

PART 307—ACQUISITION PLANNING

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Subpart 307.1—Acquisition Planning

307.104 General procedures.

(a) Each contracting activity shall prepare an Annual Acquisition Plan (AAP) as far in advance of each fiscal year as possible, in accordance with the following:

(1) The AAP shall contain all anticipated acquisition actions for the coming fiscal year that exceed the simplified acquisition threshold, including new acquisitions and contract/order modifications. The AAP must include—

- (i) The aggregate dollars planned for simplified acquisitions by quarter;
- (ii) Any long lead-time acquisitions that will be awarded in future fiscal years (*see* paragraph (c) below); and
- (iii) Proposed multi-agency and intra-agency contracts—*see 317.70*.

(2) The HCA or the CCO, as appropriate, shall prepare the AAP and obtain the information needed for its

preparation from the responsible program planning/budget office and/or the program offices.

(3) Contracting activities shall use the AAP for reporting purposes and workload scheduling and monitoring.

(4) The HCA/CCO and Small Business Specialist (SBS) in the Office of Small and Disadvantaged Business Utilization (OSDBU) shall review the AAP at least quarterly, with input from the cognizant program office, and modify it, as appropriate, during the fiscal year, with updated information, particularly regarding the specific acquisition method the contracting activity plans to use.

(5) HHS requires use of a standard format for an AAP. The template for the plan is available on the ASFR/OGAPA/DA Internet Web site. For the data elements specified in the AAP format, the HCA/CCO may include information in addition to that required by the standard instructions accompanying the format.

(b) As early as possible following completion of the AAP, the Contracting Officer shall initiate discussions with the assigned Project Officer, in consultation with the OSDBU SBS, for each action that exceeds the simplified acquisition threshold. As appropriate, the discussions shall include—

(1) Determining the intended acquisition strategy and contract/order type, including the use of options;

(2) Reviewing the SOW, if available, for adequacy and ensuring that a PWS is used for services, where practicable;

(3) Evaluating the potential for, and maximizing the use of, competitive procedures;

(4) Performing market research, identifying potential sources, and determining set-aside potential and small business subcontracting opportunities;

(5) Assessing the availability of commercial items;

(6) Determining required clearances/approvals and supporting documentation; and

(7) Preparing an acquisition milestone schedule;

(8) Determining the best multi- or intra-agency contracting activity to assist in awarding a contract on the requiring organization's behalf, if applicable; and

(9) Determining in the case of direct ordering that the chosen acquisition vehicle is the best way to obtain the required product or service, if a vehicle other than those listed in 317.7002(b) is proposed.

(c) The HCA or designee (not lower than the CCO) shall establish standard lead-times for processing various types of acquisitions and applicable fiscal year deadlines for receipt of requirements to allow for well-planned and timely awards. The Project Officer shall initiate planning, to the extent possible, for certain requirements, such as major capital IT investments, major capital construction investments, and R & D projects that require peer review, at least 24 months before planned award, given the clearance/approval requirements and lead-time required for such complex acquisitions.

(d) The outcome of the discussions referenced in paragraph (b) above shall be an agreement concerning the acquisition approach and documentation required. For those actions that require development of a written AP—see 307.7101, for which the Project Officer has ultimate responsibility, these discussions shall also result in an agreement concerning—

(1) Which elements of the AP the Contracting Officer will assist the Project Officer in preparing; and

(2) The date (as specified in the milestone schedule) the Project Officer will provide the AP to the CCO or designee.

307.104-70 Acquisition strategy.

Program and Project Managers responsible for major IT capital investments (and for any other investments designated by the HHS CIO, DASFMF, the CAO, or the cognizant HCA) shall prepare an acquisition strategy using the HHS acquisition strategy template. The template for the acquisition strategy is available on the ASFR/OGAPA/DA Internet Web site. Program and Project Managers must initiate the acquisition strategy for major IT capital investments as part of the planned investment's business case, usually during the Enterprise Performance Life Cycle concept phase.

307.104-71 Purpose and timing.

(a) The purpose of an acquisition strategy is to describe the overall approach for acquiring capabilities needed to fulfill investment/programmatic objectives. Acquisition strategy development requires identification of issues and risks that might impact an acquisition(s) to allow early action to eliminate or mitigate the issues and risks.

(b) An acquisition strategy differs from an AP with respect to the timing of its development and the level of detail required.

(1) An acquisition strategy is established at the inception (concept phase) of an investment/acquisition to support the business case, identify and mitigate risks, and begin the acquisition planning process. An acquisition strategy addresses the major issues surrounding business objectives, competitive forces, and various risks that need to be considered.

(2) An acquisition strategy is a living document used throughout the investment's life-cycle. It should be continuously updated with the active involvement of the Program or Project Manager and the Contracting Officer at appropriate points, as plans for the investment/acquisition mature. An acquisition strategy ultimately will result in an AP—see 307.71.

(3) An AP, which is required to support proposed acquisitions expected to exceed \$500,000 (inclusive of options, with certain exceptions)—see 307.7101, is developed closer to the time of solicitation. The AP addresses not only those issues in the acquisition strategy, but also the tactical details of how the acquisition will be executed.

307.105 Contents of written acquisition plans.

FAR 7.105 specifies the content requirements of a written AP. Subpart 307.71 incorporates and supplements those requirements.

307.108-70 Telecommuting of contractor employees.

(a) SOWs/PWSs shall permit offerors or contractors to specify their own place(s) of performance (hence authorize their employees to telecommute), except as follows:

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(1) The Project Officer may restrict place of performance (hence restrict an offeror's or contractor's telecommuting) for any part of an SOW/PWS, after determining that the work or any portion thereof must be performed at a specified place of performance; or security would be compromised. The Project Officer must document this determination in writing and send a copy of the determination, along with the SOW/PWS, to the Contracting Officer. The Project Officer must also address in an HHS AP (or other acquisition request document) any performance requirements or security considerations that restrict place of performance—see 307.71.

(2) In accordance with *FAR 7.108(a)*, if the Contracting Officer concurs with the Project Officer's determination in (a)(1) above, then the Contracting Officer must sign the Project Officer's determination; include it in the official contract file; and specify any prohibition against telecommuting in the solicitation and resultant contract.

(3) In accordance with *FAR 7.108(a)*, if the Contracting Officer decides to restrict a place of performance that the Project Officer did not restrict, then the Contracting Officer must document in writing the determination to preclude telecommuting in part or in whole; include the determination in the official contract file; and specify any prohibition against telecommuting in the solicitation and resultant contract.

(b) If the Contracting Officer disagrees with the Project Officer's determination in (a)(1) above, then the Contracting Officer shall return both the SOW/PWS and determination to the Project Officer for further consideration.

(c) The Contracting Officer shall ensure that authorized telecommuting of contractor employees does not result in increased cost or price to the Government.

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 to fulfill program needs con-

sistent with 31 U.S.C. 6301–6308. This subpart explains the use of the contract as the award instrument for acquisition relationships and a grant or cooperative agreement as instruments for financial assistance relationships.

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 eligible entities to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) OPDIVs shall use a contract as the legal instrument to reflect a relationship between the Government and an entity whenever the—

(1) 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 Government; or

(2) Government determines 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 requires the Associate DAS for Acquisition's prior approval.

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

(1) OPDIVs shall use a grant when no substantial programmatic involvement is anticipated between the Government and the recipient during performance of the contemplated activity.

(2) OPDIVs shall use a cooperative agreement when substantial programmatic involvement is anticipated between the Government and the recipient during performance of the contemplated activity.

307.7002

(d) As a general rule, OPDIVs shall use contracts 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) Production of publications or audiovisual materials the Government requires primarily for the conduct of its direct operations.

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

(8) Conferences conducted on the Government's behalf.

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

307.7002 Procedures.

(a) OPDIV program officials shall use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. OPDIV program officials shall meet with the HCA and the Chief Grants Management Officer, or their designees, as necessary, to determine whether award is to be made through the acquisition or assistance process. This determination shall normally occur prior to the time when the AAP is reviewed and approved so that the AAP will reflect all known proposed contract actions. The HCA shall fully document a shift from one award in-

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strument to another in the appropriate files to show a fundamental change in program purpose that unequivocally justifies the rationale for the shift.

(b) The Contracting Officer shall confirm the appropriateness of the use of the contract instrument when reviewing the AP or other acquisition request document.

(c) OPDIVs shall ensure that the choice of instrument is in accordance with 31 U.S.C. 6301–6308 and applicable HHS 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 instrument, OPDIVs shall obtain guidance from ASFR/OGAPA/DA, through appropriate acquisition channels, including the HCA, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals, or request for quotations shall indicate whether the intended relationship will be one of acquisition or financial assistance and specify the award instrument the OPDIV will use.

Subpart 307.71—Acquisition Plan

307.7100 Scope of subpart.

FAR 7.102 requires acquisition planning for all acquisitions. This subpart establishes: (a) when a written AP is required; (b) its contents and format; and (c) the need for review of the AP to certify that it is accurate, complete, and in the proper format. This subpart also establishes the documentation requirements for those acquisitions not requiring an AP.

307.7101 Policy.

(a) An AP is required for all acquisitions, to be placed by an HHS contracting office, expected to exceed \$500,000 (inclusive of options) with the following exceptions:

(1) Letter contracts.

(2) Unsolicited proposals.

(3) Regulated utility services available from only one source.

(4) Proposals under the Small Business Innovative Research (SBIR) and

Small Business Technology Transfer (STTR) programs.

(5) Acquisition of commercial items/services—*see FAR 2.101*, including orders placed under FSS contracts meeting the definition of a commercial item/service, and not exceeding \$5.5 million [\$11 million for acquisitions as described in *FAR 13.500(e)*].

(6) Task orders or delivery orders of any dollar amount placed under—

(i) An IDIQ contract, other than a GWAC; or

(ii) A BPA, provided there is an approved acquisition planning document for the original action, and there is no significant deviation from that plan.

(7) Orders of any dollar amount placed under HHS-wide strategic sourcing vehicles.

(8) Contract/order modifications that—

(i) Exercise options;

(ii) Only provide additional funding;

or

(iii) Make changes authorized by the Changes clause.

(9) Assisted acquisitions processed pursuant to an interagency agreement. However, the OPDIV must comply with the requirements specified in *317.5 Interagency Agreements* under the Economy Act and *317.70, Multi-agency and Intra-agency Contracts*.

(b) In urgent or other justifiable cases, such as an emergency acquisition—*see FAR Part 18*, the HCA may waive, in writing, the requirement for completion of an AP. An HCA shall not approve a waiver request based on the lack of advance planning.

(1) The Project Officer, the Project Officer's immediate supervisor, the head of the sponsoring program office, the Contracting Officer, and other signatories shall sign the waiver request in accordance with OPDIV policies. In OPDIVs where a CCO(s) is designated, as defined in *302.101*, the cognizant CCO also shall sign the waiver request.

(2) HHS has established a standard format for preparing an AP waiver request. The template for the waiver request is available on the ASFR/OGAPA/DA Internet Web site. Contracting activities shall use this format when requesting a waiver.

(3) The OPDIV shall provide ASFR/OGAPA/DA a copy of any approved

waiver request within 5 business days after HCA approval.

(c) For those acquisitions not requiring an AP, other than assisted acquisitions processed pursuant to an interagency agreement—*see 317.5 and 317.70*, the Project Officer shall provide an acquisition request document (e.g., memorandum, requisition, or other form of transmittal) to the CCO or designee, requesting completion of the required action. The request must include, as applicable: a SOW/PWS (including deliverables and reporting requirements); a certified funding document; source selection strategy and criteria; necessary clearances, approvals, and justifications (e.g., a JOFOC); a milestone schedule; and an independent Government cost estimate.) In addition, OPDIVs shall use the content requirements of the AP as a reference in determining what other information and documentation is necessary to support the intended acquisition. Alternatively, OPDIVs may prescribe use of an AP for acquisitions excepted under *307.7101(a)(1) through (a)(8)*.

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307.7102 Content.

In accordance with *307.105*, the *FAR*, *HHSAR*, and other Federal requirements that OPDIVs must consider in developing an AP, as well as its format, are stipulated in *307.7103*. An AP shall address each applicable element. As indicated in the instructions, elements that are not applicable to an individual acquisition shall be marked "N/A." The scope and depth of an AP may vary depending on the nature, complexity, and estimated cost of the proposed acquisition. As a result of new or revised *FAR* requirements or other Federal directives, the—

(a) HCA or designee may make any needed interim changes to the AP;

(b) HCA or designee shall notify ASFR/OGAPA/DA of the need to revise the AP; and

(c) ASFR/OGAPA/DA shall update the AP, which would supersede any interim HCA (or designee) changes made

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to the acquisition plan for future acquisitions.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21510, Apr. 26, 2010]

307.7103 Format.

(a) HHS has established a standard format for preparing an AP. The template for the AP is available on the ASFR/OGAPA/DA Internet Web site.

(b) OPDIVs may use the prescribed format without modification or use it as a guideline, as long as the format used by the OPDIV complies with the requirements specified in subparagraphs (c) and (d) below.

(c) An AP must consist of seven (7) parts with standard headings, as follows:

- Part I Transmittal and Approval Form.
- Part II Summary Sheet.
- Part III Project Considerations and Information.
- Part IV Clearance/Approval Checklist.
- Part V Acquisition Milestone Schedule.
- Part VI Independent Government Cost Estimate.
- Part VII Attachments.

(d) Within each of the seven parts, there are required components that an OPDIV cannot modify and specific areas where OPDIVs can make changes. The table in the *Requirements and Responsibilities* section of the AP cites the titles, paragraph/subparagraph headings, narrative, and other requirements that must appear in each part of an AP in the specified format, as well as permissible modifications.

307.7104 Review and certification.

Before the Project Officer transmits the AP to the CCO or designee—see 307.7105, the head of the sponsoring program office (typically a Division Director or equivalent), Project Officer, Funds Certification Official, Contracting Officer, and other signatories in accordance with OPDIV policies, shall review the AP and certify that it provides all required information in the prescribed format and the following:

Acquisition planning	Responsible organization/official	HHSAR reference
Make necessary interim changes to the AP and notify ASFR/OGAPA/DA of changes needed.	OPDIV HCA or designee	307.7102.

(a) Vague and ambiguous language has been eliminated.

(b) A thorough technical review of the SOW/PWS has been completed.

(c) The project is structured by phases or tasks, as appropriate.

(d) Methods are available to assess the contractor’s performance.

(e) The acquisition mechanism is appropriate—*i.e.*, the principal purpose of the project is to acquire supplies or services for the direct benefit or use of the Government.

(f) The planned obligation of appropriated funds for the project satisfies a *bona fide* need of the requiring office arising in the fiscal year for which the appropriation was made.

307.7105 Transmittal.

The Project Officer shall convey the signed AP to the CCO or designee by providing a completed Part I—Transmittal and Approval Form, with other parts of the AP attached, no later than the date agreed to in the acquisition milestone schedule, unless the officials establish a different date by mutual agreement.

307.7106 Acquisition milestones.

The Contracting Officer shall retain the acquisition milestone schedule in the contract file and update/revise it to track progress of the acquisition. The milestone schedule signatories (*see the Requirements and Responsibilities* section of the AP—Part V of the table) shall mutually agree to any revisions to the milestone dates that will impact meeting the scheduled award date. Milestone schedule signatories shall report a failure to meet established milestones to a higher level official in accordance with OPDIV procedures.

307.7107 Responsibilities.

The following table summarizes the responsibilities of the various organizations and officials for acquisition planning:

Health and Human Services

307.7108

Acquisition planning	Responsible organization/official	HHSAR reference
Update the AP to reflect new or revised FAR and other Federal directives.	ASFR/OGAPA/DA	307.7102.
Prepare the AAP and update it quarterly, as appropriate.	OPDIV-HCA/CCO	307.104, subparagraph (a).
Establish standard acquisition lead-times and deadlines for receipt of requirements for award in an applicable fiscal year.	OPDIV-HCA/CCO	307.104, subparagraph (d).
Identify and plan requirements, particularly complex, long lead-time acquisitions, well in advance of the fiscal year in which they are to be awarded.	OPDIV-Project Officer	307.104, subparagraph (d).
(i) Participate in acquisition planning; (ii) prepare the AP; and (iii) provide the AP to the Contracting Officer.	OPDIV-Project Officer	(i) 307.104, subparagraph (c); (ii) 307.104, subparagraph (e); and (iii) 307.7105.
(i) Participate in acquisition planning; and (ii) assist the Project Officer in AP preparation.	OPDIV-Contracting Officer	(i) 307.104, subparagraph (c); (ii) 307.104, subparagraph (e).
Waive requirement for development of an AP when justified.	OPDIV-HCA	307.7101, subparagraph (b).
Review and certify that an AP is complete, accurate, and in the proper format.	OPDIV-Head of the Sponsoring Program Office, Project Officer, Funds Certification Official, Contracting Officer, and other signatories in accordance with OPDIV policies.	307.7104
Meet established acquisition milestone dates	OPDIV-Project Officer and Contracting Officer.	307.7106.

307.7108 Statement of work.

(a) *General.* An SOW describes the work or services a contractor is to perform in reaching an end result without describing the method that the contractor shall use, unless the method of performance is critical or required in order to obtain successful performance. An SOW shall be clear and concise; completely define the responsibilities of both the contractor and the Government; and be worded to make misinterpretation virtually impossible.

(b) *Term (level of effort) form and completion form SOWs.* Term-form (level of effort) SOWs essentially require the furnishing of technical effort, which may include a report thereof, while completion-form SOWs require development of tangible items designed to meet specific performance and/or design characteristics—see FAR 16.306(d) for this distinction.

(1) Term (or level of effort). A term or level of effort-form SOW is appropriate for research where the objective is to discover the feasibility of later development or to gather general information. A term or level of effort-form SOW specifies 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-form SOW is appropriate for development work where the feasibility of producing an end item is already known. A completion-form 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 the contractor must complete and the Contracting Officer approve before the contractor may proceed to the next phase or stage. 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, such as one for an R & D or demonstration project,

may include stages of accomplishment. Within each phase, there may be a number of tasks that the SOW should include. When phases of work can be identified, the SOW shall provide for phasing and the solicitation shall require offerors to submit proposed costs by phases. The resultant contract shall 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 Contracting Officer shall not allow contractors to incur costs for phases that are dependent upon successful completion of earlier phases until the Contracting Officer provides written acceptance of the prior work.

(d) *Elements of the SOW.* The elements of the SOW may vary with the objective, complexity, size, and nature of the acquisition. In general, the SOW shall 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 SOW shall provide sufficient detail to accurately reflect the Government's requirement. It shall state what is to be accomplished without prescribing the method the contractor is to use and shall include performance standards, if applicable. See 307.104(b)(2) and FAR 37.602 for guidance on preparation of a PWS. An SOW may include tasks and subtasks. The degree of breakout depends on the size and complexity of the project. An SOW shall indicate whether the tasks are sequential or concurrent.

(4) *Reference material.* This includes an explanation of all reference material a contractor needs to carry out the project; the applicability of the reference material; and a statement as to where potential offerors can obtain the material.

(5) *Level of effort.* When a level of effort is necessary, the SOW shall specify the number and type of personnel required, if known, and the type and degree of expertise.

(6) *Special requirements (as applicable).* This includes providing, in a separate section, any unusual or special contractual requirements that may affect performance. For example, the SOW shall specify separately the work requirements to implement information security management requirements—see 339.71 for additional information.

(7) *Deliverables and reporting requirements.* This includes clearly and completely describing all deliverables and reports, including the time frame for completion, the format, and the required number of copies.

PART 308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 308.4—Federal Supply Schedules

Sec.

308.404 Use of Federal Supply Schedules.

308.405–6 Limited source justification and approval.

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Subpart 308.4—Federal Supply Schedules

308.404 Use of Federal Supply Schedules.

(f) *Technical Evaluation.* When conducting a technical evaluation of quotations or proposals received under FAR Part 8, the provisions of 315.305(a)(3) apply.

308.405–6 Limited source justification and approval.

(g)(1) As required by FAR 8.405–1 or 8.405–2, the responsible program office must provide a written justification whenever it requests an acquisition under the FSS program that restricts consideration of the number of schedule contractors or to an item peculiar to one manufacturer. The justification must be submitted with the AP or other acquisition request document—see 307.71. The Project Officer has responsibility for preparing the justification with assistance, as necessary, from the Contracting Officer.

(i) Justifications for orders at or below the simplified acquisition