

(b) Preliminary arrangements or agreements with the proposed contractor shall have no effect on the rationale used to support an acquisition for other than full and open competition.

[71 FR 76493, Dec. 20, 2006]

### 306.303-2 Content.

(a)(1) Each justification shall include the name of the program office; the name, address, and phone number of the Project Officer; and project identification, such as the authorizing program legislation, to include citations or other internal program identification data such as title, contract number, etc.

(2) The description may be in the form of a statement of work, purchase description, or specification. A statement is to be included to explain whether the acquisition is an entity in itself, whether it is one in a series, or part of a related group of acquisitions.

(c) JOFOCs shall be signed by the Project Officer, the Project Officer's immediate supervisor, the Contracting Officer, and the approving official (if the approving official is not the Contracting Officer).

[71 FR 76494, Dec. 20, 2006]

### 306.304 Approval of the justification.

(a)(2) The competition advocates are listed in 306.501. This authority is not delegable.

(3) The competition advocate shall exercise this approval authority, except where the individual designated as the competition advocate does not meet the requirements of FAR 6.304 (a)(3)(ii). This authority is not delegable.

(4) The senior procurement executive of the Department is the Deputy Assistant Secretary for Acquisition Management and Policy. This designation has been made pursuant to the OFPP Act (41 U.S.C. 414(c)(2)(B)).

(c) A class justification shall be processed the same as an individual justification.

[71 FR 76494, Dec. 20, 2006]

## Subpart 306.5—Competition Advocates

### 306.501 Requirement.

The Department's competition advocate is the Director, Strategic Acquisition Service, Program Support Center (PSC). The competition advocates for each of the Department's contracting activities are as follows:

*AHRQ*—Director, Office of Performance Accountability, Resources and Technology

*CDC*—Chief Information Officer

*CMS*—Chief Operating Officer

*FDA*—Chief, Office of Shared Services

*HRSA*—Associate Administrator, Office of Administration and Financial Management

*IHS*—Director, Office of Management Services

*NIH*—Senior Scientific Advisor for Extramural Research, Office of Extramural Research (R&D) and Senior Advisor to the Director (Other than R&D)

*PSC*—Director, Strategic Acquisition Service

*SAMHSA*—Executive Officer

[71 FR 76494, Dec. 20, 2006]

## PART 307—ACQUISITION PLANNING

### Subpart 307.1—Acquisition Planning

Sec.

307.104 General procedures.

307.105 Contents of written acquisition plans.

307.170 Program training requirements.

307.170-1 Training policy exceptions.

307.170-2 Training course prerequisites.

307.170-3 Earned value training requirement for IT program/project managers and IT CORs/COTRs.

307.170-4 Required training in HHS' portfolio management tool.

307.170-5 Maintenance/refresher training requirement for program/project managers and CORs/COTRs.

307.170-6 Warranting of Other Transaction Officers for Other Transactions.

307.170-7 Training requirements for Other Transaction Officers.

307.170-8 Appointment of an Other Transaction Officer Technical Representative for an Other Transaction.

307.170-9 Training requirement for an Other Transaction Officer Technical Representative.

### Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.

## 307.104

## 48 CFR Ch. 3 (10-1-09 Edition)

- 307.7001 Distinction between acquisition and assistance.  
307.7002 Procedures.

### Subpart 307.71—Requests for Contract

- 307.7100 Scope of subpart.  
307.7101 General.  
307.7102 Procedures.  
307.7103 Responsibilities.  
307.7104 Transmittal.  
307.7105 Format and content.  
307.7106 Statement of work.  
307.7107 Review.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4226, Jan. 17, 2001, unless otherwise noted.

### Subpart 307.1—Acquisition Planning

#### 307.104 General procedures.

(a) Each contracting activity shall prepare an Annual Acquisition Plan (AAP). The AAP is a macro plan, containing a list of anticipated contract actions over the simplified acquisition threshold and their associated funding, as well as the aggregate planned dollars for simplified acquisitions by quarter, developed for each fiscal year. The AAP shall conform to reasonable budget expectations and shall be reviewed at least quarterly and modified as appropriate. The HCA or the CCO shall obtain this information from the program planning/budget office of the contracting activity and use the AAP to provide necessary reports and monitor the workload of the contracting office. For contract actions, the plan shall contain, at a minimum:

- (1) A brief description (descriptive title, perhaps one or two sentences if necessary);
- (2) Estimated award amount;
- (3) Requested award date;
- (4) Name and phone number of contact person (usually the Project Officer);
- (5) Other information required for OPDIV needs.

(b) Once the AAP is obtained from the program planning/budget office, the Contracting Officer/Contract Specialist shall initiate discussions with the assigned Project Officer for each planned negotiated acquisition over \$100,000 except for:

(1) Acquisitions made under inter-agency agreements, and

(2) Contract modifications which exercise options, make changes authorized by the Changes clause, or add funds to an incrementally funded contract. (The HCA may prescribe procedures for contract actions not covered by this subpart.)

(c) The purpose of the discussions between the Contracting and Project Officers is to develop an individual acquisition planning schedule and to address areas that will need to be covered in the request for contract (RFC), including clearances, acquisition strategy, sources, etc. The Project Officer must either have a statement of work (SOW) ready at this time or must discuss in more detail the nature of the services/supplies that will be required.

(d) Standard lead-times for processing various types of acquisitions and deadlines for submission of acceptable RFCs (that is, RFCs which include all required elements such as clearances, funding documents, and an acceptable SOW) for award in a given fiscal year shall be established by the HCA or designee not lower than the CCO.

(e) The outcome of the discussions referenced in paragraph (c) of this section between the Project Officer and the Contracting Officer/Contract Specialist will be an agreement concerning the dates of significant transaction-specific acquisition milestones, including the date of submission of the RFC to the Contracting Officer. This milestone schedule document will be prepared with those dates and will be signed by the Project Officer and the Contracting Officer. The milestones cannot be revised except by mutual agreement of these same individuals. If the planning schedule indicates the need to obtain approval of a Justification for Other than Full and Open Competition, the HCA or CCO must sign the milestone agreement. This document shall be retained in the contract file. All other considerations that will affect the acquisition (technical, business, management) shall be addressed in the RFC (*see* 307.71).

[71 FR 76494, Dec. 20, 2006]

## Health and Human Services

## 307.170-2

### 307.105 Contents of written acquisition plans.

The written acquisition plan required by FAR 7.105 must be contained in the request for contract, as specified in subpart 307.71, and is the final product of the planning process.

### 307.170 Program training requirements.

(a) HHS will maintain a program for certifying employees before they may be considered eligible for appointment as a program/project manager or COR/COTR.

(b) All HHS program/project managers, alternate program/project managers, CORs/COTRs, alternate CORs/COTRs, and at least fifty percent of the HHS program personnel performing the function of technical proposal evaluator on a technical evaluation team or panel for a competitively solicited HHS contract, shall have successfully completed the Department's "Basic Project Officer" course, or an equivalent course, before assuming the duties of their designated role, or take the next available class. This requirement applies to the initial technical proposal evaluation and any subsequent technical evaluations that may be required. (\*Peer and objective reviewers are excluded from these requirements). Course equivalency for the "Basic Project Officer" course will be determined by the ASAM/OAMP. The Contracting Officer is responsible for ensuring that the program/project manager, COR/COTR, and proposal evaluators have successfully completed the required training. Non-information technology (IT) program/project managers and non-IT CORs/COTRs who have successfully completed the appropriate "Basic Project Officer" course, or an equivalent course, are highly encouraged to take the Department's one-day course entitled "Early Warning Project Management System Workshop," or an equivalent Earned Value course. Program/Project managers and CORs/COTRs are highly encouraged to take the Department's "Writing Statements of Work" course, or an equivalent course. Peer and objective reviewers are excluded from these requirements. (\*The peer review process pertains specifically to NIH in the peer re-

view of applications for grants and contracts. Applications are evaluated by a peer review group composed of scientists from the extramural research community.) All courses are offered through HHS University.

[71 FR 76495, Dec. 20, 2006]

### 307.170-1 Training policy exceptions.

In the event there is an urgent requirement for a specific individual to serve as a program/project manager and COR/COTR (or alternate program/project manager and alternate COR/COTR) and that individual has not successfully completed the prerequisite training course(s), the HCA (not delegable) may waive the training requirement and authorize the individual to perform the project duties, provided that:

(a) The individual first meets with the cognizant Contracting Officer to review the HHS "Project Officer's Contracting Handbook" to discuss the important aspects of the contracting-program office relationship as appropriate to the circumstances; and

(b) The individual attends the next scheduled "Basic Project Officer" course, or an equivalent course, and, for those current and proposed IT program/project managers, as well as alternate IT program/project managers and IT CORs/COTRs (as well as alternate CORs/COTRs) assigned to HHS IT projects (including those designated as major or tactical by HHS), the next "Early Warning Project Management System Workshop."

[71 FR 76495, Dec. 20, 2006]

### 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.

### 307.170-3

(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) Project Officers on HHS projects for which HHS or OMB requires an Exhibit 300 [under OMB Circular A-11, part 7] must successfully complete either HHS’ “Early Warning Project Management System Workshop” or an equivalent Earned Value Management course (see paragraph 307.170(c)).

(4) 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 or its equivalent. Upon successful completion of the basic course, it is recommended that they take the appropriate “Advanced Project Officer” course. Peer and objective reviewers are excluded from these requirements.

[66 FR 4226, Jan. 17, 2001, as amended at 70 FR 40, Jan. 3, 2005]

### 307.170-3 Earned value training requirement for IT program/project managers and IT CORs/COTRs.

All current and proposed IT program/project managers, alternate IT program/project managers, IT CORs/COTRs, and alternate CORs/COTRs assigned to HHS IT projects (including those IT projects designated as major or tactical), regardless of dollar threshold, must successfully complete the Department’s (offered through HHS University) one-day course entitled “Early Warning Project Management System Workshop,” or an equivalent Earned Value training course. Course equivalency will be determined jointly by the ASAM/OAMP and the HHS Office of the Chief Information Officer.

[71 FR 76495, Dec. 20, 2006]

### 307.170-4 Required training in HHS’ portfolio management tool.

All current and proposed IT program/project managers, as well as alternate IT program/project managers and IT

### 48 CFR Ch. 3 (10-1-09 Edition)

CORs/COTRs (as well as alternate IT CORs/COTRs), regardless of dollar threshold, must successfully complete training in HHS’ portfolio management tool (contact the HHS Office of the Chief Information Officer for additional information).

[71 FR 76495, Dec. 20, 2006]

### 307.170-5 Maintenance/refresher training requirement for program/project managers and CORs/COTRs.

Program/Project Managers and CORs/COTRs who monitor one or more contracts are required to take 40 CLPs each year.

[71 FR 76495, Dec. 20, 2006]

### 307.170-6 Warranting of Other Transaction Officers for Other Transactions.

(a) Other Transaction (OT) Officers shall possess the qualifications necessary to ensure that OTs are in compliance with applicable laws and regulations. The ASAM/OAMP will have the sole authority to warrant OT Officers at HHS. To receive a warrant as an HHS OT Officer, the individual must be a Contracting Officer, preferably with an unlimited warrant, with a Federal Acquisition Certification in Contracting (FAC-C) Level III, or a Level III or IV certified Grants Officer within HHS. Nominations for appointment of OT Officers shall be submitted to the Head of Contracting Activity in writing through appropriate organizational channels for review. The nomination package shall include the following:

(1) A completed Appendix A (“OT Officer’s Warrant Application Form”) of HHS Other Transaction Authority Guidebook;

(2) A recommendation from the employee’s immediate supervisor providing justification for the appointment of an HHS OT Officer;

(3) Current resume/OF 612/SF 171 and/or other documentation describing the employee’s experience, education, and training relevant to the position for which warrant authority is being sought;

(4) A copy of the employee’s most recent performance appraisal;

(5) Type of work to be performed under the warrant, *i.e.*, executing OTs;

(6) A copy of the certificate issued under the HHS Acquisition Certification Program indicating the employee's current certification level and a copy of previous warrant certificate, if applicable; or a copy of the certificate issued under the HHS Grants Certification Program, if applicable; and

(7) Proof of successful completion of the "Cooperative Agreements, CRADAs & Other Transactions" course taught by Federal Publications Seminars, or an equivalent course.

(b) For additional information, see [http://www.knownet.hhs.gov/acquisition/hhs\\_epp\\_postings/HHSGuidebook1-OTAMarch2005.doc](http://www.knownet.hhs.gov/acquisition/hhs_epp_postings/HHSGuidebook1-OTAMarch2005.doc).

[71 FR 76495, Dec. 20, 2006]

#### **307.170-7 Training requirements for Other Transaction Officers.**

OT Officers must successfully complete the "Cooperative Agreements, CRADAs & Other Transactions" course, or an equivalent course, prior to appointment as an OT Officer. Grants Officers who serve as OT Officers are required to have successfully completed the following courses: CON 110 ("Mission Support Planning"); CON 111 ("Mission Strategy Execution,"); CON 112 ("Mission Performance,") or CON 120 ("Mission Focused Contracting,") or equivalent courses *prior* to being appointed as an OT Officer. The HHS OTA Board will determine course equivalency.

[71 FR 76495, Dec. 20, 2006]

#### **307.170-8 Appointment of an Other Transaction Officer Technical Representative for an Other Transaction.**

The program office nominates the Other Transaction Officer Technical Representative (OTR). The OT Officer prepares an OTR delegation memorandum that describes the OTR's authority and assigns the OTR specific responsibilities, with limitations of authority, in writing. The OTR represents the OT Officer only to the extent delegated in the written appointment and does not have the authority to change the terms and conditions of the OT.

[71 FR 76495, Dec. 20, 2006]

#### **307.170-9 Training requirement for an Other Transaction Officer Technical Representative.**

(a) Program personnel selected to serve as an OTR or an alternate OTR assigned to an OT, and at least fifty percent of the technical evaluators that review the initial and any subsequent proposals or revisions thereof, shall successfully complete the Department's "Basic Project Officer" course, or an equivalent course prior to being appointed. Determination of course equivalency shall be made by the HHS OTA Board.

(b) In addition to the Department's required "Basic Project Officer" course, the OTR or alternate OTR assigned to an OT, and at least fifty percent of the technical evaluators that review the initial and any subsequent proposals or revisions thereof, shall successfully complete the "Cooperative Agreements, CRADAs & Other Transactions" course, or an equivalent course, prior to being appointed and prior to assuming job duties associated with the OT.

(c) Refresher training in the policies and procedures of awarding cooperative agreements, CRADAs and OTs is required every three years.

[71 FR 76495, Dec. 20, 2006]

### **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 31 U.S.C. 6301-6308. This subpart explains the use of the contract as the award instrument for acquisition relationships, and the grant or cooperative agreement as the instrument for assistance relationships. This subpart provides guidance for determining whether to use the acquisition or assistance process to fulfill program needs.

#### **307.7001 Distinction between acquisition and assistance.**

(a) 31 U.S.C. 6301-6308 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 Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP).

(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 Department 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, in-

cluding 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.

[66 FR 4226, Jan. 17, 2001, as amended at 71 FR 76496, Dec. 20, 2006]

### 307.7002 Procedures.

(a) OPDIV 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 HCA and the principal grants management official, or their designees, to distinguish the relationships and determine whether 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 must ensure that the choice of instrument is determined in accordance with 31 U.S.C. 6301-6308 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, OAMP, 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 and specify the award instrument to be used.

### Subpart 307.71—Requests for Contract

#### 307.7100 Scope of subpart.

This subpart prescribes the format and contents of the request for contract (RFC) and provides procedures for its preparation and submission.

#### 307.7101 General.

The program office's preparation of the RFC and submission to the contracting office completes the presolicitation phase of the acquisition planning process and commences the solicitation phase. The RFC is the formal document which initiates the preparation of the solicitation by the contracting office and sets the acquisition process in motion. It is the result of the planning by the project officer and contracting officer and contains much of the pertinent information necessary for the development of a sound, comprehensive solicitation.

#### 307.7102 Procedures.

The program office should submit the RFC to the contracting office no later than the date agreed to by the contracting officer and the project officer in the milestone schedule (see 307.104(h)), unless a revised due date has been established by mutual agreement.

#### 307.7103 Responsibilities.

(a) It is the responsibility of the project officer to prepare the RFC so that it complies with the requirements of this subpart and any OPDIV guidance issued in accordance with this subpart.

(b) Prior to the submission of the RFC to the contracting office, the head of the program office sponsoring the project shall review the RFC to ensure that all required information is provided in the prescribed format, and a technical review of the statement of work has been made. The level and extent of the technical review is to be commensurate with the estimated cost, importance, and complexity of the proposed acquisition, and must be thorough enough to ensure that vague and ambiguous language is eliminated, the statement of work is structured by phases or tasks, if appropriate, and methods are available for assessing the contractor's technical, cost, and delivery performance.

#### 307.7104 Transmittal.

The RFC must be conveyed to the contracting office by use of a cover memorandum. The cover memorandum must be signed by the head of the sponsoring program office and include both a statement attesting to the conclusiveness of the review described in 307.7103(b) and a list identifying all attachments to the RFC.

[71 FR 76496, Dec. 20, 2006]

#### 307.7105 Format and content.

The Department is in the process of standardizing a format for the RFC. In the interim, the information in paragraph (a) of this section must be included. Paragraph (b) contains information that must also be included if applicable.

(a) The RFC must include:

(1) *Purpose of the contract.* A brief, general description of the requirement, including the citation of the legislation which authorizes the program or project, and a statement as to the intended purpose/use of the proposed contract.

(2) *Period of performance.* The number of months (or other time period) required for total performance and, if applicable, for each phase of work indicated in the statement of work, as well as the proposed starting date.

(3) *Estimated cost and funds citation.* An estimate of the total cost of the proposed contract and, if applicable, the estimate for each phase indicated in the statement of work. The project officer must provide a cost breakdown of all contributing cost factors, an estimate of the technical staff hours, direct material, subcontracting, travel, etc., and may consult with contracting and cost advisory personnel in developing this information. This section must include the certification of funds availability for the proposed acquisition, along with the appropriation and accounting information citations. When funds for the proposed acquisition are not currently available for obligation but are anticipated, a statement of intent to commit funds from the financial management officer shall be included in lieu of the certification of funds availability. (Contracts cannot be awarded unless funds are available, but see FAR 32.703-2).

(4) *Specification, purchase description, or statement of work.* A description of the work to be performed that may be in the form of a specification, purchase description, or statement of work. Guidance concerning the statement of work and its contents is contained in 307.7106. Use of the specification is primarily limited to supply or service contracts where the material end item or service to be delivered is well defined by the Government. To the maximum extent possible, requirements should be defined as performance-based statements of work that focus on outcomes or results. If the RFC for a service contract is not utilizing a performance-based statement of work, with associated measures and a quality surveillance plan, the rationale for this determination must be documented. If a performance-based service contract is utilized, the RFC must detail the performance standards that must be met, the quality surveillance plan that will be implemented and the performance incentives to be used, if applicable.

(5) *Schedule of deliverables/reporting requirements.* A description of what is to be delivered, including, if applicable, technical and financial progress reports and any final report, and the required date of delivery for each deliverable. Reporting requirements should be tailored to the instant acquisition and should not be unnecessarily extensive or detailed. All delivery and reporting requirements shall include the quantities, the place of delivery, and time of delivery.

(6) *Sources for solicitation.* A list of known potential sources by name, size, type of ownership, and mailing address. The project officer is encouraged to use trade and professional journals and publications and conduct a thorough market research to identify new prospective sources to supplement the list of known sources. Efforts to identify set-aside possibilities, e.g., 8(a), HUBZone, veteran-owned, service-disabled veteran-owned, and small business, and efforts to identify sources such as small disadvantaged and women-owned small businesses must be documented.

(7) *Project officer and alternate.* The project officer's name, title, organization, mailing address, and telephone number, along with the same data for the project officer's alternate, and a statement that these individuals have completed the Department's project officer training course (see 307.170)

(b) The RFC must include, if applicable to the acquisition:

(1) *Background and need.* The background, history, and necessity for the proposed contract. This section is to include prior, present, and planned efforts by the program office in the same or related areas, and a description of efforts by other departmental activities and Federal agencies in the same or related program areas, if known. In addition, specific project information, such as the relevance or contribution to overall program objectives, reasons for the need, priority, and project overlap are to be provided.

(2) *Reference materials.* A list, by title and description, of study reports, plans, drawings, and other data to be made available to prospective offerors for use in preparation of proposals and/

or the contractor for use in performance of the contract. The project officer must indicate whether this material is currently available or when it will be available, and how it may be accessed by potential offerors.

(3) *Technical evaluation criteria and instructions.* Technical evaluation criteria, which have been developed based on the requirements of the specific project, and any instructions and information which will assist in the preparation of prospective offerors' technical proposals. Evaluation factors may include understanding of the problem, technical approach, experience, personnel, facilities, etc. Criteria areas discussed in the statement of work and the relative order of importance or weights assigned to each of these areas for technical evaluation purposes must be identified.

(4) *Special program clearances or approvals.* The following special program clearances or approvals should be reviewed for applicability to each acquisition. Those which are applicable should be addressed during the planning discussions between the Project Officer and Contracting Officer/Contract Specialist (see 307.104(c)) and immediate action should be initiated by the Project Officer to obtain the necessary clearances or approvals. The Contracting Officer/Contract Specialist shall provide a comprehensive checklist of these and any OPDIV special approvals, clearances, and requirements to the program office. If the approval or clearance has been requested and is being processed at the time of RFC submission, a footnote to this effect, including all pertinent details, must be included in this section.

(i) *Commercial activities.* (OMB Circular No. A-76). An RFC must contain a statement as to whether the proposed solicitation is or is not to be used as part of an OMB Circular No. A-76 public-private cost comparison. (See OMB Circular No. A-76, Performance of Commercial Activities.)

(ii) *Printing.* The acquisition of printing and high volume duplicating by contract is prohibited unless it is authorized by the Joint Committee on Printing of the U.S. Congress. Procedures to be followed are contained in the "Government Printing and Binding

Regulations" and the HHS Printing Management Manual and FAR subpart 8.8.

(iii) *Paperwork Reduction Act.* Under the Paperwork Reduction Act of 1995, a Federal agency shall not collect information or sponsor the collection of information from ten or more persons (other than Federal employees acting within the scope of their employment) unless, in advance, the agency has submitted a request for Office of Management and Budget (OMB) review, to the OMB, and the OMB has approved the proposed collection of information. Procedures for the approval may be obtained by contacting the OPDIV reports clearance officer. (See 5 CFR part 1320).

(iv) *Publications.* All projects that will result in contracts which include publications development (print products, electronic bulletin boards, posting on the internet) require review and approval by the Office of the Assistant Secretary for Public Affairs (OASPA). Form HHS-615, Publication Planning and Clearance Request, must be forwarded to OASPA through the OPDIV public affairs officer. Publications are defined in Chapter 5-00-15 of the Public Affairs Management Manual.

(v) *Public affairs services.* Projects for the acquisition of public affairs services in excess of \$5,000 must be submitted to the Office of the Assistant Secretary for Public Affairs (OASPA) for review and approval on Form HHS-524, Request for Public Affairs Services Contract.

(vi) *Audiovisual.* All projects which will result in contracts which include audiovisuals, regardless of the audio, video, or audiovisual medium employed, require review and approval by the Office of the Assistant Secretary for Public Affairs (OASPA). Form HHS-524A, Publication Planning and Clearance Request, must be forwarded to OASPA through the OPDIV public affairs officer. Audiovisuals are defined in chapter 6-00-15 of the Public Affairs Management Manual.

(vii) *Privacy Act (5 U.S.C. 552a).* Whenever the Department contracts for the design, development, operation, or maintenance of a system of records on individuals on behalf of the Department to accomplish a departmental

function, the Privacy Act is applicable. The program official, after consultation with the activity's Privacy Act Coordinator and the Office of General Counsel, as necessary, shall include a statement in the request for contract as to the applicability of the Act. Whenever an acquisition is subject to the Act, the program official prepares a "system notice" and has it published in the FEDERAL REGISTER. (See HHS Privacy Act regulation, 45 CFR part 5b; FAR subpart 24.1 and subpart 324.1.)

(viii) *Foreign research.* All foreign research contract projects to be conducted in a foreign country and financed by HHS funds (U.S. dollars) must have clearance by the Department of State with respect to consistency with foreign policy objectives. This clearance should be obtained prior to negotiation. Procedures for obtaining this clearance are set forth in the HHS General Administration Manual, Chapter 20–60.

(5) *Identification and disposition of data.* Identification of the data expected to be generated by the acquisition and an indication of whether the data are to be delivered to the Department or to be retained by the contractor is required. The project officer must also include information relative to the use, maintenance, disclosure, and disposition of data. The project officer must include a statement as to whether or not another acquisition, based upon the data generated by the proposed acquisition, is anticipated.

(6) *Government property.* If known, the type of Government property, individual items, and quantities of Government property to be furnished to, or allowed to be acquired by, the resultant contractor should be indicated. The project officer must specify when the Government property is to be made available.

(7) *Special terms and conditions.* Any suggested special terms and conditions not already covered in the statement of work.

(8) *Justification for other than full and open competition.* If the proposed acquisition is to be awarded using other than full and open competition, a justification prepared in accordance with

FAR subpart 6.3 and subpart 306.3 is required.

[66 FR 4226, Jan. 17, 2001, as amended at 70 FR 40, Jan. 3, 2005; 71 FR 76496, Dec. 20, 2006]

### 307.7106 Statement of work.

(a) *General.* A statement of work (SOW) describes the work or services to be performed in reaching an end result without describing the method that will be used unless the method of performance is critical or required in order to obtain successful performance. The SOW should be clear and concise and must completely define the responsibilities of both the contractor and the Government. The SOW should be worded to make more than one interpretation virtually impossible.

(b) *Term (level of effort) vs. completion work statement.* Careful distinctions must be drawn between term (level of effort) SOWs, which essentially require the furnishing of technical effort and which may include a report thereof, and completion type work statements, which require development of tangible items designed to meet specific performance and/or design characteristics. (See FAR 16.306(d) for distinction.)

(1) *Term (or level of effort).* A term or level of effort type SOW is appropriate for research where one seeks to discover the feasibility of later development, or to gather general information. A term or level of effort type SOW may only specify that some number of labor-hours be expended on a particular course of research, or that a certain number of tests be run, without reference to any intended conclusion.

(2) *Completion.* A completion type SOW is appropriate to development work where the feasibility of producing an end item is already known. A completion type SOW may describe what is to be achieved through the contracted effort, such as development of new methods, new end items, or other tangible results.

(c) *Phasing.* Individual research, development, or demonstration projects frequently lie well beyond the present state of the art and entail procedures and techniques of great complexity and difficulty. Under these circumstances, a contractor, no matter how carefully selected, may be unable to deliver the desired result. Moreover, the job of

evaluating the contractor's progress is often difficult. Such a contract is frequently phased and often divided into stages of accomplishment, each of which must be completed and approved before the contractor may proceed to the next. Phasing makes it necessary to develop methods and controls, including reporting requirements for each phase of the contract and criteria for evaluation of the report submitted, that will provide, at the earliest possible time, appropriate data for making decisions relative to future phases. A phased contract may include stages of accomplishment such as research, development, and demonstration. Within each phase, there may be a number of tasks which should be included in the SOW. When phases of work can be identified, the SOW will provide for phasing and the request for proposals will require the submission of proposed costs by phases. The resultant contract will reflect costs by phases, require the contractor to identify incurred costs by phases, establish delivery schedules by phase, and require the written acceptance of each phase. The provisions of the Limitation of Cost clause shall apply to the estimated cost of each phase. Contractors shall not be allowed to incur costs for phases which are dependent upon successful completion of earlier phases until written acceptance of the prior work is obtained from the contracting officer.

(d) *Elements of the SOW.* The elements of the SOW will vary with the objective, complexity, size, and nature of the acquisition. In general, it should include the following:

(1) *Purpose of the project.* This includes a general description of the objectives of the project and the desired results.

(2) *Background information.* This includes a brief history of the project and the importance of the project to the overall program objectives.

(3) *A detailed description of the technical requirements.* The statement of work should provide sufficient detail to accurately reflect the Government's requirement. It should state what is to be done without prescribing the method to be used and should include performance standards. The statement of work may be broken down into tasks

and subtasks. The degree of breakout depends on the size and complexity of the project. The statement of work should indicate whether the tasks are sequential or concurrent.

(4) *Reference material.* All reference material to be used in the conduct of the project that indicates how the work is to be carried out must be identified. Applicability should be explained, and a statement made as to where the material can be obtained.

(5) *Level of effort.* When a level of effort is required, the number and type of personnel required should be stated. If known, the type and degree of expertise should be specified.

(6) *Special requirements.* (as applicable). An unusual or special contractual requirement, which would impact on contract performance, should be included as a separate section.

(7) *Deliverables reporting requirements.* All deliverables and/or reports must be clearly and completely described. Include the timeframe for completion, the format, and the number of copies.

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### 307.7107 Review.

Upon receipt of the RFC, the contracting officer shall review its contents to ensure that all pertinent information has been provided by the program office and that it includes an acceptable SOW. If pertinent information is missing or the SOW is inadequate, the contracting officer shall obtain or clarify the information as soon as possible so that the acquisition schedule can be met. If the program office delays furnishing the information or clarification, the contracting officer should notify the head of the sponsoring program office, in writing, of the possible slippage in the acquisition schedule and the need for an expeditious remedy. The contracting officer should also notify the chief of the contracting office. A program office's or project officer's continued failure to adhere to agreed on milestones should also be reported to the head of the contracting activity.

**PART 309—CONTRACTOR  
QUALIFICATIONS**

**Subpart 309.4—Debarment, Suspension,  
and Ineligibility**

Sec.

309.403 Definitions.

309.404 List of parties excluded from Federal procurement and nonprocurement programs.

309.405 Effect of listing.

309.406 Debarment.

309.406-3 Procedures.

309.407 Suspension.

309.407-3 Procedures.

309.470 Reporting of suspected causes for debarment, suspension, or the taking of evasive actions.

309.470-1 Situations where reports are required.

309.470-2 Contents of reports.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4231, Jan. 17, 2001, unless otherwise noted.

**Subpart 309.4—Debarment,  
Suspension, and Ineligibility**

**309.403 Definitions.**

*Acquiring agency's head or designee*, as used in the FAR, shall mean, unless otherwise stated in this subpart, the head of the contracting activity. Acting in the capacity of the acquiring agency's head, the head of the contracting activity may make the required justifications or determinations, and take the necessary actions, specified in FAR 9.405, 9.406, and 9.407 for his or her respective activity, but only after obtaining the written approval of the debarring or suspending official, as the case may be.

*Debarring official* means the Assistant Secretary for Administration and Management, or his/her designee.

*Initiating official* means either the contracting officer, the head of the contracting activity, the Deputy Assistant Secretary for Acquisition Management and Policy, or the Inspector General.

*Suspending official* means the Assistant Secretary for Administration and Management, or his/her designee.

[71 FR 76497, Dec. 20, 2006]

**309.404 List of parties excluded from Federal procurement and non-procurement programs.**

(c) The Office of Acquisition Management and Policy (OAMP) shall perform the actions required by FAR 9.404(c).

(4) OAMP shall maintain all documentation submitted by the initiating official recommending the debarment or suspension action and all correspondence and other pertinent documentation generated during the OAMP review.

[71 FR 76497, Dec. 20, 2006]

**309.405 Effect of listing.**

(a) The head of the contracting activity (HCA) (not delegable) may, with the written concurrence of the debarring or suspending official, make the determinations referenced in FAR 9.405(a), regarding contracts for their respective activities.

(1) If a Contracting Officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the Contracting Officer shall prepare a determination, including all pertinent documentation, and submit it through acquisition channels to the head of the contracting activity. The documentation must include the date by which approval is required and a compelling reason for the proposed action. Compelling reasons for award of a contract or consent to a subcontract with a debarred or suspended contractor include:

(i) The property or services to be acquired are available only from the listed contractor; or

(ii) The urgency of the requirement dictates that the Department conduct business with the listed contractor.

(2) If the HCA decides to approve the requested action, he/she shall request the concurrence of the debarring or suspending official and, if given, shall inform the contracting officer in writing of the decision within the required time period.

[66 FR 4231, Jan. 17, 2001, as amended at 71 FR 76497, Dec. 20, 2006]