

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Children, Youth and Families

1. Log No: ACYF-CB-PI-09-11

2. Issuance Date: September 17, 2009

3. Originating Office: Children's Bureau

4. Key Words: Tribes; Fostering Connections; Statewide Automated Child Welfare Information Systems (SACWIS); Federal Financial Participation (FFP)

PROGRAM INSTRUCTION

TO: American Indian and Alaska Native Communities, Tribal Organizations and Consortia (Tribes), Tribal Information Technology Executives and Other Interested Parties

SUBJECT: Federal Information Technology Policy – Conditions for Federal financial participation (FFP) for Tribal Automated Information Technology Projects including Tribal Statewide Automated Child Welfare Information Systems (SACWIS).

LEGAL & RELATED REFERENCES: Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law (P.L.) 110-351); Omnibus Budget Reconciliation Act of 1993 (P.L. 106-33); Title IV-E of the Social Security Act (the Act) sections 474(a)(3) and 479B; 45 CFR Part 95 – Subpart F; 45 CFR 1355; Action Transmittal ACF-OISM-001 (issued February 24, 1995); Program Instruction (PI) ACYF-CB-PI-08-05 (issued 10/23/2008); Information Memorandum (IM) ACYF-CB-IM-08-03 (issued 10/24/2008)

PURPOSE: This PI provides guidance on the Federal Advance Planning Document (APD) regulations that Tribes (like States) must comply with to claim title IV-B and/or title IV-E FFP for child welfare information technology projects, equipment, and services. The APD requirements apply to the development, implementation and operation of a Tribal system regardless of whether or not the system is classified as a comprehensive Tribal automated child welfare information system that meets all of the requirements of a State SACWIS system. Through the APD process, FFP may be available for either a Tribal automated child welfare information system (e.g., SACWIS) or a smaller case tracking application that does not meet the requirements of a State SACWIS system.

BACKGROUND: The Children’s Bureau (CB) within the Administration for Children and Families (ACF) has oversight responsibilities for State and Tribal child welfare information technology projects that are supported with Federal funds. Under P.L. 110-351, Tribes that operate an approved title IV-E program may be eligible to receive FFP to develop, implement and operate an automated child welfare system or a comprehensive Tribal automated child welfare information system, like a SACWIS. This PI identifies the specific rules and regulations under 45 CFR 95 Subpart F that Tribes (like States) must comply with when implementing automated child welfare systems with Federal funds. Finally, this PI will list the critical technical assistance and guidance documents that have previously been developed regarding the specific rules and regulations under 45 CFR 95 Subpart F.

DISCUSSION: **Federal Legislation**

P.L. 110-351 provides Tribes the opportunity to implement a title IV-E program. Except as otherwise specified, the legislation states that the title IV-E requirements shall apply to Tribes in the same manner as they apply to States.

Federal Regulations

Federal regulations at 45 CFR 1355.30 identify the supporting regulations outside of 45 CFR 1355 that “are applicable to all programs funded under titles IV-B and IV-E of the Act.” 45 CFR 1355.30(k) specifies that the regulations at 45 CFR 95 Subpart F apply to any entity administering a title IV-B and/or a title IV-E program(s).

Subpart F of 45 CFR Part 95 describes the conditions under which FFP for automated data processing equipment and services will be approved by CB. Among other requirements, Subpart F:

- defines terms used in the process for requesting FFP (95.605);
- establishes approval requirements for acquiring automated data processing equipment and/or services (95.611);
- identifies the consequences of not complying with the plans approved in an APD (95.612);
- establishes minimum procurement standards, including rules covering the need for open and free competition (95.613);
- defines Federal rights to access systems and records (95.615);
- and,
- identifies ownership rights to software designed, developed or installed with Federal funds and the limitations on the use of commercial off the shelf software (COTS) products (95.617).

The requirements delineated under 45 CFR Part 95 Subpart F apply to a Tribe approved to operate a title IV-B and/or a title IV-E program in the same manner as a State operating those programs. The entire APD regulation is available at <http://www.acf.hhs.gov/programs/cb/systems/sacwis/federal.htm>.

Process for Requesting FFP (45 CFR 95.605)

Tribes seeking Federal funding for information systems equipment and services, including system development, implementation and operation must submit an APD for approval by CB if the project costs are expected to exceed the regulatory thresholds (see below for a discussion of the APD and procurement thresholds).

An APD provides the Federal government with information necessary to determine the project funding levels as well as monitor the progress of a project. The APD includes a statement of needs and objectives, a requirements analysis, a proposed schedule and budget, as well as other information described in 45 CFR 95.605. If the project meets or exceeds the regulatory thresholds described at 45 CFR 95.611, the APD remains the sole vehicle to approve or request FFP for that project. Should the cost of the system exceed the applicable regulatory threshold, the APD must be submitted and approved in order for the requesting Tribe to claim FFP for the cost of the automated data processing services and/or equipment.

There are two major types of APD submissions: the Planning APD and the Implementation APD. Tribes shall submit a Planning APD when seeking Federal reimbursement for the costs related to system planning and/or preparing an Implementation APD. Tribes shall submit an Implementation APD when seeking reimbursement for the costs associated with designing, developing and implementing an automated system. Again, the need to submit an APD is determined by the anticipated life cycle cost of the system project.

In addition, there are two types of APD Updates, which are used to keep CB informed of the project status and to obtain continued funding throughout the life of the project. The Annual APD Update is the vehicle Tribes use to provide official project status reports and to request continued project funding. An As Needed APD Update is used if significant changes occur in the project approach, procurement methodology, schedule or costs between submissions of the Annual APD Update.

The regulations at 45 CFR 95.605 identify when the APD process should be initiated. Existing guidance concerning APDs and the APD process is identified at the end of this document.

Requirements for Federal Approval (45 CFR 95.611)*Prior Approval Requirements*

A Tribe must obtain prior written approval from CB when it plans to acquire Automated Data Processing equipment or services with FFP when the total costs will exceed the regulatory threshold (as of the date of this PI the threshold is \$5,000,000¹) in combined Federal and non-Federal funds. At the time that this PI was published, both operational and developmental activities are covered under these rules.

Specific submission thresholds are listed below:

- For planning activities, a Planning APD must be submitted if the Automated Data Processing project is expected to exceed the regulatory threshold (currently \$5,000,000).
- For the costs associated with designing, developing, and deploying the Automated Data Processing solution, an Implementation APD must be submitted if the Automated Data Processing project is expected to exceed the regulatory threshold (currently \$5,000,000).
- For Request for Proposals (RFP) and contracts, approval is required prior to the release of an RFP and prior to the execution of the contract when the resulting contract is anticipated to or will exceed the regulatory threshold (currently \$5,000,000) for competitive procurements. The regulatory threshold requiring prior approval is lower for noncompetitive acquisitions (currently \$1,000,000).
- For contract amendments, approval is required prior to the execution of the contract amendment involving contract cost increases exceeding the regulatory threshold (currently \$1,000,000) or contract time extensions of more than 120 days. Tribes will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately described and justified in an APD.

Ongoing Project Approval Requirements

For ongoing project activities covered under a Planning APD or an Implementation APD, a Tribe must submit:

- An Annual APD Update; and

¹ Considering that the threshold requiring an action could change, the reader should refer to 45 CFR Subpart F for the applicable threshold.

- An As Needed APD Update when changes cause any of the following conditions to occur:
 - A cost increase above the regulatory threshold (currently \$1,000,000);
 - A schedule extension of more than 60 days;
 - A significant change in procurement approach and/or scope of procurement activities beyond that approved in the APD;
 - A change in system concept or scope of the project; and/or
 - A change to the approved cost allocation methodology for the project.

Please see the Federal regulations at 45 CFR 95.611 for additional details regarding prior approval conditions related to claiming FFP to acquire an Automated Data Processing system, including the costs related to the equipment and services needed to design, develop, implement and/or operate the data processing system.

Disallowance of FFP (45 CFR 95.612)

Failure to submit any of the required documents to the satisfaction of CB may result in disapproval or suspension of project funding. Furthermore, should CB find that any acquisition approved or modified under the conditions listed in 45 CFR 95.611 fails to comply with the criteria, requirements, or activities listed in the approved APD to the detriment of the title IV-B or title IV-E program, payment of FFP may be disallowed.

Requirement for Free and Open Competition (45 CFR 95.613)

Regulations at 45 CFR 95.613 require information technology product and service procurements to be conducted in an open and free manner. CB will review proposed procurements for potential impediments to open and free competition. Such impediments would include, but not limited to:

- Organizational conflicts of interest;
- The imposition of unreasonable requirements on firms in order for them to qualify to do business, such as requiring firms to have an existing business presence in a specified geographical area;
- The imposition of local geographical preferences;
- Requiring unnecessary experience of firms and/or their team members, such as requiring experience to perform activities not required by the procurement;
- Excessive liability provisions;
- Sole source considerations;

- Excessive bonding requirements; and
- Unfair or restrictive evaluation processes.

Software and Ownership Rights (45 CFR 95.617)

All procurement instruments must include a clause that provides the Tribe with ownership rights in all software or modifications thereof and associated documentation designed, developed or installed with FFP under 45 CFR Part 95. Tribes must also include a clause granting the Federal government a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use such software, modifications, and documentation designed, developed or installed with FFP.

Furthermore, FFP is not available for proprietary applications developed for the title IV-E or title IV-B programs or for COTS products that are not provided at established catalog or market prices and sold or leased to the general public. COTS products that may only be procured or supported through a single source would not be eligible for FFP.

The provisions at 45 CFR 95.617 applies to all systems funded with FFP, regardless of cost or threshold.

Tribal Automated Child Welfare Information System (45 CFR 1355.50)

Tribes may, at their discretion, implement a comprehensive Tribal automated child welfare information system, like a State SACWIS system, that meets the requirements specified in 45 CFR 1355.50 through 1355.57. It is important to note that implementing a SACWIS-type system is an option and should only be pursued if that system model efficiently and effectively supports the business and practice needs of the Tribe.

For example, if a Tribe will serve a small client population under an approved title IV-E program, it may not be cost effective to build a large, complex and fully-automated case management system. Tribes must thoroughly examine the feasibility, costs, and benefits of implementing a SACWIS-type system before committing resources to such a project.

Tribal Title IV-E Plan Development Grants

Funding from Tribal Title IV-E Plan Development Grants may be used for the design and development of a child welfare information

technology system. As a condition of operating a title IV-E program, a Tribe must also have a title IV-B subpart 1 program. The rules at 45 CFR 1355.30(k) state that the regulations at 45 CFR 95 Subpart F apply to any entity administering a title IV-E or title IV-B program. Therefore, all systems designed, developed or implemented using title IV-E or title IV-B funds would need to comply with the APD rules and restrictions, independent of a Tribe's use of a Tribal Title IV-E Plan Development Grant to design or develop a data system.

Regardless of how a Tribe designs or develops a data collection system, it is critical that a Tribe understands that once it begins to operate a title IV-E program it will only be able to claim title IV-E and title IV-B funds for future costs of the data system if the application comports with the conditions defined at 45 CFR Part 95, including the provision at 45 CFR 95.617 regarding COTS products. If a Tribe has designed or developed an application that is not eligible for title IV-B or title IV-E funding, regardless of the cost or the applicable threshold, all system costs will need to be solely funded with Tribal funds.

Additional Resources

CB's website contains links to Federal rules, regulations, policy, additional guidance and technical assistance materials. Please see <http://www.acf.hhs.gov/programs/cb/systems/sacwis/federal.htm> for additional guidance and policy documents.

The following guidance documents may be of particular interest to Tribes as they move forward with their Child Welfare automation initiatives:

- Public Law 103-66: Establishes general State SACWIS requirements and cost allocation provisions.
- Social Security Act at sections 474(a)(3)(C) and (D): These are the sections of the Social Security Act addressing SACWIS type systems.
- ACF-OISM-001: Issued February 24, 1995. Provides CB guidance and policy on all areas related to State SACWIS planning, designing, development and implementation.
- ACF-OSS-05: Issued August 21, 1998. Amends and supplements previous guidance on the implementation and operation of a State SACWIS. It also supersedes some sections of AT-ACF-OISM-001. This guidance was issued in response to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

and the Adoption and Safe Families Act (ASFA – P.L. 105-89, enacted November 19, 1997).

- The State Systems APD Guide: Issued September 1996. This guide provides States, and now Tribes, with guidance regarding the various types of Advance Planning Documents (Planning, Implementation, Annual and As Needed APDs).
- Cost Benefit Guide OISM-ACF-IM-93-4: Issued October 6, 1993. This IM transmits a revised Feasibility, Alternatives, and Cost/Benefit Analysis Guide and provides guidance concerning these requirements.
- ACYF-CB-IM-04-07: Issued July 2, 2004. This IM introduces the Cost Allocation Methodologies Toolkit, which provides an objective cost allocation methodology for multi-program system projects.
- ACYF-CB-IM-05-02: Issued May 3, 2005. This IM provides Tribes, an optional checklist for use in requesting an exemption of prior approval for Information Technology acquisition documents.
- SACWIS Assessment Review Guide: If a Tribe elects to implement a Tribal automated child welfare information system application, CB will conduct an Assessment Review to assess the system's compliance with the functional requirements and the optional functionality described in the Tribe's Implementation APD. The Assessment Review Guide is available at:
<http://www.acf.hhs.gov/programs/cb/systems/sacwis/process.htm>.

CB typically conducts a weeklong on-site review, which includes a system walk-through and interviews of users. The on-site review provides CB with an in-depth look at the system.

INQUIRIES:

HHS – Director, Division of State Systems, Children’s Bureau,
Administration for Children, Youth and Families, Administration for
Children and Families

/s/

Maiso L. Bryant
Acting Commissioner
Administration on Children, Youth and Families