

JUSTIFICATION AND APPROVAL
FOR OTHER THAN FULL AND OPEN COMPETITION

1. Contracting Activity: Department of Veterans Affairs (VA)
Office of Acquisition Operations
Technology Acquisition Center
260 Industrial Way West
Eatontown, NJ 07724

2. Description of Action: The proposed action is for a Firm-Fixed-Price (FFP) contract, consisting of one twelve (12) month base period and one (1), twelve (12) month option period for additional support services from the Open Source Electronic Health Record Agent (OSEHRA) custodian for the Electronic Health Record (EHR) open source software development community.

3. Description of Supplies or Services: The proposed action will provide for open source software community operational support from OSEHRA, the current EHR open source Custodial Agent. OSEHRA's currently software code baseline repository includes the VA's Veterans Health Information Systems and Technology Architecture (VistA) Freedom of Information Act (FOIA) code. As a Custodial Agent, OSEHRA facilitates Government agencies, industry, educational institutions, and independent software developers to become members of this EHR-based open source community and contribute software code. This software code can be utilized to allow VA to develop and improve the current Veterans Health Information Systems and Technology Architecture (VistA) based EHR, as well as VA's contribution to the proposed integrated EHR (iEHR) providing for the development of a common EHR serving both active duty service members and, subsequently, Veterans so their health information can be seamlessly shared and available in DoD and VA healthcare systems. Under this proposed acquisition, VA requires establishment of a separate repository for standard Gold Disk VistA code to ensure a common software baseline compared to the current 133 instances of VistA currently operating at VA facilities across the enterprise. Specifically, VA requires additional support services beyond those received as an EHR open source community participant which include the establishment of a test platform to ensure interoperability of certified open source code contributions with the VA Gold Disk baseline for release back into the VA VistA production domain. VA also requires the development of standards supporting VistA open source development and integration into the VA production enterprise and implementation of open source software policy across the Department. Finally, VA requires documentation for open source community outreach planning supporting continued code contribution inputs into VistA. The total estimated price of the proposed action inclusive of the option period is

4. Statutory Authority: The statutory authority permitting other than full and open competition for this proposed acquisition is 41 U.S.C. 253(c)(3), "when it is

necessary to establish or maintain an essential capability for engineering or development work calling for the practical application of investigative findings and theories of a scientific or technical nature” as implemented by Federal Acquisition Regulation (FAR) 6.302-3(a)(2)(ii).

5. Rationale Supporting Use of Authority Cited Above: The proposed source for this action is the OSEHRA, 900 North Glebe Road, Arlington, Virginia, 22203. OSEHRA was activated under contract GS-35F-0738N with The Informatics Applications Group (TIAG) Inc., order VA118-11-F-0067 dated June 17, 2011 and acquired further support for its operational activation under contract VA118-12-C-0039 with Ray Group International. OSEHRA, as the Custodial Agent of the EHR open source software community and as a 501(c) not-for-profit organization provides essential EHR open source community software engineering and development capabilities through its current hosting of the VistA Freedom of Information Act (FOIA) software code repository; its establishment of the existing open source software code contribution environment and open source community member governance to approve proposed projects and submit corresponding software development code; and its establishment of the functional and operational certification infrastructure and procedures to test software code contributions for integration into the FOIA codebase.

Since its activation, OSEHRA is the sole not-for-profit EHR open source community custodian and the only such custodian with the software engineering and development capabilities to facilitate open source software development projects having open-architected, standards-based and modular functionality for adoption into existing EHR systems, including VistA. Further, no academic institutions or Federally Funded Research and Development Centers (FFRDCs) could continue operations of the current custodian or operate an EHR-focused open source software development community without significant and unproductive disruption to both VA and the EHR market. VA's evolving governance protocols and processes for development of VistA software code, code contributions, certification, retrieval and validation (inside the VA firewall) are designed to seamlessly integrate with the development and certification infrastructure implemented by OSEHRA. These software engineering and development capabilities can facilitate deployment of production-ready modular software enhancements, replacements and extensions to VistA across all VA facilities. This will ensure superior compliance with applicable VA security, configuration management and product management policy. Duplication of these software engineering and development capabilities, whether with a profit making contractor, not-for-profit entity, academic institution or FFRDC would require at a minimum approximately \$13M in duplication of costs already expended by VA. This estimate includes \$10M in contracts (dollars expended in contracts referenced above) to institute the necessary governance, infrastructure and community enablement to activate another Custodial Agent. The estimate also includes VA salary of \$3M as calculated by the VA Office of Information Technology (OIT) VistA Tiger Team expended for the initial design and planned implementation of complimentary business and technical processes for review and approval of

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proposed software projects for submission consideration and retrieval and validation of open source software code or commercial healthcare software modules certified for operational and functional use based upon the current governance and certification processes previously created and currently implemented by OSEHRA. None of the costs incurred would be recovered through competition as there would essentially be two EHR open source software development communities trying to establish and maintain the same baseline software code repository, governance and certification guidelines. Interaction with duplicate Custodial Agents for VistA EHR to certify software code through established engineering and certification governance creates the appearance of a lack of commitment by VA to stimulate innovation and technology through open source methodology throughout the EHR market place. The schedule impacts relative to establishment of a duplicate EHR open source software development community providing the existing capabilities of OSEHRA is estimated at 24 months, largely because potential participants will be reluctant to support both, or to switch from OSEHRA to an alternative custodian. VA impacts associated with a delay of this magnitude would be lost efficiencies in achieving state of the art and improved functionality for the VistA enterprise through the current OSEHRA open source community, particularly with respect to the EHR market innovation and new technologies that have historically promoted proprietary solutions, resulting in the 133 non-standard instances of VistA in use today. VA would be further impacted by the lost investment of 24 months in adopting open source project solutions for the clinical scheduling, laboratory and pharmacy extensions of VistA currently in process. This justification does not anticipate that those modules would be acquired on a non-competitive basis as the purpose of OSEHRA is to provide a common platform upon which standards-based and modular components can be shared, compared, and qualified for use at VA through competitive acquisitions. Accordingly, to ensure VA is fully compliant on an openly architected and modular VistA that facilitates a planned iEHR solution it is essential to maintain OSEHRA's unique open source software engineering and development governance, certification and community enablement capabilities through a non-competitive sole source contract under the authority of FAR 6.302-3(a)(2)(ii).

6. Efforts to Obtain Competition: Market research was conducted, details of which are in the market research section of this document. The proposed action described herein will be synopsized on the Federal Business Opportunities Page in accordance with FAR Part 5. Any proposals received in response to the solicitation shall be considered by the agency.
7. Actions to Increase Competition: Independent operation and self-sufficiency of OSEHRA as custodian of the EHR open source software development community is anticipated. At this time, no future requirements or commitments to acquisitions to sustain operations for the effort described herein are known at this time. In the event of changes to the EHR market or to the VA enterprise and/or the management of VistA that results in future requirements, those shall be handled on a case-by-case basis. Market research shall be conducted to determine any future acquisition strategy, including the need for continued

acquisition from OSEHRA using the authority cited herein or through competitive acquisition.

8. Market Research: The VA Office of the Chief Technology Officer, in conjunction with VHA VistA technical representatives conducted on-going market research since award of the contract for establishment of OSEHRA in June 2011 through October 2012. These VA representatives have reviewed various corporate and foundations websites, trade journals and attended various conferences, summits and seminars to stay abreast of the EHR market place and open source software organizations and their best practices. The results of this market research indicate that there are no other entities, whether private profit making commercial companies, academic institutions, not-for-profit corporations or foundations or Federally Funded Research and Development Centers (FFRDCs) that can meet VA's aforementioned requirements.
9. Other Facts: None.