

302.201

NIH—Director, Office of Acquisition Management and Policy

SAMHSA—Director, Division of Contracts Management

(2) 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.

(3) 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, HCAs 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.

Project Officer is a Federal employee who monitors contractor performance and provides technical guidance to the Contract Specialist/Contracting Officer. The Project Officer serves as the Contract Specialist/Contracting Officer's authorized representative to monitor specific aspects of the contract, thereby ensuring that the contractor's performance meets the standards set forth in the contract, the technical requirements under the contract are met by the delivery date(s) and/or within the period of performance, and per-

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formance is accomplished within the price or estimated cost stated in the contract. A Project Officer is required to comply with HHS Project Management Certification Program training requirements. The term “Project Officer” is synonymous with Contracting Officer's Representative (COR) and Contracting Officer's Technical Representative (COTR).

[71 FR 76491, Dec. 20, 2006]

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) In accordance with 52.202–1(a)(1), paragraph (a) at 352.202–1 shall be used in place of paragraph (a) of the FAR clause.

(b) In accordance with 52.202–1(a)(1), 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.

[71 FR 76492, Dec. 20, 2006]

PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 303.1—Safeguards

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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.

(a)(3) The Department of Health and Human Services' Standards of Conduct are prescribed in 45 CFR part 73.

[71 FR 76492, Dec. 20, 2006]

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 Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP), 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, as amended at 71 FR 76492, Dec. 20, 2006]

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.

(h) A copy of the agency report of suspected antitrust violations submitted to the Attorney General by the HCA shall also be submitted to the Director, Office of Acquisition Management and Policy.

[71 FR 76492, Dec. 20, 2006]

Subpart 303.4—Contingent Fees

303.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Reports shall be made promptly to the Contracting Officer.

(b)(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

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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 and Policy.

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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.

(a) 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).

[71 FR 76492, Dec. 20, 2006]

PART 304—ADMINISTRATIVE MATTERS

Subpart 304.6—Contract Reporting

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304.602 Federal Procurement Data System—Next Generation (FPDS-NG).

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.

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Subpart 304.6—Contracting Reporting

304.602 Federal Procurement Data System—Next Generation (FPDS-NG).

The Departmental Contracts Information System (DCIS) represents the Department's implementation of the FPDS-NG. All departmental contracting activities are required to use the DCIS and follow the procedures stated in the Enhanced Departmental Contracts Information System Manual, available at <http://dcis.hhs.gov>, and amendments to the manual. 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 contracts and contract modifications awarded in the previous month.

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Subpart 304.8—Government Contract Files

304.804-70 Contract closeout audits.

(a) Contracting Officers shall rely, to the maximum extent possible, on 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 paragraph (b) of this section.

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

(1) The Office of the Inspector General (OIG) and ASAM's Deputy Assistant Secretary for Acquisition Management and Policy in conjunction with the OPDIV's cost advisory/audit focal point, determine which contracts or contractors will be audited, which audit agency will perform the audit, and the type and scope of closeout audit to be performed. These decisions shall be based upon the needs of the customer, risk analysis, return on investment, and the availability of audit