shelf (OTS) electronic health record (EHR) system for deployment across the Department of Defense (DoD) enterprise. Leidos, the prime contractor, serves as the service provider-integrator (SPI). The DHMSM EHR consists of inpatient and outpatient solutions from Cerner and a dental solution provided by Henry Schein. The DHMSM EHR will replace functionality of core legacy systems (AHLTA, CHCS, and Essentris, among others), and will be deployed to both fixed medical treatment facilities and operational medicine facilities worldwide. The Leidos Partnership will support the integration, configuration, testing, deployment, training, and sustainment of the DHMSM EHR.

The DHMSM EHR will communicate via existing DoD IT Networks (DODIN) as well as Defense Health Agency (DHA) infrastructure to support the solution. The Medical Community of Interest (Med-COI) network provides this infrastructure backbone and supports the legacy EHR capability as well as the new DHMSM EHR. In addition to network infrastructure, the DHMSM EHR solution must have a hosting infrastructure in which to deploy the solution, store data generated by the system, and provide any server-side application processing.

The Request For Proposals (RFP), leading to the award of the contract to Leidos, contemplated the required hosting solution. Offerors were instructed that the Government would provide either a traditional DISA hosting solution, or a Government-approved commercial solution at the enterprise hosting level. This was referred to as "Tier 1" hosting. Any site-specific, or non-enterprise hosting at various levels were required to be proposed and provided by the contractor, which was referred to as

Tiers 2 through 4 depending on whether they were regionally or locally located. The scope being added under authority of this J&A will allow for the ordering of operational management services, to include Tier 1 hosting, on the IDIQ contract, rather than the Government providing a separate enterprise hosting solution.

The Government's strategy when developing the RFP for this performance based contract anticipated differing solutions that utilized some varying amount of centralized, regional, and local hosting instances, depending on a particular solution's architecture. The Leidos solution is unique in that it provides [REDACTED]

Further, the architecture of the contracted EHR is [REDACTED]

In the RFP, offerors were required to complete a pricing attachment that reflected the scale and estimated price for the offeror's proposed Tier 1 solution based upon pricing assumptions provided by the Government, which were derived from the traditional DISA model. The resulting information was used to consider the impact of the vast differences that the Government anticipated in architecture needs (i.e., highly centralized, decentralized, virtualized, etc.) for the different solutions, and to create a common basis for proposal evaluation. The price for these hosting services was included in the total evaluated cost/price calculation and, thus, in the source selection decision, but not included in the final contract award value. The Government expected that the architecture of a particular solution would drive the requirements for the size and complexity of the hosting; therefore, not including this in the evaluated cost/price could have unfairly favored one offer over another depending on the proposed architecture. For example, offerors with extensive infrastructure needs at Tiers 2 through 4 would have unfairly looked far more expensive than offerors without these needs, yet the Government would still be required to expend funds to obtain Tier 1 infrastructure. Given that underlying architecture is the primary driver of price, not who provides the hosting, and that the Government already considered this in its source selection decision, the decision to utilize contractor-provided hosting would not have impacted the source selection decision.

The proposed modification will only add scope for these services to the DHMSM contract; the total ordering ceiling for the IDIQ will remain unchanged. However, the Independent Government Estimate (IGE) for the Tier 1 operational management services is \$50.7 million over the remaining life of the 10-year contract. The period of performance of contract N00039-15-D-0044 will also remain unchanged.

**Estimated Dollar Value**

	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	FY25	Total
RDT&E	\$7.9M	\$1.9M	--	--	--	--	--	--	--	--	\$9.8M
O&M	--	--	\$2.0M	\$6.5M	\$5.8M	\$5.5M	\$5.5M	\$5.5M	\$5.1M	\$5.0M	\$40.9M
<b>Total</b>	<b>\$7.9M</b>	<b>\$1.9M</b>	<b>\$2.0M</b>	<b>\$6.5M</b>	<b>\$5.8M</b>	<b>\$5.5M</b>	<b>\$5.5M</b>	<b>\$5.5M</b>	<b>\$5.1M</b>	<b>\$5.0M</b>	<b>\$50.7M</b>

**(4) Statutory Authority Permitting Other Than Full and Open Competition**

10 U.S.C. 2304(c)(1), One source or limited sources.

(5) Rationale Justifying Use of Cited Statutory Authority

Direct access to proprietary Cerner data, which is only available as a managed service within Cerner-owned and operated data centers, is required to enable the full functionality of the DHMSM EHR. Therefore, no vendor other than Cerner, as a member of the Leidos team, can satisfy the requirement. Hosting services are a critical component of delivering the DHMSM EHR solution, especially when considering that the DHMSM EHR solution to be delivered [REDACTED].

The DHMSM EHR must be capable of meeting or exceeding the key system attributes to include availability, maintainability, reliability, security, and performance, in addition to delivering the 60 primary functional capabilities that allow for the delivery of healthcare in accordance with the Military Health System's (MHS) Concepts of Operations (CONOPS). To deliver these capabilities, Leidos proposed a suite of products delivered by Cerner and Henry Schein. In addition to the 60 required capabilities, the contract requires the offeror to deliver all products in its commercial suite, as well as any future capabilities added to its commercial suite. As part of the DHMSM solicitation, offerors were allowed and encouraged to propose additional commercial products or capabilities that may be of benefit to the Government, beyond those required in the solicitation, as a way of differentiating potential solutions during source selection. The terms of the contract required licenses to utilize any such products, and the RFP informed offerors that these capabilities would be added to the contract as formal requirements. The Leidos Partnership proposed a suite of products that met the 60 required capabilities and added several additional capabilities. In accordance with the RFP, the additional capabilities were incorporated into the contract as requirements.

While Leidos' solution, to include the proposed additional capabilities, can technically be hosted in a Government or commercial facility, the benefits of these capabilities cannot be fully realized unless they are hosted in the Cerner environment. To fully enable these functionalities, the DHMSM EHR solution requires direct access to proprietary Cerner data including: 1) anonymized patient data from the entire Cerner community, beyond only the DoD enclave; 2) quantitative models; and 3) strategies utilized by the Cerner solution in support of advanced analytical capabilities. This is offered by Cerner only as part of its commercial managed services offering (which also includes hosting), and is only available within [REDACTED] Cerner-owned and operated data centers. The proprietary data consists of quantitative models and strategies, which are the result of extensive Cerner-funded research and development efforts conducted over 15 years. The models are based on analysis of clinical, operational, and financial data associated with more than [REDACTED] health records from more than [REDACTED] medical institutions. The models incorporate vast amounts of actual longitudinal patient data and information collected through other Cerner applications covering more than [REDACTED] patients. Forward deploying the DHMSM EHR into any other hosting solution would prevent access to these models and data (and would be limited to a DoD-only dataset) because Cerner only offers them to customers as part of its commercial managed services solution.

The Leidos solution is capable, from a technical perspective, of being hosted in Government-provided Tier I enterprise datacenters (i.e. Government or commercial facilities), and is, thus, fully compliant with the requirements of the DHMSM contract. Moreover, the evaluation of responses to the Government's September Hosting RFI (discussed below), along with technical data about the EHR solution delivered under the contract, confirmed that commercial options to host the DHMSM EHR solution are available, from a technical perspective. Nevertheless, all identified solutions would require access to the Cerner proprietary data, and Cerner has asserted to the Government that it does not allow for connection to these managed services by any other commercial entity, and that it does not resell these services through any other source.

The additional capabilities, proposed as part of the Leidos solution and incorporated into the contract, provide functionality that utilizes machine learning and computational statistics to enable predictive analysis and decision support. The full benefit of these functionalities is considered to be of significant value to DoD clinicians, end-users, and all beneficiaries; and can directly impact patient outcomes. Among many examples are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Cerner proprietary information is utilized by these capabilities, which were already procured under the DHMSM contract. While the capabilities will function in facilities without access to the proprietary Cerner information, they will be limited to utilizing only DoD data, which greatly impacts the accuracy of the analytics given the much smaller population of data which, in turn, could

negatively impact patient outcomes. As described above, the additional capabilities provide for greater insights into patient care, safety, and risks, which the MHS community desires to utilize. Given the benefits of the additional capabilities to clinicians and beneficiaries, the MHS' desire to leverage the functionality to improve patient safety and care, and the fact that the capabilities have been incorporated into the contract as requirements, fully enabling the capabilities is clearly in the best interest of the Government.

As this data is proprietary and the result of private expenditures and research and development, the Government does not have rights to access or use this data, or to provide it to other entities for use outside of the Cerner data centers. Allowing a third-party to host or to have access to the Cerner proprietary data could adversely impact Cerner's financial viability and competitive market advantage. The DHMSM EHR must be co-located at the commercial Cerner hosting centers for the DoD to fully utilize the benefits provided by modules such as [REDACTED], unless these barriers to access can be alleviated.

Under the DHMSM contract, the Government paid [REDACTED] for enterprise licenses to the Cerner suite, which represents a [REDACTED] discount from their commercial pricing. The Government expects that conducting a smaller volume competitive procurement among higher priced offerings, to obtain other analytical modules, would likely not result in [REDACTED] and would result in considerable additional expense. Further, initial system configuration is priced at [REDACTED], almost half of which has already been expended to date configuring the existing system. As a result, reconfiguring the system to utilize analytical modules and the accompanying data would result in a substantial duplication of cost, well in excess of the entire cost of hosting the solution. This would also fundamentally alter the Government's strategy of procuring a commercial-off-the-shelf EHR as it would result in a "fork" of the Cerner suite that would have modules integrated into it that are not part of Cerner's commercial offering. This would result in even further duplication of cost and considerable administrative burden because DoD would be responsible for the maintenance and upkeep of the entire "forked" system instead of just its portion of the maintenance of the commercial system that Cerner's other commercial customers contribute to.

The hosting environment must be instantiated in time to support developmental testing and operational testing of the DHMSM EHR by 2QFY16. Further, this testing must be completed to meet the deployment activities of EHR solution as required by the National Defense Authorization Act (NDAA) of 2014, Section 713, which states that DoD shall, "deploy modernized electronic health record software supporting clinicians of [DoD] by no later than December 31, 2016." If these activities do not occur as scheduled, the system will not be able to deploy, and contract resources in place to conduct deployment activities such as training, change management, and site activation will be subject to Government delay, resulting in further potential duplication of cost. These delays would also further extend the life of many legacy systems; retiring these legacy systems was one of the key benefits identified in the Government Economic Analysis. Because, and as mentioned above, the RFP allowed for flexibility in proposing the DHMSM EHR solution and because the selected solution served to determine the requirements for enterprise hosting, the Government could not have conducted the procurement for the hosting environment until after award of the DHMSM EHR contract. Exploring further solutions, to include conducting competitive procurements for the enterprise hosting solution, would result in unacceptable delays in fulfilling the requirements.

Cerner has asserted that it is not willing to negotiate at this time for the procurement of the data rights that would enable the Government to utilize the Cerner solution in a competitive environment. Thus, competing the hosting solution would either negatively affect patient outcomes or result in significant duplication of cost that is unlikely to be recouped through competition. The Government's IGE estimates the cost of commercial hosting to be approximately \$50.7M over 10 years. Even if

obtaining the hosting on a sole source basis cost two to three times as much, which the Government has no reason to expect, it would likely still be less than the cost of reconfiguring the system to utilize different analytics modules to offset the negative effect on patient outcomes.

**(6) Description of Efforts Made to Solicit Offers from as Many Offerors as Practicable**

To assess the interest and capability present in the commercial marketplace, SPAWAR, on behalf of the DHMSM program, released a request for information (RFI) regarding the hosting requirements on September 21, 2015. The RFI posed a number of questions related to environments, security, location, physical security, capacity, scalability, continuity, performance, managed services, and price. The RFI resulted in 19 responses from both large and small businesses. Upon review of the information provided and through engineering assessment of the DHMSM EHR solution, the Government determined that none of the respondents, with the exception of Cerner, were capable of hosting the DHMSM solution so that the additional capabilities associated with access to the proprietary Cerner data (as addressed above) could be obtained. Respondents were not asked in the RFI to demonstrate how they could obtain access to Cerner proprietary data because of Cerner's assertions that they do not provide access outside of their managed service offerings.

The Government has also worked closely with the DoD Chief Information Officer to explore the possibility of hosting the solution in Government datacenter environments; however, these environments present the same barriers to access as commercial solutions.

On December 18, 2015, the Government issued a synopsis through its SPAWAR e-Commerce and FedBizOps portals that advised industry of its intent to proceed on a sole source basis. The synopsis established a deadline for responses of January 04, 2016. The Government received four responses from interested parties that challenged the sole source notification:

Company	Address	
CSC Government Solutions LLC	Falls Church, VA	
IBM US Federal, Global Business Services	Bethesda, MD	
Amazon Web Services, Inc.	Herndon, VA	
General Dynamics Information Technology, Inc.	Frederick, MD	

█ of the responses █ describe technical solutions utilizing a variety of methods to connect the DHMSM EHR back to the Cerner proprietary data, while utilizing appropriate safeguards. The methods include the use of secure protocols, encryption, virtual private clouds, etc. The Government does not fundamentally dispute any of the technical assertions in the responses, and, in fact, considers some of them to have technical merit in that the solution described would be viable if access to Cerner data could be obtained. Nevertheless, none of the solutions could obtain access to Cerner's proprietary data, which is only available as part of Cerner's managed service offering. Cerner does not allow third-party access and will not enter discussions with the Government to procure the necessary rights to grant third-part access.

█ of the responses █ assumed that the Government has sufficient data rights to compel Cerner to grant access to this proprietary data. However, this assumption is incorrect. The Government did not request these rights as part of the RFP or obtain these rights under the contract, and Cerner will not specifically negotiate access rights post award. █ also suggests replacing the Cerner analytical modules with a module from another vendor to allow hosting the solution in other facilities. The Government has already procured an EHR solution, which includes analytical modules, and replacing these modules would result in considerable inefficiency and duplication of cost.

Finally, [REDACTED] response [REDACTED] failed to provide a technical solution, but asserted that any systems integrator can engage with Cerner to obtain access to the Cerner proprietary data, but provides no supporting evidence demonstrating the ability to obtain access, such as letters of intent from Cerner, previous experience obtaining access to Cerner's proprietary data when working with Cerner, etc. As such, this response is speculative, and does not indicate a viable solution, especially given the direct assertion by Cerner that they do not provide access outside of their managed service offering.

Because the Government synopsis informed all interested parties that they must clearly demonstrate an ability to obtain access to the proprietary Cerner data, and none of the responses did so, the Government determined that further discussions were unnecessary. The Government responded in writing to each interested party that responded to the synopsis to inform them of the result of the Government's analysis; specifically, that while their solutions may have technical merit with the exception of [REDACTED], it was not clear how their solutions would overcome the restrictions on access to proprietary Cerner information. The interested parties were further informed that fully enabling the additional capabilities has been determined to be in the best interest of the Government and that the only viable technical solution for fully enabling these capabilities is through the proposed sole source modification to the Leidos and Cerner team under contract N00039-15-D-0044.

(7) Determination of Fair and Reasonable Cost

The Contracting Officer has determined the anticipated cost to the Government of the supplies/services covered by this J&A will be fair and reasonable. Prior to issuance of any task orders under the IDIQ contract, the Contracting Officer will perform cost/price analysis comparing the proposed solution to other similar commercial and Government options.

(8) Actions to Remove Barriers to Future Competition

N00039-15-D-0044 provides for the delivery of perpetual, enterprise licenses for the DHMSM EHR solution. The DHMSM Acquisition Strategy anticipates one or more competitive follow-on contracts to sustain the EHR solution, for which the Government owns a perpetual license, at the conclusion of the period of performance. The Government expects to develop a performance specification that will support competition for future acquisitions of the same or similar items. In order to develop such a specification, the Government must obtain data rights to the Cerner proprietary data. While Cerner has currently indicated that it will not negotiate for these rights, the Government will attempt to reopen the matter as circumstances evolve throughout the product's lifecycle.

**CERTIFICATIONS AND APPROVAL**

**TECHNICAL/REQUIREMENTS CERTIFICATION**

I certify that the facts and representations under my cognizance which are included in this Justification and its supporting acquisition planning documents, except as noted herein are complete and accurate to the best of my knowledge and belief.

**DHMSM CHIEF ENGINEER, TECHNICAL COGNIZANCE:**

[Redacted Signature]

**MHS FUNCTIONAL CHAMPION, REQUIREMENTS COGNIZANCE:**

[Redacted Signature]

**LEGAL SUFFICIENCY REVIEW:**

I have determined this Justification is legally sufficient.

[Redacted Signature]

**CONTRACTING OFFICER CERTIFICATION:**

I certify that this Justification is accurate and complete to the best of my knowledge and belief.

Matthew G. Hudson      Matthew G. Hudson      703-588-5696      28 JAN 2016  
Signature                      Name                      Phone No.                      Date

**HEAD OF THE CONTRACTING ACTIVITY APPROVAL:**

Upon the basis of the above justification, I hereby approve, as Head of the Contracting Activity, the solicitation of the proposed procurement(s) described herein using other than full and open competition, pursuant to the authority of 10 U.S.C. 2304(c)(1), one source or limited sources.

[Redacted Signature]