

## SUBCHAPTER A—GENERAL

### PART 301—HHS ACQUISITION REGULATION SYSTEM

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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 counterpart 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 Paperwork 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.,

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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.