PART 3001—FEDERAL ACQUISITION REGULATIONS SYSTEM

Authority: 5 U.S.C. 301-302, 41 U.S.C. 1707, 41 U.S.C. 1702, 41 U.S.C. 1303(a)(2), 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

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Parent topic: SUBCHAPTER A—GENERAL

Subpart 3001.1—Purpose, Authority, Issuance

3001.101 Purpose.

The Department of Homeland Security Acquisition Regulation (HSAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

3001.102 Statement of Guiding Principles for the Federal Acquisition System.

(d) The FAR and this supplement are to be interpreted permissively, if consistent with statutory and regulatory requirements, policy, and sound professional judgment.

3001.103 Authority.

The HSAR is issued by DHS's Chief Procurement Officer, who is the Senior Procurement Executive (SPE), see 41 U.S.C. 1702 and DHS Delegation Number 0702, under authority of 5 U.S.C. 301-302, the Office of Federal Procurement Policy Act, Pub. L. No. 93-400, 88 Stat. 796 (1974), including sections 22 and 25, 41 U.S.C. 1707, 1302 and 1303, and (FAR) 48 CFR part 1, subpart 1.3.

3001.104 Applicability.

(a) The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within HSAR or the Homeland Security Acquisition Manual (HSAM):

(1) Statute;

(2) FAR or other applicable regulation or Executive Order;

(3) HSAR;

(4) Department of Homeland Security (DHS) Directives; and

(5) HSAM.

(b) The Transportation Security Administration (TSA) exception to this regulation is authorized by the Aviation and Transportation Security Act of 2001 (ATSA) (section 101(a) of Public Law 107-71, as implemented at section 114(o) of title 49) for contracts awarded by TSA pursuant to this ATSA authority. The Consolidated Appropriations Act of 2008, Public Law 110-161, Division E, Title V, section 568 eliminates ATSA section 114(o) effective June 23, 2008. Accordingly, TSA acquisitions initiated after June 22, 2008 are subject to 48 CFR Chapters 1 and 30.

(c) Contracts involving Non-Appropriated Fund Instrumentalities (NAFIs) must contain suitable dispute provisions and may provide for appellate dispute jurisdiction in the Civilian Board of Contract Appeals (CBCA). However, the contract must not attempt to confer court jurisdiction that does not otherwise exist.

(d) The FAR and HSAR may be followed, where feasible, for:

(1) No-cost contracts;

(2) Concession contracts; and

(3) Contracts on behalf of NAFIs entered into by appropriated fund contracting officers.

3001.105 Issuance.

3001.105-1 Publication and code arrangement.

(a) The HSAR is published in:

(1) The Federal Register and

(2) Cumulated form in the Code of Federal Regulations (CFR).

3001.105-2 Arrangement of regulations.

(a) *General.* The HSAR, which encompasses both Department-wide and Component-unique guidance, conforms to the arrangement and numbering system prescribed by (FAR) 48 CFR 1.105-2. Guidance that is unique to a Component contains the organization's acronym or abbreviation directly following the title. The following acronyms and abbreviations apply:

DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);

Federal Emergency Management Agency (FEMA);

Federal Law Enforcement Training Center (FLETC);

Transportation Security Administration (TSA);

U.S. Citizenship and Immigration Services (USCIS);

U.S. Coast Guard (USCG);

U.S. Customs and Border Protection (CBP);

U.S. Immigration and Customs Enforcement (ICE); and

U.S. Secret Service (USSS).

3001.105-3 Copies.

Official versions of the HSAR are available in the Code of Federal Regulations, as supplemented and revised from time to time by the Federal Register, both of which are available from the Government Publishing Office in paper form. The HSAR is also available in electronic form at *https://www.ecfr.gov/*. The Homeland Security Acquisition Manual (HSAM), which complements the HSAR, can also be found at *http://www.dhs.gov*.

3001.106 OMB Approval under the Paperwork Reduction Act.

(a) The Office of Management and Budget (OMB) has assigned the following control numbers that must appear on the upper right-hand corner of the face page of each solicitation, contract, modification, and order:

OMB Control No. 1600-002 (Contract related forms)

OMB Control No. 1600-005 (Offeror submissions)

OMB Control No. 1600-003 (Contractor submissions)

OMB Control No. 1600-004 (Protests)

OMB Control No. 1601-0023 (Safeguarding of Controlled Unclassified Information)

(b) OMB regulations and OMB's approval and assignment of control numbers are conditioned upon not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

Subpart 3001.3—Agency Acquisition Regulations

3001.301 Policy.

(a)

(1) The HSAR is issued for Departmental guidance according to the policy cited in (FAR) 48 CFR 1.301. The HSAR establishes uniform Department of Homeland Security policies and procedures for all acquisition activities within the Department of Homeland Security. Component supplemental acquisition regulations to be inserted in the HSAR as a HSAR supplement regulation must be reviewed and approved by the Chief Procurement Officer (CPO) before the CPO authorizes and submits the proposed content for publication in the Federal Register under (FAR) 48 CFR part 1, subparts 1.3 and 1.5.

(2)

(i) The CPO is authorized to issue internal agency guidance at any organizational level. Department-wide procedures are contained in the HSAM. The HCA may implement internal procedures or supplement the FAR, HSAR, or HSAM as provided in HSAM 3001.3. The HCA may issue procedures or delegate this authority to any organizational level deemed appropriate. Component procedures may be more restrictive or require higher approval levels than those permitted by the HSAM, unless otherwise specified.

(ii) Individuals granted authority in the HSAR may delegate that authority, unless the FAR or HSAR specifically state that the authority is not delegable.

(b) The Under Secretary of Management established procedures through Management Directive (MD) 0490.1, entitled *Federal Register Notice and Rules,* to ensure that agency acquisition regulations are published for comment in the Federal Register in conformance with FAR procedures at (FAR) 48 CFR subpart 1.5.

3001.301-70 Amendment of HSAR.

(a) Requests for changes to the regulation may be recommended by DHS personnel, other Government agencies, or the public. Change requests are to be submitted in the following format to the Department of Homeland Security, Attn: Office of the Under Secretary of Management, Chief Procurement Officer, Washington, DC 20528.

(1) *Problem:* Succinctly state the problem(s) created by current HSAR requirements or processes and describe the factual or legal reasons for requesting a regulatory change.

(2) *Recommendation:* Identify the recommended change by using the current language and lining through the words to be deleted and inserting proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion:* Explain why the change is necessary and how the change will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other helpful information and documents such as statutes, legal decisions, regulations, reports, etc.

(4) *Point of Contact:* Provide a point of contact for answering questions regarding the

recommendation, along with a telephone number, e-mail or other method of reaching the contact.

(b) The HSAR is maintained by the CPO through the HSAR/HSAM change process (i.e., input from various Components including representatives specifically designated to formulate Departmental acquisition policies and procedures).

(1) Homeland Security Acquisition Circular (HSAC). HSAC (see (HSAR) 48 Chapter 3001.301-72) will be used to amend (HSAR) 48 Chapter 30.

(2) HSAR Notices will be issued (with a specified expiration date) when interim guidance is necessary under any of the following circumstances:

(i) To promulgate, as rapidly as possible, selected material in a general or narrative manner, in advance of a HSAC issuance;

(ii) To disseminate other acquisition related information; or

(iii) To issue guidance that is expected to be effective for a period of 1 year or less.

3001.301-71 Effective date.

Unless otherwise stated:

(a) HSAR changes apply to solicitations issued on or after the effective date of the change;

(b) Contracting officers may, at their discretion, amend solicitations issued before the effective date to include HSAR changes, provided award of the resulting contract(s) will occur on or after the effective date of the change; and

(c) When required by law, contracting officers must modify existing contracts to include HSAR changes. Otherwise, and where feasible, contracting officers should consider using the Changes clause or other suitable authority, to modify existing contracts to include HSAR changes.

3001.301-72 HSAC or HSAR Notice numbering.

HSACs and HSAR Notices will be numbered consecutively on a fiscal year basis beginning with number “01” prefixed by the last two digits of the fiscal year (e.g., HSAR Notices 03-01 and 03-02 indicate the first two HSAR Notices issued in fiscal year 2003).

3001.303 Publication and codification.

(a) The HSAR is issued as chapter 30 of Title 48 of the CFR.

(1) The FAR numbering illustrations at (FAR) 48 CFR 1.105-2 apply to the HSAR.

(2) Coverage within HSAR 48 CFR chapter 30 is identified by the prefix “30” followed by the complete FAR cite which may extend downward to the subparagraph level (e.g., (HSAR) 48 CFR 3001.101).

(3) Coverage in HSAR chapter 30 that supplements the FAR will use part, subpart, section, and subsection numbers ending in “70” through “89”. A series of numbers beginning with “70” is used for provisions and clauses (e.g., (HSAR) 48 CFR 3001.301-70).

(4) Coverage in HSAR 48 CFR chapter 30, other than that identified with a “70” or higher number, which implements the FAR uses the identical number sequence and caption of the FAR segment being implemented which may extend downward to the subparagraph level. Subparagraph numbers/letters may not be shown as sequential, but may be shown by the specific paragraph/subparagraph implemented from the FAR (e.g., (HSAR) 48 CFR 3003.301 contains subparagraphs (a) and (b) because only these subparagraphs, correlating to FAR, are being supplemented by (HSAR) 48 CFR chapter 30).

(5) *Component-unique guidance.* Supplementary material for which there is no counterpart in the FAR or HSAR shall be identified using chapter, part, subpart, section, or subsection numbers of “90” and up (e.g., the U.S. Coast Guard's acronym is “USCG”; an USCG-unique clause pertaining to “Inspection and/or Acceptance” would be designated “USCG 3052.246-90”).

(6) References and citations. Cross references to the FAR in the HSAR will be cited by “FAR” followed by the FAR numbered cite, and cross reference to the HSAM in the HSAR will be cited by “HSAM” followed by the HSAM numbered cite.

(7) Department/agency and Component supplements must parallel the FAR and HSAR numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

Table 1-1—HSAR Numbering

FAR	Is implemented as	Is supplemented as
19	3019	3019.70
19.5	3019.5	3019.570
19.501	3019.501	3019.501-70
19.501-1	3019.501-1	3019.501-170

3001.304 Agency control and compliance procedures.

(a) The HSAR is under the direct oversight and control of the DHS, Office of the Chief Procurement Officer (OCPO), which is responsible for evaluation, review, and issuance of all Department-wide acquisition regulations and guidance in accordance with DHS regulatory clearance procedures, as applicable. Each HCA may supplement the HSAR with internal Component issued guidance that does not go beyond internal operating procedures and does not have a significant cost or administrative impact on contractors or offerors. Supplementation should be kept to a minimum. Any Component that seeks a component-specific regulation or that intends to use a solicitation provision or a contract clause on a repetitive basis must prepare and coordinate a draft rule with Component legal counsel and obtain HCA approval, which is non delegable. The HCA must forward the draft

rule to the CPO for concurrence prior to further action in accordance with DHS regulatory clearance procedures. If approved, the CPO or designee, will sign the Component-specific regulation and it will be integrated into the HSAR.

(b) [Reserved]

(c) The CPO is responsible for evaluating all proposed regulatory coverage in the HSAR to determine if the substance could apply to other agencies and to make recommendation for inclusion in the FAR.

Subpart 3001.4—Deviations from the FAR and HSAR

3001.403 Individual deviations.

Unless precluded by law, executive order, or other regulation, the HCA is authorized to approve individual deviation (except with respect to (FAR) 48 CFR 30.201-3, 30.201-4; the requirements of the Cost Accounting Standards board rules and regulations at 48 CFR chapter 99 (FAR appendix); and part 50). Submit requests per (HSAR) 48 CFR 3001.7000, including complete documentation of the justification for the deviations (*See* HSAM 3001.403).

3001.404 Class deviations.

(a) Unless precluded by law, executive order, or other regulation, the CPO is authorized to approve FAR class deviations, except (FAR) 48 CFR 30.201-3, and 30.201-4 (the requirements of the Cost Accounting Standards Board); 48 CFR chapter 99 (FAR appendix); and part 50. Prior to authorizing a FAR class deviation, the CPO shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless the CPO determines that urgency precludes such consultation. FAR class deviation requests shall be submitted to the CPO per (HSAR) 48 CFR subpart 3001.70 including complete documentation of the justification for the deviation, and the estimated number and type of contract actions affected. The CPO will transmit a copy of each approved FAR deviation to the FAR Secretariat.

Subpart 3001.6—Career Development, Contracting Authority, and Responsibilities

3001.601 General.

DHS Delegation Number 0200.1, Delegation to the Directorate of Management, delegates authority from the Secretary to the Under Secretary of Management to manage the acquisition function. DHS Delegation 0700, Delegation to the Chief Procurement Officer for Acquisition and Financial Assistance Management, delegates this authority from the Under Secretary of Management to the Chief Procurement Officer.

3001.602 Contracting officers.

3001.602-3 Ratification of unauthorized commitments.

DHS policy requires that acquisitions be made only by Government officials having authority to enter into such acquisitions. Acquisitions made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of an employee making an unauthorized commitment, and may result in disciplinary action being taken against an employee who makes an unauthorized commitment.

3001.603 Selection, appointment, and termination of appointment.

3001.603-1 General.

Under DHS Delegations, the Heads of the Contracting Activity (HCA), with authority to redelegate no lower than the Chief of the Contracting Office (COCO), are authorized to select and appoint contracting officers and terminate their appointment.

Subpart 3001.7—Determinations and Findings

3001.704 Content.

The following format shall be used for all determinations and findings (D&Fs), unless otherwise specified in the FAR or the HSAR. The contracting officer is responsible for preparing D&Fs, and requirements and technical personnel are responsible for the accuracy and adequacy of the supporting factual information, which shall be furnished to the contracting officer.

Insert specific information indicated in brackets.

Determination and Findings

Under [*insert citation for appropriate statutory and/or regulatory basis for D&F*], the Department of Homeland Security, [*insert contracting activity*], is granted authority to [*insert nature and/or description of the action being approved*].

Findings

[*Findings that detail the particular circumstances, facts, or reasoning essential to support the determination.*]

Determination

[*A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.*] [*Expiration date of the D&F, if required.*]

[*Signature of authorized official*]

Name and Title

[month, day, and year]

Date

Subpart 3001.70—Other Determinations, Waivers, Exceptions, Approvals, Reviews, and Submittals

3001.7000 Coordination and approval.

Documents requiring CPO approval. Requests shall be prepared in writing by the contracting officer and submitted through the HCA to the CPO for approval.

3001.7001 Content.

The general format at (HSAR) 48 CFR 3001.704 shall be used to provide a justification to support the requested determination, waiver, exception or approval.