

GAM sets forth specific training requirements for program officials as follows:

(1) All program personnel selected to serve as project officer for an HHS contract shall have successfully completed either the Department's appropriate "Base Project Officer" course, or an equivalent course (see paragraph (b), below).

(2) At least fifty percent of the HHS program personnel performing the function of technical proposal evaluator on a technical evaluation team or panel for any competitively solicited HHS contract shall have successfully completed the appropriate "Basic Project Officer" course, or an equivalent course (see paragraph (b), below). This requirement applies to the initial technical proposal evaluation and any subsequent technical evaluations that may be required.

(b) Determination of course equivalency shall be made by the principal official responsible for acquisition of the cognizant contracting activity. The contracting officer is responsible for ensuring that the project officer and technical proposal evaluators have successfully completed the required training discussed in 307.170-2.

[49 FR 13969, Apr. 9, 1984, as amended at 56 FR 47002, Sept. 17, 1991]

307.170-1 Policy exceptions.

(a) *Small contracting activities.* (1) Program personnel designated to serve as project officers and technical proposal evaluators for contracts which originate in offices having a mission which only incidentally and infrequently involves the generation of contract requirements (i.e., normally less than three contract requirements per fiscal year and in an amount not exceeding \$100,000 per contract) are not required to have completed any of the referenced training courses, although completion of an appropriate "Basic Project Officer" course is recommended.

(2) As a substitute for the training, contracting officers servicing these program offices are required to ensure, as a minimum, that program personnel designated to serve as project officers and technical proposal evaluators have read and studied the "DHHS Project

Officers' Contracting Handbook," and fully understand their responsibilities. The contracting officer shall require these program personnel to furnish written certification that they have fulfilled this requirement prior to discharging the duties of project officer or technical proposal evaluator.

(b) *Urgent requirements.* In the event there is an urgent requirement for a specific individual to serve as a project officer and that individual has not successfully completed the prerequisite training course, the principal official responsible for acquisition may waive the training requirement and authorize the individual to perform the project duties, provided that:

(1) The individual first meets with the cognizant contracting officer to review the "DHHS Project Officers' Contracting Handbook," and to discuss the important aspects of the contracting—program office relationship as appropriate to the circumstances; and

(2) The individual attends the next scheduled and appropriate "Basic Project Officer" course.

[49 FR 13969, Apr. 9, 1984, as amended at 56 FR 47002, Sept. 17, 1991]

307.170-2 Training course prerequisites.

(a) *Project officers.* (1) Newly appointed project officers, and project officers with less than three years experience and no previous related training, are required to take the appropriate "Basic Project Officer" course. (The grade level for project officers attending the course should be GS-7 and above). All project officers are encouraged to take the appropriate "Writing Statements of Work" course.

(2) Project officers with more than three years experience, and project officers with less than three years experience who have successfully completed the appropriate basic course, are qualified (and encouraged) to take the "Advanced Project Officer" course.

(3) Additional information on prerequisites for attendance of these courses may be found in the "DHHS Acquisition Training and Certification Program Handbook."

(b) *Technical proposal evaluators.* Technical proposal evaluators, regardless of experience, are required to take

the appropriate “Basic Project Officer” course. Upon successful completion of the basic course, it is recommended that they take the appropriate “Advanced Project Officer” course.

[49 FR 13969, Apr. 4, 1984, as amended at 56 FR 47002, Sept. 17, 1991]

Subpart 307.3—Contractor Versus Government Performance

307.302 General.

(a) GAM Chapter 18–10, Commercial-Industrial Activities of the Department of Health and Human Services Providing Products or Services for Government Use, assigns responsibilities for making method-of-performance decisions (contract vs. in-house performance) to various management levels within the Department depending on the dollar amount of capital investment or annual operating costs. It also requires that each operating division (OPDIV), staff division (STAFFDIV) and regional office (RO) designate a “Commercial-Industrial Control Officer” (CICO) to be responsible for ensuring compliance with the requirements of the Chapter.

(d) Besides contracts with annual operating costs under \$100,000, contracts under an authorized acquisition set-aside for small business or labor surplus area concerns and contracts made pursuant to section 8(a) of the Small Business Act are exempted from the requirements of FAR Subpart 7.3, GAM Chapter 18–10, and OMB Circular No. A–76.

307.303 Determining availability of private commercial sources.

In accordance with the provisions of GAM Chapter 18–10, OPDIVs, STAFFDIVs, and ROs and must prepare and maintain a complete inventory of all individual commercial or industrial activities, including those conducted under contracts in excess of \$100,000 annually. They must also conduct periodic reviews of each activity and contract in the inventory to determine if the existing performance, in-house or by contract, continues to be in accordance with the policy guidelines of GAM Chapter 18–10.

307.304 Procedures.

Contracting officers shall ensure that no acquisition action involving a commercial-industrial activity is initiated unless it is in compliance with the requirements of GAM Chapter 18–10. The contracting officer must check each request for contract expected to result in a contract in excess of \$100,000 to ensure that it contains a statement as to whether the proposed contract is or is not subject to review under GAM Chapter 18–10 requirements. If the contracting officer has any questions regarding the determination of applicability or nonapplicability, or if the required statement is missing, the program office submitting the request for contract should be contacted and the situation rectified. If the issue cannot be resolved with the program office, the contracting officer shall refer the matter to the CICO for a final determination. The principal official responsible for acquisition is responsible for ensuring that contracting activities are in full compliance with FAR Subpart 7.3.

307.307 Appeals.

The review and appeals procedures discussed in FAR 7.307 are addressed in GAM Chapter 18–10.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.

This subpart provides guidance on the appropriate selection of award instruments consistent with the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224) and the OMB implementation of the Act as published in the FEDERAL REGISTER on August 18, 1978 (41 FR 36860). This subpart addresses acquisition relationships where the award instrument is the contract, and assistance relationships where the award instrument is either a grant or cooperative agreement.

307.7001 Applicability.

This subpart applies to the choice of award instrument—contract, grant, or cooperative agreement—for all program and individual transactions, except where specifically prohibited by law.

307.7002 Purpose.

This subpart provides guidance to assist in the determination of whether to use the acquisition or assistance process to fulfill program needs. The distinction between, and use of, grants and cooperative agreements is not discussed in detail. Detailed guidance may be found in Chapter 1-02 of the Grants Administration Manual.

307.7003 Distinction between acquisition and assistance.

(a) The Federal Grant and Cooperative Agreement Act of 1977 requires the use of contracts to acquire property or services for the direct benefit or use of the Government and grants or cooperative agreements to transfer money, property, services, or anything of value to recipients to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) A contract is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever:

(1) The principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or

(2) The Department determines in a specific instance that the use of a type of contract is appropriate. That is, it is determined in a certain situation that specific needs can be satisfied best by using the acquisition process. However, this authority does not permit circumventing the criteria for use of acquisition or assistance instruments. Use of this authority is restricted to extraordinary circumstances and only with the prior approval of the Director, Office of Acquisition and Grants Management.

(c) A grant or cooperative agreement is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

(1) A grant is the legal instrument to be used when no substantial involvement is anticipated between the De-

partment and the recipient during performance of the contemplated activity.

(2) A cooperative agreement is the legal instrument to be used when substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(d) As a general rule, contracts are to be used for the following purposes:

(1) Evaluation (including research of an evaluative nature) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.

(2) Technical assistance rendered to the Government, or on behalf of the Government, to any third party, including those receiving grants or cooperative agreements.

(3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.

(4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(5) Training projects where the Government selects the individuals or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards).

(6) Planning for Government use.

(7) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(8) Design or development of items for Government use or pursuant to agency definition or specifications.

(9) Conferences conducted on behalf of the Government.

(10) Generation of management information or other data for Government use.

(e) As a general rule, grants or cooperative agreements are to be used for the following purposes:

(1) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing the assistance.

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(2) Financial assistance (stimulation or support) to a specific program activity eligible for assistance under specific legislation authorizing the assistance.

[49 FR 13969, Apr. 9, 1984, as amended at 54 FR 24343, June 7, 1989]

307.7004 Procedures.

(a) OPDIV, agency, and regional office program officials should use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. It is the responsibility of these program officials to meet with the principal official responsible for acquisition and the principal grants management official, or their designees, to distinguish the relationships and determine whether the award is to be made through the acquisition process or assistance process. This determination should be made prior to the time when the annual acquisition plan is reviewed and approved so that the plan will reflect all known proposed contract actions. The cognizant contracting officer will confirm the appropriateness of the use of the contract instrument when reviewing the request for contract.

(b) Shifts from one award instrument to another must be fully documented in the appropriate files to show a fundamental change in program purpose that unequivocally justifies the rationale for the shift.

(c) OPDIVs, agencies, and regional offices must ensure that the choice of instrument is determined in accordance with the Federal Grant and Cooperative Agreement Act of 1977 and applicable departmental policies. If, however, there are major individual transactions or programs which contain elements of both acquisition and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other, guidance should be obtained from the Director, Office of Acquisition and Grants Management through normal channels, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals must indicate whether the intended relationship will be one of acquisition or assistance

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and specify the award instrument to be used.

[49 FR 13969, Apr. 9, 1984, as amended at 54 FR 24343, June 7, 1989]

Subpart 307.71—Phase II Advance Acquisition Planning (Scheduling)

307.7101 Background.

(a) Failure to properly plan individual acquisitions and failure to schedule the overall acquisition workload of an office, agency, or OPDIV tends to result in an inordinate percentage of contract awards being made in the closing weeks and even days of the fiscal year. This phenomenon, variously identified as “The September Rush”, “Hurry-up Spending”, “End-of-Year Purchasing”, and “Year-End Spending Abuses”, in turn fosters rushed, other than full and open competition, inadequately documented, and potentially wasteful acquisitions. Excessive year-end spending also invites increased intervention and/or scrutiny from Congress, the Office of Management and Budget, and the media. The end of the fiscal year, however, is usually too late to take corrective actions that are effective without being unduly damaging to necessary programs. The key is to begin advance acquisition planning far earlier.

(b) To avoid the historic pattern of wasteful and unnecessary year-end spending, the Department introduced the Acquisition Planning Initiative by Under Secretarial memorandum of February 19, 1980, Subject: New Procedures to Improve Planning and Scheduling of Contract Awards and Curb Last-Minute Year-End Procurement Spending. Phase II of this initiative, beginning with Fiscal Year 1981, established the present acquisition planning mechanism. Basic guidance on the Phase II mechanism is contained in the ASMB memorandum of March 28, 1980, Subject: Phase II of (Fiscal Year 1981) Procurement Planning Initiative—Guidelines for Program Funding Milestones. For the Public Health Service, the above guidance is supplemented by the ASMB memorandum of April 21,