

and 42 CFR 433.112 and 42 CFR 433.113 for specific requirements for title XIX.

Regular matching rate means the normal rate of FFP authorized by titles IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act for State and local agency administration of programs authorized by those titles.

Requirements Analysis means determining and documenting the information needs and the functional and technical requirements the proposed computerized system must meet.

Service agreement means the document signed by the State or local agency and the State or local Central Data Processing facility whenever the latter provides data processing services to the former and:

(a) Identifies those ADP services the Central Data Processing facility will provide;

(b) Includes, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a certification that these charges apply equally to all users;

(c) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(d) Includes assurances that services provided will be timely and satisfactory;

(e) Includes assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with provisions of 45 CFR 205.50 and 303.21;

(f) Requires the provider to obtain prior approval pursuant to 45 CFR 95.611(a) from the Department for ADP equipment and ADP services that are acquired from commercial sources primarily to support the titles covered by this subpart and requires the provider to comply with 45 CFR Part 74, Subpart P for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the titles covered by this subpart when these titles may reasonably be expected to either: Be billed for more than 50 percent of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement, or directly charged for the

total cost of the purchase or lease of ADP equipment or services;

(g) Includes the beginning and ending dates of the period of time covered by the service agreement; and

(h) Includes a schedule of expected total charges to the title covered by this subpart for the period of the service agreement.

Software means a set of computer programs, procedures, and associated documentation used to operate the hardware.

State agency means the State agency administering or supervising the administration of the State plan under titles I, IV, X, XIV, XVI(AABD), XIX or XXI of the Social Security Act.

System specifications means information about the new ADP system—such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data—which is required to determine the ADP equipment and software necessary to implement the system design.

System study means the examination of existing information flow and operational procedures within an organization. The study essentially consists of three basic phases: Data gathering investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting of the parts and relationships uncovered through the analysis into an efficient system.

[51 FR 45326, Dec. 18, 1986, as amended at 55 FR 4375, Feb. 7, 1990, 59 FR 30708, June 15, 1994; 65 FR 33633, May 24, 2000]

SPECIFIC CONDITIONS FOR FFP

§ 95.611 Prior approval conditions.

(a) *General acquisition requirements.* (1) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of \$5,000,000 or more in Federal and State funds.

(2) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section,

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when the State plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate authorized by 45 CFR 205.35, 45 CFR part 307 or 42 CFR part 433, subpart C, regardless of the acquisition cost.

(3) A State shall obtain prior written approval from the Department of its justification for a sole source acquisition, when it plans to acquire non-competitively from a nongovernmental source ADP equipment or services, with proposed FFP at the regular matching rate, that has a total State and Federal acquisition cost of more than \$1,000,000 but no more than \$5,000,000. Noncompetitive acquisitions of more than \$5,000,000 are subject to the provisions of paragraph (b) of this section.

(4) Except as provided for in paragraph (a)(5) of this section, the State shall submit requests for Department approval, signed by the appropriate State official, to the Director, Administration for Children and Families, Office of State Systems. The State shall send to ACF one copy of the request for each HHS component, from which the State is requesting funding, and one for the State Systems Policy Staff, the coordinating staff for these requests. The State must also send one copy of the request directly to each Regional program component and one copy to the Regional Director.

(5) States shall submit requests for approval which involve solely Title XIX funding (i.e., State Medicaid Systems), to CMS for action.

(6) The Department will not approve any Planning or Implementation APD that does not include all information required as defined in § 95.605.

(b) *Specific prior approval requirements.* The State agency shall obtain written approval of the Department prior to the initiation of project activity.

(1) For regular FFP requests.

(i) For the Planning APD subject to the dollar thresholds specified in paragraph (a) of this section.

(ii) For the Implementation APD subject to the dollar thresholds specified in paragraph (a) of this section.

(iii) For the Request for Proposal and Contract, unless specifically exempted by the Department, prior to release of the RFP or prior to the execution of

the contract when the contract is anticipated to or will exceed \$5,000,000 for competitive procurement and \$1,000,000 for noncompetitive acquisitions from nongovernmental sources. States will be required to submit RFPs and contracts under these threshold amounts on an exception basis or if the procurement strategy is not adequately described and justified in an APD.

(iv) For contract amendments, unless specifically exempted by the Department, prior to execution of the contract amendment involving contract cost increases exceeding \$1,000,000 or contract time extensions of more than 120 days. States 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.

(2) For enhanced FFP requests.

(i) For the Planning APD.

(ii) For the Implementation APD.

(iii) For the Request for Proposal and contract, unless specifically exempted by the Department, prior to release of the RFP or prior to execution of the contract when the contract is anticipated to or will exceed \$100,000.

(iv) For contract amendments, unless specifically exempted by the Department, prior to execution of the contract amendment, involving contract cost increases exceeding \$100,000 or contract time extensions of more than 60 days.

(3) Failure to submit any of the above to the satisfaction of the Department may result in disapproval or suspension of project funding.

(c) *Specific approval requirements.* The State agency shall obtain written approval from the Department:

(1) For regular FFP requests.

(i) For an annual APDU for projects with a total acquisition cost of more than \$5,000,000, when specifically required by the Department.

(ii) For an “As Needed APDU” when changes cause any of the following:

(A) A projected cost increase of \$1,000,000 or more.

(B) A schedule extension of more than 60 days for major milestones;

(C) A significant change in procurement approach, and/or scope of procurement activities beyond that approved in the APD;

(D) A change in system concept, or a change to the scope of the project;

(E) A change to the approved cost allocation methodology.

The State shall submit the "As Needed APDU" to the Department, no later than 60 days after the occurrence of the project changes to be reported in the "As Needed APDU".

(2) For enhanced FFP requests.

(i) For an Annual APDU.

(ii) For an "As needed" APDU when changes cause any of the following:

(A) A projected cost increase of \$100,000 or 10 percent of the project cost, whichever is less;

(B) A schedule extension of more than 60 days for major milestones. For Aid to Families with Dependent Children (AFDC) Family Assistance Management Information System (FAMIS)-type projects, in accordance with section 402(e)(2)(C) of the Social Security Act, any schedule change which affects the State's implementation date as specified in the approved APD requires that the Department recover 40 percent of the amount expended. The Secretary may extend the implementation date, if the implementation date is not met because of circumstances beyond the State's control. Examples of circumstances beyond the State's control are:

(1) Equipment failure due to physical damage or destruction; or,

(2) Change imposed by Federal judicial decisions, or by Federal legislation or regulations;

(C) A significant change in procurement approach, and/or a scope of procurement activities beyond that approved in the APD;

(D) A change in system concept or scope of the project;

(E) A change to the approved cost methodology;

(F) A change of more than 10% of estimated cost benefits.

The State shall submit the "As Needed APDU" to the Department, no later than 60 days after the occurrence of the project changes to be reported in the "As Needed APDU".

(3) Failure to submit any of the above to the satisfaction of the Department may result in disapproval or suspension of project funding.

(d) *Prompt action on requests for prior approval.* The ACF will promptly send to the approving components the items specified in paragraph (b) of this section. If the Department has not provided written approval, disapproval, or a request for information within 60 days of the date of the Departmental letter acknowledging receipt of a State's request, the request will automatically be deemed to have provisionally met the prior approval conditions of paragraph (b) of this section.

[51 FR 45326, Dec. 18, 1986, as amended at 55 FR 4377, Feb. 7, 1990; 56 FR 12356, Mar. 25, 1991; 59 FR 30708, June 15, 1994; 61 FR 39897, July 31, 1996]

§ 95.612 Disallowance of Federal Financial Participation (FFP).

If the Department finds that any ADP acquisition approved or modified under the provisions of § 95.611 fails to comply with the criteria, requirements, and other undertakings described in the approved advance planning document to the detriment of the proper and efficient operation of the affected program, payment of FFP may be disallowed. In the case of a suspension of approval of an APD for enhanced funding, see 45 CFR 205.37(c), 307.40(a) and 307.35(d).

[55 FR 4378, Feb. 7, 1990]

§ 95.613 Procurement standards.

(a) Procurements of ADP equipment and services are subject to the procurement standards prescribed by subpart P of 45 CFR part 74 regardless of any conditions for prior approval. Those standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(b) Those standards, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and the ADP services and equipment acquired by a State or local Central Data Processing facility primarily to support the Social Security Act programs covered by this subpart. Service agreements