

SUBCHAPTER A—GENERAL

PART 301—HHS ACQUISITION REGULATION SYSTEM

Subpart 301.1—Purpose, Authority, Issuance

- Sec.
301.101 Purpose.
301.103 Authority
301.106 OMB approval under the Paperwork
Reduction Act.

Subpart 301.2—Administration

- 301.270 Executive Committee for Acquisition.

Subpart 301.4—Deviations from the FAR

- 301.403 Individual deviations.
301.404 Class deviations.
301.470 Procedure.

Subpart 301.6—Career Development, Contracting Authority, and Responsibilities

- 301.602 Contracting officers.
301.602-3 Ratification of unauthorized commitments.
301.603 Selection, appointment, and termination of appointment of Contracting Officers/Contract Specialists.
301.603-1 General.
301.603-2 Selection of Contracting Officers.
301.603-3 Appointment of Contracting Officers.
301.603-4 Termination or revocation of a Contracting Officer's appointment.
301.603-70 Delegation of Contracting Officer responsibilities.
301.603-71 Waivers to warrant standards.
301.603-72 Training and certification requirements for Contracting Officers/Contract Specialists.
301.603-73 Earned value training requirement for Contracting Officers/Contract Specialists who administer an IT contract.
301.603-74 Training policy exception.
301.603-75 Training requirement for purchase cardholders, Approving Officials (AOs), and Agency/Organization Program Coordinators (A/OPCs).
301.603-76 Requirement for certification retention and maintaining currency of acquisition knowledge and skills for Contracting Officers/Contract Specialists and purchasing agents.

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 FAR policies and procedures and provides additional policies and procedures that supplement the FAR to satisfy the needs of HHS.

(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.

[66 FR 4220, Jan. 17, 2001, as amended at 71 FR 76488, Dec. 20, 2006]

301.103 Authority.

(b) The HHSAR is prescribed by the Assistant Secretary for Administration and Management 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

301.270

HHSAR segment	OMB control No.
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., requirements contained in specifications, statements of work, etc.).

Subpart 301.2—Administration

301.270 Executive Committee for Acquisition.

(a) The Deputy Assistant Secretary for Acquisition Management and Policy 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 Division of Acquisition Policy (DAP), Agency for Healthcare Research and Quality, Centers for Medicare & Medicaid Services, 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, Division of Acquisition Policy (DAP). 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 purposes of the ECA are to:

- (1) Advise and assist the Chair on major acquisition policy matters;

(2) Review and evaluate the overall effectiveness of existing policies and procedures and the impact of new acquisition policies, procedures, and regulations on current acquisition policies and procedures.

(d) The Chair will periodically issue a list of current members and alternates, including each person’s name, title, organization, address, telephone number, and e-mail address. ECA members are responsible for apprising the Chair of any changes to the list.

[71 FR 76488, Dec. 20, 2006]

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 to the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP).

[71 FR 76489, Dec. 20, 2006]

301.404 Class deviations.

Requests for class deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded to the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP).

[71 FR 76489, Dec. 20, 2006]

301.470 Procedure.

(a) Deviation requests shall be prepared in memorandum form and forwarded through the Head of the Contracting Activity (HCA) to the Director, Division of Acquisition Policy. A deviation may be requested verbally in an exigency situation; however, the request must be confirmed 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;

Health and Human Services

301.603-1

(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).

[66 FR 4220, Jan. 17, 2001, as amended at 71 FR 76489, Dec. 20, 2006]

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 \$100,000 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, a description of the requirement, the estimated or agreed upon price, the funds citation, an explanation of why the contracting office was not used and why the proposed contractor was selected, a list of

other sources considered, and a statement as to whether the contractor has commenced work.

(2) The Contracting Officer will review the submitted material and prepare it for ratification if it is determined that the commitment is 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.

[66 FR 4220, Jan. 17, 2001, as amended at 71 FR 76489, Dec. 20, 2006]

301.603 Selection, appointment, and termination of appointment of Contracting Officers/Contract Specialists.

301.603-1 General.

(a) The appointment, selection, and termination of appointment of Contracting Officers/Contract Specialists shall be made by the HCA. This authority is not delegable. The procedures for the selection and appointment of Contracting Officers/Contract Specialists shall apply to anyone seeking a Contracting Officer warrant. OPDIV procedures shall be followed in the appointment and termination of Contracting Officers/Contract Specialists in offices that have Contracting Officers/Contract Specialists with dual signature warrants.

(b) Standard Form (SF) 1402, "Certificate of Appointment," shall be used to appoint personnel in the 1102 series as Contracting Officers. It shall also be used for personnel in any other series who will obligate the Government to the expenditure of funds in excess of the micro-purchase threshold. The SF 1402 shall indicate the Contracting Officer's warrant level and threshold and any other limitations. The HCA may

determine an alternate appointment document for appointments at or below the micropurchase threshold level. Contracting Officer warrants will be issued to civil service personnel only. A delegation of procurement authority shall be set forth in a memorandum that describes the spending limits and authority. 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 as a prerequisite to being appointed as a Contracting Officer with authority to obligate funds in excess of the micro-purchase threshold (see 301.603-72). The HCA will determine and require training for individuals appointed as Contracting Officers/Contract Specialists at dollar levels below the micropurchase threshold. Individuals selected for Contracting Officer warrant authority must meet the education, training, and experience requirements that are established for the warrant level. An individual shall be appointed as a Contracting Officer only in instances where a valid organizational need is demonstrated. Factors to be considered in assessing the need for an appointment of a Contracting Officer include volume of actions, complexity of work, and structure of the organization.

(d) Contracting Officers (GS-1102's) shall not sign contracts or modifications to contracts which will result in the total amount of the contract exceeding their delegated warrant authority (as specified on the SF-1402). This includes Indefinite Delivery Indefinite Quantity (IDIQ) contracts. However, orders placed against an IDIQ may be issued by Contracting Officers up to their delegated authority provided that each order is separate and distinct.

(e) Employees delegated warrant authority are the only individuals legally authorized to bind the Government by executing contracts or signing determinations and findings required by the FAR. The amount specified on the warrant shall cover the estimated maximum contract amount, including all

option periods. For example, an employee with a \$500,000 Contracting Officer Certificate of Appointment may not award a contract for a base year of \$300,000 if the contract includes a one-year option for an additional \$300,000. In this case, the total contract amount, including options, exceeds the amount stipulated in the warrant. If a warrant is limited to \$500,000 (for example), the holder may not sign a contract for more than that amount, even if the additional amount is subject to the availability of funds. Contracting Officers with higher warrant levels may sign the action when modifications to orders and contracts make the total amount of the contract exceed the Contracting Officer's warrant limitation.

[71 FR 76489, Dec. 20, 2006]

301.603-2 Selection of Contracting Officers.

When it has been determined that the appointment is in the best interest of the OPDIV and/or Department and there is a demonstrated need for the procurement authority requested, nominations for appointment of Contracting Officers shall be submitted to the HCA through appropriate organizational channels for review. The HCA is responsible for appointing Contracting Officers in accordance with FAR 1.603. This authority is not delegable. The HCA will determine the documentation required, consistent with FAR 1.603-2, when the resulting appointment and authority will not exceed the micropurchase threshold.

[71 FR 76490, Dec. 20, 2006]

301.603-3 Appointment of Contracting Officers.

(a) Appointing officials must ensure that a warrant candidate meets the experience and education/training requirements listed in 301.603-72.

(b) If it is essential to appoint an individual who does not fully meet the certification requirements for the Contracting Officer authority sought, an interim appointment may be granted by the HCA. HCAs are responsible for ensuring that training requirements are met within the specified time frame. Interim appointments may not

Health and Human Services

301.603-72

exceed one year in total, and shall not be granted unless the individual can meet the certification requirements within one year from the date of appointment. The HCA may extend an interim appointment by granting additional time to complete the requirements of a permanent appointment. If the certification requirements are not completed by the extended date, the appointment will automatically terminate.

[71 FR 76490, Dec. 20, 2006]

301.603-4 Termination or revocation of a Contracting Officer's appointment.

Termination or revocation of Contracting Officer appointments shall be accomplished in accordance with FAR 1.603-4.

[71 FR 76490, Dec. 20, 2006]

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 that 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 preestablished mechanisms. Ordering officials, including those under the National Institutes of Health's (NIH) Delegated Acquisition Program (DELPRO), are not Contracting Officers.

[71 FR 76490, Dec. 20, 2006]

301.603-71 Waivers to warrant standards.

There may be an unusual circumstance that requires delegation of a warrant to an employee who does not meet the warrant standards in of the HHS Contracting Officer Warrant Program. Any requests for waivers requesting deviations from the requirements and policies of the HHS Contracting Officer Warrant Program shall be sent in writing to the SPE for ap-

proval. The SPE will either approve or disapprove in writing the request for a waiver to the warrant standards. The SPE may grant waivers on a case-by-case basis in unique situations only.

[71 FR 76490, Dec. 20, 2006]

301.603-72 Training and certification requirements for Contracting Officers/Contract Specialists.

(a) Federal Acquisition Certification in Contracting (FAC-C) certification is *not mandatory* for all GS-1102s; however, members of the workforce issued new Contracting Officer (CO) warrants on or after January 1, 2007, regardless of GS series, *must* be certified at an appropriate level to support their warrant obligations, pursuant to agency policy. *New* CO warrants are defined in OFPP Policy Letter 05-01 as warrants issued to employees for the *first time* at a department or agency. FAC-C certification does not apply to:

(1) Senior level officials responsible for delegating procurement authority;

(2) Non-1102s whose warrants are generally used to procure emergency goods and services; or

(3) Non-1102s whose warrants are so limited as to be outside the scope of this program, as determined by the Chief Acquisition Officer (CAO).

(b) HHS requires a senior level FAC-C certification for any employee issued an unlimited Contracting Officer's warrant on or after January 1, 2007.

(c) Achievement of the FAC-C is based on three requirements: education, training, and experience, and the requirements are cumulative, (*i.e.*, a person must meet the requirements of each previous certification level).

(d) FAC-C training requirements are as follows:

(1) FAC-C Level I:

(i) CON 100 Shaping Smart Business Arrangements.

(ii) CON 110 Mission Support Planning.

(iii) CON 111 Mission Strategy Execution.

(iv) CON 112 Mission Performance Assessment.

(v) CON 120 Mission Focused Contracting.

(vi) 1 Elective.

(2) FAC-C Level II:

(i) CON 202 Intermediate Contracting.

301.603-73

48 CFR Ch. 3 (10-1-09 Edition)

- (ii) CON 204 Intermediate Contract Pricing.
- (iii) CON 210 Government Contract Law.
- (iv) 2 Electives.
- (3) FAC-C Level III:
 - (i) CON 353 Advanced Business Solutions for Mission Support.
 - (ii) 2 Electives.
- (e) Those conducting simplified acquisitions from \$2,500 to \$100,000 will need to be issued an HHS Simplified Acquisition Certificate. Required training is as follows:
 - (1) HHS Simplified Acquisition Certificate A:
 - (i) Basic Simplified Acquisition Procedures/DAU's CON 237.
 - (iii) Advanced Simplified Acquisition Procedures or Appropriations Law.
 - (2) HHS Simplified Acquisition Certificate B:
 - (i) Basic Simplified Acquisition Procedures/DAU's CON 237.
 - (ii) Advanced Simplified Acquisition Procedures or Appropriations Law.
 - (iii) CON 100 (Shaping Smart Business Arrangements).
 - (iv) CON 110 (Mission Support Planning).
- (f) For additional information, see <http://www.knownet.hhs.gov/acquisition/careerhandbookver.1.0.doc>.

[71 FR 76490, Dec. 20, 2006]

301.603-73 Earned value training requirement for Contracting Officers/Contract Specialists who administer an IT contract.

All GS-1102s who administer an IT contract, regardless of dollar thresh-

old, are required to successfully complete the Department's (offered through HHS University) one-day course entitled "Early Warning Project Management Systems Workshop," or an equivalent Earned Value training course. Determination of course equivalency shall be made jointly by the Office of Acquisition Management and Policy/ASAM and the HHS Office of the Chief Information Officer.

[71 FR 76490, Dec. 20, 2006]

301.603-74 Training policy exception.

In the event there is an urgent requirement for a Contracting Officer/Contract Specialist to award or administer an IT contract, and the Earned Value training requirement has not been met, the HCA (not delegable) may waive the training requirement and authorize the individual to perform the job duties, provided that the individual attends the next scheduled "Early Warning Project Management System Workshop" course, or an equivalent Earned Value course.

[71 FR 76490, Dec. 20, 2006]

301.603-75 Training requirement for purchase cardholders, Approving Officials (AOs), and Agency/Organization Program Coordinators (A/OPCs).

Training requirements for purchase cardholders, AOs, and A/OPCs are listed in the following table:

Authority ^a	Program participant	Required training ^b
Up to \$2,500	Prospective/newly appointed purchase cardholders and Approving Officials.	Basic purchase card course (HHS University 1-day course) or an equivalent course that has been approved by the HHS Acquisition Training Coordinator prior to appointment. Training will include green-purchasing and Section 508 requirements.
\$2,501 to \$25,000	Purchase card holders and Approving Officials.	Refresher purchase card training, including green-purchasing training and Section 508 training, every 2 years.
	Prospective/newly appointed purchase cardholders and Approving Officials.	<ul style="list-style-type: none"> • Basic Purchase Card course. • Basic Simplified Acquisition Procedures/DAU's CON 237. • Advanced Simplified Acquisition Procedures or Appropriations Law.
\$25,001 to \$100,000	Purchase card holders and Approving Officials.	Refresher purchase card training, including green-purchasing training and Section 508 training, every 2 years.
	Prospective/newly appointed purchase cardholders and Approving Officials.	<ul style="list-style-type: none"> • Basic Purchase Card course. • Basic Simplified Acquisition Procedures/DAU's CON 237. • Advanced Simplified Acquisition Procedures or Appropriations Law. • CON 100 (Shaping Smart Business Arrangements). • CON 110 (Mission Support Planning).

Authority ^a	Program participant	Required training ^b
Not applicable	Purchase cardholders and Approving Officials. Prospective/newly appointed Agency/Organization Program Coordinators. Agency/Organization Program Coordinators.	Refresher purchase card training, including green-purchasing training and Section 508 training, every 2 years. Basic Purchase Card course, Basic Simplified Acquisition Procedures or DAU's CON 237, Advanced Simplified Acquisition Procedures or Appropriations Law, CON 100 (Shaping Smart Business Arrangements), and CON 110 (Mission Support Planning). Refresher purchase card training, including green-purchasing training and Section 508 training, every 2 years (attendance at GSA's annual training conference satisfies refresher training).

^a Cardholders and Approving Officials with authorized increases in DPA have up to 6 months to complete the training requirements for the new DPA.
^b CON 237, CON 100, and CON 110 are available at the DAU Web site at <http://www.dau.mil/registrars/enroll.asp>. CON 100 is also offered through HHS University (see Web site at: <http://learning.hhs.gov>).

[71 FR 76490, Dec. 20, 2006]

301.603-76 Requirement for certification retention and maintaining currency of acquisition knowledge and skills for Contracting Officers/Contract Specialists and purchasing agents.

To maintain a FAC-C, GS-1102s, including all warranted Contracting Officers regardless of series, shall earn 80 continuous learning points (CLPs) every two years beginning January 1, 2008. For GS-1105s and GS-1106s, a minimum of forty (40) hours (or continuous learning points) is required every two years after all mandatory training requirements have been met. Certification will expire if the CLPs are not earned every two years, and may result in a loss of warrant authority.

[71 FR 76490, Dec. 20, 2006]

for Agency for Healthcare Research and Quality (AHRQ), Centers for Disease Control and Prevention (CDC), Centers for Medicare & Medicaid Services (CMS), Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), Indian Health Service (IHS), National Institutes of Health (NIH), Substance Abuse and Mental Health Services (SAMHSA), and the Deputy Secretary for the Office of the Secretary (OS).

Chief of the Contracting Office (CCO) is typically a mid-level management official, usually an office director, division director, or branch chief, who manages and monitors the daily contract operations of an OPDIV or major component of an OPDIV. The CCO is subordinate to the Head of Contracting Activity (HCA), except where the HCA and CCO are the same individual.

Head of the contracting activity (HCA)—

(1) Occupies designated organization positions as follows:

ASAM-OS—Deputy Assistant Secretary for Acquisition Management and Policy

AHRQ—Director, Division of Contracts Management

CMS—Director, Office of Acquisition and Grants Management

PSC—Director, Division of Acquisition Management

CDC—Director, Procurement and Grants Office

FDA—Director, Office of Acquisitions & Grant Services

HRSA—Director, Division of Procurement Management

IHS—Director, Division of Acquisition Policy

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.

Agency head or head of the Agency, unless otherwise specified, means the head of the Operating Division (OPDIV)