

### 301.603-2

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 AHRQ, CMS, PSC, CDCP, FDA, HRSA, IHS, NIH, and SAMHSA, or the Assistant Secretary for Administration and Management (ASAM) 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), Agency for Healthcare Research and Quality (AHRQ), Centers for Medicare & Medicaid Services (CMS), 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  
*CMS*—Director, Acquisition and Grants Group  
*PSC*—Director, Division of Acquisition Management  
*CDCP*—Director, Procurement and Grants Office  
*FDA*—Director, Office of Acquisitions & Grant 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 Director, Office of Acquisition Management and Policy (Director, OAMP) 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.

[66 FR 4222, Jan. 17, 2001, as amended at 70 FR 39, Jan. 3, 2005]

**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.

303.104–7 Violations or possible violations of the Procurement Integrity Act.

### **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.

### **303.104–7 Violations or possible violations of the Procurement Integrity Act.**

(a)(1) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has no impact on the impending award or selection of a contractor must be submitted through appropriate channels, along with supporting documentation, to the Head of Contracting Activity (HCA) for review and approval of the determination awarding a contract.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a contractor must be referred through channels, along with all related information available, to the HCA (if the HCA is an SES) or to another SES official designated by the OpDiv. That individual will—

(i) Refer the matter immediately to the Office of Acquisition Management and Policy (OAMP), Assistant Secretary for Administration and Management, Office of the Secretary for review, which may consult with the Office of General Counsel (OGC) and the Office of Inspector General (OIG), as appropriate; and

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104–7(c) and (d). The HCA shall obtain the approval or concurrence of the OAMP before proceeding with the action.

(b) The individual in paragraph (a)(2) of this section acts as the agency head designee with respect to actions taken under the FAR clause 52.203–10, Price or Fee Adjustment for Illegal or Improper Authority.

[70 FR 39, Jan. 3, 2005]

### **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