

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**and**

**Centers for Medicare & Medicaid Services**

**State Systems APD Guide**

October 2010



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## **PREFACE**

This State Systems APD Guide was initially developed in September 1996 by the Department of Health and Human Services' (HHS) Administration for Children and Families (ACF), in cooperation with the Health Care Finance Administration (HCFA), to help States prepare Advance Planning Documents (APDs) and related documents for approval for Federal financial participation (FFP). This revision updates the Guide to reflect regulatory changes in Part 95 as reflected in the final rule published on October 28, 2010. It is intended to streamline the process by establishing certain discrete standards that State submissions must meet prior to approval and by limiting these standards to the most essential.

This document will be used by HHS staff as a standard for review. It should also be used by State personnel and their consultants and contractors working on systems subject to HHS' review, approval, and certification.

The true test of this manual is how well it supports the States during the systems life cycle and whether it remains relevant and useful. In this sense, the final test of this guide by the ultimate users — the States — remains.

HHS welcomes suggestions from those using this guide. Written comments may be sent to:

Department of Health and Human Services  
Administration for Children and Families  
Attn: Jim Blackie  
370 L'Enfant Promenade, SW  
Washington, DC 20447-0001

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## **CHAPTER I: INTRODUCTION**

### **A. OVERVIEW OF GUIDE**

This guide sets forth requirements related to the preparation, submission, and review of APDs and supporting documentation. This guide is for State use in acquiring and managing information systems and in preparing, submitting, and updating Advance Planning Documents (APDs). This guide is also used by Federal personnel in HHS central and regional offices in advising State personnel and reviewing submissions.

A comprehensive table of contents supports the guide's use as a reference document. The guide is divided into five chapters and two appendices.

- Chapter I is the introduction.
- Chapter II describes the requirements for Planning APDs.
- Chapter III addresses the requirements for Implementation APDs.
- Chapter IV covers APD Updates.
- Chapter V addresses solicitation documents and contracts.

Appendix A contains detailed submission requirements for APDs. Appendix B is a list of authorities.

### **B. BACKGROUND AND OBJECTIVES**

The Department of Health and Human Services (HHS) provides leadership and direction in planning, managing, and coordinating the administration and financing of a broad range of comprehensive and supportive programs for vulnerable children and families. These programs are carried out in part by public and private, State and local agencies and are designed to promote stability, economic security, responsibility, and self-sufficiency.

Although the programs are carried out at the State and local levels, HHS is responsible for approving, monitoring, and certifying that the programs are being implemented as intended by law and regulation — and that the expenditure of Federal funds is made wisely.

This guide describes HHS' policies and procedures for Federal review, approval, and funding of information systems supporting the operation of the Administration's programs. An important element of the process is the preparation and approval of Advance Planning Documents (APDs).

The three primary purposes of the APD process are to:

- Describe in broad terms the State's plan for managing the design, development, implementation, and operation of a system that meets Federal, State, and user needs in an efficient, comprehensive, and cost-effective manner;
- Establish system and program performance goals in terms of projected costs and benefits; and
- Secure Federal financial participation (FFP) for the State.

This *State Systems APD Guide* — referred to in short as the *APD Guide* — is intended to:

- Provide a single guide addressing policies and procedures that apply across HHS' programs and apply equally to all States;
- Inform States how to obtain approval and funding through Advance Planning Documents (APDs); and
- Provide insight on the most critical elements of the approval process so that States can prepare more effective APDs and so that Federal approval can be granted more readily.

In developing this guide, HHS was cognizant of the requirements of Administration for Children and Families (ACF), the Centers for Medicare & Medicaid, and the U.S. Department of Agriculture's Food and Nutrition Service (FNS). Given that State agencies must at times develop automation plans that integrate and address the requirements of ACF, CMS and FNS, this guide endeavors to describe high-level processes, procedures, and documents that are compatible within HHS and with those of FNS, given existing regulations and policies.

Nonetheless, to be useful to the States, this guide goes beyond high-level requirements to describe, for example, aspects of the review of APDs which reflect HHS' perspective. States developing APDs for systems which require approval from ACF, CMS, and FNS should refer also to HHS' *APD Guide*, HCFA's guidance in Chapter 11 of the *State Medicaid Management Manual*, and FNS's *APD Handbook*.

**EXHIBIT I-1: RESPONSIBILITIES**

| State Responsibilities   | HHS Responsibilities  |
|--|---|
| <p>Propose cost-effective systems solutions.</p> <p>Implement systems that meet Federal and State programmatic requirements.</p> <p>Achieve maximum practicable competition.</p> <p>Set system and program performance goals in terms of costs and benefits.</p> <p>Measure performance against projected costs and benefits.</p> <p>Establish State procurement standards that govern systems procurements that apply to projects not funded with FFP as well as those projects receiving matching FFP.</p> | <p>Set standards for systems and for document approval.</p> <p>Review and approve or disapprove State submissions.</p> <p>Provide FFP.</p> <p>Ensure performance progress against projected costs and benefits.</p> <p>Serve as information source on system initiatives across all States.</p> |

**C. RESPONSIBILITIES**

As Exhibit I-1 on the prior page indicates, the administration of HHS' programs is a cooperative endeavor, with Federal and State governments working together to implement information systems that support the management of human service programs. Given the State's operational role, considerable responsibility rests with the State for operating welfare-related programs efficiently, effectively, and economically. Automated systems are needed to accomplish this task.

The cost of these automated systems is typically provided by matching Federal funds to State expenditures, resulting in shared funding responsibilities. While currently most programs do not have authority to provide enhanced FFP for system development, we have retained the enhanced FFP thresholds and provide guidance in this document should statutory authority be provided (See Exhibit I-2 below.)

**EXHIBIT I-2: PROGRAM FUNDING INFORMATION**

| <b>Program</b>                       | <b>Regular FFP Percentage Rate</b> | <b>Enhanced FFP Percentage Rate</b> | <b>Approved by:</b> |
|--------------------------------------|------------------------------------|-------------------------------------|---------------------|
| Title IV-A: TANF (Block Grant)       | N/A                                | N/A                                 | ACF                 |
| Title IV-B: Child Welfare            | 75                                 | N/A                                 |                     |
| Title IV-E: Foster Care and Adoption | 50                                 | N/A                                 |                     |
| Title IV-D: Child Support            | 66                                 | N/A                                 | ACF                 |
| Title XIX                            | 50                                 | N/A                                 | CMS                 |

**D. TYPES OF APDs**

Each State seeking Federal funding above the regulatory thresholds (covered in the next section) for the development and implementation of information systems must prepare and submit an Advance Planning Document (APD) for approval by HHS. The APD process may involve one or a series of documents used to secure Federal funding. Eligible State information systems are planned and developed under HHS' approval process which can include two major submissions:

- The Planning APD, and
- The Implementation APD.

In addition, States may use three types of APD Updates (APDUs) to keep HHS advised and to obtain continued funding throughout the systems life. The three types of APDUs are:

- Annual APD Updates, used for routine reporting on the status of the project and for requesting continued, phased project funding, and
- As-Needed APD Updates, used if significant changes occur in project approach, procurement, schedule, or costs.
- Operational APD Updates, a 1-2 page annual document that provides updated information on the M&O status in three areas, 1) description of the activity, 2) estimated annual cost, and 3) summary of the acquisition methods.

As part of the APD process, States may also be required to submit copies of solicitation documents, contracts, and contract amendments for prior written approval when regulatory thresholds are exceeded (unless exempted at the time of APD approval). If the APDU requests exemption and provides the information required by Section 95.610, the State can assume that their APD approval includes an approval of their exemption request unless the approval letter specifically requires submission of the procurement documents.

The information needed for an exemption request is as follows:

- A) Type and scope of project
- B) Procurement strategy
- C) Estimated cost or not to exceed cost
- 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 Section 95.617

Although use of the formats described in this guide is encouraged — to ease and expedite Federal review and approval — the formats are not mandatory.

## **E. APPROVAL REQUIREMENTS**

In the past, dollar thresholds alone determined whether States must obtain written approval from HHS before proceeding or before being authorized Federal financial participation (FFP). With the publication of the final rule, the authority to exempt acquisitions from prior Federal approval is greatly expanded and is based on assessment of risk, not solely dollar cost of the proposed acquiring. Exhibit I-3 beginning on page 11 illustrates the current approval requirements in brief.

The following chapters detail the APD requirements and set standards against which HHS conducts reviews. These standards should help States — and by extension HHS — in developing well-prepared APDs.

A State best serves its own interests if, *prior to submission*, State analysts review the draft APD to anticipate questions or problems and *resolve them before submission*. States should be aware that the quality, completeness, and organization of the APD are directly related to the time needed by HHS to reach a funding decision.

## **F. SUBMISSION INFORMATION**

All APD submissions must be signed by the State agency head or authorized State agency official<sup>1</sup>. These signatures indicate to HHS that the project has the requisite organizational and financial support of the State, conforms with the State Plan, satisfies State users and organizations, and (to the State's knowledge) meets all policy and regulatory requirements.

The State sends APD submissions involving a single program to that applicable program office. See Appendix A for additional information.

### **Electronic submissions:**

The final rule revised the regulations to eliminate the requirement of written submissions and encourage electronic submissions and electronic Federal approvals. The Federal program offices vary in their ability to accept and send electronic documentation. However, all Federal program offices have set this as a goal and encourage electronic submissions of the APD and other procurement documentation wherever possible. Due to staff turn-over, please click on the links provided in Appendix A to verify the correct email(s) for each program office to email the electronic version of the APD or related procurement documentation. If submitting electronically without an accompanying hard copy, please ensure that the cover letter signed by the State authorized requestor is faxed or provided in a scanned PDF version. The size of the files may prevent some HHS or FNS program offices from receiving the electronic versions. If you don't receive an acknowledgement letter related to your electronic submission, please contact the appropriate program offices for alternative means of electronic submission.

APD's and acquisition documents involving multiple programs should be sent to:

Department of Health and Human Services  
Administration for Children and Families  
Director, Office of State Systems  
370 L'Enfant Promenade, SW  
Washington, DC 20447-0001

Due to reorganization, some program offices, such as OCSE, no longer require the State to submit a copy of the APD to the respective Regional office. For single-program request, please consult with the program office to determine if the ACF Regional offices require copies of the APD. Central Office consolidates headquarters and regional office comments (if appropriate) on the APD submission and notifies the State whether the APD is approved, conditionally approved, deferred, or disapproved.

Further information about submission requirements is included at Appendix A.

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<sup>1</sup> State agency heads are required to notify ACF in writing of the individuals authorized to submit APDs. Unsigned submissions and those signed by any person other than the State agency head or authorized officials may be returned.

**G. PROCESS STREAMLINING**

This document establishes certain discrete standards that State submissions must meet before Federal financial participation is approved. It is intended to ensure that HHS analysts will measure submissions against a common set of standards. It helps HHS by focusing review on areas critical to HHS' responsibilities under the law. It helps the States by finitely defining the rules for approval and supporting preparation of more concise, to-the-point submission documents.

**H. PROMPT ACTION ON REQUESTS FOR PRIOR APPROVAL**

The regulations at 45 Code of Federal Regulations (CFR) §95.611(d) specify that HHS must provide a State written approval, disapproval, or a request for information within 60 days of the date of the acknowledgement of receipt of the State's request. The Federal acknowledgement of receipt of the States submission may be hard copy or electronic or both. The acknowledgment letter will identify the Federal program office that was assigned this control and provides a control number that is useful in identifying the submission in later correspondence or when inquiring as to status. If the Federal program office does not request additional information or respond within 60 days of the date of the acknowledgement letter, "the request will automatically be deemed to have provisionally met the prior approval conditions" of 45 CFR §95.611. Decision Table 1 in Exhibit I-3 shows when APD submission is required. Decision Table 2 in Exhibit I-3 shows when Contract and RFP approval is required. Decision Table 3A-D in Exhibit I-3 shows when Contract amendment approval is required.

**EXHIBIT I-3: SUMMARY OF 45 CFR §95-611's  
KEY APPROVAL REQUIREMENTS**

**Decision Table 1: HHS Approvals**

| <b>If the State is seeking:</b> | <b>and the total acquisition cost (Federal and State funds) is:</b> | <b>and the acquisition is:</b> | <b>then:</b>               |
|---------------------------------|---|--------------------------------|----------------------------|
| Regular Funding                 | < \$1,000,000   | Competitive or Non-Competitive | No submission is required. |
| Regular Funding                 | ≥ \$5,000,000   | Competitive or Non-Competitive | An APD is required.        |
| Enhanced Funding                | > 0   | Competitive or Non-Competitive | An APD is required.        |

**EXHIBIT I-3 continued:**  
**SUMMARY OF 45 CFR §95-611's KEY APPROVAL REQUIREMENTS**  
**Decision Table 2: HHS Approvals: RFPs<sup>2</sup> and Contracts**

| If APD is required<br>and Funding is: | and the total<br>acquisition cost<br>(Federal and State<br>funds) is:  | and the<br>acquisition is:            | then:   |
|---------------------------------------|--|---------------------------------------|---|
| Regular                               | < \$1,000,000  | Competitive or<br>Non-<br>Competitive | No submission is<br>required.   |
| Regular                               | \$1,000,000 - \$6,000,000<br>for software application<br>procurements* | Competitive                           | No submission is<br>required.   |
| Regular                               |  | Noncompetitive                        | submission of the RFP<br>and contract is required<br>unless exempted                            |
| Regular                               | ≥ \$6,000,000<br>for software application<br>procurements              | Competitive or<br>Non-<br>Competitive | submission of the RFP<br>and contract is required<br>unless exempted                            |
| Regular                               | \$20,000,000 for<br>hardware and COTS<br>procurements                  | Competitive or<br>Non-<br>Competitive | Submission of the RFP<br>and contract is required<br>unless exempted                            |
| Regular                               | Maintenance and<br>operations procurements                             | Competitive or<br>Non-<br>Competitive | Exempt from<br>submission for prior<br>Federal approval if 1-2<br>page M&O APD is<br>submitted. |
| Regular                               | IV&V Procurements  | Competitive or<br>Non-<br>Competitive | Must be submitted for<br>prior Federal approval<br>regardless of cost                           |

\* Prior Federal approval of sole source contracts over \$1 million is still required. Submission of sole source justification is also still required, however the Federal program office will defer to the State procurement policies and procedures.

<sup>2</sup> Or other types of solicitation documents, such as Invitations for Bids (IFBs).

**EXHIBIT I-3 continued:  
SUMMARY OF 45 CFR §95-611's KEY APPROVAL REQUIREMENTS**

**Decision Table 3A: HHS Approvals: Contract Amendments**

| <b>If APD is required and Funding is:</b> | <b>and the contract amendment's cost increase is:</b>  | <b>then:</b>  |
|---|--|---|
| Regular                                   | ≤\$1,000,000 or under 20% of the base contract, whichever is higher                              | No submission is required.  |
| Regular                                   | > \$1,000,000 or cumulative contract amendments exceed 20% of base contract, whichever is higher | Submission of the contract amendment and APDU is required unless exempted |

**Decision Table 3B: HHS Approvals: Contract Amendments**

| <b>If APD is required and Funding is:</b> | <b>and the contract amendment's time extension is:</b> | <b>then:</b>   |
|---|--|--|
| Regular                                   | ≤ 120 days   | No submission is required.                                 |
| Regular                                   | > 120 days   | Submission of the contract amendment and APDU is required. |

**Decision Table 3C: HHS Approvals: Contract Amendments**

| <b>If APD is required and Funding is:</b> | <b>and the contract amendment's cost increase is:</b> | <b>then:</b>   |
|---|---|--|
| Enhanced                                  | ≤ \$300,000   | No submission is required.                                 |
| Enhanced                                  | > \$300,000   | Submission of the contract amendment and APDU is required. |

**Decision Table 3D: HHS Approvals: Contract Amendments**

| <b>If APD is required and Funding is:</b> | <b>and the contract amendment's time extension is:</b> | <b>then:</b>   |
|---|--|--|
| Enhanced                                  | ≤ 60 days  | No submission is required.                                 |
| Enhanced                                  | > 60 days  | Submission of the contract amendment and APDU is required. |

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## CHAPTER II: PLANNING APD

A Planning APD is a written plan of action to determine the need for, feasibility of, and projected costs and benefits of an automatic data processing (ADP) equipment or services acquisition.

| Standards for Approval  |
|---|
| <ul style="list-style-type: none"><li>• Is the need clear?</li><li>• Does the State have a reasonable plan to plan?</li><li>• Has the State committed to preparing a needs assessment, feasibility study, alternatives analysis, and cost/benefit analysis?</li><li>• Has the State estimated the costs to plan?</li><li>• Are the estimated planning costs and cost allocation reasonable for the project?</li><li>• Has the State estimated the project cost?</li></ul> |

Planning APDs are used by States that *want to be reimbursed* for the costs of *planning* for the implementation of a system, including acquisition of ADP equipment or services. Planning activities eligible for Federal financial participation (FFP) by HHS include:

- Preparing a detailed Project Management Plan
- Determining system needs,
- Assessing project feasibility,
- Evaluating alternatives,
- Conducting cost/benefit analyses,
- Preparing Advance Planning Documents,
- Developing functional requirements,
- Assessing other States' systems for transfer, and
- Preparing procurements.

The Planning APD is a very brief document prepared and submitted *prior to initiating* Planning Phase activities. It is a plan to plan. The purpose is not to provide needs and plans in detail but to develop a high-level management statement of vision, needs, objectives, plans, and estimated costs. The focus is on describing how planning will be

accomplished and demonstrating that the State has established a plan that is reasonable for the level of effort of the project. Planning APDs that meet the standards for approval shown in the box on the preceding page will be approved within 60 days.

The Planning APD has four sections:

- Statement of need,
- Project Management Plan for planning,
- Planning project budget, and
- Estimate of total project cost.

The four sections of the Planning APD are described in the following paragraphs.

## **A. STATEMENT OF NEED**

This section of the Planning APD should set forth the State's information and services "vision,"<sup>3</sup> including the scope and objectives of the planned information system and its interrelationships with other systems (if known). In addition, the needs statement should define the system requirements in terms of problems and needs which may represent:

- Deficiencies in existing capabilities,
- New or changed program requirements, or
- Opportunities for economies or efficiencies.

For example, the State may identify new requirements based on insufficient system capacity for current or projected caseloads, lengthy case processing times, limited functional automation, or current or projected operating costs. Therefore, deficiencies or needs may be based on functional, programmatic, technical, operational, or resource requirements.

This section should answer the question, *"Is the need clear?"*

## **B. PROJECT MANAGEMENT PLAN FOR PLANNING**

The Project Management Plan summarizes how the State will plan.

The State's planning project organization is briefly described. At this point in the project, all that is required is that the State identify key players in the planning phase, such as the project manager and other key planning staff by name and title. This information can be

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<sup>3</sup> "Vision" means the State planners' view of future program needs and the systems architecture necessary to support those needs.

depicted in an organization chart.

The Project Management Plan for planning describes how and when the activities for the Planning Phase will be conducted and schedules milestones for completion of key events.

For example, provisions at 45 CFR §95.605 require a State to commit to:

- Conducting and preparing a needs assessment<sup>4</sup>, feasibility study, alternatives analysis, and cost/benefit analysis; and
- Preparing a functional requirements specification and/or a General Systems Design.<sup>5</sup>

If applicable and if known, this section sets forth how and when contractor services to support planning will be acquired. In some cases, the State may be able to describe an overall strategy — the number of contractors, the products and services they will provide, and their relationships to each other and to the State.<sup>6</sup> An effective way to present this information is graphically.

This section should answer the questions, *"Does the State have a reasonable plan to plan?"* and *"Has the State committed to preparing a needs assessment, feasibility study, alternatives analysis, and cost/benefit analysis?"*

### **C. PLANNING PROJECT BUDGET AND COST ALLOCATION**

This section succinctly describes in narrative form the resource needs for which funding support during the Planning Phase may be requested by the State. These needs may relate to State and contractor staff costs, computer time, hardware and commercially available software, travel, space, supplies, telephones, photocopying, and so forth.

This section of the APD also provides the budget and the cost allocation to be used during the Planning Phase.

- 1. Budget** Typically, the planning project budget provides estimated expenditures by category, with cost projections summarized annually and totaled for the Planning Phase. In very large or complex projects, budget data may be broken down by task or phase and category. (At times, ACF may require this on an

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<sup>4</sup> Referred to as a "requirements analysis" in this guide.

<sup>5</sup> Note that, in many cases, only the Conceptual System Design will be completed during the planning phase. In that event, the Conceptual System Design may be referenced in the Planning APD with a note that the General System Design will be developed during the implementation phase.

<sup>6</sup> Under 92.36(a) the Federal program offices will defer to the State's procurement laws, policies and procedures related to conflict of interest.

exception basis.) Unless modified by HHS' approval, the total is the ceiling for expenditures during the Planning Phase. The budget format States should use is shown in Exhibit II-1 on the following page.

2. **Cost Allocation.** Cost allocation should be described in narrative and in an exhibit depicting share and dollars. First, the Planning Phase cost allocation plan is described, including procedures to identify, record, allocate, and report direct and indirect costs, partially and fully attributable to the system project, for funding at regular and enhanced rates. The State also describes how it will fund its portion of the costs. The planning cost allocation is applied to the total planning project budget to calculate budget totals by program. States should follow the format for a cost allocation plan used in the Cost Allocation Toolkit. For planning APD's the Federal program offices have indicated that they will accept cost allocation of equal shares among programs participating in the planning phase. This is not the only acceptable cost allocation methodology for planning. Other reasonable approaches to allocating costs during this phase will also be considered.

For additional information on cost allocation, see Cost Allocation Methodology Toolkit. [http://www.acf.hhs.gov/programs/cse/stsys/dsts\\_plan\\_ca.html](http://www.acf.hhs.gov/programs/cse/stsys/dsts_plan_ca.html)

This section should answer the questions, "*Has the State estimated the costs to plan?*" and "*Are the estimated planning costs and cost allocation reasonable for the project?*"

#### **D. TOTAL PROJECT COST**

This section provides a gross estimate of total project costs for the entire system acquisition — including planning and implementation. This information is very preliminary and will be updated in the Implementation APD.

This section should answer the question, "*Has the State estimated the project cost?*"

## EXHIBIT II-1

### Planning APD: Planning Project Budget

| Cost Category*      | Year 1 | Year 2** | Total |
|---------------------|--------|----------|-------|
| Direct Personnel    |        |          |       |
| Contractor Services |        |          |       |
| System Hardware     |        |          |       |
| System Software     |        |          |       |
| Training            |        |          |       |
| Overhead            |        |          |       |
| Supplies            |        |          |       |
| Other               |        |          |       |
| <b>TOTALS</b>       |        |          |       |

- \* Actual State cost categories may differ
- \*\* If required.

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## CHAPTER III: IMPLEMENTATION APD

Implementation APDs are written plans of action that States use to request Federal financial participation (FFP) in the costs of designing, developing, and implementing the system. Implementation activities eligible for matching funds from HHS include:

- Developing detailed system designs,
- Preparing solicitations for system hardware, software, and services,
- Converting data and software,
- Developing and testing software,
- Preparing sites,
- Training users, and
- Installing systems.

| <b>Standards for Approval</b>  |
|--|
| <ul style="list-style-type: none"><li>• What will this investment buy?</li><li>• Is the need for investment clear?</li><li>• Did the State analyze requirements, feasibility, and alternatives?</li><li>• Were at least two alternatives to the status quo evaluated for costs and benefits?</li><li>• Is the basis for selection of the chosen alternative reasonable?</li><li>• Is the acquisition well planned?</li><li>• How much will this investment cost?</li><li>• How will the costs be shared?</li></ul> |

States are required to submit an Implementation APD prior to incurring costs for system design and development, when the total project costs (including planning) are estimated to exceed the thresholds in 45 CFR §95.611(b). See Exhibit III-1 on the next page. Implementation APDs that meet the standards for approval shown in the box to the right will be approved within 60 days.

**EXHIBIT III-1: Prior Written Approval Required:  
Implementation APD [45 CFR §95.611(b)]**

| Funding  | Circumstance   |
|----------|--|
| Enhanced | Implementation APD for ADP equipment or services, regardless of costs<br>— <i>before incurring costs</i>   |
| Regular  | Implementation APD for ADP equipment or services, with total project costs (including planning costs) projected at \$5,000,000 or more for competitive acquisitions<br>— <i>before incurring costs</i> |

Unlike the Planning APD, the Implementation APD is a comprehensive and thorough document which sets forth specific, detailed information and summarizes or provides key documents prepared during the Planning Phase.

The detail in the Implementation APD should be commensurate with the complexity and scope of the acquisition. For example, States can set forth the need, costs, and benefits for a mainframe upgrade in significantly fewer pages than required for a new, multi-program, multimillion dollar, system development project. It is the State's responsibility to determine how much text and graphics are required to explain with clarity its plan of action. However, as a rule of thumb, HHS does not expect submissions that are too large to fit in a two- or three-inch binder. In general, less is better, provided clarity is not sacrificed.

As described in 45 CFR §95.610, the Implementation APD should have six sections, organized and categorized as follows:

- Section A. Statement of needs and objectives;
- Section B. Summary of results of the requirements analysis, feasibility study, and alternatives analysis;
- Section C. Project Management Plan; (description of nature and scope of activities to be undertaken and the methods be used to accomplish the project and personnel resource statement).
- Section D. Proposed budget; and
- Section E. Prospective cost allocation.
- Section F. Proposed activity schedule

In addition, the Implementation APD has two enclosures:

- Tab 1. Cost/benefit analysis, and
- Tab 2. Budget detail

To support HHS' timely review, States should prepare the Implementation APD in the format and order described in this chapter. The key components of the APD are described in the following paragraphs.

Section 610 (b) Implementation APD does not include criteria for seeking an exemption from prior approval of RFP and contacts because the criteria for an exemption in Section 610(b) (ii) indicates that the acquisition cannot be the initial acquisition for a high risk activity such as software application development.

## **A. STATEMENT OF NEEDS AND OBJECTIVES**

The State should summarize the current environment and the new system needs, objectives, and anticipated benefits. Needs may be expressed in terms of deficiencies in existing capabilities, new or changed program requirements, or opportunities for economies or efficiencies.

This section should serve as an executive summary to the project. It should answer the questions "*What will this investment buy?*" and "*Is the need for the investment clear?*"

## **B. SUMMARY OF REQUIREMENTS ANALYSIS, FEASIBILITY STUDY, AND ALTERNATIVES ANALYSIS**

The regulation at 45 CFR §95.605(2) requires that the Implementation APD include a *summary* of the results of the requirements analysis, feasibility study, and alternatives analysis. Note that copies of these documents are not required; their submission may delay action on the APD due to increased review time.

The requirements section should describe the functional and technical needs, including system interface requirements. System interface requirements may relate to IV-A, IV-D, IV-E, Medicaid, Federal Parent Locator Service (FPLS), Child Care, State Labor and Employment, IRS, and others as needed.

This section should also identify each of the alternatives analyzed for the system project and the considerations and conclusions reached regarding each one. It should also identify which alternatives were selected for evaluation of costs and benefits and provide the rationale for selection of the chosen alternative. If applicable, system transfer is addressed, summarizing which State systems were assessed for possible transfer and the results of the assessment.

Unless specifically requested by HHS, States are *not* required to enclose copies of the requirements analysis, feasibility study, or alternatives analysis.

This section answers the questions "*Did the State analyze requirements, feasibility, and alternatives?*" "*Were at least two alternatives to the status quo evaluated for costs and*

*benefits?," and "Is the basis for selection of the chosen alternative reasonable?"*

### **Former Section C. COST/BENEFIT ANALYSIS – is deleted**

This requirement for a baseline CBA and subsequent annual updates in the APD Updates was deleted in the final rule. However, the requirement for a functional cost/benefit analysis for each of the alternatives in the Feasibility Study/Analysis of Alternatives is retained.

### **C. PROJECT MANAGEMENT PLAN**

The Project Management Plan summarizes the project activities, deliverables, and products; project organization; State and contractor resource needs; and anticipated system life. Any significant differences from the Project Management Plan submitted with the Planning APD should be explained.

- 1. Nature, Scope, Methods, Activities, Schedule, and Deliverables** This section of the Project Management Plan describes in narrative and graphics how and when the project activities will be conducted and sets forth the resulting project documentation and contractor deliverables.

To support timely review, this section should provide a workflow (Gantt) chart addressing project activities, documentation, and contractor deliverables. Relationships between activities — sequential and parallel — are established in the plan, responsibilities identified, and provisions included to check progress. The schedule describes each activity and sets milestones for beginning and ending significant tasks.

Among the most critical activities of the Implementation Phase for a large system acquisition are:

- Developing the General<sup>7</sup> and/or Detailed System Designs;
- Preparing solicitations and awarding contracts for contractor support services, hardware, and software;
- Developing the conversion plan, test management plan, installation plan, facilities management plan, training plan, users' manuals, and security and contingency plans;
- Converting and testing data;
- Developing, modifying, or converting software;

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<sup>7</sup> For a system transfer project, a new General System Design may not be necessary.

- Testing software;
- Training staff for systems testing and operation; and
- Installing, testing, and accepting systems.

If applicable with regard to procurement activities, this section should describe how and when contractor services to support the project will be acquired. Specifically, the State's overall strategy is established — the number of contractors, the products and services they will provide (such as hardware, software, and quality assurance), and their relationships to each other and to the State.<sup>8</sup>

**2. Project Organization and Personnel Resources** The State's project organization is described in overview in terms of staff, responsibility, and relationships. The project organization, preferably shown by organization chart:

- Identifies the project manager and other key staff by name and title;
- Identifies the relationship of the project team to the project steering committee (if applicable); and
- Identifies interrelationships with user groups and contractors.

**3. State and Contractor Resource Needs.** This section succinctly describes in narrative form the resource needs for which funding support may be requested by the State. These needs may relate to State and contractor staff costs, computer time, hardware and commercially available software, depreciation, travel, space, supplies, telephones, photocopying, office equipment, furniture, and so forth. This information serves as a narrative explanation of the budget (which is addressed in the next section of the Implementation APD).

**4. System Life.** This section describes the anticipated system life for the required resources, inclusive of planning, implementation, and operational phases.

The Project Management Plan answers the question *"Is the acquisition well planned?"*

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<sup>8</sup> Note that State procurement laws and policies may exclude Planning Phase contractors from competing for or participating as a prime contractor or subcontractor on follow-on Implementation Phase activities and/or any resulting procurements.

## **E. PROPOSED BUDGET**

The State's proposed budget, summarized in the APD, considers all costs for Implementation Phase activities. For a large buy, this might include (but not be limited to) system software and data conversion, software development, computer capacity planning, contractor costs, supplies, training, maintenance, and operations. Miscellaneous ADP expenses may also be included. Consideration of multiple funding programs or source (cost allocation) is not necessary in the proposed budget.<sup>9</sup>

Typically, the project budget details estimated expenditures by category, with cost projections summarized annually and totaled for the project. In very large or complex projects, budget data may be broken down by task or phase and category. (At times, ACF may require this on an exception basis.)

The narrative of the Implementation APD provides the summary information by year and project total for implementation costs. Detailed breakouts by category are included in Tab 2. A sample budget format is shown in Exhibit III-2 on page III-8.

This section answers the question *"How much will this investment cost?"*

## **F. PROSPECTIVE COST ALLOCATION**

The prospective cost allocation plan is described, including procedures to identify record, allocate, and report direct and indirect costs, partially and fully attributable to the system project. The State also sets forth the methodology for cost distribution (such as cost pools) and how it will fund its portion of the costs of implementing the system. See Exhibit III-3 on page III-9.

For multi-program projects, please see the Cost Allocation Methodology Toolkit

This section answers the question *"How will the costs be shared?"*

## **G. ACTIVITY SCHEDULE**

The proposed activity schedule for the project is described.

This section answers the question *"What steps are necessary to achieve success and what is the proposed timetable for each phase of the project?"*

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<sup>9</sup> Cost allocation breakdowns are addressed in the last section of the Implementation APD.

**EXHIBIT III-2**

**Implementation APD: Implementation Budget**

| <b>Cost Category*</b>          | <b>Enhanced<br/>Year 1<br/>(by<br/>quarter)</b> | <b>Regular<br/>Year 1<br/>(by<br/>quarter)</b> | <b>Total<br/>Year 1<br/>(by<br/>quarter)</b> | <b>Enhanced<br/>Year 1<br/>(by<br/>quarter)</b> | <b>Regular<br/>Year 1<br/>(by<br/>quarter)</b> | <b>Total<br/>Year 1<br/>(by<br/>quarter)</b> | <b>Cumulative<br/>Totals</b> |
|--------------------------------|---|--|--|---|--|--|------------------------------|
| Direct Personnel               |   |  |  |   |  |  |                              |
| Contractor Services            |   |  |  |   |  |  |                              |
| System Hardware                |   |  |  |   |  |  |                              |
| System Software                |   |  |  |   |  |  |                              |
| Training                       |   |  |  |   |  |  |                              |
| Overhead                       |   |  |  |   |  |  |                              |
| Supplies                       |   |  |  |   |  |  |                              |
| Other                          |   |  |  |   |  |  |                              |
| <b>Yearly and Grand Totals</b> |   |  |  |   |  |  |                              |

\* Actual State cost categories may differ

**EXHIBIT III-3: Cost Allocation Plan Format**

**Estimated Implementation Phase Budget**

| <b>Federal / State Program</b> | <b>Program Share of Cost</b> | <b>Amount (\$)</b> | <b>FFP Rate</b> | <b>Federal Share (\$)</b> | <b>State Share (\$)</b> |
|--------------------------------|------------------------------|--------------------|-----------------|---------------------------|-------------------------|
|                                |                              |                    |                 |                           |                         |
|                                |                              |                    |                 |                           |                         |
|                                |                              |                    |                 |                           |                         |
|                                |                              |                    |                 |                           |                         |
| <b>TOTAL</b>                   |                              |                    |                 |                           |                         |

## CHAPTER IV: APD UPDATES

There are three types of Advance Planning Document Updates (APDUs): Annual APDU, As-Needed APDU and Operational APDU. These documents are reviewed in conformance with the standards to the right. (Note that the last three standards apply to post-implementation updates.)

Unlike APDs which require *prior* written approval, APDUs simply require written approval. APDUs may be submitted after the incident requiring the update has occurred. However, submission does not necessarily mean approval will be granted.

| <b>Standards for Approval</b>   |
|---|
| <ul style="list-style-type: none"><li>• Is the State's progress acceptable?</li><li>• Is the investment still sound?</li><li>• How do changes in cost allocation methodology affect HHS' programs?</li><li>• Are projected program performance, cost, and benefit goals being realized?</li><li>• Has the State initiated corrective action to address cost overruns or schedule slippages?</li><li>• Has the State provided sufficient information on which to exempt procurement from prior Federal approval?</li></ul> |

### A. ANNUAL APD UPDATE

Annual APD Updates are used to report annually on the status of the project, request additional funding, and report post-implementation costs and benefits.

They are prepared by the State and submitted to HHS 60 days before the FFP authority for the project is set to expire. A State may seek a no-cost extension of its submission date for an Annual APD if it has not expended the funding previously authorized.

The purpose of the Annual APDU is to allow both the State and HHS to assess the status of the project, in terms of past performance and future plans. Since HHS usually provides funding on an annual basis, the APDU also serves as the State's request for continued or additional funding.

**EXHIBIT IV-1: Annual APD Updates: Written Approval Requirements  
[45 CFR §95.611(b)]**

| Funding  | Circumstance  | Condition                          |
|----------|---|------------------------------------|
| Enhanced | Annual APD Updates  |                                    |
| Regular  | Annual APDUs for projects with a total acquisition over \$6,000,000 | When specifically required by HHS. |

The Annual APDU includes the following sections:

- References to the approved APD and all approved changes,
- Project status report,
- Revised Project Management Plan,
- Revised project budget,
- Cost allocation/distribution changes, and
- Actual costs

Note that the final rule eliminated the need for submitting annual cost benefit information, and added an optional section for States who wish to seek exemption from prior approval for acquisitions that are neither the initial acquisition nor a high risk acquisition. If all required information in this acquisition summary section is submitted, the State may assume that the APDU approval also constitutes approval of the exemption request(s).

The requirements for these sections are described below.

- 1. References to the Approved APD and All Approved Changes** The State provides a brief summary of the history of the APD process, summarizing the submission and approval of the Planning APD (if applicable), Implementation APD, and APD Updates (whether Annual As-Needed or Operational). HHS uses this information to quickly become current with the State's project status and immediate needs.
- 2. Project Status Report.** The State reports on the status of the past year's project tasks and milestones, addressing:
  - Task completion,
  - Task extension, and
  - New tasks, previously unanticipated.

In addition, if the State has encountered or anticipates problems or delays, an explanation should be provided. Slippages should be discussed in terms of causes and effect on the overall implementation schedule.

This section answers the question *"Is the State's progress acceptable?"*

- 3. Revised Project Management Plan** The State provides an updated Project Management Plan, reflecting the project changes summarized in the preceding section and including an assessment of the impact of significant changes on the projected system breakeven.

This section answers the question *"Will schedule changes affect system breakeven?"*

- 4. Revised Project Budget.** The State's revised project budget consists of:

- An accounting of expenditures for project development over the past year,
- An explanation of the differences between projected expenses in the last approved APD or APDU and the actual expenditures for the past year, and
- A revised projection of total project costs and an explanation of significant (10% or greater) increases.

This section answers the questions *"How do budget changes affect system breakeven and HHS' programs?"* and *"Is the investment still sound?"*

- 5. Cost Distribution Changes** This section is only needed if the original IAPD allocated costs among more than one program or activity. One example would be if the costs were allocated among TANF and Medicaid or cost allocated between IV-D child support activities and non-IVD child support activities. If so, this section would summarize any approved or anticipated changes to the cost allocation methodology.

**This section answers the question *"How do changes in cost allocation methodology affect HHS programs?"***

- 6. Actual Costs** Please note that the requirement for annual updates to the Cost Benefit analysis was eliminated in the final rule. A functional cost benefit analysis is still a requirement for the Initial Implementation APD. The APD is an estimate of projected systems costs by phase or by year. Approval of the APD and associated FFP is usually provided on an annual basis, to correspond to availability of State match. If your State legislature appropriates IT expenditures on a biennial basis, this information should be communicated in the APD, it may reduce the frequency of your APD Updates. Each subsequent APD Updates should provide actual costs incurred during the preceding year by quarter. This permits the Federal program offices to adjust the FFP authority either up or down. We recognize that a full year of actual expenditures is unlikely to be available when the next APD Update is due. We request that the State provide the actual expenditures by quarter. Depending on the actual expenditures, it may result in a downward or upward adjustment in the FFP authorized for the project.

One common error in State APD Update submissions is that the State fails to specify in the cover letter or accompanying documentation, how much they are requesting for the

period covered in the APD Update. Please make it clear whether your request for upcoming budget period already takes into consideration the difference (overspent or underspent authority) from the FFP authority approved in previous update.

## **7. Acquisition Summary**

States have the option of requesting an exemption from prior approval of the acquisitions associated with the project for the upcoming year. To be eligible for an exemption, the APD should include the following information:

- A) Type and scope of project (e.g. firm fixed price, time and materials, labor hour, best effort. M&O, services, license renewal, software development, hardware, COTS)
- B) Procurement strategy (e.g. Competitive, Master contract, sole source)
- C) Estimated cost or not to exceed amount (e.g. \$65 million over \$5 million, \$20 million in the timeframe covered by this APDU.)
- D) Timeframe of contract (e.g. 5 years with three option years, Estimated start date)
- 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 Section 95.617. (IM 05-03 is a good source of Federal requirements.)

Please note that Section 611(b)(iii) specifies that the exemption request included in the APD Updates shall be assumed to be approved with the APD approval provided that:

- (a) the acquisition summary provides sufficient detail to base an exemption
- (b) the acquisition does not deviate from the terms of the exemption
- (c) The acquisition is not the initial acquisition for a high risk activity, such as software application development, Acquisitions, whether exempted from Federal prior 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 (IM 05-03)

## **B. AS-NEEDED APD UPDATES**

As-Needed APD Updates are used to:

- Report and receive HHS approval for additional funding,
- Clarify project information requirements as an approval condition of the Planning or Implementation APD, and/or
- Report and receive HHS approval for significant project changes,<sup>10</sup>

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<sup>10</sup> If the change occurs within 60 days of the due date of the Annual APDU, the change may be reported as part of the annual submission.

In addition, As-Needed APD Updates are used when the project is being funded on a phased implementation basis.

The format of the As-Needed APDU follows the format of the original APD which it is modifying. For example, a State which has submitted an Implementation APD prior to vendor selection must submit an As-Needed APDU to reflect such information as an updated schedule of activities, an updated project management plan, and a revised budget which incorporates contractual versus estimated vendor costs.

As-Needed APD Updates may also be required by HHS to evaluate projects at key decision points and milestones projected to occur between annual APD Updates. If so, the submission of an As-Needed APD Update at the decision point or milestone will be a condition of an APD approval.

As-Needed APD Updates are submitted if changes occur in project schedule or costs which exceed the thresholds set forth in 45 CFR §95.611(b). See Exhibit IV-2 on page IV-7.

For example, the State should use an As-Needed APDU to:

- Request approval when expenditures are anticipated to exceed regulatory thresholds;
- Request approval for additional funding below the regulatory threshold, but above previously approved expenditure levels, when the State wants to be reimbursed at the higher level;
- Request authority for project continuation when significant project changes are anticipated, such as a schedule extension that exceeds the regulatory limit;
- Report major changes in the scope of the project, such as a change in the procurement plan or activities, system concept, or development approach;
- Report significant, anticipated changes to the cost distribution plan or methodology or to projected system costs and benefits; or
- Provide detailed information on project and/or budget activities if required as an approval condition of a prior APD.
- Provide additional information in 95.611 (2)(vi) to provide information on which an exemption of RFP and contracts can be based.

The As-Needed APDU may be submitted at any time, following the format of the APD being amended but including only those elements that have changed. The State must include supporting documentation to justify the need for a change to project approvals.

**EXHIBIT IV-2: As-Needed APD Updates: Written Approval Requirements  
[45 CFR §95.611(b)]**

| Funding  | Circumstance  | Condition  |
|----------|---|--|
| Enhanced | As-Needed APDUs for: <ul style="list-style-type: none"> <li>· Projected cost increases of \$1,000,000 or more</li> <li>· Over 120 day extension for major milestones</li> <li>· Significant change in procurement scope or approach</li> <li>· Change in system concept or project scope</li> <li>· Change to approved cost allocation methodology</li> <li>· Change exceeding 10% of estimated cost benefits</li> <li>· When specifically required by HHS</li> </ul> | Submitted to HHS no later than 60 days after the occurrence of the change being reported.<br><br>States may want to obtain prior approval, since costs are incurred at the State's risk. |
| Regular  | As-Needed APDUs for: <ul style="list-style-type: none"> <li>· Projected cost increases of \$1,000,000 or more</li> <li>· Over 120 day extension for major milestones</li> <li>· Significant change in procurement scope or approach</li> <li>· Change in system concept or project scope</li> <li>· Change to approved cost allocation methodology</li> <li>· When specifically required by HHS</li> </ul>  | Submitted to HHS no later than 60 days after the occurrence of the change being reported.<br><br>States may want to obtain prior approval, since costs are incurred at the State's risk. |

### **C. Operational APD Updates**

The final rule created a new type of APD Update to be utilized for those States who systems projects are in operational mode. This type of OAPDU should not be used by a State who has any system development activities.

An OAPDU is an annual submission which provides basic information in three areas and should not exceed 2 pages. The three areas are: (i) summary of activities, (ii) acquisitions and (iii) annual budget by project/systems receiving funding by programs covered under Part 95.

**Summary of Activities:** This section should provide sufficient description to determine if the activities described are in fact operations and maintenance activities, and not development. A new definition of software maintenance was provided in the final rule.

Software maintenance means routine support activities that normally include corrective, adaptive, and perfective changes, without introducing additional functional capabilities. Corrective changes are tasks to correct minor errors or deficiencies in software. Adaptive changes are minor revisions to existing software to meet changing requirements. Perfective changes are minor improvements to application software so it will perform in a more efficient, economical, and/or effective manner. Software maintenance can include activities such as revising/creating new reports, making limited data element/data base changes, and making minor alterations to display screen images.

**Summary of Acquisitions:** This section should provide information on the type and scope of the contract, procurement strategy, estimated costs, timeframe and certification that the procurement meets Federal and State procurement standards. Since most State operational contracts are multi-year, this section will be detailed in the year of procurement but not applicable in other years. A statement that the acquisition is in the 2<sup>nd</sup> year of a 5 year contract would be sufficient.

**Annual budget for operations;** this section should provide sufficient information for the Federal program office to approve FFP for operational activities.

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## CHAPTER V: CONTRACTING DOCUMENTS

The final rule published at XXX on XXX provided the most far reaching changes in this area. In the past, HHS reviewed four types of contracting documents as part of its APD process:

- Sole source justifications,
- Solicitation documents,
- Contracts, and
- Contract amendments.

| <b>Standards for Approval</b>  |
|--|
| <ul style="list-style-type: none"><li>• Has the State met its obligation to provide for maximum practicable competition?</li><li>• Has the State met its obligation to specify ACF's program requirements?</li><li>• Are the relationships of the State and all contractors clear?</li><li>• Does the State have primary responsibility for the project?</li></ul> |

As indicated in the decision tables beginning on page 11 (and repeated in this chapter for ease of reference), the recent regulatory changes substantially revised both the submission thresholds and the use of exemption authority. Only high risk, large dollar acquisitions (or lower dollar value noncompetitive buys) require review.

The final rule updated 95.613 Procurement Standards to clarify that procurements of ADP equipment and services are subject to the procurement standards in Part 92. Part 92.36(a) specifies that a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The Department retains the authority to provide greater oversight including requiring a State to comply with 92.36c) if the Department determines that the State procurement process is an impediment to competition that could substantially impact project cost or risk of failure.

### **A. SOLE SOURCE JUSTIFICATIONS**

In certain situations, States are required to submit the sole source justification even though an APD is not required. As the decision table on the next page indicates, this

occurs when the State is seeking FFP at the regular matching rate for a noncompetitive acquisition expected to cost between \$1,000,000 and \$6,000,000.

Noncompetitive acquisitions equal to or above \$5,000,000 at the regular matching rate and all acquisitions at the enhanced matching rate require an APD (rather than just the sole source justification). Even though the Federal program office will give deference to the State procurement laws, policies and procedures related to sole source justification, the state must still provide their justification accompanied by documentation or affirmative attestation by the requesting official that the sole source is justified under State procurement policies.

| <b>If the State is seeking:</b> | <b>and the total acquisition cost (Federal and State funds) is:</b> | <b>and the acquisition is:</b> | <b>then:</b>  |
|---------------------------------|---|--------------------------------|---|
| Regular Funding                 | \$1,000,000 - \$6,000,000   | Noncompetitive                 | Submission of the sole source justification is required.* |

\* While the sole source justification is required to be submitted, the Federal program office will defer to the State’s procurement laws, policies and procedures as to whether this sole source acquisition is justified under the State’s procurement rules. The Federal program office may request an affirmative attestation from the authorized requestor that the acquisition complies with State procurement rules.

*[This table is an excerpt of Decision Table 1 in Exhibit I-3 and is repeated here for ease of reference.]*

**B. SOLICITATION DOCUMENTS**

The term "solicitation documents" refers to documents that are used to solicit bids, proposals, and information from contractors. *Those that are used to solicit bids or proposals can result in a contract — and may be subject to prior written approval if the acquisition exceeds established thresholds.* In such cases, the solicitation documents are most frequently Requests for Proposals (RFPs) rather than Invitations for Bids (IFBs).

Unless exempted in the Annual or As-Needed APDU, States are required to obtain prior written approval from HHS for solicitations of products and/or services when the regulatory thresholds set forth in 45 CFR §95.611(b) are exceeded. See Table 4 on the next page.

**Decision Table 4: HHS Approvals: RFPs<sup>11</sup> and Contracts**

| <b>If an APD is required and funding is:</b> | <b>and the total acquisition cost (Federal and State funds) is:</b> | <b>and the acquisition is:</b> | <b>then:</b>  |
|--|---|--------------------------------|---|
| Regular                                      | < \$1,000,000   | Competitive or Noncompetitive  | No submission is required.  |
| Regular                                      | \$1,000,000 - \$6,000,000 for software application procurements     | Competitive                    | No submission is required.  |
| Regular                                      |   | Noncompetitive                 | Submission of the RFP and contract is required unless exempted <sup>12</sup>        |
| Regular                                      | ≥ \$6,000,000 for software application procurements                 | Competitive or Noncompetitive  | Submission of the RFP and contract is required unless exempted                      |
| Regular                                      | \$20,000,000 for hardware and COTS procurements                     | Competitive or Noncompetitive  | Submission of the RFP and contract is required unless exempted                      |
| Regular                                      | Maintenance and operations procurements                             | Competitive or Noncompetitive  | Exempt from submission for prior Federal approval if 1-2 page M&O APD is submitted. |
| Regular                                      | IV&V Procurements   | Competitive or Noncompetitive  | Must be submitted for prior Federal approval regardless of cost                     |

\* Prior Federal approval of sole source contracts over \$1 million is still required. Submission of sole source justification is also still required, however the Federal program office will defer to the State procurement policies and procedures. An affirmative statement or certification that this sole source procurement is justified under the State's procurement procedures may be required.

<sup>11</sup> Or other types of solicitation documents, such as Invitations for Bids (IFBs).

Although the form of solicitations varies due to differing State procurement policies and regulations,<sup>13</sup> there are common elements which are important to HHS' review. These include:

- A "specification" (for products) or a "statement of work" (for services) describing what the State intends to buy;
- The authorities and responsibilities of the State and contractor(s) under the contract;
- The rules for contractor evaluation and selection,<sup>14</sup> including an indication of the relative importance of the evaluation factors; and
- "Acceptance criteria" which describe how the State will review and "accept" (as a precursor to final payment) products and services delivered under the contract.

In addition, the solicitation should be clear about what constitutes acceptable performance under the contract.

Acquisitions under the submission threshold or exempt from prior Federal approval are still required to meet Federal standards, including a provision retaining software ownership rights. 92.36 states "The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. These include but are not limited to:

These Federal requirements include, but are not limited to:

- Equal Employment Opportunity, Executive Order 11246 of September 24, 1965
- Anti-Kickback Law 18 USC 874
- Davis Bacon Act 40 USC 276a to 276a-7
- Contract Work Hours and Safety Standards Sections 103 and 107 40 USC 327-330
- Clean Air Act 42 USC 1827(h)
- Clean Water Act 33 USC 1368
- Energy Policy and Conservation Act 89 Stat. 87
- Does the acquisition, if funded in whole or in part by HHS meet the standards and functional requirements set forth in the Federal program regulations?
- Does the acquisition document contain a clause that provides HHS and/or their representatives access to State or Territorial agency documents, papers or other

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<sup>13</sup> State procurements must adhere not only to Federal requirements, but also to State law, procurement regulations, and practices.

<sup>14</sup> Cost must always be a significant factor in selection.

- records pertinent to the procurement in order to make audits, examinations, excerpts and transcripts?
- Does the acquisition comply with Federal rules relative to State or Territorial ownership rights to all software products, documentation and intellectual property created under this acquisition?
  - Does the statement of work in the acquisition document convey expectations to be met by the successful contractor including items such as required tasks, deliverables and their scheduled of delivery, technical requirements, security, privacy and confidentiality requirements, roles and responsibilities, and project reporting requirements?
  - Does the acquisition document include clauses covering mandatory contract terms and conditions, order of precedence, compliance with laws, liability, period of performance, Force Majeure, availability of funds, notices, disputes, and failure of performance, damages and termination?
  - Does the acquisition document include information about the evaluation and selection process such as technical and cost scoring and weighting, and proposal ranking and selection?:
  - Has the evaluation and selection process been finalized relative to technical and cost scoring prior to the release of the acquisition document?
  - Does the acquisition document delineate responsibilities relative to key staff, the change order process and documentation requirements?

### **C. CONTRACTS AND CONTRACT AMENDMENTS**

States are required to obtain prior written approval from HHS for prospective contracts for products and/or services when the regulatory thresholds set forth in 45 CFR §95.611(b) is exceeded. In addition, certain contract modifications or amendments must also be submitted for prior written approval. These thresholds, described in Table 5A-D on the following page, apply to single contract amendments or modifications. However, *requirements may not be fragmented to avoid submission requirements.*

Contracts should not be submitted for HHS' review until the State has determined that the offer meets all the mandatory requirements of the solicitation, conforms with the approved APD, has been selected in accordance with the evaluation and selection criteria, is within projected expenditures or is otherwise justifiable, and is signed by the vendor but not the State.

Contracts are reviewed by HHS to meet the broad standards of review established at the beginning of this chapter.

Under the final rule, contract amendments need not be submitted for prior Federal approval or sole source justification until they cumulatively exceed 20 percent of the base contract. The base contract is defined as the initial contract activity, including all option years, allowed during a defined unit of time, for example, 2 years. The base contract includes option years but does not include amendments.

Acquisitions for Independent Validation and Verification contracts must be submitted for prior Federal approval regardless of the amount of the contract. We encourage States and Territories to use the IV&V assessment report as a starting point for the IV&V statement of work.

**Decision Table 5A: HHS Approvals: Contract Amendments**

| <b>If APD is required and Funding is:</b> | <b>and the contract amendment's cost increase is:</b>                     | <b>then:</b>  |
|---|---|---|
| Regular                                   | ≤ the contract amendments cumulatively are under 20% of the base contract | No submission is required.  |
| Regular                                   | > the contract amendments cumulatively exceed 20% of the base contract    | If not exempted in the Annual or As-Needed APDU, submission of the contract amendment and APDU is required. |

**Decision Table 5B: HHS Approvals: Contract Amendments**

| <b>If APD is required and Funding is:</b> | <b>and the contract amendment's time extension is:</b> | <b>then:</b>   |
|---|--|--|
| Regular                                   | ≤ 120 days   | No submission is required.                                 |
| Regular                                   | > 120 days   | Submission of the contract amendment and APDU is required. |

**Decision Table 5C: HHS Approvals: Contract Amendments**

| <b>If APD is required and Funding is:</b> | <b>and the contract amendment's cost increase is:</b> | <b>then:</b>   |
|---|---|--|
| Enhanced                                  | ≤ \$300,000   | No submission is required.                                 |
| Enhanced                                  | > \$300,000   | Submission of the contract amendment and APDU is required. |

**Decision Table 5D: HHS Approvals: Contract Amendments**

| If APD is required and Funding is: | and the contract amendment's time extension is: | then:  |
|------------------------------------|---|--|
| Enhanced                           | ≤ 60 days                                       | No submission is required.                                 |
| Enhanced                           | > 60 days                                       | Submission of the contract amendment and APDU is required. |

**D. Exemptions**

Section 95.611 (b)(iii) of the regulations has always permitted the Federal program offices to exempt acquisitions from prior Federal approval, but the final rule significantly expands this authority. The content of the Annual and As-Needed APDU's have been modified to specify the information that must be provided by the State seeking such an exemption.

The acquisition summary for the upcoming year or development phase should provide the following information on proposed acquisitions:

- (a) Type and scope of contract - Examples of type of contract are: firm fixed price, labor hours, and time and materials. Examples of scope of contract are: maintenance and operation, COTS software, application software development, service contract, and licenses.
- (b) Procurement strategy - Examples of procurement strategy are: full and open competition, limited competition (e.g. master service contract) and sole source procurement. If the procurement is sole source, the State needs to provide a sole source justification, either separately or as part of the APDU. That justification should make reference to the procurement policies and procedures used by the State for procurement from non-Federal funds.
- (c) Estimated cost or not to exceed amount - Describes the total cost of the acquisition and annual cost if applicable, or the specified number of labor hours not to be exceeded for all project categories.
- (d) Timeframe of contract - Examples of the timeframe of a contract should include the years in the initial contract with the number of options for additional years. This should include the estimated begin and end dates of the contract.
- (e) A signed certification from the authorized State official that the proposed acquisition will comply with all State and Federal requirements including the retention of software ownership rights specified in §95.617. The Acquisition

Checklist issued in OCSE Information Memorandum 05-03 provides a summary of Federal requirements that should be included in the acquisition solicitation documents. A statement in the APD that the acquisitions summarized will comply with all applicable State procurement requirements and the Federal requirement specified in the Acquisition Checklist will be sufficient.

If this information is contained in the Annual or As-Needed APDU, the approval of those documents will also constitute approval of the exemption request. The Federal program office(s) retain the authority to deny the exemption request but must specify which exemption requests are denied and provide the reason why those procurements must be submitted for prior Federal approval. IV&V acquisitions must be submitted for prior Federal approval regardless of cost and initial acquisitions for a high risk activity are also unlikely to be exempted.

## CHAPTER VI: HIGH RISK PROJECTS

### A. Independent Verification and Validation (IV&V)

The final rule provides for IV&V assessments if certain events are triggered:

- Are at risk of missing statutory or regulatory deadlines for automation that is intended to meet program requirements.
- Are at risk of failing to meet a critical milestone
- Indicate the need for a new project or total system redesign
- Are developing systems under waivers pursuant to sections 452(d)(3) or 627 of the Social Security Act.
- Are at risk of failure, major delay, or cost overrun in their system development efforts or fail to timely and completely submit APD updates or other required systems documentation
- States procurement policies put the program at risk, including a pattern of failing to pursue competition to the maximum extent feasible
- State's failure to adequately involve State program offices in the development and implementation of the project

The events specified above may trigger a Federal IV&V assessment review, but the results of that review will determine if the State must acquire IV&V services. The Federal IV&V assessment report will recommend the areas and the frequency of the IV&V review to be procured. The Federal IV&V assessment report should serve as the requirements document or statement of work for the State's RFP.

All RFP and contracts related to IV&V which is required by the Department must be submitted for prior Federal approval regardless of the cost of the contract. The submission thresholds do not apply to IV&V acquisitions.

### B. Request for reconsideration of Denied FFP for failure to obtain prior approval

The revisions in the final rule related to increased submission thresholds and expanded authority for exempting RFP and contracts from prior approval should significantly reduce the number of instances where a State fails to seek prior Federal approval. However, the final rule provides at 95.623 a process by which a State may seek reconsideration of the denial of FFP related to failure to seek prior Federal approval.

If such reconsideration is needed, the State must address the following:

- The acquisitions must be reasonable, useful and necessary
- The State's failure to obtain prior approval, must have been inadvertent,
- The request was not previously denied by HHS

- The acquisition otherwise meets all applicable Federal and State requirements
- The State must not have a record of recurrent failures to seek prior Federal approval

C. Recoupment of FFP for Failed projects

## Appendix A: Submission Requirements for APDs

Effective immediately, it is no longer necessary to provide the Director, Regional Administrative Support Center (RASC), with copies of requests for Federal financial participation for automatic data processing (ADP) equipment or services acquisitions.

1. States should address ADP funding requests involving multiple programs to:

Assistant Secretary for Administration  
Administration for Children and Families  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447  
ATTN: Jim Blackie- Mail Stop OA 6<sup>th</sup> floor Aerospace

Funding requests for Medicaid Management Information Systems should continue to be sent directly to the Associate Regional Administrator, Division of Medicaid of the appropriate Health Care Financing Administration (HCFA) regional office.

Funding requests for Office of Child Support Enforcement should be handled as below:

Hard copies should be addressed to:

Commissioner  
Office of Child Support Enforcement  
370 L'Enfant Promenade S.W.  
Mail Stop: 4th Floor West.  
Washington D.C. 20447

Attn: Director, Division of State and Tribal Systems

Materials sent by courier should be addressed to the following street address:

901 D Street S.W.  
Washington DC

Tribes may submit electronically to their analyst:

[http://www.acf.hhs.gov/programs/cse/stsys/OCSE\\_Analysts\\_by\\_Tribe.pdf](http://www.acf.hhs.gov/programs/cse/stsys/OCSE_Analysts_by_Tribe.pdf)

States may submit electronically to their analyst:

[http://www.acf.hhs.gov/programs/cse/stsys/OCSE\\_analysts\\_by\\_State.pdf](http://www.acf.hhs.gov/programs/cse/stsys/OCSE_analysts_by_State.pdf)

Funding requests for Child Welfare projects should be handled as below:

Submissions sent to the Division via the U.S. Postal Service should be addressed as follows:

Associate Commissioner  
Children's Bureau  
370 L'Enfant Promenade, S.W.  
Washington, DC 20024

Attn:  
Director  
Division of State Systems  
Room 8136, 1250 Maryland Avenue SW

Submissions sent to the Division via alternative couriers (FedEx, UPS, etc.) should be addressed as follows:

Associate Commissioner  
Children's Bureau  
8th Floor  
1250 Maryland Avenue SW  
Washington, DC 20024

Attn:  
Director  
Division of State Systems  
Room 8136

As the Portals Office Building at 1250 Maryland Avenue is a privately owned building, there may not be anyone available to receive a Saturday delivery.

In addition, a copy of all submissions should be sent to the appropriate AFC Office of Regional Operations, Regional Office Program Manager.

Regional Offices of the Administration for Children and Families serve as the first point of contact for information and assistance for States and Tribes operating child welfare programs. For more information about contacting ACF Regional Offices visit: <http://www.acf.hhs.gov/programs/oro/index.html>.

2. We encourage electronic submissions of APD's and related procurement documents. Currently, our email exchange has some size limitations; please contact the appropriate Federal program office for alternative methods of submitting electronic versions of these documents. The cover letter signed by the authorized requestor can be faxed to the appropriate program office or sent as a scanned PDF file.

Because electronic submissions may be rejected by our Office mail system, the

importance of receiving an acknowledgement letter is underscored. The goal is to provide an acknowledgement letter within days of receipt. If you do not receive an acknowledgment letter, please follow up by telephone or email.

The Federal program office(s) are willing to send scanned versions of the Federal approval letters to the authorized requestor and/or designated individual. Please keep the appropriate Federal offices apprised of the correct emails to send electronic versions of the approval letters.

3. If there has been a change to the official(s) authorized in your Department to submit requests for prior systems approval on behalf of the State agency for Titles IV-A, IV-B, IV-D, IV-E, or XIX, please notify us in writing of the newly designated individual(s).



## Appendix B: Authorities

The origin of many of the programs overseen and financed by HHS is the Social Security Act. Included under HHS' scope of review authority are:

- Title IV-A: Temporary Assistance to Needy Families (TANF)
- Title IV-B: Child Welfare Services
- Title IV-D: Child Support Enforcement
- Title IV-E: Foster Care and Adoptive Services

The State systems activities for these programs are managed and reviewed in accordance with rules codified in the Code of Federal Regulations (CFR). Regulations generally applicable across programs<sup>15</sup> include:

45 CFR Part 92: Establishes procurement standards, reports, records retention and reporting program performance for all DHHS grants, including entitlement grants.

45 CFR Part 95, Subpart A: Sets a two-year limit (15 months in some cases) for a State to claim Federal financial participation (FFP) in expenditures under State plans approved for certain titles of the Social Security Act.

45 CFR Part 95, Subpart E: Establishes requirements for preparation, submission, approval of — and adherence to — State cost allocation plans for public assistance programs.

45 CFR Part 95, Subpart F: Specifies the conditions for FFP in the cost of acquiring data processing equipment and services under an approved State plan; sets forth the approval and reporting processes of the Advance Planning Document (APD) and Advance Planning Document Updates (APDUs); and requires access by HHS to all aspects of State systems. Authorizes under section §95.621 the Department to conduct "periodic on-site surveys and reviews of State and local agency ADP methods and practices."

45 CFR Part 95, Subpart G: Prescribes requirements concerning the computation of claims for FFP in the cost of equipment under public assistance programs and identifies requirements for the management and disposition of equipment. Applies to equipment purchased by State agencies and equipment purchased under service agreements with other State agencies and under cost-type contracts. Allows an exemption under §95.641 to the capitalization and depreciation provisions for ADP equipment if previously approved by HHS.

Program-specific rules codified in the CFR, but not addressed in this guide, include:

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<sup>15</sup> Regulations specific to programs, such as IV-A and IV-D, are outside the scope of this document.

45 CFR Parts 300 to 305: Sets forth operational procedures, reporting requirements, and standards for audit for the Title IV-D program.

45 CFR Part 307: Governs enhanced funding for the acquisition and operation of comprehensive, statewide Child Support Enforcement systems. Includes the programmatic conditions and functional requirements required for States to qualify for funding of systems acquisitions. Sets forth HHS' oversight responsibilities.

45 CFR Part 1355: Sets forth requirements for Statewide Automated Child Welfare Information Systems (SACWIS).

In addition to the law, regulations, and this document, the following guidelines apply:

- Action Transmittals issued by HHS;
- OMB Circular A-87, which establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and local governments;<sup>16</sup>
- OMB Circular A-102, which sets consistent and uniform Federal policy in the management of grants and cooperative agreements with State and local governments;
- OMB Circular A-128, which establishes uniform Federal audit requirements for State and local governments that receive Federal aid — codified in 45 CFR Part 74, Appendix J;
- ACF's *Information Systems Review Guide*;
- ACF's guide, *Feasibility, Alternatives, and Cost/Benefit Analysis*;
- ACF's *Companion Guide: Cost/Benefit Analysis Illustrated*; and
- Program-specific guides as applicable.

Because guidance is regularly released by HHS, State and Federal personnel must routinely update their guidance files. In order to obtain information about currently effective Action Transmittals and other ACF guidance, reviewers may contact the

Child Support Data Standards Registry - <http://www.acf.hhs.gov/cse/dsr/>

Federal Child Support website - <http://www.acf.hhs.gov/programs/cse/stsys!/cse.html>

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<sup>16</sup> OMB Circulars can be obtained by calling the Office of Management and Budget on 202-395-3000 and asking for publications.

Federal SACWIS website -

<http://www.acf.hhs.gov/programs/cb/systems/sacwis/about.htm>

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