| ACF<br>Administration for Children and Families | **U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**<br>**Administration on Children, Youth and Families** | |
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| | **1. Log No:** ACYF-CB-IM-13-01 | **2. Issuance Date:** April 22, 2013 |
| | **3. Originating Office:** Children's Bureau | |
| | **4. Key Words:** Automated Child Welfare Information Systems; Advance Planning Document (APD); APD Reform; Optional Checklist; Exemption; Prior Approval; Acquisition; Contract; Federal Financial Participation | |

**INFORMATION MEMORANDUM**

**To:** State and Tribal public assistance agencies, title IV-E agency information executives, and other interested parties

**Subject:** Optional checklist for State and Tribal title IV-E agencies (hereafter referred to as title IV-E agencies) to request an exemption of prior approval for automated data processing equipment and services procurements

**Related References:** 45 CFR Part 95.605 and 95.611

**Purpose:** This Information Memorandum (IM) supersedes guidance previously issued by this agency in ACYF-CB-IM-05-02 (Issued: May 3, 2005). This IM provides information to title IV-E agencies seeking an exemption from prior Federal approval related to automated data processing equipment and services procurements.

**Background:** The Advance Planning Document (APD) process governs the procedure by which States obtain approval for Federal financial participation (FFP) in the cost of acquiring automated data processing equipment and services. On October 28, 2010 the APD regulations at 45 CFR Part 95 were changed, as published in the Federal Register (75 FR 66319). The primary goal of the October 2010 revision of the APD regulations was to simplify and streamline the APD process, including those related to Federal prior approval of title IV-E agency acquisition of automated data processing equipment and services.

As part of the Administration for Children and Families' efforts to expedite the Federal approval of State and Tribal IT procurements, the new APD rules provided the option of including an *Acquisition Summary* section in an APD that provides the information needed on planned acquisitions in order to qualify for an exemption from the prior approval requirements at 45 CFR 95.611. The October 2010 revision also maintained the option to submit an Acquisition Checklist in order to satisfy the Federal prior approval requirements. It is our belief that the need for the Acquisition Checklist will diminish as title IV-E agencies begin to include the *Acquisition*

*Summary* section in future APDs. The attached Acquisition Checklist is an optional tool for title IV-E agencies to provide assurances that an acquisition of automated data processing equipment and/or services complies with relevant State, Tribal, and Federal policies.

**Discussion:** One of the major changes in the revised APD rules is a shift in focus from Federal to State or Tribal procurement rules. Under the APD regulations at 45 CFR 95.613, the Federal agencies will now defer to State or Tribal procurement rules if:

- The procurement rules are applied consistently for procurements not reimbursed with Federal funds; and

- This Office determines that the State or Tribe's procurement process will not substantially impact project cost or project risk.

The Department retains its oversight authority, including requiring a title IV-E agency to comply with the competition provision of Section 92.36 (c) if it determines that the title IV-E agency's procurement process is an impediment to competition that could increase project cost or risk of failure.

We are updating the Acquisition Checklist template to conform to the APD regulations at 45 CFR 95.613. The use of this checklist to meet the regulatory requirements of prior Federal approval of acquisition documents as specified at 45 CFR 95.611 is optional. Title IV-E agencies retain the right to provide either an Acquisition Summary or the full version of the acquisition documents and related contracts with their APD submission.

The checklist may be used for acquisition documents (e.g., Request for Proposals, Request for Quote, Invitation to Bid) as well as resultant contracts and contract amendments. The checklist is acquisition specific. Title IV-E agencies that elect to use the Checklist must fill out and submit a separate checklist for each document for which they are requesting exemption from prior approval. In addition to a general coversheet identifying the State or Tribe and project, the title IV-E agency should provide a brief narrative describing the scope and purpose of the acquisition, contract, or contract amendment. The checklist also includes three sections that should be completed based on the type of document it covers. If the checklist is being submitted for an acquisition document, sections I and II must be completed. If the checklist is for a contract or a contract amendment, sections I and III must be completed. All questions in the relevant sections of the checklist should be answered by the title IV-E agency. Any question with an answer of "No" should be addressed in the introductory narrative that accompanies the checklist.

**INQUIRIES:** Director, Division of State Systems, Children's Bureau, Administration for Children, Youth and Families, Administration for Children and Families.

/s/

Bryan Samuels
Commissioner
Administration on Children, Youth
and Families

Attachment
A – Acquisition Checklist Template

## Attachment A

## Acquisition Checklist Template

State or Tribe and Project Name: _____
Acquisition/Reference Number: _____

**Acquisition Checklist Template**

The Children's Bureau (CB) has developed the following optional checklist for title IV-E agencies to use to provide assurances that an acquisition of automated data processing equipment and/or services complies with all relevant State, Tribal, and Federal regulations and policies. CB, in accordance with the regulations at 45 CFR 95.611, may grant an exemption from prior approval for an acquisition document based on a title IV-E agency's responses to this checklist.

Please include the following information:

Project name:

Purpose of Acquisition Activity (Check all that apply):

| | | | |
|---|---|---|---|
| Project Planning | ☐ | System Development | ☐ |
| System Implementation | ☐ | System Operations | ☐ |
| System Maintenance | ☐ | Hardware and Equipment | ☐ |
| Commercial Off the Shelf Software | ☐ | | |
| Other: _ | ☐ | | |

Estimated or Actual Cost of the acquisition, contract, or contract amendment (including all option years):

A brief paragraph describing the acquisition activity should be included in the cover letter submitted with this request. The submission should identify: (1) the agency(s) and stakeholders involved; (2) basic system characteristics, project scope, and estimated life span ; and (3) the type of contract or agreement that has or will result from the acquisition. For each "No" response to the checklist, a narrative explanation must be provided either directly following the checklist, in the cover letter or on a separate sheet of paper.

The checklist should be submitted to the Children's Bureau.

Indicate the type of document to which this checklist applies.

- ☐ Acquisition Document (Complete Section I and II)
- ☐ Contract (Complete Sections I and III)
- ☐ Contract Amendment (Complete Sections I and III)

State or Tribe and Project Name: _____
Acquisition/Reference Number: _____

Section I: Acquisition Document, Contract, and Contract Amendment Questions

| Description | Checkbox |
|---|---|
| | |
| 1. Has or will the acquisition process be conducted in a manner that provides, to the maximum extent practicable, open and free competition?* | ☐ Yes<br>☐ No |
| 2. Does the acquisition, if funded in whole or part by U.S. Department of Health and Human Services, meet the standards and functional requirements set forth in the Federal program regulations of each participating agency? | ☐ Yes<br>☐ No |
| 3. Does the acquisition or contract comply with all applicable State acquisition standards, laws, policies and procedures? | ☐ Yes<br>☐ No |
| 4. Does the acquisition or contract require support for the following Federal provisions: | |
| • Equal Employment Opportunity: This is based on Executive Order (EO) 11246 as amended by EO 11375 and supplemented by Department of Labor regulations at 41 CFR Part 60. | ☐ Yes<br>☐ No |
| • Anti-Lobbying Act: This Act as codified at 31 U.S.C. 1352 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal government in connection with a specific contract, grant, or loan. | ☐ Yes<br>☐ No |
| • Americans with Disabilities Act: This Act in regulation at 28 CFR Part 35 prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by State and local governments, except public transportation services. | ☐ Yes<br>☐ No |
| • Debarment, Suspension, and Other Responsibility: Based on EO 12549 and common rule at 2 CFR 376 requires certification that the recipient and its principals are not debarred, suspended, or otherwise ineligible under the terms of the rule. | ☐ Yes<br>☐ No |
| 5. Does the acquisition document or contract contain a clause that provides US DHHS and/or their representatives access to all documents, papers, or other records pertinent to the procurement in order to make audits, examinations, excerpts and transcripts per 45 CFR 95.615? | ☐ Yes<br>☐ No |

* **An answer of "No" to this question requires submission of documentation justifying the noncompetitive acquisition, including a statement that the procurement will be conducted under the same rules used for those with State or Tribe-only funds.**

State or Tribe and Project Name: _____
Acquisition/Reference Number: _____

| Description | Checkbox |
|---|---|
| 6. Does the acquisition or contract contain language complying with Federal rules relative to State ownership rights to all software products, documentation and intellectual property created under this acquisition? | ☐ Yes<br>☐ No |
| 7. Does the acquisition document or contract contain a clause that grants the Federal Government a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, software, modifications, and documentation developed and/or obtained through this acquisition per 45 CFR 95.617? | ☐ Yes<br>☐ No |
| 8. Does the Statement of Work in the acquisition document and the resultant contract convey expectations to be met by the successful contractor including items such as required tasks, deliverables and their schedule of delivery, technical requirements, security, privacy and confidentiality requirements, roles and responsibilities, and project reporting requirements? | ☐ Yes<br>☐ No |
| 9. Does the acquisition document or contract 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, failure of performance, damages, and termination? | ☐ Yes<br>☐ No |
| 10. Does the acquisition document delineate responsibilities relative to key staff, the change order process, and documentation requirements? | ☐ Yes<br>☐ No |

Section II: Acquisition Document Specific Questions

| Description | Checkbox |
|---|---|
| | |
| 1. Date the acquisition document will be released to vendors: | |
| 2. Number of days vendors will have to respond to the Acquisition Document: | |
| 3. 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? | ☐ Yes<br>☐ No |
| 4. Has the evaluation and selection process been finalized relative to technical and cost scoring prior to the release of the acquisition document? | ☐ Yes<br>☐ No |
| 5. Does the acquisition document delineate responsibilities relative to key staff, the change order process, and documentation requirements? | ☐ Yes<br>☐ No |

State or Tribe and Project Name: _____
Acquisition/Reference Number: _____

Section III: Contract and Contract Amendment Specific Questions

| Description | Checkbox |
|---|---|
| | |
| 1. Does the contract or contract amendment delineate:<br>• responsibilities relative to key staff;<br>• the change order process; and<br>• documentation requirements? | ☐ Yes<br>☐ No |
| 2. If this request is for a contract amendment, do the activities in the Statement of Work for the contract amendment fall within the overall scope of the original Acquisition Document and contract? | ☐ Yes<br>☐ No |

This form must be signed by either the appropriate State official authorized to submit acquisition documentation to the US Department of Health and Human Services or the State director of purchasing.

**Signature:** _____ **Printed Name:** _____

**Title:** _____ **Date:** _____