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INFORMATION MEMORANDUM

To: State Public Assistance Agencies, State Information Executive, And Other Interested Parties

Subject: FEDERAL/STATE INFORMATION TECHNOLOGY POLICY Relationship Of Master Contracts For Acquisition Of State Information Technology Products Or Services And Competition.

Legal and Related References:

45 CFR PART 95, SUBPART F; 45 CFR PART 92; 7 CFR PART 277

Purpose: This Information Memorandum provides guidance to the states and territories (hereafter referred to as states) regarding the use of state master contracts to acquire state Information Technology products and services. This IM does not establish any new systems policy. This IM is intended to codify into one document the federal response to questions posed by states regarding the relationship of master contracts to the procurement standard for maximum practical open and free competition of IT procurements.

The Administration for Children and Families (ACF), and Centers for Medicare and Medicaid Services (CMS) are charged with oversight responsibility for Information Technology projects that result in automated information systems supporting the programs administered by these federal agencies. Procurements of Automated Data Processing (ADP) equipment and services by states, tribes and territories are subject to federal procurement standards which include a requirement for maximum practical free and open competition regardless of whether the procurement is formally advertised or negotiated.

Background: One of the trends in state procurements in recent years has been the growth in the use of master contracts for the acquisition of Information Technology

products and services that are acquired repetitively. States have requested guidance regarding whether these master contracts require sole source

justification or if they meet the federal procurement standards for open and free competition and what documentation, if any, needs to be submitted for federal approval or prior approval of task orders issued against these state master contracts.

: A master contract or initiative to qualify vendors does not require prior written approval from the Department of Health and Human Services (DHHS). However, if Federal financial participation (FFP) is requested when the state seeks to acquire products or services from that master contract, then the master contract needs federal approval and the task order for the services or products to be acquired needs prior federal approval. At the point when task orders are to be issued to qualified vendors on the master contract to secure competitive price quotes for needed products or services, DHHS requires a copy of the Request for Proposals (RFP) that was used to qualify vendors on the master contract, the master contract itself, and the proposed task order to assure that the state has followed competitive procedures. The review of the RFP and resultant master contract is a one-time review for federal approval. Thereafter, prior federal review and approval requirements would not apply to the master contract but would apply to the subsequent task orders issued against the master contract, as the underlying RFP and master contract would have already received approval.

An acquisition that uses an approved master contract does not require sole source justification as long as the federal review of both the contract and the task order determines that the state has followed competitive procedures (i.e., allowed multiple eligible vendors on the master contract an opportunity to bid).

If the provisions of the state master contract are complied with, (i.e.) issuing the task order to a specified number of qualified vendors on the master contract) then the task order would not require a sole source justification even if only one vendor on the qualified list provided a response to the task order solicitation.

Any attempt by the state to “direct” procurement of a product or service to a specified vendor on the approved master contract list would be considered a sole source procurement and thus require sole source justification.

Information:

By its very nature, a master contract reduces competition. Therefore, to ensure that competitive procedures are followed by the state, task orders issued against a master contract can not exceed the original scope of the master contract. One way of determining whether the task orders issued against the master contract exceed the original scope of the master contract is to consider whether 1) the RFP for the master contract gives sufficient notice to all vendors that the master contract would

cover all state IT procurements or 2) the proposed scope limits the products or services offered, limits the state agencies eligible to participate, or otherwise sets a ceiling on total contract value.

The concern to DHHS in reviewing any proposed acquisition is the justification for the resources being acquired, the reasonableness of the projected costs, and assurance that the spirit of competition is met (namely that the selection process ensures the state will receive best product at the best price). If our review of a proposed acquisition from a master contract results in a finding that further competition is required to obtain a better price and/or product, or finds need to open an existing long term contractual arrangement to competition, we will require that the state agency acquire the equipment or services through an RFP or similar competitive process. In these cases, RFPs and contracts above regulatory threshold limits will have to be submitted to the federal program offices that have approval of the IT services acquired under these master contracts.

To ensure proper planning, and to avoid situations where there would be insufficient time to fully compete the acquisition, we encourage states to summarize their procurement plans in their APD Updates so DHHS can provide guidance in a timely manner.

Inquires:

HHS – Director, ACF/ACYF/CB/DSS
Director, ACF/OCSE/OAPO/DSTS
CMS – Director, Division of State Systems

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