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reasonably required to perform the work.

(k) Period of effectiveness of a proposed letter contract. (If more than 180 days, the Contracting Officer shall provide a detailed justification).

(l) A statement of any substantive matters that need to be resolved.

316.603-71 Approval for modifications to letter contracts.

An official one level above the Contracting Officer shall approve all letter contract modifications. Contracting activities shall process requests for authority to issue letter contract modifications in the same manner as requests for authority to issue letter contracts. A request shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and name/title of approving official.

(d) Letter contract number and date issued.

(e) Detailed justification as to why the letter contract cannot currently be definitized.

(f) Detailed justification as to why the level of funding must be increased.

(g) Detailed justification as to why the period of effectiveness must be increased beyond 180 days, if applicable.

(h) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the acquisition, the Contracting Officer shall include the information required by 316.603-70(j).

Subpart 316.7—Agreements

316.770 Unauthorized types of agreements.

316.770-2 Memoranda of understanding.

Use of a “memorandum of understanding,” which purports to modify mandatory FAR and HHSAR provisions to make them acceptable to a prospective contractor, is not authorized because it may address matters contrary to the language of the solicitation or prospective contract. A memorandum of understanding does not bind the

Government under the contract. The Contracting Officer shall make a change in a solicitation or contract only by amendment or modification, respectively. When a change to a prescribed contract clause is considered necessary, the Contracting Officer shall request a deviation.

PART 317—SPECIAL CONTRACTING METHODS

Subpart 317.1—Multi-year Contracting

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

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 317.1—Multi-year Contracting

317.104 General.

(b) The Senior Procurement Executive is the agency head for the purpose of FAR 17.104(b).

317.105 Policy.

317.105-1 Uses.

(a) Each HCA determination to use multi-year contracting, as defined in FAR 17.103, is limited to individual acquisitions where the full estimated

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cancellation ceiling does not exceed 20 percent of the total contract value over the multi-year term or \$11.5 million, whichever is less. Cancellation ceiling provisions shall conform to the requirements of *FAR 17.106-1(c)*. The determination is not delegable and shall address the issues in *FAR 17.105-1(a)* and the following:

(1) The amount of, and basis for, the estimated cancellation ceiling.

(2) Identification and assignment of a Contracting Officer holding a FAC-C Level III certification or, alternatively, one familiar with the application of this contracting method.

(3) Availability of appropriations to fund the obligation of total contract costs for the first year of performance plus the estimated amount of the full cancellation ceiling.

(4) Reasonable expectation that, throughout the contemplated contract performance period, the OPDIV, through its annual budget request, will seek funding for the contract at the level necessary to avoid contract cancellation; and

(5) Program requirements are reasonably stable and the associated technical risks are not excessive—*i.e.*, not of the nature or level to jeopardize contract completion or result in its cancellation.

Upon SPE request, the HCA shall provide a copy of each determination (other than those specified in *317.105-1(b)* below).

(b)(1) SPE approval is required for any—

(i) Individual determination to use multi-year contracting with a cancellation ceiling in excess of the limits in *317.105-1(a)*; or

(ii) Class determination (see *FAR Subpart 1.7*).

(2) A determination involving a cancellation ceiling in excess of the limits in *317.105-1(a)* shall present a compelling justification for the estimated cancellation ceiling. When the estimated cancellation ceiling exceeds \$11.5 million, the determination shall be accompanied by a draft congressional notification letter pursuant to *FAR 17.108* and *317.108*.

(c) The funding required for performance of each year of a multi-year contract under *FAR Subpart 17.1* and this

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subpart must be provided in full at the start of that program year.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

317.107 Options.

When used as part of a multi-year contract, options shall not be used to extend the performance of the original requirement for non-severable services beyond 5 years. Options may serve as a means to acquire related services (severable or non-severable) and, upon being exercised, shall be funded from the then-current fiscal year's appropriation.

[75 FR 21511, Apr. 26, 2010]

317.108 Congressional notification.

(a) The SPE is the agency head for the purposes of *FAR 17.108(a)*. Upon SPE approval of the determination required by *317.105-1(b)(1)*, the SPE will finalize and sign the congressional notification letter and provide it to the appropriate House and Senate committees.

Subpart 317.2—Options

317.204 Contracts.

(e) The total of the basic and option periods shall not exceed 10 years in the case of services and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to IT and R & D contracts. However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

317.207 Exercise of options.

(h) Before exercising an option for a subsequent performance period/additional quantity under a multiple-year contract/order—*see 339.201-70(c)*, which involves the acquisition of EIT products and services, including EIT deliverables such as electronic documents and reports, subject to Section 508 of the Rehabilitation Act of 1973, as amended, the Contracting Officer shall ensure that the contractor has provided to the Contracting Officer and Project Officer a properly completed HHS Section 508 Annual Report—*see*

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Section 508 policy on HHS Office on Disability Web site. The Contracting Officer shall request that the contractor provide the report in sufficient time for its review and approval by the Contracting Officer, Project Officer, and the Section 508 Official or designee, prior to exercise of an option. The Contracting Officer shall ensure that the report and all related approvals are made a part of the official contract/order file.

Subpart 317.5—Interagency Acquisitions Under the Economy Act

317.503 Determination and findings requirements.

(a) In addition to the D & F contents specified in *FAR 17.503(a)(1) and (2)*, each Assisted Contracting D & F shall address—

(3) The servicing organization(s) contemplated (the assigned HHS contracting office shall be one of the servicing organizations contemplated);

(4) For each organization and alternative approach contemplated, the anticipated benefits to the OPDIV; the anticipated costs, including associated fees or other compensation; and the contract/order placement timeframe;

(5) The tradeoffs (cost, schedule, performance) among the approaches considered;

(6) The recommended multi-agency or intra-agency contracting approach;

(7) The conclusion that the contract to be awarded by the selected servicing organization is the most advantageous alternative to the Government, notwithstanding fees and the increased risk associated with assisted contracting; and

(8) The steps that will be taken to ensure that contract funding will comply with the *bona fide* needs rule and the Anti-Deficiency Act.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

Subpart 317.70—Multi-agency and Intra-agency Contracts

317.7000 Scope of subpart.

(a) This subpart prescribes policies for HHS' use of multi-agency and intra-

agency contracting under all authorities. It does not apply when HHS transfers funds to another agency under an interagency agreement whose primary purpose is other than contracting on HHS' behalf.

(b) For multi-agency contracts under the authority of the Economy Act, see *FAR Subpart 17.5 and 317.503*.

(c) Multi-agency contracting authorities other than the Economy Act include but are not limited to the Clinger-Cohen Act [40 U.S.C. 11302(e)]; the Government Management Reform Act (Pub. L. 103-356); Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, *et seq.*); and 40 U.S.C. 501, Services for Executive Agencies.

317.7001 Definitions.

As used in this subpart:

Multi-agency contracting describes a procedure in which a Federal agency needing supplies or services obtains them using another Federal agency's contract (direct ordering), the contracting assistance of another Federal agency (assisted contracting), or both. In some cases, more than one servicing organization may be involved in assisted contracting.

Intra-agency contracting describes a procedure in which an HHS OPDIV/STAFFDIV needing supplies or services obtains them by issuing an order under another HHS OPDIV/STAFFDIV's contract or agreement (e.g., a BPA—direct ordering); or using the contracting assistance of another OPDIV/STAFFDIV (assisted contracting); or both.

Assisted contracting is a subset of multi-agency/intra-agency contracting in which a servicing contracting office other than the requesting organization's assigned contracting office contracts on behalf of the requesting organization.

Direct ordering is a subset of multi-/intra-agency contracting in which a contracting or ordering officer issues an order under another OPDIV's or Federal agency's indefinite delivery vehicle (e.g., a GSA FSS schedule or a GWAC).

Requesting organization refers to the organization with the requirement for a multi- or intra-agency contract.

Servicing organization refers to an organization that assists a requesting organization by awarding a contract or order on its behalf. In the context of multi-agency contracting, the servicing organization and requesting organization must be in different Federal agencies. For intra-agency contracting, the servicing and requesting organizations must both be HHS organizations.

317.7002 Potential multi-agency and intra-agency sources.

(a) Prior to deciding to use multi-agency or intra-agency contracting, the requesting organization must perform sufficient market research to consider the relative merits and costs of available contracts and contracting offices for meeting the requesting organization's need.

(b) Direct ordering conducted by HHS contracting officers using GSA vehicles, GWACs, and vehicles established under the Federal Strategic Sourcing Initiative does not require justification. HHS contracting officers should be cautious about using unfamiliar contract vehicles. When using vehicles other than those listed above, the Contracting Officer shall include in the contract file a D & F, which is prepared in consultation with the SBS, and which concludes that the chosen vehicle is the best way to obtain the required product or service.

(c) With the exception of assisted contracts and direct order acquisitions to be placed pursuant to the authority of the Economy Act, which always require preparation of a supporting D & F—see *FAR 17.503*, proposed assisted contracts approved as part of an annual or updated acquisition plan require no additional documentation or approvals.

(d) For proposed assisted contracts *not* approved as part of an annual or update acquisition plan, the requiring organization shall identify the potential servicing organization(s); summarize the services each source provides; and describe the compensation arrangement(s). The assigned contracting office shall be one of the alternatives considered. For multi-agency contract actions, this information shall be included in the Assisted Contracting D & F required in *317.7003(b)*.

317.7003 Documentation for multi-agency contracts.

(a) In the case of proposed direct ordering using vehicles other than those listed in *317.7002(b)*, the HHS contracting officer shall comply with the D & F requirement in *317.7003(b)*.

(b) If a proposed assisted contract, using a servicing organization outside HHS, was not approved during preparation and review of the annual acquisition plan, including updates, then the program/project office or other requiring activity shall prepare an Assisted Contracting D & F, similar to the D & F specified in *FAR 17.503*, but augmented with the information specified in *317.503*. The Project Officer or other requiring official shall be responsible for preparing and staffing this Assisted Contracting D & F.

(1) For assisted contracts greater than or equal to \$500,000 (including the value of the base contract and all options and, for indefinite delivery vehicles, the value of the vehicle and all potential orders), the assigned HHS Contracting Officer shall review and approve or reject the Assisted Contracting D & F, annotated with the SBS' recommendation. The Contracting Officer's signature on the Assisted Contracting D&F signifies his/her concurrence that assisted contracting through the proposed servicing contracting office is in the best interest of the government. The Project Officer must retain a copy of the approved Assisted Contracting D & F.

(2) For assisted contracts less than \$500,000, the HCA may delegate authority to the Project Officer or other requiring official to approve the required Assisted Contracting D & F. The \$500,000 threshold includes the value of the base contract and all options and, for indefinite delivery vehicles, the value of the vehicle and all potential orders.

(3) During a declared (Presidential or HHS Secretarial) emergency, funding and requirements documentation may be transferred to a servicing organization without an Assisted Contracting D & F. The Project Officer shall document his/her file, explaining the exigent circumstances.

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(c) Assisted contracts require supporting interagency agreements, as described in OFPP's memorandum, "Interagency Acquisitions," dated June 2008. Note that Part A of an interagency agreement can support multiple assisted contracts. Each interagency agreement shall address all the elements identified in OFPP's model interagency agreement (Appendix 2 of OFPP's "Interagency Acquisitions"). The level of detail in HHS interagency agreements should be commensurate with the dollar value and complexity of the assisted contract. HHS requesting organizations shall not forward funding or requirements documentation outside HHS without a properly executed interagency agreement; and servicing activities within HHS (e.g., PSC and the NIH Information Technology Acquisition and Assessment Center), shall not contract on behalf of non-HHS requesting organizations without properly executed interagency agreements.

317.7004 Documentation for intra-agency contracts.

(a) In the case of proposed direct ordering, using vehicles other than those

listed in 317.7002(b), the HHS contracting officer shall comply with the D & F requirement in 317.7003(b).

(b) With the exception of assisted contracts and direct order acquisitions to be placed pursuant to the authority of the Economy Act, which always require preparation of a supporting D & F—see *FAR 17.503*, proposed assisted contracts approved as part of an annual or updated acquisition plan require no additional documentation or approvals.

(c) For proposed assisted contracts *not* approved as part of an annual or updated acquisition plan, the requiring organization shall identify the potential servicing organization(s); summarize the services the source(s) provide(s); and describe the compensation arrangement(s). The assigned contracting office shall be one of the alternatives considered.

(d) Assisted intra-agency contracts may require supporting intra-agency agreements or other documentation as prescribed by OPDIV procedures.