

(9) Determining in the case of direct ordering that the chosen acquisition vehicle is the best way to obtain the required product or service, if a vehicle other than those listed in 317.7002(b) is proposed.

(c) The HCA or designee (not lower than the CCO) shall establish standard lead-times for processing various types of acquisitions and applicable fiscal year deadlines for receipt of requirements to allow for well-planned and timely awards. The Project Officer shall initiate planning, to the extent possible, for certain requirements, such as major capital IT investments, major capital construction investments, and R & D projects that require peer review, at least 24 months before planned award, given the clearance/approval requirements and lead-time required for such complex acquisitions.

(d) The outcome of the discussions referenced in paragraph (b) above shall be an agreement concerning the acquisition approach and documentation required. For those actions that require development of a written AP—see 307.7101, for which the Project Officer has ultimate responsibility, these discussions shall also result in an agreement concerning—

(1) Which elements of the AP the Contracting Officer will assist the Project Officer in preparing; and

(2) The date (as specified in the milestone schedule) the Project Officer will provide the AP to the CCO or designee.

#### **307.104-70 Acquisition strategy.**

Program and Project Managers responsible for major IT capital investments (and for any other investments designated by the HHS CIO, DASFMF, the CAO, or the cognizant HCA) shall prepare an acquisition strategy using the HHS acquisition strategy template. The template for the acquisition strategy is available on the ASFR/OGAPA/DA Internet Web site. Program and Project Managers must initiate the acquisition strategy for major IT capital investments as part of the planned investment's business case, usually during the Enterprise Performance Life Cycle concept phase.

#### **307.104-71 Purpose and timing.**

(a) The purpose of an acquisition strategy is to describe the overall approach for acquiring capabilities needed to fulfill investment/programmatic objectives. Acquisition strategy development requires identification of issues and risks that might impact an acquisition(s) to allow early action to eliminate or mitigate the issues and risks.

(b) An acquisition strategy differs from an AP with respect to the timing of its development and the level of detail required.

(1) An acquisition strategy is established at the inception (concept phase) of an investment/acquisition to support the business case, identify and mitigate risks, and begin the acquisition planning process. An acquisition strategy addresses the major issues surrounding business objectives, competitive forces, and various risks that need to be considered.

(2) An acquisition strategy is a living document used throughout the investment's life-cycle. It should be continuously updated with the active involvement of the Program or Project Manager and the Contracting Officer at appropriate points, as plans for the investment/acquisition mature. An acquisition strategy ultimately will result in an AP—see 307.71.

(3) An AP, which is required to support proposed acquisitions expected to exceed \$500,000 (inclusive of options, with certain exceptions)—see 307.7101, is developed closer to the time of solicitation. The AP addresses not only those issues in the acquisition strategy, but also the tactical details of how the acquisition will be executed.

#### **307.105 Contents of written acquisition plans.**

*FAR 7.105* specifies the content requirements of a written AP. Subpart 307.71 incorporates and supplements those requirements.

#### **307.108-70 Telecommuting of contractor employees.**

(a) SOWs/PWSs shall permit offerors or contractors to specify their own place(s) of performance (hence authorize their employees to telecommute), except as follows:

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(1) The Project Officer may restrict place of performance (hence restrict an offeror's or contractor's telecommuting) for any part of an SOW/PWS, after determining that the work or any portion thereof must be performed at a specified place of performance; or security would be compromised. The Project Officer must document this determination in writing and send a copy of the determination, along with the SOW/PWS, to the Contracting Officer. The Project Officer must also address in an HHS AP (or other acquisition request document) any performance requirements or security considerations that restrict place of performance—see 307.71.

(2) In accordance with *FAR 7.108(a)*, if the Contracting Officer concurs with the Project Officer's determination in (a)(1) above, then the Contracting Officer must sign the Project Officer's determination; include it in the official contract file; and specify any prohibition against telecommuting in the solicitation and resultant contract.

(3) In accordance with *FAR 7.108(a)*, if the Contracting Officer decides to restrict a place of performance that the Project Officer did not restrict, then the Contracting Officer must document in writing the determination to preclude telecommuting in part or in whole; include the determination in the official contract file; and specify any prohibition against telecommuting in the solicitation and resultant contract.

(b) If the Contracting Officer disagrees with the Project Officer's determination in (a)(1) above, then the Contracting Officer shall return both the SOW/PWS and determination to the Project Officer for further consideration.

(c) The Contracting Officer shall ensure that authorized telecommuting of contractor employees does not result in increased cost or price to the Government.

### Subpart 307.70—Considerations in Selecting an Award Instrument

#### 307.7000 Scope of subpart.

This subpart provides guidance on the appropriate selection of award instruments to fulfill program needs con-

sistent with 31 U.S.C. 6301–6308. This subpart explains the use of the contract as the award instrument for acquisition relationships and a grant or cooperative agreement as instruments for financial assistance relationships.

#### 307.7001 Distinction between acquisition and assistance.

(a) 31 U.S.C. 6301–6308 requires the use of contracts to acquire property or services for the direct benefit or use of the Government and grants or cooperative agreements to transfer money, property, services, or anything of value to eligible entities to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) OPDIVs shall use a contract as the legal instrument to reflect a relationship between the Government and an entity whenever the—

(1) Principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Government; or

(2) Government determines in a certain situation that specific needs can be satisfied best by using the acquisition process. However, this authority does not permit circumventing the criteria for use of acquisition or assistance instruments. Use of this authority is restricted to extraordinary circumstances and requires the Associate DAS for Acquisition's prior approval.

(c) OPDIVs shall use a grant or cooperative agreement as the legal instrument to reflect a relationship between the Government and an entity whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute.

(1) OPDIVs shall use a grant when no substantial programmatic involvement is anticipated between the Government and the recipient during performance of the contemplated activity.

(2) OPDIVs shall use a cooperative agreement when substantial programmatic involvement is anticipated between the Government and the recipient during performance of the contemplated activity.