




May 20, 2009

ACQUISITION POLICY MEMORANDUM 2009 - 02

To: Heads of Contracting Activity

From: Nancy J. Gunderson 
Acting Senior Procurement Executive

Subject: Contract and Order File Organization and Content

Effective Date: October 1, 2009

1. Purpose: This memorandum specifies the organizational schema and minimum content requirements for HHS contract and order (hereafter “contract”) files (Attachment A), and promulgates interim acquisition guidance pending formal incorporation in the HHS Acquisition Regulation (HHSAR) (Attachment B). This interim acquisition guidance includes standard checklists that specify the types of information and documents that, if applicable, must be included in contract files.
2. Background: Federal Acquisition Regulation (FAR) 4.802 specifies the requirements for establishing and maintaining contract files. FAR 4.803 provides examples of the documentation normally included in contract files, but does not prescribe any particular approach for organizing file contents.
3. Applicability: HHS contracting activities must implement these file organization and documentation requirements, including use of the standard checklists, for all applicable new projects/requirements initiated on or after October 1, 2009. (NOTE: For purposes of this memorandum, a project/requirement is considered “initiated” when an acquisition plan or other acquisition request documentation – see HHSAR 307.7101, has been received in the contracting office.) However, contracting activities should transition to use of the standard checklists, in their entirety or in part, for ongoing contracts whenever it is reasonable to do so. The requirements apply to files for (a) negotiated, sealed-bid, and Architect-Engineer acquisitions; (b) orders awarded and BPAs established under General Services Administration (GSA) Federal Supply Schedule (FSS) contracts; (c) orders placed under all types of indefinite-delivery contracts, including task orders under Government-wide Acquisition Contracts (GWACs); and (d) modifications under the types of acquisitions specified in (a), (b), and (c).

Simplified acquisitions, including those for commercial items, are exempt from these checklist requirements. However, HHS contracting activities must continue to adhere to the simplified

acquisition file documentation and retention requirements of FAR 13.106-3(b). For commercial item acquisitions using the negotiated or sealed bid methods, HHS contracting activities shall use the applicable checklist.

The contract file checklists include current generally applicable requirements for the acquisition methods cited. In order to keep the checklists as up-to-date and comprehensive as possible, OPDIVs should bring to ASAM/OAMP's attention any omissions or suggestions for changes. ASAM/OAMP will evaluate change requests and update the checklists, as necessary, for application to future acquisitions.

4. Methodology: Contract file organization practices and checklists from a number of different OPDIVs were reviewed to determine best practices. Currently, there is a wide array of approaches to contract file organization in HHS contracting offices. Some of the methodologies used are very detailed, particularly for complex, high-dollar acquisitions, while others are more streamlined. This interim acquisition guidance represents a composite of both approaches and is structured to be adaptable and capable of being extended to a variety of types of requirements and acquisition scenarios, regardless of dollar value and acquisition complexity.

5. Objectives: Use of a common file organization and content approach, including standard checklists, offers certain advantages and benefits, including the following:

a. Assisting acquisition staff in ensuring that all file documentation required by the FAR, HHSAR, and other Federal directives to support the actions taken is completed and placed logically and consistently in an appropriate section of the file;

b. Facilitating review of acquisition files to ascertain compliance, such as in the pre-award review of contract actions by OPDIVs;

c. Ensuring the availability of necessary documentation when defending against protest actions; and

d. Serving as a learning tool for acquisition staff by establishing (i) a common, unified framework for an HHS contract file and its component parts; and (ii) minimum content requirements.

6. Interim Guidance: The instructions for contract file organization and use of the following standard checklists are specified in Attachment A:

- a. Negotiated Acquisition Checklist
- b. Architect-Engineer Acquisition Checklist
- c. Sealed Bid Acquisition Checklist
- d. Task Order Checklist
- e. GSA FSS Checklist

Each type of checklist includes either three or four folders depending on the specific acquisition method used.

Attachment B provides the interim HHSAR language at 304.803-70 regarding contract file organization and use of standard checklists. This interim acquisition guidance is also posted at: <http://www.hhs.gov/oamp/policies/>.

7. Additional Regulatory Changes: As a result of developing the checklists, some inconsistencies in the current HHSAR were noted, requiring additional changes, as explained below:

a. HHSAR 315.305(a)(3)(vi) states that the technical evaluation team Chair shall provide the Contracting Officer “a copy of each signed rating sheet” along with a technical evaluation report for proposals reviewed in response to a solicitation. In addition, the HHSAR states that the report and rating sheets must be maintained as a permanent record in the contract file. However, when peer review is required by statute (see HHSAR 315.305(a)(3)(ii)(F)(1)), rating sheets cannot be provided to the Contracting Officer. Accordingly, HHSAR 315.305(a)(3)(vi) is being revised to clarify that a copy of each signed rating sheet shall be provided to the Contracting Officer “except when peer review is required by statute.”

b. FAR 15.406-3 requires that a “cost/price negotiation memorandum” be prepared to document negotiations (the agreement). However, HHSAR 315.372 requires that a “negotiation memorandum” or “summary of negotiations” be prepared to support all actions leading to an award. Also, while the HHSAR indicates that certain cost/price elements must be addressed in that memorandum, not all of the factors cited in the FAR citation are specified. Accordingly, HHSAR 315.372 is being revised to clarify that preparation of a summary of negotiations/negotiation memorandum satisfies the FAR 15.406-3 requirement for a cost/price negotiation memorandum. In addition, HHSAR 315.372(j), “Cost breakdown and analysis,” is being revised to specify that the cost/price elements addressed must include those specified in FAR 15.406-3. These changes are reflected in Attachment B.

Attachments