PART 401—AGRICULTURE ACQUISITION REGULATION SYSTEM

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

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Parent topic: SUBCHAPTER A—GENERAL

Subpart 401.1—Purpose, Authority, Issuance

401.101 Purpose.

The United States Department of Agriculture's (USDA's) Acquisition Regulation (AGAR) provides for the codification and publication of uniform policies and procedures for acquisitions by contracting activities within USDA. The purpose of the AGAR is to implement the Federal Acquisition Regulation (FAR), where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The AGAR is not by itself a complete document, as it must be used in conjunction with the FAR.

401.103 Authority.

The AGAR and subsequent amendments are issued under 5 U.S.C. 301 and 40 U.S.C. 486(c). The Senior Procurement Executive (SPE) has the delegated authority to transmit Departmental acquisition regulations.

401.104 Applicability.

The FAR and AGAR apply to all USDA acquisitions of supplies and services (including construction) which obligate appropriated funds, unless otherwise specified or excepted by law.

401.105 Issuance.

401.105-1 Publication and code arrangement.

(a) The AGAR is codified in the Code of Federal Regulations (CFR) as chapter 4 of title 48, Federal Acquisition Regulations System, to implement and supplement chapter 1 which constitutes the FAR. Parts 400 through 499 have been assigned to USDA by the Office of the Federal Register.

(b) The AGAR and its subsequent changes are published in:

(1) Daily issues of the Federal Register;

(2) Cumulative form in the CFR; and

(3) Electronic form on the USDA Departmental Administration procurement website (see AGAR 401.170).

(c) Section 553(a)(2) of the Administrative Procedure Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(d) The AGAR may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act. The USDA is also required to publish for public comment procurement regulations in the Federal Register, pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 418b), and FAR 1.301.

401.105-2 Arrangement of regulations.

AGAR coverage parallels the FAR in format, arrangement, and numbering system. However, subdivisions below the section and subsection levels may not always correlate directly to FAR designated paragraphs and subparagraphs.

401.105-3 Copies.

Copies of the AGAR published in the CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Requests should reference chapter 4 of title 48 CFR.

401.170 Electronic access to regulatory information.

The USDA procurement website provides access to the AGAR, AGAR amendments (circulars), the USDA Contracting Desk Book, and other USDA procurement policy and guidance.

Subpart 401.2—Administration

401.201 Maintenance of the FAR.

401.201-1 The two councils.

(a) USDA's representative on the Civilian Agency Acquisition Council is designated by the SPE.

(b) USDA Office of Contracting and Procurement, Procurement Policy Division will coordinate proposed FAR revisions within USDA.

Subpart 401.3—Agency Acquisition Regulations

401.301 Policy.

(a) The SPE, subject to the authorities in AGAR 401.103 and FAR 1.301, may issue and publish Departmental regulations, that together with the FAR constitute Department-wide policies, procedures, solicitation provisions, and contract clauses governing the contracting process or otherwise controlling the relationship between USDA (including any of its contracting activities) and contractors or prospective contractors.

(b) Each designated Mission Area senior contracting official is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect beyond the internal operating procedures of the activity, or a significant cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the Federal Register. Mission Area contracting leadership shall ensure that the guidance, procedures, or instructions issued—

(1) Are consistent with the policies and procedures contained in this regulation and the USDA Contracting Desk Book;

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this regulation; and

(4) Are numbered and identified by use of alphabetical suffices to the chapter number as follows:

(i) Marketing and Regulatory Programs (MRP).

(ii) Research, Education and Economics (REE).

(iii) Food, Nutrition and Consumer Services (FNCS).

(iv) Natural Resources and Environment (NRE).

(v) Farm Production and Conservation (FPAC).

(vi) Food Safety and Inspection Services (FSIS).

(vii) [Reserved]

(viii) Departmental Administration (DA) or Departmental Management (DM).

(ix) [Reserved]

(x) Rural Development (RD).

401.304 Agency control and compliance procedures.

(a) The AGAR System is under the direct oversight and control of the SPE, who is responsible for

review and issuance of all Department-wide acquisition regulations published in the Federal Register to assure compliance with FAR part 1.

(b) The SPE is also responsible for review and issuance of unpublished, Department-wide internal guidance under the AGAR System.

(c) The Mission Area senior contracting official is responsible for establishment and implementation of formal procedures for oversight and control of unpublished internal guidance issued within the contracting activity to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the SPE.

(d) The SPE is responsible for evaluating coverage under the AGAR system to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the Mission Area senior contracting official to the SPE for further action.

401.370 Exclusions.

Subject to the policies of FAR 1.3, certain USDA acquisition policies and procedures may be excluded from the AGAR under appropriately justified circumstances, such as:

(a) Subject matter which is effective for a period less than 12 months.

(b) Subject matter which is instituted on an experimental basis for a reasonable period.

(c) Acquisition procedures instituted on an interim basis to comply with the requirements of statute, regulation, Executive Order, Office of Management and Budget (OMB) Circular, or Office of Federal Procurement Policy (OFPP) Policy Letter.

401.371 USDA Contracting Desk Book.

(a) The SPE may issue and update the USDA Contracting Desk Book, consistent with the policies of the FAR and the AGAR, for the following purposes:

(1) To communicate Department-wide policy and/or procedural guidance to contracting activities;

(2) To delegate to procurement officials the authority to make determinations or to take action to implement the policies of the FAR or the AGAR; and,

(3) To establish internal policy and procedures on an interim basis, prior to incorporation in the AGAR or in a Departmental Directive.

(b) The USDA Contracting Desk Book is only available in electronic format on the USDA procurement website.

401.372 Departmental directives.

Subject to the policies of FAR 1.3, USDA from time to time may issue internal directives to establish

procedures, standards, guidance, methods of performing duties, functions, or operations. Such directives include Departmental Regulations (DRs), Departmental Notices, and Secretary's Memoranda.

Subpart 401.4—Deviations From the FAR and AGAR

401.402 Policy.

Requests for authority to deviate from the provisions of the FAR or the AGAR shall be submitted in writing as far in advance of the situation as time will permit. Each request for deviation shall contain the following:

(a) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR and AGAR;

(b) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(c) If applicable, the name of the contractor and identification of the contract affected;

(d) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(e) A description of the intended effect of the deviation;

(f) A statement of the period of time for which the deviation is needed; and

(g) Any pertinent background information which will contribute to a full understanding of the desired deviation.

401.403 Individual deviations.

In individual cases, deviations from either the FAR or the AGAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Except for cost principles, the Head of the Contracting Activity (HCA) may approve individual deviations from the AGAR, after coordinating with the Office of General Counsel (OGC) and the SPE. No deviations from the FAR or AGAR may be authorized by an individual contracting officer or an individual contracting office. A copy of each deviation and its supporting documents shall be provided to the SPE. Deviations from the FAR shall not be made unless such action is authorized by the SPE after consultation with the OGC and any other appropriate office, based on a written justification stating clearly the special circumstances involved.

401.404 Class deviations.

Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the SPE for approval. The SPE may authorize

class deviations from the FAR without consulting the Chairperson of the Civilian Agency Acquisition Council (CAAC) where urgency precludes consultation. The SPE shall subsequently inform the Chairperson of the CAAC of the deviation, including the circumstances under which it was required.

Subpart 401.6—Career Development, Contracting Authority, and Responsibilities

401.601 General.

(a) The authority and responsibility vested in the Secretary to manage USDA's acquisition function is delegated through the Assistant Secretary for Administration to the SPE. This broad authority includes, but is not limited to, the following responsibilities:

(1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.

(2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(3) Designating contracting officers.

(4) Establishing clear lines of contracting authority.

(5) Evaluating and monitoring the performance of USDA's acquisition system.

(6) Managing and enhancing career development of the acquisition workforce.

(7) Participating in the development of Government-wide acquisition policies, regulations, and standards; and determining specific areas where government-wide performance standards should be established and applied.

(8) Determining areas of Department- unique standards and developing unique Department-wide standards.

(9) Certifying to the Secretary that the acquisition system meets approved standards.

(b) The SPE may delegate specified contracting authority and the responsibility to manage related acquisition functions.

(c) Unless prohibited by the FAR, the AGAR, or by other applicable statutes and regulations, the SPE may redelegate specified authority to make determinations in order to implement the policies and procedures of the FAR. Such delegations shall be in writing but need not be published. Such delegations may be made by the HCA if authority has been delegated by the SPE.

401.602 Contracting officers.

401.602-3 Ratification of unauthorized commitments.

(a) *Ratification* means the signed, documented action taken by an authorized official to approve and

sanction a previously unauthorized commitment. *Unauthorized commitment* means an agreement made by a Government representative who lacked the authority to enter into a contract on behalf of the Government.

(b) Procedures are in accordance with the USDA Contracting Desk Book, 401.602-3.

401.603 Selection, appointment, and termination of appointment for contracting officers.

401.603-1 General.

The SPE may delegate contracting authority to the extent authorized by general written delegation of acquisition authority appointing qualified individuals as contracting officers, in accordance with selection and appointment procedures as stated in the USDA Contracting Desk Book.