

## Dept. of Health and Human Services

§ 95.605

(2) If the State wishes to request a reconsideration of the Operating Division's determination, it must submit the request in accordance with the Operating Division's procedures.

(b) If the issue affects the programs of more than one Operating Division, or Federal department or the State, the Director, DCA, after consulting with the Operating Divisions, shall determine the amount inappropriately claimed under each program. The Director, DCA will notify the State of this determination, of the dollar affect of the determination on the claims made under each program, and will inform the State of its opportunity for appeal of the determination under 45 CFR part 16. The State will subsequently be notified by the appropriate Operating Division as to the disposition of the funds in question.

[47 FR 17509, Apr. 23, 1982, as amended at 62 FR 38218, July 17, 1997]

### Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)

SOURCE: 51 FR 45326, Dec. 18, 1986, unless otherwise noted.

#### GENERAL

#### § 95.601 Scope and applicability.

This subpart prescribes part of the conditions under which the Department of Health and Human Services will approve the Federal Financial Participation (FFP) at the applicable rates for the costs of automated data processing incurred under an approved State plan for titles IV-B, IV-D, IV-E, XIX or XXI of the Social Security Act. The conditions of approval of this subpart add to the statutory and regulatory requirements for acquisition of Automated Data Processing (ADP) equipment and services under the specified titles of the Social Security Act.

[75 FR 66336, Oct. 28, 2010]

#### § 95.605 Definitions.

As used in this part, the term:

*Acceptance documents* means a record of satisfactory completion of an approved phase of work or contract, and

acceptance thereof by the State agency.

*Acquisition* means acquiring ADP equipment or services from commercial sources or from State or local government resources.

*Acquisition Checklist* means the standard Department checklist that States can submit to meet prior written approval requirements instead of submitting the actual Request for Proposal (RFP), contracts or contract amendments. The Acquisition Checklist allows States to self-certify that their acquisition documents, which include RFPs, contracts, contract amendments or similar documents, meet State and Federal procurement requirements, contain appropriate language about software ownership and licensing rights in compliance with § 95.617, and provide access to documentation in compliance with § 95.615.

*Advance Planning Document (APD)*, Initial advance automated data processing planning or Initial APD means a recorded plan of action to request funding approval for a project which will require the use of ADP service or equipment. The term APD refers to a Planning APD, or to a planning and/or development and implementation action document, i.e., Implementation APD, or to an Advance Planning Document Update. Requirements are detailed in § 95.610, paragraphs (a), (b), and (c).

*Advance Planning Document Update (APDU)* is a document or record submitted annually (Annual APDU) to report project status and/or post implementation cost-savings, or, on an as-needed (As-Needed APDU) basis, to request funding approval for project continuation when significant project changes are anticipated; for incremental funding authority and project continuation when approval is being granted by phase; or to provide detailed information on project and/or budget activities as specified in § 95.610(c).

*Alternative approach to APD requirements* means that the State has developed an APD that does not meet all conditions for APD approval in § 95.610, resulting in the need for a waiver under § 95.627(a).

*Automated data processing* or *ADP* means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

*Automated data processing equipment* or *ADP equipment* or *Hardware* means automatic equipment that accepts and stores data, performs calculations and other processing steps, and produces information. This includes:

- (a) Electronic digital computers;
- (b) Peripheral or auxiliary equipment used in support of electronic computers;
- (c) Data transmission or communications equipment, and
- (d) Data input equipment.

*Automatic Data Processing Services* or *ADP Services* means:

- (a) Services to operate ADP equipment, either by agency, or by State or local organizations other than the State agency; and/or
- (b) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming, system conversion and system implementation and include, for example, the following:

- (1) Systems Training,
- (2) Systems Development,
- (3) Site Preparation,
- (4) Data Entry, and

- (5) Personal services related to automated systems development and operations that are specifically identified as part of a *Planning ADP* or *Implementation ADP*. As an example, a personal service would be the service of an *expert individual* to provide advice on the use of ADP software or hardware in developing a State automated management information system.

*Base contract* means the initial contractual activity, including all option years, allowed during a defined unit of time, for example, 2 years. The base contract includes option years but does not include amendments.

*Commercial-off-the-shelf (COTS) software* means proprietary software products that are ready-made and available

for sale to the general public at established catalog or market prices.

*Data processing* means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules or procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording and transmitting.

*Department* means the Department of Health and Human Service.

*Design* or *system design* means a combination of narrative and diagrams describing the structure of a new or more efficient automatic data processing system. This includes the use of hardware to the extent necessary for the design phase.

*Development* means the definition of system requirements, detailing of system and program specifications, programming and testing. This includes the use of hardware to the extent necessary for the development phase.

*Emergency situation* is defined as a situation where:

- (a) A State can demonstrate to the Department an immediate need to acquire ADP equipment or services in order to continue the operation of one or more of the Social Security Act programs covered by Subpart F, and
- (b) The State can clearly document that the need could not have been anticipated or planned for and the State was prevented from following the prior approval requirements of § 95.611.

*Enhanced matching rate* means the higher than regular rate of FFP authorized by Title IV-D, IV-E, and XIX of the Social Security Act for acquisition of services and equipment that conform to specific requirements designed to improve administration of the Child Support Enforcement, Foster Care and Adoption Assistance, and Medicaid programs.

*Enhancement* means modifications which change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies which may have been present in the software or hardware, or to improve the operational performance of the software or hardware.

*Feasibility study* means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems can be made to warrant a substantial investment of staff, time, and money being requested and whether the plan is capable of being accomplished successfully.

*Federal program office* means the Federal program office within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services. The Federal program offices within the Administration for Children and Families (ACF) are the Children's Bureau for titles IV-B (child welfare services) and IV-E (foster care and adoption assistance), the Office of Child Support Enforcement for title IV-D (child support enforcement), and the Centers for Medicare & Medicaid Services (CMS) for titles XIX (Medicaid) and XXI (the Children's Health Insurance Program) of the Social Security Act.

*FFP* means Federal financial participation.

*Functional Requirements Specification* is defined as an initial definition of the proposed system, which documents the goals, objectives, user or programmatic requirements, management requirements, the operating environment, and the proposed design methodology, e.g., centralized or distributed. This document details what the new system and/or hardware should do, not how it is to do it. The Specifications document shall be based upon a clear and accurate description of the functional requirements for the project, and shall not, in competitive procurements, lead to requirements which unduly restrict competition. The Specification document is the user's definition of the requirements the system must meet.

*General Systems Design* means a combination of narrative and graphic description of the generic architecture of a system as opposed to the detailed architecture of the system. A general systems design would include a systems diagram and narrative identifying overall logic flow and systems functions; a description of equipment needed (including processing data transmission and storage requirements); a description of other resource require-

ments which will be necessary to operate the system; a description of system performance requirements; and a description of the physical and organizational environment in which the system will operate including how the system will function within that environment (e.g. how workers will interface with the system).

*Grantee* means an organization receiving financial assistance directly from an HHS awarding agency to carry out a project or program.

*Independent Verification and Validation—(IV&V)* means a well-defined standard process for examining the organizational, management, and technical aspects of a project to determine the effort's adherence to industry standards and best practices, to identify risks, and make recommendations for remediation, where appropriate.

*Implementation APD* means a recorded plan of action to request Federal Financial Participation (FFP) in the costs of designing, developing, and implementing the system.

*Independent Verification and Validation—(IV&V)* means a well-defined standard process for examining the organizational, management, and technical aspects of a project to determine the effort's adherence to industry standards and best practices, to identify risks, and make recommendations for remediation, where appropriate.

*Installation* means the integrated testing of programs and subsystems, system conversion, and turnover to operation status. This includes the use of hardware to the extent necessary for the installation phase.

*Medicaid Management Information System (MMIS)* is a commonly accepted term for *Mechanized Claim Processing and Information Retrieval System* as provided by Section 1903(a)(3) and 1903(r) of the Social Security Act and at 42 CFR 433.110 *et seq.*

*Noncompetitive* means solicitation of a proposal from only one source, or after solicitation of a number of sources, negotiation with selected sources based on a finding that competition is inadequate.

*Operational APD*—An operational APD is a record of no more than two pages to be submitted annually by State programs whose system is not in

development. The Operational APD provides a short summary of the activities, method of acquisition, and annual budget for operations and software maintenance.

*Operation* means the automated processing of data used in the administration of State plans for titles I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act. Operation includes the use of supplies, software, hardware, and personnel directly associated with the functioning of the mechanized system. See 45 CFR 205.38 and 307.10 for specific requirements for titles IV-A and IV-D, and 42 CFR 433.112 and 42 CFR 433.113 for specific requirements for title XIX.

*Project* means a defined set of information technology related tasks, undertaken by the State to improve the efficiency, economy and effectiveness of administration and/or operation of one or more of its human services programs. For example, a State may undertake a comprehensive, integrated initiative in support of its Child Support, Child Welfare and Medicaid program's intake, eligibility and case management functions. A project may also be a less comprehensive activity such as office automation, enhancements to an existing system or an upgrade of computer hardware.

*Regular matching rate* means the normal rate of FFP authorized by titles IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act for State and local agency administration of programs authorized by those titles.

*Requirements Analysis* means determining and documenting the information needs and the functional and technical requirements the proposed computerized system must meet.

*Service agreement* means the document signed by the State or local agency and the State or local Central Data Processing facility whenever the latter provides data processing services to the former and:

(a) Identifies those ADP services the Central Data Processing facility will provide;

(b) Includes, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a

certification that these charges apply equally to all users;

(c) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(d) Includes assurances that services provided will be timely and satisfactory; preferably through a service level agreement;

(e) Includes assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with provisions of all applicable federal statutes and regulations, including §§ 205.50 and 307.13;

(f) Requires the provider to obtain prior approval pursuant to § 95.611(a) from the Department for ADP equipment and ADP services that are acquired from commercial sources primarily to support the titles covered by this subpart and requires the provider to comply with § 95.613 for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the titles covered by this subpart when the human service programs may reasonably be expected to either: be billed for more than 50 percent of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of ADP equipment or services;

(g) Includes the beginning and ending dates of the period of time covered by the service agreement; and

(h) Includes a schedule of expected total charges to the title covered by this subpart for the period of the service agreement.

*Service Oriented Architecture (SOA)*, also referred to as *Service Component Based Architecture*, describes a means of organizing and developing Information Technology capabilities as collaborating services that interact with each other based on open standards. Agency SOA artifacts may include models, approach documents, inventories of services or other descriptive documents.

*Software* means a set of computer programs, procedures, and associated documentation used to operate the hardware.

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*Software maintenance* means routine support activities that normally include corrective, adaptive, and perfective changes, without introducing additional functional capabilities. Corrective changes are tasks to correct minor errors or deficiencies in software. Adaptive changes are minor revisions to existing software to meet changing requirements. Perfective changes are minor improvements to application software so it will perform in a more efficient, economical, and/or effective manner. Software maintenance can include activities such as revising/creating new reports, making limited data element/data base changes, and making minor alterations to data input and display screen designs.

*State agency* means the State agency administering or supervising the administration of the State plan under titles I, IV, X, XIV, XVI(AABD), XIX or XXI of the Social Security Act.

*System specifications* means information about the new ADP system—such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data—which is required to determine the ADP equipment and software necessary to implement the system design.

*System study* means the examination of existing information flow and operational procedures within an organization. The study essentially consists of three basic phases: Data gathering investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting of the parts and relationships uncovered through the analysis into an efficient system.

*Total Acquisition Cost* means all anticipated expenditures (including State staff costs) for planning and implementation for the project. For purposes of this regulation total acquisition cost and project cost are synonymous.

[51 FR 45326, Dec. 18, 1986, as amended at 55 FR 4375, Feb. 7, 1990, 59 FR 30708, June 15, 1994; 65 FR 33633, May 24, 2000; 75 FR 66336, Oct. 28, 2010]

### SPECIFIC CONDITIONS FOR FFP

#### § 95.610 Submission of advance planning documents.

Advance Planning Document (APD) refers to an Initial advance automated data processing planning document or Initial APD, providing a recorded plan of action to request funding approval for a project which will require the use of ADP services or equipment, including the use of shared or purchased services in lieu of State acquired stand-alone resources. Requirements are detailed in paragraph (a), (b) and (c) of this section.

(a) *Planning APD.* (1) A separate planning effort and Planning APD is optional, but highly recommended, and generally applies to large statewide system developments and/or major hardware acquisitions. States with large, independent counties requesting funding at the regular match rate for county systems are strongly encouraged to engage in planning activities commensurate with the complexity of the projected ADP project and to submit a Planning APD to allow for time and to provide funding for its planning activities. Therefore, States must consider the scope and complexity of a project to determine whether to submit a Planning APD as a separate document to HHS or whether to combine the two phases of planning and implementation into one APD covering both the Planning APD and the Implementation APD requirements.

(2) The Planning APD is a relatively brief document, usually not more than 6–10 pages, which must contain:

(i) A statement of the problem/need that the existing capabilities can not resolve, new or changed program requirements or opportunities for improved economies and efficiencies and effectiveness of program and administration and operations;

(ii) A project management plan that addresses the planning project organization, planning activities/deliverables, State and contractor resource needs, planning project procurement activities and schedule;

(iii) A specific budget for the planning phase of the project;

(iv) An estimated total project cost and a prospective State and Federal