



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary
Washington DC 20201

MEMORANDUM

AUG 31 2005

TO: OPDIV Chief Information Officers (CIOs),
OPDIV Heads of the Contracting Activity (HCAs)
HHS Chief Acquisition Officer

FROM: HHS Senior Procurement Executive
HHS Chief Information Officer

SUBJECT: HHS Procedures for Utilization of GSA SmartBuy

This memorandum is to remind you of the SmartBuy mandate from the Office of Management and Budget (OMB) and to provide you with procedures to ensure that all HHS software buys are consistent with the OMB guidance (link provided below).

The General Services Administration (GSA) SmartBuy program is intended to reduce agency expenditures for commercial off-the-shelf (COTS) software by taking advantage of volume discounts. GSA has created six SmartBuy agreements. **Agencies are required to use those agreements to purchase any COTS software that is available under those agreements.** The six manufacturers represented by those agreements are:

- Environmental Systems Research Institute ((ESRI) geographical information systems software)
- Manugistics (logistical and supply chain management software)
- Novell (network operating system and collaboration software)
- Oracle (database software)
- ProSight (project portfolio management software)
- WinZip (data archiving software)

OPDIVs' Head of the Contracting Activity (HCAs) are instructed to use the following procedures for software procurement actions available through SmartBuy. OPDIV HCAs will distribute these procedures to all OPDIV acquisition staff, including all IMPAC Purchase Card holders.

1. Acquisition staff members are to determine if the requirement can be fulfilled through SmartBuy prior to completing any procurement action for COTs software. A list of existing SmartBuy agreements is posted on the HHS enterprise software licensing site at <http://isdpm.nih.gov/information/Smartbuy.asp>.
2. If the required software is available under one of the six SmartBuy agreements, e.g., **ESRI, Manugistics and ProSight software**, the requirement must be processed through SmartBuy with the following exception:

Novell, Oracle and WinZip - Requirements for software from these manufacturers can be satisfied with existing HHS enterprise software license agreements available through the HHS enterprise software licensing site, <http://isdpm.nih.gov>.

3. SmartBuy requirements should be forwarded to the iSDP program manager via email (Dave Hunter, HunterD@mail.nih.gov). The statement of requirement should include a brief description of the products needed and why they are needed. The iSDP program manager will assist with the acquisition by providing SmartBuy program and contact information, and by gathering the required reporting elements.
4. Exceptions to these procedures can be authorized only by the HHS CIO and Chief Acquisition Officer (CAO) who must be granted a waiver by OMB and GSA. Therefore, OPDIVs are cautioned to ensure that there is a bona fide need for the acquisition to be processed outside of SmartBuy prior to requesting an exception from the HHS CIO and CAO. Written waiver requests must be submitted by the OPDIV CIO with concurrence from the OPDIV HCAs under single cover to the HHS CIO and HHS CAO, with a courtesy copy to the HHS Senior Procurement Executive (SPE) and iSDP program manager. The request must include an itemized product list, including estimated cost per line item and a written justification. A “GSA Waiver Letter Format” has been attached to assist you in preparing any waiver request your OPDIV might have. Only the HHS CIO and HHS CAO will submit waiver requests to GSA and OMB.

/s/

Marc R. Weisman
HHS Senior Procurement Executive

/s/

Charles Havekost
HHS Chief Information Officer

Sources:

<http://www.whitehouse.gov/omb/memoranda/fy04/m04-08.pdf>

http://www.whitehouse.gov/omb/procurement/comp_src/implementing_strategic_sourcing.pdf

Attachments:

1. GSA Waiver Letter Format
2. GSA SmartBuy Waiver Process

GSA Waiver Letter Format

GSA
Office of Electronic Government and Technology
1800 F ST. NW, Room 2239
Washington, DC 20405
SmartBUYWaiver@gsa.gov

[Date]

Dear [GSA Point of Contact],

The HHS [OPDIV] is requesting approval to enter into a non-SmartBuy agreement for (*software publisher*) products that are (currently available through_____/have been announced as pending). This request is necessary because the [HHS/OPDIV] has a compelling need based on the following justification. Details of the potential agreement are below.

Justification: [enter text]

1. Software Package: _____
2. For use by (HHS/[OPDIV]/[Organization]): _____
3. Enterprisewide license: yes or no
4. Number of seats, licenses, or processors: _____
5. Length of time for requested waiver: _____
6. If agency agreement is less than SmartBuy agreement that is finalized, additional cost for SmartBuy agreement: _____ (agency must include supporting documentation)

(Software publisher/reseller) has agreed to include language that, should a SmartBuy agreement be subsequently established for (software title) products and services under similar terms and conditions, (software publisher) will enter into good faith negotiations to lower its prices to its reseller(s) or allow the (agency) to move to the SmartBuy agreement. HHS/[OPDIV] also understands that contract options will be done on an annual basis.

Approval of this request will ensure near-term continuity of critical HHS/[OPDIV] purchasing while providing the means to transition to the government-wide SmartBuy license agreements as quickly as practicable.

Sincerely,

_____	_____	_____	_____
(name)	date	(name)	date
OPDIV HCA		OPDIV CIO	

CONCUR:

_____	_____	_____	_____
(name)	date	(name)	date
HHS CAO		HHS CIO	

cc: Office of Management and Budget, Administrator for Office of E-Gov and IT

GSA SmartBUY Waiver Process

In accordance with the February 2004 OMB memo “Maximizing Use of SmartBUY and Avoiding Duplication of Agency Activities with the President’s 25 E-Gov Initiatives”, GSA will notify agencies at least 30 days before an expected SmartBUY contract. Request for waivers are discouraged, although for compelling reasons, these will be considered and granted. When requesting a waiver, agencies are to follow the internal processes, including approvals, of the Department/Agency.

Process

- At least 30 days prior to an expected SmartBUY award, agency Chief Information Officers (CIO) and Senior Procurement Executives (SPE) will be notified of the intention to award a SmartBUY contract for a software market category, line of business or for a specific software title.
- Following the announcement of an anticipated agreement, agencies shall not enter into any agreements for titles within the market category or line of business or the identified software title without a waiver from GSA. If agencies have a compelling reason for not participating in a particular SmartBUY contract (either one in place or one announced as pending) for a particular software title or within a category of software/line of business, the agency CIO and SPE may apply to GSA Office of Governmentwide Policy for a waiver request (Attachment A contains a sample request). Address all requests to the GSA Deputy Associate Administrator (DAA) for Electronic Government and Technology (ME) at SmartBUYwaiver@gsa.gov with a copy to the Office of Management and Budget, Administrator for E-Gov and IT, fax 202-395-4995.
- An Interagency Waiver Advisory Team, comprised of individual representatives from the CIO Council, Federal Acquisition Council, Chief Financial Officers Council, Small Agency CIO Council, and SmartBUY PMO will analyze the waiver request and make a recommendation to GSA’s Deputy Associate Administrator (DAA) for Electronic Government and Technology. Criteria for the decision will be based on specific and quantifiable information provided by the agency that demonstrates a serious impact on agency operations or cost if the purchase is not made immediately. The DAA will issue a waiver decision within 10 working days of receipt of the request based on consideration given to the waiver advisory group recommendation. If a waiver is granted, the agency can proceed with the acquisition.
- When exercising option periods or negotiating new contracts that pre-date SmartBUY, agencies must transition to SmartBUY or have waiver approval from GSA and include a standard clause in their contracts addressing price redetermination and migration to SmartBUY agreements. This clause currently states: "If during the term of this contract, _____(vendor) or its resellers enter into an agreement with the General Services Administration under the SmartBUY Initiative - which includes pricing for the specific products or services similar to those licensed under this contract, that is less than the pricing under this contract, _____(vendor) will enter into good faith negotiations to lower its prices to its reseller(s), and thus this contract, consistent with the similar terms and conditions of the SmartBUY agreement, or allow these requirements to move to the SmartBUY agreement at the Government's option, with full credit for all funds paid under this contract." (If there are no resellers, references to them are dropped.)

SmartBUY and the President's Management Council's 25 E-Gov Initiatives

Program Managers for the 25 E-Gov initiatives have been pursuing common solutions to crosscutting E-Gov efforts. In some cases, the process is the solution; in other cases, a common computing platform and software solution will be implemented. GSA, in conjunction with OMB, will work with the E-Gov program managers to implement SmartBUY agreements in support of the E-Gov initiatives. The waiver process above will apply to all partnering agencies working with the E-Gov initiatives. When a waiver is requested regarding an E-Gov initiative or the business line of that E-Gov initiative, the program manager for that initiative will be included on the waiver advisory team.