

Subject: AGENCY AGREEMENTS

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8-77-00 PURPOSE

This chapter establishes Department policy for the management and use of agency agreements. It also provides information to be used by those who prepare these agreements.

p-77-10 SCOPE

This chapter applies only to those agreements which an HHS organizational unit enters into with another HHS organizational unit or with a Federal agency outside the Department for the purpose of procuring, providing, or exchanging services, supplies, and/or equipment. This chapter does not cover those "agreements or understandings" where agencies enter into a joint project in which they each contribute their own resources; nor does it cover "general agreements" which do not specifically commit the participating agencies to the purchase, provision or exchange of services, supplies, and/or equipment.

B-77-20 DEFINITIONS

For the purposes of this Chapter, an agency agreement (also known as a reimbursable agreement) is a written compact in which a Federal agency agrees to provide to, purchase from, or exchange with another Federal agency, services, supplies, and/or equipment. Agency agreements are generally between only **two** Federal agencies (interagency agreement) or two organizational units of the same agency (intra-agency agreement). Occasionally, they may involve more than two agencies or organizational units. As a general rule, the agency agreement will be the document with which the receiving agency agrees to reimburse the providing agency for the cost of the services, supplies or equipment. In certain cases two or more agencies may agree to exchange services, supplies, and/or equipment of an approximately **equal** value without a transfer of funds.

8-77-30 LEGAL AUTHORITY FOR AGENCY AGREEMENTS

A. Section 1535 of Title 31 of the U.S. Code (31 U.S.C. **1535**), provides the legal authority for most agency **agreements**. That section authorizes the head of an agency or a major organizational unit within an agency to **place an order** for goods and services with a major organizational unit within the same agency or with another Federal **agency if the** following four conditions are met:

1. Funds are available.
2. The head of the ordering agency or unit decides the order is in the best interest of the United States government.
3. The agency or unit to fill the order is **in a** position to supply or render the goods or services, or obtain them by contract; and
4. The head of the ordering agency decides the goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.

For the purposes of this chapter, the Secretary is considered to be **"the** head of an agency." Similarly, for purposes of this chapter, the OPDIV heads and the STAPFDIV heads are considered to be the **"heads** of major organizational units." These **HHS** officials **have** authority to approve agency agreements, consistent with the provisions of 8-77-60. No other HHS official can approve agency agreements without specific delegated authority.

- B. If the work to be done under an agency agreement cannot be conducted under the authority of Title 31, other legal authority to have the work done by another agency and to transfer funds for that purpose must exist.
- C. In addition, the requisitioning and provider agencies or units must have independent legal authority to carry out the activity and expend funds for the particular purpose identified in the agreement.

8-77-40 MANAGEMENT OF AGENCY AGREEMENTS

Each major BBS organizational unit shall develop and implement within its operational framework, a system for the effective management and use of its agency agreements. As a minimum, the system should provide for:

- 0 Assurance that the services, supplies, and/or equipment to be provided under an agency agreement are essential to the operation of the requisitioning unit, cannot be provided by the requisitioning unit, and are obtained at the least possible cost.
- 0 Approval of all agency agreements at a high enough level to assure effective management control. The officials who sign the agreements must have the authority to make the commitments set forth in the agreements.
- 0 Assurance that the requisitioning unit has sufficient funds available for the services, supplies, and/or equipment to be provided under the agreement. (This should include funds certification by the appropriate administrative or financial officer.)
- 0 Review and concurrence by the budget officer or other financial manager responsible for control of the budget and staff years (FTEs) for each agreement.
- 0 Assurance that copies of the agreement are furnished to the respective finance offices for the establishment of the commitments/obligations of the requisitioning unit, and the recording of any advance if applicable.
- 0 Review and concurrence by the Office of the General Counsel (OGC) if the agreement requires the Secretary's approval, raises unresolved legal questions, presents novel or unusual legal circumstances, or is sensitive. Other agreements may be submitted for OGC review, as desired.
- 0 Referral to the Secretary, as necessary. See Section 8-77-60.
- 0 Assurance that the provisions of each agreement are consistent with OMB Circular A-76 on Commercial Activities.

- 0 Assurance that, as appropriate, **agreements comply** with requirements contained in the **HHS Information Resources Management Manual**.
- 0 Assurance that agreements are conducted in compliance with all applicable legislation (e.g., the Privacy Act, the **Paperwork** Reduction Act).
- 0 Designation of a responsible official to oversee the administration and execution of each agreement.
- 0 Maintenance, within prescribed records retention schedules, of copies of all agency agreements, together with pertinent documents related to them, *in* a systematic order at central locations which permits easy access for auditors or other Department staff.
- 0 Evaluation of the services, supplies, and/or equipment supplied or obtained under select agency agreements (e.g., those that are new or complex, those that involve large sums of money, or those that have been in existence for longer than three years) to ascertain the agreement's quality, value, and utility.

8-77-50 FORM AND CONTENT OF AGENCY AGREEMENTS

- A. Agency agreements have no single form. They may range from a few brief paragraphs **to a** detailed document of several pages. Their length and content depend on ~~the~~ complexity of the services, supplies, and/or equipment to be provided and the conditions under which the services, supplies, and/or equipment are to be provided. Exhibit 8-77-A contains a sample agreement. Use it as a guide (not an absolute).
- B. As a minimum, each agreement should contain the following information:
 - 0 Subject of the agreement.
 - 0 Official name of each *agency* participating in the agreement.
 - 0 Legal authority for the agreement.

- 0 Responsibility of each participant under the agreement.
- 0 Description of the services, supplies, and/or equipment that each participant will provide or obtain under the agreement, how and when these items will be provided and obtained, and their estimated or actual cost.
- 0 Description of financing arrangements including how the requisitioning unit will transfer funds and when, and how often, the supplying unit will submit **expenditure** reports. (Note: In certain cases, where the cooperating parties provide services to each other which are approximately equal, they may agree to provide such services without a transfer of funds.)
- 0 Time period to be covered by the agreement.
- 0 Appropriation numbers, billing address, and other accounting information applicable to the services, supplies, and/or equipment to be provided under the agreement.
- 0 Name, address, and telephone number of each person to be contacted for further information about the agreement.
- 0 Effective date of the agreement and, if necessary, provision for its modification.
- 0 Signature, name, and title of each signer to the agreement, and the date that each signer signs the agreement. Signers of the agreements should be of comparable rank.

8-77-60 REFERRAL TO **THE SECRETARY**

With the exception of Information Resources Management (**IRM**)-related agreements, which are reviewed separately under the Department's IRM review process, heads of **OPDIVs** and **STAFFDIVs** shall refer to the Secretary for approval any agency agreement which involves at least one of the following:

- 0 Agreement impacts major Secretarial or OPDIV policy initiative or contains significant policy change.
- 0 *Agreement* may have a significant impact on relations between the Department and State and local governments, Other HHS grantees, or the public.
- 0 Agreement is beyond the scope of authorities delegated by the Secretary.
- 0 Agreement is determined by OPDIV or STAFFDIV head to require Secretarial approval.

Submission of non-IRM-related agency agreements for Secretarial approval shall be made through the Assistant Secretary for Management and Budget (ASMB) under a cover memorandum which explains, in precise terms, the need for the agreement and the benefits to be derived from it. ASMB will obtain clearances of the proposed agreement from the Office of the General Counsel and other OS offices, as appropriate, before forwarding the agreement to the Secretary.

IRM-related agency agreements should be submitted for Departmental review and approval consistent with current dollar thresholds established for competitive acquisitions of information technology, and in compliance with requirements for ADP procurement as established in the HHS IRM Circulars.

SAMPLE AGENCY AGREEMENT

INTERAGENCY AGREEMENT BETWEEN
**THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND
THE DEPARTMENT OF DEFENSE**

I. **Purpose**

This interagency agreement establishes the basis for certain services to be provided to the Department of Health and Human Services (HHS) by the Department of Defense (DoD), Assistant Secretary of Defense, Comptroller, OASD(C). Under the provisions of this agreement, the DoD will provide to BBS computer access to the Federal Information Locator System (FILS) on a cost reimbursable basis. The DoD holds an umbrella contract with a commercial timesharing company which operates and maintains the FILS software.

II. **Authority**

31 USC 1535

III. **Background**

In March 1984, the Office of Management and Budget (OMB) informed Federal agencies that it was formally establishing FILS using the DoD system. Federal agencies are required to access the FILS data base for the purpose of checking new and existing public use reports for duplication with other new or existing reports. The purpose of this agreement is to arrange for BBS to have access to the computer facilities on which the FILS resides.

IV. **Scope of Work**

The DoD will provide BBS with access to the computer center at which the FILS resides in accordance with Teleprocessing Services Program (TSP) contract terms. BBS will acquire its own terminal equipment with which to access the computer center. Access to the computer center will be over public communications lines. DoD will provide BBS with the necessary protocols and account numbers to access the FILS. DoD will bill BBS for its use of computer facilities during the course of accessing FILS according to the normal rates charged users of FILS.

SAMPLE AGENCY AGREEMENT

V. Duration of Agreement

This agreement becomes effective on (date), and will remain in effect through (date). Annual renewal, commencing (date) may be made by written mutual consent of both parties. The renewal agreement will include an estimate of the reimbursable annual costs and the services to be provided.

VI. Project Officers

DoD (Name of Person)
OASD (C) MS **IRMS**
Room **3A336**, Pentagon
Washington, D.C. 20301

HHS (Name of Person)
Office of Public and State Data Systems
Office of Management Analysis and Systems
Room 526-F
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

VII. Funds

The estimated value of this agreement is less than \$7,000 for FY 19__. HHS will reimburse DoD for costs incurred, not to exceed \$7,000 for FY 19__. Requests for payment should be submitted (quarterly, semiannually, annually) to:

Department of Health and Human Services
Division of Accounting Operations
Room 743-H Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Requests for payment should cite the following accounting data:

Appropriation Number: XXXXXXXX

Common Accounting Number: XXXXXXXX Object Code: 25.xx

SAMPLE AGENCY AGREEMENT

HHS will send payment to:

OASD (Admin.), **WHS**
Directorate of Budget and Finance
Finance and Accounts Division
Room 3B 268, Pentagon
Washington, D.C.

Monthly, **DoD** will send BBS a list of the services provided under the agreement and the associated cost of the services for the preceding month. **DoD** should send these to (name of person) at the address shown above under item VI.

HHS

DoD

(Name of Person)
Assistant Secretary for
Management and Budget

(Name of Person)
Assistant Secretary of
Defense, Comptroller

Date

Date