



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

IN REPLY REFER TO:  
J&A No. 17-0154  
Originator's Code: 55350

**JUSTIFICATION AND APPROVAL  
TO PROCURE USING OTHER THAN FULL AND OPEN COMPETITION**

1. Contracting Activity.

Department of the Navy (DON)  
SPAWAR SYSTEMS CENTER PACIFIC (SSC PAC)  
2.0 Contracts, Code 22550  
53560 Hull Street  
San Diego, CA 92152-5001

2. Description of Action Being Approved.

This procurement action is to award a contract on a sole source basis to Microsoft Corp (Microsoft) for Microsoft Enterprise Services (MES) including Microsoft Premier Services (MPS) and Microsoft Product Engineering Services (MPES). This contract will be a decentralized, Firm Fixed-Price, Indefinite Delivery/Indefinite Quantity (IDIQ) contract with an ordering period of five years consisting of one base year and four (4) twelve-month option periods, with an estimated value of \$1.76B available for ordering to the entire DoD, Intelligence Communities, and U.S. Coast Guard.

The Department of Defense (DoD) Enterprise Software Initiative (ESI) is a strategic sourcing initiative sponsored by the DoD Chief Information Officer to save on costs on commercial software, and information technology (IT) hardware and services; in addition to streamlining ordering procedures and creating greater visibility of DoD-wide requirements. Through its joint team of experts, requirements are consolidated and agreements are established with IT providers resulting in standardized contracting processes and vendor management strategies across the DoD.

Orders awarded against this contract by all DoD components will be required to confirm the validity of requirements in accordance with FAR 16.505(a)(2). The type of funding to be obligated on individual task orders will vary depending on the specifics of each requirement and funding is expected to be predominantly Other Procurement and Operations and Maintenance appropriations.

A 'Within Scope Determination' template will be generated and provided to ordering activities through an ordering guide, which will be disseminated via the DoD ESI website concurrent with award of the contract. The 'Within Scope Determination,' approved by the ordering contracting officer will be required to be completed prior to issuance of any resulting task order.

SPAWAR Systems Center Pacific #17-0154

### 3. Description of Supplies/Services.

MES, which consists of MPS and MPES, will be procured under this contract and are needed to provide end-to-end life cycle product support. The following is a description of each of these services.

- a. MPS offers a combination of proactive offerings to optimize the operations and management of Microsoft technology and 24 x 7 x 365 mission critical reactive support to respond to the most difficult technology outages and/or problems. MPS has a unique support structure comprised of customer-facing personnel, which includes back-end tools, and processes. The following are some of the benefits that MPS provides:
- Customers can order a “sliding-scale” of support between proactive and reactive to respond to customer technology environments. Customers can engage proactive support for system performance analysis prior to an issue. Reactive support is engaged after a system failure or issue has occurred.
  - MPS allows the customer to receive a direct route to Microsoft technical personnel during the life of the Premier Support agreement. These Premier resources include technology personnel with access to Microsoft-only intellectual property.
  - MPS 24 x 7 x 365 problem resolution support provides response and solutions for operational problems as they are encountered. This involves launching the necessary expertise to the customer’s location, including hostile territories, during mission-critical outages or problems.
  - MPS provides proactive support assistance with prescriptive advice and guidance on IT issues such as performance concerns, disaster recovery, and configuration assistance using tools and offerings specifically created at Microsoft.
  - MPS gives customers the ability to define the severity of the situation which in-turn triggers numerous internal as well as external Microsoft resources. This includes Microsoft Technical Account Managers, Premier Field Engineers, and Rapid Onsite Support Services.
  - MPS provides “restricted access” online information services to assist the customer’s IT staff with remaining up to date on Microsoft products and technologies.

b. MPES specializes in the front-lifecycle stages of software system setup (plan, design, architect, develop/code and deploy). MPES requires direct access to Microsoft software developers and source code for current and future products. This direct access allows Microsoft to quickly address customer design and architecture issues. MPES is instrumental in facilitating important new product features/functionality to be considered and implemented based on direct feedback from customers. Microsoft Technology Adoption Program is a corporate offering integrated with MPES which allows customers the ability to experience future technologies and provide input before products are released. Through this offering, customers are able to influence products specifically for their requirements while there is still time to make code changes. MPES includes Microsoft owned and created offerings such as the Microsoft Public Sector Solution Center (PSSC). The PSSC is available to perform full-scale solution development specifically for customer requirements end-to-end. MPES has a direct path to Microsoft software developers to

quickly address customer design and architecture issues and, ultimately product bug issues (i.e. hotfixes) with Microsoft Premier Support.

The estimated ceiling price of the proposed action is \$1.76 billion based on the Independent Government Cost Estimate (IGCE). The IGCE was developed using data gathered from the historical use of DoD ESI, Army CHES, and directly from Microsoft. The Government anticipates the majority of funding for MPS and MPES will be Other Procurement and Operations and Maintenance. For MPES, RDT&E appropriations may be utilized based upon the complexity and developmental nature of the MPES effort.

**TABLE 1: Projected Cost Estimates**

	FY18	FY19	FY20	FY21	FY22	Total
MPS	(b)(4)					
MPES						
<b>Total</b>			<b>352,599,511</b>	<b>359,651,501</b>	<b>366,844,531</b>	<b>\$1,763,688,981</b>

4. Statutory Authority Permitting Other Than Full and Open Competition.

10 U.S.C. 2304(c)(1) (Only one responsible source and no other supplies or services will satisfy agency requirements.)

5. Rationale Justifying Use of Cited Statutory Authority.

Microsoft software is an integral part of the DoD’s architecture within its tactical and non-tactical environments and is in the majority of the IT hardware (servers, desktops, laptops, and other end-user devices) that comprise its’ IT infrastructure. DoD computers include a standard suite of Microsoft software that includes Operating System (OS) and Office applications. The ability to maintain, secure, and operate these systems require direct support from Microsoft to ensure systems are deployed in compliance with information assurance requirements and to ensure operational readiness.

MES requires access to proprietary Microsoft source code for resolving a variety of functional and operational requirements that only Microsoft employees have access to. The following MES services are examples that demonstrate the need for access to proprietary Microsoft source code:

- Migration support of third party Government off-the-shelf (GOTS) and Commercial off-the-shelf (COTS) applications from one Microsoft operating system platform to another. In some cases, the migration of applications from one platform to another exposes security vulnerabilities or functional incompatibilities in the software. In these situations, custom code, scripts, or architecture changes that are not available via Microsoft’s public site are necessary to resolve the issues.
- The Navy’s OCONUS Navy Enterprise Network (ONE-Net) initiative to deliver comprehensive, end-to-end information and telecommunication services to OCONUS

Navy shore commands by using a common computing environment for both the Non-secure IP Router Network (NIPRNet) and Secure IP Router Network (SIPRNet) routinely requires MES. If there is a system failure the government has to ensure the system is back to full operational capability as soon as possible. Access to MES is critical for bringing any Microsoft related system back to operational status. Utilizing MPS, ONE-Net engineers are able to access MES Personnel onsite to facilitate the development of solutions. MPS supports ONE-Net with non-security hotfixes only available through Microsoft through the end of the Extended Support phase of the Microsoft Support Lifecycle. Microsoft provides "Extended Hotfix Support" which can only be developed by personnel with access to Microsoft proprietary code.

- The DoD requires custom engineering support to create, migrate, and integrate cloud solutions including Infrastructure-as-a-Service (IaaS), Platform-as-a-Service (PaaS), and Software-as-a-Service (SaaS). For example, the Navy Hospital Jacksonville is preparing to integrate custom applications and collaboration capabilities into an IaaS model which would require MES. In addition, military components are transitioning current office e-mail, portal services, and collaboration capabilities into a SaaS model, which requires the integration of Active Directory, PKI authentication, and Exchange services with existing on-premise resources. These transitions require changes to current IT processes used to develop, maintain, manage, and regulate desktop-like services in a Defense Community Cloud environment.

Microsoft provides a unique service and is the only vendor that can provide these types of services via MES. Microsoft does not provide its proprietary source code to any of its authorized service partners and although MPS services can be acquired through a Microsoft authorized service partner, service partners would be limited in providing services (i.e. migration and integration of cloud solutions) due to the need for access through Microsoft employees to proprietary source code and intellectual property. For those MES contracts that are procured through an authorized service partner, the services will still be provided by Microsoft and the contractor would charge pass-through charges resulting in higher prices.

Based on data obtained from the Federal Procurement Data System – Next Generation (FPDS-NG), the following table provides a comparison of labor costs between Microsoft and their authorized service partners.

Title	MES Labor rate	Company A Labor Rate	% higher	Company B Labor Rate	% higher	Company C Labor Rate	% higher	Company D Labor Rate	% higher
Associate Consultant									
Consultant									
Engagement Manager									
Principal Consultant									
Project Manager									
Senior Consultant					(b)(4)				
Designated Support Engineering (DSE)									
Support Account Manager									
US National Problem Resolution Support (MPES)									

Based on the analysis required in FAR 6.302-1(a)(2)(iii)(A) for a follow-on contract, awarding to any other contractor (i.e. Microsoft authorized service partners) for MES would result in substantial duplication of cost to the Government that is not expected to be recovered through competition. These pass-through costs would be an average of 10% higher (ranging from 2% to 19% higher) if procured through a Microsoft authorized service partner instead of directly to Microsoft. If this entire requirement were to be competed among Microsoft authorized service partners, the pass-through costs would be \$ 176M. Additionally, market research further supports that Microsoft is the only contractor available for MES as demonstrated in previous IDIQ contracts for MES (including the MARCORSSYSCOM and DISA contracts) which were also sole-sourced to Microsoft using other than full and open competitive procedures pursuant to Title 10 U.S. Code 2304(c)(1) and Federal Acquisition Regulation (FAR) 6.302-1/Defense Federal Acquisition Regulation Supplement (DFARS) 206.302-1.

6. Description of Efforts Made to Solicit Offers from as Many Offerors as Practicable.

A synopsis was posted on Federal Business Opportunities (FedBizOpps) in April 2017 that provided notice of intent to award a Sole-Source contract to Microsoft. No responses were received. This is consistent with a similar notice of intent to sole source posted in July 2012. To date, no alternative sources capable of providing MES have expressed interest in this procurement.

In addition to the aforementioned synopsis of the proposed acquisition, the government conducted on-line research, held extensive meetings with Microsoft, and sought information through questionnaires from current MES customers. Market research revealed there were not any additional potential sources. A search conducted on the Small Business Administration (SBA) Dynamic Small Business Search revealed 18 firms that offer MES. Of the 18 firms, five have GSA Federal Supply Schedule contracts and of those five, three are small businesses. After further inquiry, it was concluded that only a third of the MPES related service offerings are available on the five partners' GSA contract and MPS related services are not available on any of the GSA schedules. 18 companies have the ability to sell MES on a pass through basis by

entering into a Microsoft Service Agreement with Microsoft, which is essentially a “contractor/subcontractor” relationship. Any company can establish this agreement with Microsoft. Preliminary comparison of the MPES GSA prices with Microsoft public sector prices confirmed that contract offered GSA prices are higher than the Microsoft price lists. Microsoft partners are not able to obtain MES at rates discounted from the Microsoft price lists. By establishing a contract directly with Microsoft, DoD will ensure the lowest MES prices available are obtained and avoid pass through charges of service partners.

Market research did reveal a rare occasion where a partner provided MES at a slightly reduced price; however, the overarching procurement involved large hardware purchases wherein the hardware was of such significance the partner was willing to take a loss on the MES. Hardware purchases will not be included under the proposed MES contract.

#### 7. Determination of Fair and Reasonable Cost.

Microsoft prepares an annual MES price list that is distributed upon request. The price list is comprised of two sets of rates, commercial and public sector. DoD falls under the public sector rates. Price reasonableness will be determined based on a comparison of the MES price lists and pricing offered under previous efforts for MES. The Contracting Officer will determine the anticipated cost to the Government for the services covered by this J&A will be fair and reasonable.

#### 8. Actions to Remove Barriers to Future Competition.

Due to Microsoft’s proprietary source code, future competition with the potential of producing better pricing for the Government is not attainable because: (1) Microsoft resellers and service partners cannot perform MES services with their own employees since they cannot obtain access to proprietary Microsoft code; and (2) Microsoft does not provide discounted prices for MES to any reseller. Resellers can only provide MES via subcontract (Microsoft Service Agreement) to Microsoft and this subcontract arrangement would most likely result in the Government being charged higher prices due to pass-through charges assessed by the resellers.

Market conditions have not changed since the original MES services contract was awarded in 2009. Future competition is not anticipated as both MPS and MPES require access to proprietary source code which is restricted by Microsoft solely for use by Microsoft employed technicians.

**TECHNICAL AND REQUIREMENTS CERTIFICATION (FAR 6.303-2(b))**

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.

(b)(6)

07/26/17

Date

Enterprise Communication and Networks Division Head  
SPAWAR Systems Center Pacific, Code 55300  
Phone (619) 553-6715

**Requirements Cognizance:**

(b)(6)

7/26/17

Date

Communications and Networks Department Head  
SPAWAR Systems Center Pacific, Code 55000  
Phone (619) 553-3800

**REVIEW FOR LEGAL SUFFICIENCY**

I have determined this justification is legally sufficient.

(b)(6)

7/26/17

Date

Associate Counsel  
SPAWAR Systems Center Pacific, Code 35100  
Phone 619-553-9098

**CONTRACTING OFFICER CERTIFICATION**

I certify that this justification, including supporting acquisition planning documents, is accurate and complete to the best of my knowledge and belief.

(b)(6)

2 Aug 17

Date

Stacie Sedgwick  
Contracting Officer  
SPAWAR Systems Center Pacific, Code 22550  
Phone: (619) 553-5587

**APPROVAL:**

Upon the basis of the above justification, I hereby approve, as Senior Procurement Executive of the Navy, 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).

**SENIOR PROCUREMENT EXECUTIVE:**

(b)(6) \_\_\_\_\_  
ASN (RDA) 3/15/18  
Date