

**301.401**

HHSAR Segment	OMB Control No.
352.270-11 .....	0990-0432
352.270-5a .....	0990-0432
352.270-5b .....	0990-0432

**Subpart 301.2 [Reserved]**

**Subpart 301.4—Deviations from the FAR**

**301.401 Deviations.**

Contracting officers are not permitted to deviate from the FAR or HHSAR without seeking proper approval. With full acknowledgement of FAR 1.102(d) regarding innovative approaches, any deviation to FAR or the HHSAR requires approval by the Senior Procurement Executive (SPE).

**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 with, or contractual commitments made to, prospective contractors by individuals who do not have delegated contracting authority. Unauthorized commitments do not follow the appropriate process for the expenditure of Government funds. Consequently, the Government may not be able to ratify certain actions, putting a contractor at risk for taking direction from a Federal official other than the contracting officer. See FAR 1.602-1. Government employees responsible for unauthorized commitments are subject to disciplinary action. Contractors perform at their own risk when accepting direction from unauthorized officials. Failure to follow statutory and regulatory processes for the expenditure of Government funds is a very serious matter.

(2) The head of the contracting activity (HCA) is the official authorized to ratify an unauthorized commitment. No other re-delegations are authorized.

(c) *Limitations.* (5) The HCA shall coordinate the request for ratification with the Office of General Counsel,

**48 CFR Ch. 3 (10-1-24 Edition)**

General Law Division and submit a copy to the SPE.

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

**301.603-1 General.**

(a) The Agency head has delegated broad authority to the Chief Acquisition Officer, who in turn has further delegated this authority to the SPE. The SPE has further delegated specific acquisition authority to the Operating and Staff Division heads and the HCAs. The HCA (non-delegable) shall select, appoint, and terminate the appointment of contracting officers.

(b) To ensure proper control of re-delegated acquisition authorities, HCAs shall maintain a file containing successive delegations of HCA authority through the contracting officer level.

**PART 302—DEFINITIONS OF WORDS AND TERMS**

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

**Subpart 302.1—Definitions**

**302.101 Definitions.**

(a) *Agency head or head of the agency*, unless otherwise stated, means the Secretary of Health and Human Services or specified designee.

(b) *Contracting Officer's Representative (COR)* is a Federal employee designated in writing by a contracting officer to act as the contracting officer's representative in monitoring and administering specified aspects of contractor performance after award of a contract or order. In accordance with local procedures, operating divisions (OPDIVs) or staff divisions (STAFFDIVs) may designate CORs for firm fixed-price contracts or orders. COR's responsibilities may include verifying that:

(1) The contractor's performance meets the standards set forth in the contract or order;

(2) The contractor meets the contract or order's technical requirements by

## Health and Human Services

303.203

the specified delivery date(s) or within the period of performance; and

(3) The contractor performs within cost ceiling stated in the contract or order. CORs must meet the training and certification requirements specified in PGI Part 301.604.

(c) *Head of the Contracting Activity (HCA)* is an official having overall responsibility for managing a contracting activity, *i.e.* the organization within an OPDIV or STAFFDIV or other HHS organization which has been delegated broad authority regarding the conduct of acquisition functions.

[80 FR 72151, Nov. 18, 2015, as amended at 85 FR 72911, Nov. 16, 2020]

## **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—Contractor Gratuities to Government Personnel**

303.203 Reporting suspected violations of the Gratuities clause.

### **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.

### **Subpart 303.8—Limitation on the Payment of Funds to Influence Federal Transactions**

303.808-70 Solicitation provision and contract clause.

### **Subpart 303.10—Contractor Code of Business Ethics and Conduct**

303.1003 Requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

## **Subpart 303.1—Safeguards**

### **303.101 Standards of conduct.**

#### **303.101-3 Agency regulations.**

(a)(3) The HHS 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 shall submit to the head of the contracting activity (HCA) for review and concurrence the determination (along with supporting documentation) that a reported violation or possible violation of the statutory prohibitions has no impact on the pending award or selection of a contractor for award.

(2) The contracting officer shall refer the determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a contractor, along with all related information available, to the HCA. The HCA shall—

(i) Refer the matter immediately to the Associate Deputy Assistant Secretary—Acquisition (ADAS-A) for review, who may consult with the appropriate legal office representative and the Office of Inspector General (OIG) as appropriate; and

(ii) Determine the necessary action in accordance with FAR 3.104-7(c) and (d). The HCA shall obtain the approval or concurrence of the ADAS-A before proceeding with an action.

(b) The HCA (non-delegable) shall act with respect to actions taken under the Federal Acquisition Regulation (FAR) clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Authority.

### **Subpart 303.2—Contractor Gratuities to Government Personnel**

#### **303.203 Reporting suspected violations of the Gratuities clause.**

HHS personnel shall report suspected violations of the clause at FAR 52.203-3, Gratuities, to the contracting officer, who will in turn report the matter to the Office of General Counsel (OGC), Ethics Division for disposition.