

317.105

317.105 Policy.

317.105-1 Uses.

(a) Each HCA determination to use multi-year contracting, as defined in FAR 17.103, is limited to individual acquisitions where the full estimated cancellation ceiling does not exceed 20 percent of the total contract value over the multi-year term or \$11.5 million, whichever is less. Cancellation ceiling provisions shall conform to the requirements of *FAR 17.106-1(c)*. The determination is not delegable and shall address the issues in *FAR 17.105-1(a)* and the following:

(1) The amount of, and basis for, the estimated cancellation ceiling.

(2) Identification and assignment of a Contracting Officer holding a FAC-C Level III certification or, alternatively, one familiar with the application of this contracting method.

(3) Availability of appropriations to fund the obligation of total contract costs for the first year of performance plus the estimated amount of the full cancellation ceiling.

(4) Reasonable expectation that, throughout the contemplated contract performance period, the OPDIV, through its annual budget request, will seek funding for the contract at the level necessary to avoid contract cancellation; and

(5) Program requirements are reasonably stable and the associated technical risks are not excessive—*i.e.*, not of the nature or level to jeopardize contract completion or result in its cancellation.

Upon SPE request, the HCA shall provide a copy of each determination (other than those specified in *317.105-1(b)* below).

(b)(1) SPE approval is required for any—

(i) Individual determination to use multi-year contracting with a cancellation ceiling in excess of the limits in *317.105-1(a)*; or

(ii) Class determination (see FAR Subpart 1.7).

(2) A determination involving a cancellation ceiling in excess of the limits in *317.105-1(a)* shall present a compelling justification for the estimated cancellation ceiling. When the estimated cancellation ceiling exceeds

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\$11.5 million, the determination shall be accompanied by a draft congressional notification letter pursuant to FAR 17.108 and 317.108.

(c) The funding required for performance of each year of a multi-year contract under FAR Subpart 17.1 and this subpart must be provided in full at the start of that program year.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

317.107 Options.

When used as part of a multi-year contract, options shall not be used to extend the performance of the original requirement for non-severable services beyond 5 years. Options may serve as a means to acquire related services (severable or non-severable) and, upon being exercised, shall be funded from the then-current fiscal year's appropriation.

[75 FR 21511, Apr. 26, 2010]

317.108 Congressional notification.

(a) The SPE is the agency head for the purposes of *FAR 17.108(a)*. Upon SPE approval of the determination required by *317.105-1(b)(1)*, the SPE will finalize and sign the congressional notification letter and provide it to the appropriate House and Senate committees.

Subpart 317.2—Options

317.204 Contracts.

(e) The total of the basic and option periods shall not exceed 10 years in the case of services and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to IT and R & D contracts. However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

317.207 Exercise of options.

(h) Before exercising an option for a subsequent performance period/additional quantity under a multiple-year contract/order—*see 339.201-70(c)*, which involves the acquisition of EIT products and services, including EIT

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deliverables such as electronic documents and reports, subject to Section 508 of the Rehabilitation Act of 1973, as amended, the Contracting Officer shall ensure that the contractor has provided to the Contracting Officer and Project Officer a properly completed HHS Section 508 Annual Report—*see* Section 508 policy on HHS Office on Disability Web site. The Contracting Officer shall request that the contractor provide the report in sufficient time for its review and approval by the Contracting Officer, Project Officer, and the Section 508 Official or designee, prior to exercise of an option. The Contracting Officer shall ensure that the report and all related approvals are made a part of the official contract/order file.

Subpart 317.5—Interagency Acquisitions Under the Economy Act

317.503 Determination and findings requirements.

(a) In addition to the D & F contents specified in *FAR 17.503(a)(1) and (2)*, each Assisted Contracting D & F shall address—

(3) The servicing organization(s) contemplated (the assigned HHS contracting office shall be one of the servicing organizations contemplated);

(4) For each organization and alternative approach contemplated, the anticipated benefits to the OPDIV; the anticipated costs, including associated fees or other compensation; and the contract/order placement timeframe;

(5) The tradeoffs (cost, schedule, performance) among the approaches considered;

(6) The recommended multi-agency or intra-agency contracting approach;

(7) The conclusion that the contract to be awarded by the selected servicing organization is the most advantageous alternative to the Government, notwithstanding fees and the increased risk associated with assisted contracting; and

(8) The steps that will be taken to ensure that contract funding will comply

with the *bona fide* needs rule and the Anti-Deficiency Act.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

Subpart 317.70—Multi-agency and Intra-agency Contracts

317.7000 Scope of subpart.

(a) This subpart prescribes policies for HHS' use of multi-agency and intra-agency contracting under all authorities. It does not apply when HHS transfers funds to another agency under an interagency agreement whose primary purpose is other than contracting on HHS' behalf.

(b) For multi-agency contracts under the authority of the Economy Act, *see FAR Subpart 17.5 and 317.503*.

(c) Multi-agency contracting authorities other than the Economy Act include but are not limited to the Clinger-Cohen Act [40 U.S.C. 11302(e)]; the Government Management Reform Act (Pub. L. 103-356); Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, *et seq.*); and 40 U.S.C. 501, Services for Executive Agencies.

317.7001 Definitions.

As used in this subpart:

Multi-agency contracting describes a procedure in which a Federal agency needing supplies or services obtains them using another Federal agency's contract (direct ordering), the contracting assistance of another Federal agency (assisted contracting), or both. In some cases, more than one servicing organization may be involved in assisted contracting.

Intra-agency contracting describes a procedure in which an HHS OPDIV/STAFFDIV needing supplies or services obtains them by issuing an order under another HHS OPDIV/STAFFDIV's contract or agreement (e.g., a BPA—direct ordering); or using the contracting assistance of another OPDIV/STAFFDIV (assisted contracting); or both.

Assisted contracting is a subset of multi-agency/intra-agency contracting in which a servicing contracting office