



December 1, 2004

Dear Colleague:

We are writing to inform you of our policy on the issues of free and open competition, sole source acquisitions and prior approval requirements for procurements related to the development and/or operation of Human Services Information Technology (HSIT) projects in light of the Federal Register notice dated September 8, 2003 that brought HHS entitlement grant programs under 45 CFR Part 92. This notice expanded the scope of 45 CFR Part 92 to include the entitlement grant programs previously cited at 45 CFR 92.4 and removed such programs from the scope of 45 CFR Part 74.

As a result of this notice we have received numerous questions from state staff regarding its impact upon procurement standards applicable to those HSIT projects that are also subject to the prior written approval requirement in 45 CFR Part 95. At issue are the references in Part 95 to Part 74 for state acquisitions. While it is our intention to amend and update the citations in Part 95, as an interim measure we issue this clarification of our policy.

Subpart F in 45 CFR Part 95 specifically describes the conditions under which federal financial participation (FFP) for automated data processing equipment and services will be approved. This Subpart establishes requirements for prior approval (95.611), procurement standards (95.613), access to systems and records (95.615) and ownership rights (95.617). Its applicability remains unchanged and overrides any other regulations governing these issues. The transfer to 45 CFR Part 92 for the entitlement grant programs in no way supercedes or obviates the requirements or conditions for FFP as delineated in Subpart F of Part 95.

In summary, this change does not alter the aforementioned requirements currently set forth in Subpart F of Part 95, including the requirement for maximum open and free competition. As outlined in the overriding regulations at 45 CFR Part 95, all requirements regarding competition, procurement procedures, cost and price analysis, procurement records, contract administration and contract provisions specific to HSIT projects remain valid and unchanged until such time as a revision to Part 95 is issued.

Should you have questions regarding these matters please feel free to contact the individual

listed below who handles your program:

James Blackie, Multi-OPDIV Requests, 202-690-7458

Robin Rushton, Child Support Enforcement, 202-690-1244

Terry Watt, Children's Bureau/SACWIS, 202-690-8177

Rick Friedman, Centers for Medicare and Medicaid, 410-786-4451

Sincerely,

/s/

Curtis L. Coy
Deputy Assistant Secretary
for Administration
Administration for Children and Families
Department of Health and Human Services