

## SUBCHAPTER A—GENERAL

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 responsibilities.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4220, Jan. 17, 2001, unless  
 otherwise noted.

#### Subpart 301.1—Purpose, Authority, Issuance

##### 301.101 Purpose.

(a) The Department of Health and Human Services Acquisition Regulation (HHSAR) is issued to establish uniform acquisition policies and procedures for the Department of Health and Human Services (HHS) which conform to the Federal Acquisition Regulation (FAR) System.

(b) The HHSAR implements and supplements the FAR. (Implementing material expands upon or indicates the manner of compliance with related FAR material. Supplementing material

is new material which has no counter-  
 part in the FAR.)

(c) The HHSAR contains all formal departmental policies and procedures that govern the acquisition process or otherwise control contracting relationships between the Department's contracting offices and contractors.

##### 301.103 Authority.

(b) The HHSAR is prescribed by the Assistant Secretary for Management and Budget under the authority of 5 U.S.C. 301 and section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary.

(c) The HHSAR is issued in the Code of Federal Regulations (CFR) as Chapter 3 of Title 48, Department of Health and Human Services Acquisition Regulation. It may be referenced as "48 CFR Chapter 3."

##### 301.106 OMB approval under the Pa- perwork Reduction Act.

(a) The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this chapter:

HHSAR segment	OMB control No.
315.4 .....	0990-0139
324.70 .....	0990-0136
342.7101 .....	0990-0131
352.224-70 .....	0990-0137
352.224-70 .....	0990-0136
352.233-70 .....	0990-0133
352.270-1 .....	0990-0129
352.270-2 .....	0990-0129
352.270-3 .....	0990-0129
352.270-5 .....	0990-0130
352.270-8 .....	0990-0128
352.270-9 .....	0990-0128
370.1 .....	0990-0129
370.2 .....	0990-0129

(b) The OMB control number "OMB No. 0990-0115" is to be included in the upper right corner of the first page of all solicitations, purchase orders, and contracts issued by departmental contracting activities. The number represents approval of the HHS acquisition process and covers recordkeeping and reporting requirements which are unique to individual acquisitions (*e.g.*,

**301.270**

requirements contained in specifications, statements of work, etc.).

**Subpart 301.2—Administration**

**301.270 Executive Committee for Acquisition.**

(a) The Deputy Assistant Secretary for Grants and Acquisition Management has established the Executive Committee for Acquisition (ECA) to assist and facilitate the planning and development of departmental acquisition policies and procedures and to assist in responding to other agencies and organizations concerning policies and procedures impacting the Federal acquisition process.

(b) The ECA consists of members and alternates from the Office of Acquisition Management, Administration for Children and Families, Agency for Healthcare Research and Quality, Health Care Financing Administration, Program Support Center, Centers for Disease Control and Prevention, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, and Substance Abuse and Mental Health Services Administration. The ECA is chaired by the Director, Office of Acquisition Management. All meetings will be held at the call of the Chair, and all activities will be carried out under the direction of the Chair.

(c) The ECA, to facilitate the planning, development, and coordination of governmentwide and departmentwide acquisition policies and procedures, is to:

- (1) Advise and assist the Chair concerning major acquisition policy matters;
- (2) Review and appraise, at appropriate intervals, the overall effectiveness of existing policies and procedures; and
- (3) Review and appraise the impact of new major acquisition policies, procedures, regulations, and development on current acquisition policies and procedures.

(d) The Chair will periodically issue a list of current members and alternates specifying the name, title, organization, address, and telephone number of each. The member organizations are re-

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sponsible for apprising the Chair whenever a new member or alternate is to be appointed to the ECA, or an organizational change retitles the individual or organization.

**Subpart 301.4—Deviations From the FAR**

**301.403 Individual deviations.**

Requests for individual deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Director, Office of Acquisition Management for review and approval.

**301.404 Class deviations.**

Requests for class deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Deputy Assistant Secretary for Grants and Acquisition Management for review and approval.

**301.470 Procedure.**

(a) When a contracting office determines that a deviation is needed, it shall prepare a deviation request in memorandum form and forward it through administrative channels to the official designated in 301.403 or 301.404. In an exigency situation, the contracting office may request a deviation verbally, through normal acquisition channels, but is required to confirm the request in writing as soon as possible.

(b) A deviation request shall clearly and precisely set forth the:

- (1) Nature of the needed deviation;
- (2) Identification of the FAR or HHSAR citation from which the deviation is needed;
- (3) Circumstances under which the deviation would be used;
- (4) Intended effect of the deviation;
- (5) Period or applicability;
- (6) Reasons which will contribute to complete understanding and support of the requested deviation. A copy of pertinent background papers such as a contractor's request should accompany the deviation request.; and
- (7) Suggested wording for the deviation (if applicable).

**Subpart 301.6—Career Development, Contracting Authority, and Responsibilities**

**301.602 Contracting officers.**

**301.602-3 Ratification of unauthorized commitments.**

(b) *Policy.* (1) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. However, execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. The ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by the head of the contracting activity (HCA).

(2) The HCA is the official authorized to ratify an unauthorized commitment (but see paragraph (b)(3) of this section).

(3) Ratification authority for actions up to \$25,000 may be redelegated by the HCA to the chief of the contracting office (CCO). No other redelegations are authorized.

(c) *Limitations.* (5) The concurrence of legal counsel concerning the payment issue is optional.

(e) *Procedures.* (1) The individual who made the unauthorized contractual commitment shall furnish the reviewing contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to: a statement as to why the contracting office was not used, a statement as to why the proposed contractor was selected, a list of other sources considered, a description of work to be performed or products to be furnished, the estimated or agreed contract price, a citation of the appropriation available, and a statement whether the contractor has commenced performance.

(2) The contracting officer will review the submitted material, and prepare the ratification document if he/she determines that the commitment may be ratifiable. The contracting officer

shall forward the ratification document and the submitted material to the HCA or CCO with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the HCA or CCO will coordinate the request for ratification with the Office of General Counsel, Business and Administrative Law Division.

(3) If ratification is authorized by the HCA or CCO, the file will be returned, along with the ratification document, to the contracting officer for issuance of a purchase order or contract, as appropriate.

**301.603 Selection, appointment, and termination of appointment.**

**301.603-1 General.**

(a) The appointment and termination of appointment of contracting officers shall be made by the head of the contracting activity (HCA). This authority is not delegable.

(b) The contracting officer appointment document for personnel in the GS-1101, 1102, and 1105 series, as well as personnel in any other series who will obligate the Government to the expenditure of funds in excess of the micro-purchase threshold, shall be the Standard Form (SF)—1402, Certificate of Appointment. The HCA may determine an alternative appointment document for appointments at or below that threshold. Changes to appointments shall be made by issuing a new appointment document. Each appointment document shall be prepared and maintained in accordance with FAR 1.603-1 and shall state the limits of the individual's authority.

(c) An individual must be certified at the appropriate level under the HHS Acquisition Certification Program as a prerequisite to being appointed as a contracting officer with authority to obligate funds in excess of the micro-purchase threshold (see 301.603-3(a)). The HCA will determine and require appropriate training for individuals appointed as contracting officers at lower dollar levels. An individual shall be appointed as a contracting officer only in instances where a valid organizational need can be demonstrated. Factors to be considered in assessing the need for

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an appointment of a contracting officer include volume of actions, complexity of work, and structure of the organization.

#### 301.603-2 Selection.

Nominations for appointment of contracting officers shall be submitted to the HCA through appropriate organizational channels for review. The nomination package, which is usually initiated by the prospective contracting officer's immediate supervisor, shall normally include the nominee's current personal qualifications statement or job history, including the information required by FAR 1.603-2, a copy of his/her most recent performance appraisal, and a copy of the certificate issued under the HHS Acquisition Certification Program indicating the nominee's current certification level, if applicable. The HCA will determine the documentation required, consistent with FAR 1.603-2, when the resulting appointment and authority will not exceed the micro-purchase threshold.

#### 301.603-3 Appointment.

(a) Contracting officer appointments shall be made at levels commensurate with nominees' certification levels as follows:

(1) Level I—Purchasing Agent—Required for all personnel in the GS-1102 and 1105 series having signature authority for simplified acquisitions, including orders from GSA sources over the micro-purchase threshold.

(2) Level II—Acquisition Official—Required for all personnel in the GS-1102 series. Sufficient for delegation of contracting officer authority up to \$500,000.

(3) Level III—Senior Acquisition Official—Required for all personnel in the GS-1102 series for delegation of contracting officer authority above \$500,000.

(4) Level IV—Acquisition Manager—Required for delegation of pre-award review and approval authority as specified in subpart 304.71.

(b) If it is essential to appoint an individual who does not fully meet the certification requirements of this section for the contracting officer authority sought, an interim appointment may be granted by the HCA. Interim

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appointments may not exceed one (1) year in total, and shall not be granted unless the individual can meet the certification requirements within one year from the date of appointment. If the certification requirements are not met by that date, the appointment will automatically terminate and cannot be renewed.

#### 301.603-4 Termination.

Termination of contracting officer appointments shall be accomplished in accordance with FAR 1.603-4.

#### 301.603-70 Delegation of contracting officer responsibilities.

(a) Contracting officer responsibilities which do not involve the obligation (or deobligation) of funds or result in establishing or modifying contractual provisions may be delegated by the contracting officer by means of a written memorandum which clearly delineates the delegation and its limits.

(b) Contracting officers may designate individuals as ordering officials to make purchases or place orders under blanket purchase agreements, indefinite delivery contracts, or other pre-established mechanisms. Ordering officials, including those under NIH's DELPRO, are not contracting officers.

(c) Project officers are required to complete the training specified in 307.170, while ordering officials and others should receive sufficient instruction from the contracting officer to ensure the appropriate exercise of the responsibilities and knowledge of their limitations.

## PART 302—DEFINITIONS OF WORDS AND TERMS

### Subpart 302.1—Definitions

Sec.  
302.101 Definitions.

### Subpart 302.2—Definitions Clause

302.201 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4222, Jan. 17, 2001, unless otherwise noted.

**Subpart 302.1—Definitions****302.101 Definitions.**

*Chief of the contracting office (CCO)* is a mid-level management official in charge of a contracting office who controls and oversees the daily contracting operation of an Operating Division (OPDIV) or major component of an OPDIV. The CCO is subordinate to the head of the contracting activity, and is located at a management level above other contracting personnel, usually as a branch chief or division director.

*Head of the agency or agency head*, unless otherwise specified, means the head of the Operating Division (OPDIV) for ACF, AHRQ, HCFA, PSC, CDCP, FDA, HRSA, IHS, NIH, and SAMHSA, or the Assistant Secretary for Management and Budget (ASMB) for the Office of the Secretary (OS).

*Head of the contracting activity (HCA)* is defined in terms of certain organizational positions within the Office of Grants and Acquisition Management (OGAM), Administration for Children and Families (ACF), Agency for Healthcare Research and Quality (AHRQ), Health Care Financing Administration (HCFA), Program Support Center (PSC), Centers for Disease Control and Prevention (CDCP), Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), Indian Health Service (IHS), National Institutes of Health (NIH), and Substance Abuse and Mental Health Services Administration (SAMHSA), as follows:

*OGAM-OS*—Director, Office of Acquisition Management

*ACF*—Director, Division of Acquisition Management

*AHRQ*—Director, Division of Contracts Management

*HCFA*—Director, Acquisition and Grants Group

*PSC*—Director, Division of Acquisition Management

*CDCP*—Director, Procurement and Grants Office

*FDA*—Director, Policy, Evaluation and Support Staff, Office of Facilities, Acquisition, and Central Services

*HRSA*—Director, Division of Grants and Procurement Management

*IHS*—Director, Division of Acquisitions and Grants Management

*NIH*—Director, Office of Acquisition Management and Policy

*SAMHSA*—Director, Division of Contracts Management

In addition, the Deputy Assistant Secretary for Grants and Acquisition Management (DASGAM) is designated as an HCA. Each HCA is responsible for conducting an effective and efficient acquisition program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted and evaluated by qualified personnel, preferably assigned to positions other than in the contracting office being reviewed, to determine the extent of adherence to prescribed policies and regulations, and to detect a need for guidance and/or training. The HCA shall be certified, or be certifiable, at Level IV of the HHS Acquisition Certification Program. Individuals appointed as HCA's who do not meet the Level IV requirements shall have one year from the date of appointment to obtain Level IV certification. The heads of contracting activities may redelegate their HCA authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the Federal Acquisition Regulation, by the HHS Acquisition Regulation, or by other regulations. However, HCA and other contracting approvals and authorities shall not be redelegated below the levels specified in the HHS Acquisition Regulation or, in the absence of coverage in the HHS Acquisition Regulation, the Federal Acquisition Regulation. To ensure proper control of redelegated acquisition authorities, HCA's shall maintain a file containing successive delegations of HCA authority through and including the contracting officer level. Personnel delegated responsibility for acquisition functions must possess a level of experience, training, and ability commensurate with the complexity and magnitude of the acquisition actions involved.

**Subpart 302.2—Definitions Clause****302.201 Contract clause.**

The FAR clause, Definitions, at 52.202-1 shall be used as prescribed in FAR 2.201, except as follows:

(a) Paragraph (a) at 352.202-1 shall be used in place of paragraph (a) of the FAR clause.

(b) Paragraph (h), or its alternate, at 352.202-1 shall be added to the end of the FAR clause. Use paragraph (h) when a fixed-priced contract is anticipated; use the alternate to paragraph (h) when a cost-reimbursement contract is anticipated. This is an authorized deviation.

**PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST****Subpart 303.1—Safeguards**

Sec.

303.101 Standards of conduct.

303.101-3 Agency regulations.

**Subpart 303.2—Contract Gratuities to Government Personnel**

303.203 Reporting suspected violations of the Gratuities clause.

**Subpart 303.3—Reports of Suspected Antitrust Violations**

303.303 Reporting suspected antitrust violations.

**Subpart 303.4—Contingent Fees**

303.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

**Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

303.602 Exceptions.

**Subpart 303.7—Voiding and Rescinding Contracts**

303.704 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4223, Jan. 17, 2001, unless otherwise noted.

**Subpart 303.1—Safeguards****303.101 Standards of conduct.****303.101-3 Agency regulations.**

The Department of Health and Human Services' Standards of Conduct are prescribed in 45 CFR part 73.

**Subpart 303.2—Contractor Gratuities to Government Personnel****303.203 Reporting suspected violations of the Gratuities clause.**

Departmental personnel shall report suspected violations of the Gratuities clause in accordance with subpart M, Reporting Violations, of 45 CFR part 73. Refer to subpart B, Gifts from Outside Sources, (5 CFR 2635.201) for an explanation regarding what is prohibited and what is permitted.

**Subpart 303.3—Reports of Suspected Antitrust Violations****303.303 Reporting suspected antitrust violations.**

A copy of each report of suspected antitrust violations submitted to the Attorney General by the HCA shall also be submitted to the Director, Office of Acquisition Management.

**Subpart 303.4—Contingent Fees****303.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(c) Reports shall be made promptly to the contracting officer.

(d)(4) Suspected fraudulent or criminal matters to be reported to the Department of Justice shall be prepared in letter format and forwarded through acquisition channels to the head of the contracting activity for signature. The letter must contain all pertinent facts and background information considered by the contracting officer and chief of the contracting office that led to the decision that fraudulent or criminal matters may be present. A copy of the signed letter shall be sent to the Director, Office of Acquisition Management.

## Health and Human Services

### Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

#### 303.602 Exceptions.

Approval of an exception to the policy stated in FAR 3.601 shall be made by the HCA (not delegable).

### Subpart 303.7—Voiding and Rescinding Contracts

#### 303.704 Policy.

For purposes of implementing FAR subpart 3.7, the authorities granted to the “agency head or designee” shall be exercised by the HCA (not delegable).

## PART 304—ADMINISTRATIVE MATTERS

### Subpart 304.6—Contract Reporting

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304.602 Federal Procurement Data System (FPDS).

### Subpart 304.8—Government Contract Files

304.804-70 Contract closeout audits.

#### Subpart 304.70—Acquisition Instrument Identification Numbering System

304.7000 Scope of subpart.

304.7001 Numbering acquisitions.

#### Subpart 304.71—Review and Approval of Proposed Contract Awards

304.7100 Policy.

304.7101 Procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4224, Jan. 17, 2001, unless otherwise noted.

### Subpart 304.6—Contracting Reporting

#### 304.602 Federal Procurement Data System (FPDS).

The Departmental Contracts Information System (DCIS) represents the Department’s implementation of the FPDS. All departmental contracting activities are required to participate in the DCIS and follow the procedures stated in the Enhanced Departmental Contracts Information System Manual

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and amendments to it. The HCA (not delegable) shall ensure that all required contract information is collected, submitted, and received into the DCIS on or before the 15th of each month for all appropriate contract and contract modifications award of the prior month.

### Subpart 304.8—Government Contract Files

#### 304.804-70 Contract closeout audits.

(a) Contracting officers shall rely, to the maximum extent possible, on non-Federal single audits to close physically completed cost-reimbursement contracts with colleges and universities, hospitals, non-profit firms, and State and local governments. In addition, where appropriate, a sample of these contractors may be selected for audit, in accordance with the decision-making process set forth in the following paragraph (b).

(b) Contracting officers shall request contract closeout audits on physically completed, cost-reimbursement, for-profit contracts in accordance with the following:

(1) Decisions on: The need for and allocation of contract audit resources and services; the selection of contracts or contractors to be audited; the identification of the audit agency to perform the audit; and the type or scope of closeout audit to be conducted, shall be made by the Office of Inspector General (OIG) and Office of Grants and Acquisition Management, in consultation with the Department’s Contract Audit Users Work Group. These decisions shall be based upon the needs of the customer, risk analysis, return on investment, and the availability of audit resources. When an audit is warranted prior to closing a contract, the contracting officer shall submit the audit request to the OIG’s Office of Audit via the appropriate OPDIV representative on the Contract Audit Users Work Group.

(2) Except where a contracting officer suspects misrepresentation or fraud, contract closeout field audits shall not be requested if the cost of performance is likely to exceed the potential cost recovery. Contracts that are not selected for a field audit may be closed

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on the basis of a desk review, subject to any later on-site audit findings. The release executed by the contractor shall contain the following statement:

The Contractor agrees, pursuant to the clause in this contract entitled "Allowable Cost" or "Allowable Cost and Fixed Fee" (as appropriate), that the amount of any sustained audit exceptions resulting from any audit made after final payment shall be refunded to the Government."

### Subpart 304.70—Acquisition Instrument Identification Numbering System

#### 304.7000 Scope of subpart.

This subpart prescribes policy and procedures for assigning identifying numbers to contracts and related instruments, including solicitation documents, purchase orders, and delivery orders. The HCA (not delegable) is responsible for establishing the numbering system within the OPDIV.

#### 304.7001 Numbering acquisitions.

(a) *Acquisitions which require numbering.* The following acquisitions shall be numbered in accordance with the system prescribed in paragraphs (b) and (c) of this section:

(1) Contracts, including letter contracts and task orders under basic ordering agreements, which involve the payment of \$2,500 or more for the acquisition of personal property or non-personal services. (The number assigned to a letter contract shall be assigned to the superseding definitized contract).

(2) Contracts which involve the payment of \$2,000 or more for construction (including renovation or alteration).

(3) Contracts which involve more than one payment regardless of amount.

(4) Requests for proposals and invitations for bids.

(5) Requests for quotations.

(6) Basic ordering agreements.

(b) *Numbering system for contracts.* All contracts which require numbering (paragraphs (a)(1) through (3) of this section) shall be assigned a number consisting of the following:

(1) The three digit identification code assigned to the contracting office by

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the Office of Grants and Acquisition Management (OGAM).

(2) A two digit fiscal year designation; and

(3) A four digit serial number. For example, the initial contract executed by the Office of Acquisition Management, OS, for fiscal year 1996 would be numbered 100-96-0001. While it is required that a different series of four digit serial numbers be used for each fiscal year, serial numbers assigned need not be sequential.

(c) *Numbering system for other acquisitions.* The HCA is responsible for developing a numbering system for the acquisitions other than contracts listed in paragraphs, (a)(4) through (a)(6) of this section, and any other types of acquisitions that may be used.

(d) *Assignment of identification codes.* Each contracting office of the Department shall be assigned a three digit identification code by the OGAM. Requests for the assignment of codes for newly established contracting offices shall be submitted by the headquarters acquisition staff office of the contracting activity to the OGAM. A listing of the contracting office identification codes currently in use is contained in the Enhanced Departmental Contracts Information System Manual.

### Subpart 304.71—Review and Approval of Proposed Contract Awards

#### 304.7100 Policy.

This subpart requires each HCA (not delegable) to establish review and approval procedures for proposed contracts actions to ensure that:

(a) Contract awards are in conformance with law, established policies and procedures, and sound business practices;

(b) Contractual documents properly reflect the mutual understanding of the parties; and

(c) The contracting officer is informed of deficiencies and items of questionable acceptability, and corrective action is taken.

**Health and Human Services**

**304.7101**

**304.7101 Procedures.**

(a) All contractual documents, regardless of dollar value, are to be reviewed by the contracting officer prior to award.

(b) The HCA is responsible for establishing review and approval procedures and designating acquisition officials to serve as reviewers. Each HCA is responsible for determining the criterion (criteria) to be used in determining which contracts are to be reviewed, and that a sampling of proposed contracts not

included in the "to be reviewed" group are reviewed and approved.

(c) Officials assigned responsibility for review and approval of contract actions must possess qualifications in the field of acquisition commensurate with the level of review performed, and, at a minimum, possess those acquisition skills expected of a contracting officer. However, if any official is to serve as the contracting officer and sign the contractual document, the review and approval function shall be performed by an appropriate official at least one level above.