**DEPARTMENT OF HEALTH & HUMAN SERVICES** Public Health Service

 National Institutes of Health [*Insert IC-specific Letterhead*]

**Determination to Enter into a Multi-year Contract**

1. **Office of Acquisitions and Contracting Officer**: Provide the name of the OA and the Contracting Officer assigned to the acquisition. State whether the Contracting Officer holds a FAC-C Level III Certification. If the Contracting Officer does not hold a FAC-C Level III Certification, describe the Contracting Officer’s prior experience with the multi-year contracting method. HHSAR 317.105-1(a)(2).

2. **Project Title**: Insert Project Title.

3. **Solicitation [or Contract] Number**: Insert Solicitation or Contract Number.

4. **Description of Project**: Include a brief description of the project.

1. **Number of Awards**: Include the anticipated (or actual) number of awards.
2. **Period of Performance**: Identify the anticipated (or actual) period of performance. Note: The performance period of a multi-year contract shall not exceed 5 years unless otherwise authorized by statute. FAR 17.103 and 17.104(a). Also see 41 U.S.C. 254c(d). Options shall not be used to extend the performance of non-severable services beyond 5 years. However, options may serve as a means to acquire related **severable services** beyond the 5-year limitation noted above and, upon being exercised, shall be funded from the then-current fiscal year's appropriation. HHSAR 317.107.
3. **Continuing Need for Supplies or Services and Related Technical Risks**: State whether program requirements are reasonably stable (i.e., the need for the supplies or services is reasonably firm and continuing over the period of the contract) and whether there are any technical risks that are so excessive as to jeopardize contract completion or result in its cancellation. FAR 17.105-1(a)(1) and HHSAR 317.105-1(a)(5).
4. **Reason Why a Multi-year Contract Serves the Best Interests of the United States**: State why a multi-year contract will serve the best interests of the United States. FAR 17.105-1(a)(2). Examples are provided below but should be tailored to each acquisition.
5. Reducing the administrative burden associated with the placement and administration of a series of annual contracts;
6. Providing substantial continuity of performance, thus avoiding annual start up and phase-out costs;
7. Ensuring stabilization of contractor workforce;
8. Avoiding the need for establishing quality control techniques and procedures for a new contractor each year;
[Note: The following examples may not be appropriate for acquisitions where the cancellation ceiling is estimated to be $0.00.]
9. Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete because of high startup costs; and,
10. Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.
11. **Amount of, and Basis for, Cancellation Ceiling**: State the amount of, and basis for, the estimated (or actual) cancellation ceiling. HHSAR 317.105-1(a)(1). Also see FAR 17.106-1(c). In determining cancellation ceilings, the Contracting Officer must estimate reasonable *nonrecurring costs* to be incurred by an “average” prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the products or services to be furnished under the multi-year contract. This information may be obtained by reviewing past contracts, conducting market research and issuing a Request for Information from vendors in the relevant industry sector. *Nonrecurring costs* are those costs which are generally incurred on a one-time basis and include such costs as preproduction or startup, plant or equipment relocation, special tooling and special test equipment, preproduction engineering, and specialized workforce training. Cancellation ceilings shall not include costs for labor or materials, or other expenses (except as indicated above), which would normally be incurred in the performance of the contract. In most cases, when procuring professional services such as R&D and R&D support services, the nonrecurring costs (i.e., cancellation ceilings) will be $0.00.
12. **Availability of Appropriations**: State whether appropriations are available to fund the first year of performance plus the estimated amount of the full cancellation ceiling. HHSAR 317.105-1(a)(3). Also see 41 U.S.C. 254c(a)(1).
13. **Contract Funding**: State whether there is reasonable expectation that throughout the contract period of performance, the IC, through its annual budget request, will seek funding for the contract at a level necessary to avoid cancellation. HHSAR 317.105-1(a)(4).

Pursuant to FAR 17.105-1(a) and HHSAR 317-105-1(a), approval is requested to enter into [a] multi-year contract[s] for the project referenced above.

[*Insert Name*] Date

Contracting Officer, [*Insert Org. Name*]

CONCUR:

[*Insert Name*] Date

Director, Office of Acquisitions, [*Insert Org. Name*]

APPROVED:

                  Diane J. Frasier Date

Head of the Contracting Activity, and

Director, Office of Acquisition
and Logistics Management, OM, NIH

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Notes:

1. FAR and HHSAR do not specify when a determination to enter into a multi-year contract should be submitted for approval. Therefore, OAMP recommends that determinations be submitted for approval prior to issuance of the solicitation, except for Broad Agency Announcements (see note 3 below), which shall be submitted prior to award. When submitting determinations prior to award, allow a minimum of 10 calendar days for approval and 45 calendar days or longer for acquisitions requiring congressional notification. FAR 17.108 states that a multi-year contract which includes a cancellation ceiling in excess of $11.5 million may not be awarded until the thirty-first day after the date of congressional notification.
2. Senior Procurement Executive approval is required for (1) any individual multi-year contract where the cancellation ceiling obligated in the first year exceeds 20% of the total contract value or $11.5 million, whichever is less [HHSAR 317.105-1(a)], or (2) any class determination (see FAR Subpart 1.7). Determinations involving a cancellation ceiling in excess of the limits specified in HHSAR 317.105-1(a) shall include (1) compelling rationale why this approach is in the best interests of the United States, and (2) for cancellation ceilings exceeding $11.5 million, a draft congressional notification letter pursuant to FAR 17.108 and HHSAR 317.108. All determinations requiring SPE approval must be submitted through the HCA for concurrence. HHSAR 317.105-1(b).
3. In accordance with HHS guidance, a single solicitation or Broad Agency Announcement resulting in multiple awards is not considered a “class of contract actions,” as defined in FAR 1.703. Therefore, with the exception of BAAs, one determination covering multiple awards resulting from a single solicitation may be submitted to the HCA for approval, unless the individual cancellation ceilings exceed the thresholds specified in HHSAR 317.105-1(a). Determinations for BAAs, which do not exceed the thresholds in HHSAR 317.105-1(a), shall be submitted to the HCA for approval prior to award as individual determinations since multiple awards resulting from a BAA are likely to vary in focus, funding, periods of performance, and potentially, contract type or method. Note: IDIQ contracts are not considered multi-year contracts and therefore are not governed by 41 U.S.C. 254c and the implementing regulations in FAR Subpart 17.1. GAO Decision B-302358, December 27, 2004.
4. If the final agreed-to cancellation ceiling exceeds the level of approval obtained for the initial determination, a memorandum explaining the circumstances surrounding the increase in the ceiling shall be submitted through the HCA to the SPE. Approval of the memorandum by the SPE is required before award of the contract.