

§ 95.611

operational and development cost categories;

(vi) A project expenditures report that consists of a detailed accounting of all expenditures for project development over the past year and an explanation of the differences between projected expenses in the approved APD and actual expenditures for the past year;

(vii) A report of any approved or anticipated changes to the allocation basis in the APD's approved cost allocation methodology; and

(viii) An acquisition summary for the upcoming year or development phase that provides the following information on proposed acquisitions:

(A) Type and scope of contract

(B) Procurement strategy

(C) Estimated cost or not to exceed amount

(D) Timeframe of contract

(E) A statement or certification that the proposed acquisition will comply with all State and Federal requirements including the retention of software ownership rights specified in § 95.617.

(2) The As-Needed APDU is a document that requests approval for additional funding and/or authority for project continuation when significant changes are anticipated, when the project is being funded on a phased implementation basis, or to clarify project information requested as an approval condition of the Planning APD, Annual APDU, or Implementation APD. The As-Needed APDU may be submitted any time as a stand-alone funding or project continuation request, or may be submitted as part of the Annual APDU. The As-Needed APDU is submitted:

(i) When the State anticipates incremental project expenditures (exceeding specified thresholds);

(ii) When the State anticipates a schedule extension of more than 60 days for major milestones;

(iii) When the State anticipates major changes in the scope of its project, e.g., a change in its procurement plan, procurement activities, system concept or development approach;

(iv) When the State anticipates significant changes to its cost distribu-

45 CFR Subtitle A (10–1–11 Edition)

tion methodology or distribution of costs among Federal programs; and/or,

(v) When the State anticipates significant changes to its cost benefit projections. The As-Needed APDU shall provide supporting documentation to justify the need for a change to the approved budget.

(vi) Changes to the acquisition summary in the following areas:

(A) Type and scope of contract

(B) Procurement strategy

(C) Estimated cost or not to exceed amount

(D) Timeframe of contract

(E) A statement or certification that the proposed acquisition will comply with all State and Federal requirements including the retention of software ownership rights specified in § 95.617.

(F) New acquisitions not summarized in the Annual APDU.

(3) The Operational Advance Planning Document Update (OAPDU) is an annual submission of no more than two pages, including:

(i) Summary of activities;

(ii) Acquisitions; and,

(iii) Annual budget by project/system receiving funding through the programs covered under this part.

[75 FR 66337, Oct. 28, 2010]

§ 95.611 Prior approval conditions.

(a) *General acquisition requirements.* (1) A State shall obtain prior approval from the Department which is reflected in a record, as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of \$5,000,000 or more in Federal and State funds. States will be required to submit an Operational APDU only if they exceed the threshold requiring Federal approval, and only upon the receipt of a submission request, which is reflected in a record, from the Department. See definition of software maintenance under § 95.605.

(2) A State shall obtain prior approval from the Department which is reflected in a record, as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the

Department of Health and Human Services

§ 95.611

enhanced matching rate authorized by § 205.35, Part 307, § 1355.52 or 42 CFR part 433, subpart C, regardless of the acquisition cost.

(3) A State shall obtain prior approval from the Department, which is reflected in a record, for a sole source/non-competitive acquisition, of ADP equipment or services with a total State and Federal acquisition cost of \$1,000,000 or more.

(4) Except as provided for in paragraph (a)(5) of this section, the State shall submit multi-program requests for Department approval, signed by the appropriate State official, to the Department's Secretary or his/her designee. For each HHS agency that has federal funding participation in the project, an additional copy must be provided to the applicable Federal program office and respective Regional Offices.

(5) States shall submit requests for approval which affect only one approving component of HHS (CMS, OCSE, or Children's Bureau), to the applicable Federal program office and Regional Administrator.

(6) The Department will not approve any Planning or Implementation APD that does not include all information required in § 95.610.

(b) *Specific prior approval requirements.* The State agency shall obtain written approval of the Department prior to the initiation of project activity.

(1) For regular FFP requests.

(i) For the Planning APD subject to the dollar thresholds specified in paragraph (a) of this section.

(ii) For the Implementation APD subject to the dollar thresholds specified in paragraph (a) of this section.

(iii) For acquisition documents, an exemption from prior Federal prior approval shall be assumed in the approval of the Planning, Annual or As-Needed APDU provided that:

(A) The acquisition summary provides sufficient detail to base an exemption request;

(B) The acquisition does not deviate from the terms of the exemption; and

(C) The acquisition is not the initial acquisition for a high risk activity, such as software application development. Acquisitions, whether exempted from prior Federal approval or not,

must comply with the Federal provisions contained in § 95.610(c)(1)(viii) or (c)(2)(vi) or submit an Acquisition Checklist.

(iv) For noncompetitive acquisitions, including contract amendments, when the resulting contract is anticipated to exceed \$1,000,000, States will be required to submit a sole source justification in addition to the acquisition document. The sole source justification can be provided as part of the Planning, Annual or As-Needed APDU.

(v) If the State does not opt for an exemption or submittal of an Acquisition Checklist for the contract, prior to the execution, the State will be required to submit the contract when it is anticipated to exceed the following thresholds, unless specifically exempted by the Department:

(A) Software application development—\$6,000,000 or more (competitive) and \$1,000,000 or more (noncompetitive);

(B) Hardware and Commercial Off-the-Shelf (COTS) software—\$20,000,000 or more (competitive) and \$1,000,000 or more (noncompetitive);

(C) Operations and Software Maintenance acquisitions combined with hardware, COTS or software application development—the thresholds stated in § 95.611(b)(1)(v)(A) and (B) apply.

(vi) For contract amendments within the scope of the base contract, unless specifically exempted by the Department, prior to execution of the contract amendment involving contract cost increases which cumulatively exceed 20 percent of the base contract cost.

(2) For enhanced FFP requests.

(i) For the Planning APD.

(ii) For the Implementation APD.

(iii) For the acquisition solicitation documents and contract, unless specifically exempted by the Department, prior to release of the acquisition solicitation documents or prior to execution of the contract when the contract is anticipated to or will exceed \$500,000.

(iv) For contract amendments, unless specifically exempted by the Department, prior to execution of the contract amendment, involving contract cost increases exceeding \$500,000 or contract time extensions of more than 60 days.

§ 95.611

(3) Failure to submit any of the above to the satisfaction of the Department may result in disapproval or suspension of project funding.

(c) *Specific approval requirements.* The State agency shall obtain written approval from the Department:

(1) For regular FFP requests.

(i) For an annual APDU for projects with a total cost of more than \$5,000,000, and projects with a total estimated cost of less than \$5,000,000 only if requested by the Department.

(ii) For an "As Needed APDU" when changes cause any of the following:

(A) A projected cost increase of \$1,000,000 or more.

(B) A schedule extension of more than 60 days for major milestones;

(C) A significant change in procurement approach, and/or scope of procurement activities beyond that approved in the APD;

(D) A change in system concept, or a change to the scope of the project;

(E) A change to the approved cost allocation methodology.

The State shall submit the "As Needed APDU" to the Department, no later than 60 days after the occurrence of the project changes to be reported in the "As Needed APDU".

(2) For enhanced FFP requests.

(i) For an Annual APDU.

(ii) For an "As needed" APDU when changes cause any of the following:

(A) A projected cost increase of \$300,000 or 10 percent of the project cost, whichever is less;

(B) A schedule extension of more than 60 days for major milestones. For Aid to Families with Dependent Children (AFDC) Family Assistance Management Information System (FAMIS)-type projects, in accordance with section 402(e)(2)(C) of the Social Security Act, any schedule change which affects the State's implementation date as specified in the approved APD requires that the Department recover 40 percent of the amount expended. The Secretary may extend the implementation date, if the implementation date is not met because of circumstances beyond the State's control. Examples of circumstances beyond the State's control are:

(1) Equipment failure due to physical damage or destruction; or,

45 CFR Subtitle A (10-1-11 Edition)

(2) Change imposed by Federal judicial decisions, or by Federal legislation or regulations;

(C) A significant change in procurement approach, and/or a scope of procurement activities beyond that approved in the APD;

(D) A change in system concept or scope of the project;

(E) A change to the approved cost methodology;

(F) A change of more than 10% of estimated cost benefits.

The State shall submit the "As Needed APDU" to the Department, no later than 60 days after the occurrence of the project changes to be reported in the "As Needed APDU".

(3) Failure to submit any of the above to the satisfaction of the Department may result in disapproval or suspension of project funding.

(d) Prompt action on requests for prior approval. The Department will promptly send to the approving Federal program offices the items specified in paragraph (b) of this section. If the Department has not provided approval, disapproval, or a request for information which is reflected in a record, within 60 days of the date of the Departmental letter acknowledging receipt of a State's request, the Department will consider the request to have provisionally met the prior approval conditions of paragraph (b) of this section.

(e) Acquisitions not subject to prior approval. If the Department has not specifically requested in a record, the submittal of additional acquisition documentation for those acquisitions summarized in the APD, the approval of the Planning, Annual or As-Needed APDU will constitute an exemption of the acquisition documents from prior Federal approval. States will be required to submit acquisition documents, contracts and contract amendments under the threshold amounts on an exception basis if requested to do so in a record by the Department.

[51 FR 45326, Dec. 18, 1986, as amended at 55 FR 4377, Feb. 7, 1990; 56 FR 12356, Mar. 25, 1991; 59 FR 30708, June 15, 1994; 61 FR 39897, July 31, 1996; 75 FR 66338, Oct. 28, 2010]