Contract Actions Requiring HHS Appropriations Law Compliance Review

**(**[APM 2011-04](http://www.hhs.gov/asfr/ogapa/acquisition/apm2011-04_100611.html)**, effective October 6, 2011, as** [amended](http://www.hhs.gov/asfr/ogapa/acquisition/policies/apm2011-04-supplement1.html) **August 20, 2012)**

Contracts Actions Covered by APM 2011-04, as amended

Contract actions requiring HHS Appropriations Law Compliance Review include those actions meeting the review criteria below and falling under one of the following three Product and Service Code (PSC) categories: (1) research and development, which is defined as any PSC beginning with the letter “A”; (2) studies, which are defined as any PSC beginning with the letter “B”; and (3) data collection, which is defined as PSC R702.

Review Criteria

* Solicitations that are expected to result in awards greater than or equal to (≥) $10M and having a performance period greater than one year.
* Includes option contracts where the anticipated total cost (base plus options) is ≥ $10M.
* Includes indefinite-delivery contracts where the maximum amount is ≥ $10M.
* Contract modifications, excluding option exercises, that—
* Add work and are ≥ $10M.
* Add funds and are ≥ $10M.
* Extend the period of performance and are ≥ $10M.
* Cause the total contract amount to be ≥ $10M.
* Contract modifications (regardless of dollar value and product service code but excluding administrative modifications) to any contract identified in the HHS Fiscal Year 2010 Financial Statement Audit as having an Anti-Deficiency Act violation (list of contracts attached).
* Task/Delivery orders that are expected to result in awards greater than or equal to (≥) $10M and having a performance period greater than one year.
* Broad Agency Announcements that are expected to result in awards greater than or equal to (≥) $10M and having a performance period greater than one year. **Note: The file shall be submitted for review prior to award of the contract.**

Scope of the Reviews

Appropriations Law Compliance Reviews are limited to compliance with Federal appropriations laws and regulations and related HHS policy. They are not a substitute for the NIH Board of Contract Award Reviews required by NIH Policy Manual 6304.71, Presolicitation and Preaward Review and Approval of Proposed Contract Actions.

Documentation Required for Reviews

* Solicitations
* [HHS OGAPA/OGC Review Request Form](http://www.hhs.gov/asfr/ogapa/acquisition/policies/files/apm2011-04-ogapa-ogc-review-request.pdf), including a brief narrative describing the nature of the services to be acquired, the contract structure, and the manner in which the contract will be funded.
* Copy of the final “draft” solicitation, including all attachments (web-linked or actual attachments).
* Copy of the signed Acquisition Plan, including all attachments.
* If using multi-year contracting procedures (FAR 17.1/HHSAR 317.1), include a copy of the written determination required by FAR 17.105-1(a) and HHSAR 317.105-1(a) and (b).
* If applicable, copy of the Inter/Intra-Agency Agreement.
* Contract Modifications
* [HHS OGAPA/OGC Review Request Form](http://www.hhs.gov/asfr/ogapa/acquisition/policies/files/apm2011-04-ogapa-ogc-review-request.pdf), including a brief narrative describing the nature of the services to be acquired, the contract structure, and the manner in which the contract will be funded.
* List of all signed modifications with a brief description for each (i.e., purpose of the modification).
* Copy of the signed contract and all signed modifications, excluding administrative modifications (see FAR Subpart 43.1).
* Copy of the draft modification.
* Copy of the acquisition request document [see HHSAR 307.7101(c)] and funding requisition.
* If using multi-year contracting procedures (FAR 17.1/HHSAR 317.1), include a copy of the written determination required by FAR 17.105-1(a) and HHSAR 317.105-1(a) and (b).
* If applicable, copy of the Inter/Intra-Agency Agreement.
* Task/Delivery Orders
* [HHS OGAPA/OGC Review Request Form](http://www.hhs.gov/asfr/ogapa/acquisition/policies/files/apm2011-04-ogapa-ogc-review-request.pdf), including a brief narrative describing the nature of the services to be acquired, the contract structure, and the manner in which the contract (order) will be funded.
* Copy of the signed base contract and any signed modifications affecting the minimum/maximum quantities, term of the contract, or ordering provisions, if the base contract was awarded by NIH.
* Copy of the draft task/delivery order.
* Copy of the acquisition request document [see HHSAR 307.7101(c)] and funding requisition.
* If using multi-year contracting procedures (FAR 17.1/HHSAR 317.1), include a copy of the written determination required by FAR 17.105-1(a) and HHSAR 317.105-1(a) and (b).
* If applicable, copy of the Inter/Intra-Agency Agreement.
* Broad Agency Announcements

- [HHS OGAPA/OGC Review Request Form](http://intranet.hhs.gov/abouthhs/contracts-grants-support/acquisition-policies-guidance/apm2011-04-ogapa-ogc-review-request.pdf), including a brief narrative describing the nature of the services to be acquired, the contract structure, and the manner in which the contract will be funded.

- Copy of the solicitation, including all attachments (web-linked or actual attachments).

* Copy of the signed Acquisition Plan, including all attachments.
* Copy of the proposed contract, including all attachments (web-linked or actual attachments).
* If using multi-year contracting procedures (FAR 17.1/HHSAR 317.1), include a copy of the written determination required by FAR 17.105-1(a) and HHSAR 317.105-1(a) and (b).
* If applicable, copy of the Inter/Intra-Agency Agreement.

Waivers

Waivers can be requested only for modifications and shall be submitted using the [Appropriations Law Compliance Review Waiver Request Form](http://www.hhs.gov/asfr/ogapa/acquisition/policies/files/attach2-compliance-review-waiver-request.pdf). Waiver requests must be strongly justified and based on substantial reasons of “timing” (e.g., the proposed modification modifies the same contract as an identical modification that received OGAPA’s concurrence within the last six months) and/or “identical or similar nature” (e.g., the concurrent modification of identical multiple award contracts).  In addition to the [Appropriations Law Compliance Review Waiver Request Form](http://www.hhs.gov/asfr/ogapa/acquisition/policies/files/attach2-compliance-review-waiver-request.pdf), the following documentation must be submitted with waiver requests:

* Waiver for Timing Exception – submit the same documentation required for HHS Appropriations Law Compliance Review of modifications (see above) and a copy of OGAPA’s/OGC’s review of the identical modification of the same contract.
* Waiver for Identical or Similar Nature Exception: submit the same documentation required for HHS Appropriations Law Compliance Review of modifications (see above) for at least one of the proposed modifications and a list of the other identical/similar modifications, including contract/modification number, period of performance, contract amount, amount and fiscal year of funding to be obligated, contract type, and severability.

File Submission Requirements and Procedures

Files submitted for HHS Appropriations Law Compliance Review shall be submitted in electronic format (preferably PDF), by email, to the Director, Division of Acquisition Policy and Evaluation (DAPE**). Each document, with the exception of “signed modifications,” shall be submitted as a separate electronic file.** Attachments to documents shall be included in the same electronic file as the parent document.

DAPE will typically provide comments to the Contracting Officer within five business days of receipt of a proper file (see Documentation Required for Reviews). The Contracting Officer shall provide DAPE with a response to any issues identified in the review and, if applicable, electronic copies of the revised files (same requirements as above) for transmission to OGC for HHS Appropriations Law Compliance Review. HHS/OGC will review the files and typically provide feedback within ten business days. This feedback may take the form of mandatory corrective actions, discretionary changes/advice, or both.