PART 2401 - FEDERAL ACQUISITION REGULATION SYSTEM

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Source: 49 FR 7697, Mar. 1, 1984, unless otherwise noted.

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Parent topic: SUBCHAPTER A - GENERAL

2401.000 Scope of part.

This part describes the method by which the Department of Housing and Urban Development (HUD) implements, supplements and deviates from the Federal Acquisition Regulation (FAR) through the establishment of the HUD Acquisition Regulation (HUDAR), which prescribes the Department's procurement policies and procedures under the FAR System.

Subpart 2401.1 - Purpose, Authority, Issuance

2401.100 Scope of subpart.

This subpart describes the HUDAR and states its relationship to the FAR System. This subpart also provides the explanation of the purpose and the authorities under which the HUDAR is issued.

2401.101 Purpose.

The Department of Housing and Urban Development Acquisition Regulation is hereby established as chapter 24 of the Federal Acquisition Regulation System (48 CFR chapter 24). It is issued to provide uniform Departmental policies and procedures for the acquisition of supplies, personal property and non-personal services by the Department's contracting activities and to make these policies and procedures readily available to Departmental personnel and to the public.

2401.103 Authority.

The HUDAR is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), the general authorization in FAR 1.301, and the Secretary's delegations of procurement authority.

2401.104 Applicability.

All acquisition of personal property and non-personal services (including construction) by HUD, except as may be otherwise authorized by law, must be accomplished in accordance with the HUDAR and the FAR.

2401.105 Issuance.

2401.105-2 Arrangement of regulations.

(a) *General.* Chapter 24 is divided into parts, subparts, sections, subsections, paragraphs and further subdivisions as necessary.

(b) *Numbering.* Generally, the numbering system and part, subpart, and section titles used in the HUDAR conform with those used in the FAR or as follows:

(1) When the HUDAR implements or deviates from a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or deviation will be numbered and captioned where possible to correspond to the FAR part, subpart, section, subsection, or paragraph. For example, FAR subpart 1.4, Deviations, is implemented in HUD's acquisition regulations at subpart 2401.4, Deviations. (The "24" in the number indicates what chapter of title 48 contains the HUDAR.)

(2) When HUD supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number will parallel the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, FAR 14.407, Award, does not contain a provision for the steps to be taken when only one bid is received. The HUDAR provides this information. Since the subject matter supplements what is contained in FAR 14.407, the HUDAR section supplementing the FAR is numbered 2414.407-70.

(3) Where material in the FAR requires no implementation or deviation, there is no corresponding numbering in the HUDAR. Therefore, there may be gaps in the HUDAR sequence of numbers where the FAR, as written, is applicable to the HUDAR and requires no further implementation.

(c) *Citation.* The HUDAR will be cited in accordance with Federal Register standards approved for the FAR. Thus, this section when referred to in the HUDAR is cited as 2401.105-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2401.105-2(c)." Any section of the HUDAR may be formally identified by the section number, e.g., "HUDAR 2401.105-2." In the HUDAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 37.108.

2401.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more persons. HUD has received approval from OMB to collect information under the provisions of its Acquisition Regulation. The OMB Approval Number is 2535-0091.

2401.106-70 Contract clause.

The contracting officer shall insert the clause at 2452.201-70, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

Subpart 2401.3 - Agency Acquisition Regulations

2401.301 Policy.

(a)

(1) *Implementation.* The HUDAR implements and supplements the FAR. Implementation material is that which expands upon related FAR material. Supplementing material is that for which there is no counterpart in the FAR.

2401.302 Limitations.

(c) *Exclusions.* Certain HUD policies and procedures which come within the scope of this chapter are not included in the HUDAR. Not included is a policy or procedure of an internal nature or which is expected to be effective for a period of less than six months.

Subpart 2401.4 - Deviations

2401.403 Individual deviations.

The Senior Procurement Executive is the agency head's designee for the purposes of FAR 1.403.

2401.404 Class deviations.

(a) The Senior Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a).

2401.470 Deviations from the HUDAR.

The Senior Procurement Executive is authorized to approve deviations from the HUDAR.

2401.471 Requests for deviations - FAR and HUDAR.

(a) Requests for deviations from the FAR or HUDAR shall be submitted in writing to the Chief Procurement Officer.

(b) Each request for authorization of a deviation from the FAR or HUDAR shall:

(1) Identify the deviation as individual or class;

(2) Identify the FAR or the HUDAR requirement from which a deviation is sought;

(3) Fully describe the deviation, its intended effect, and the circumstances in which it will be used;

(4) Explain why a deviation is required and include pertinent background and supporting information;

(5) State whether the deviation has been requested previously and if so, the circumstances and result of the previous request; and

(6) Identify the contractor(s) and the contract(s) (including dollar values) that would be affected.

(c) At his or her discretion, the Chief Procurement Officer will consider requests for deviations on an expedited basis and, in urgent situations, may authorize deviations via telephone or electronic mail. Such authorizations will be confirmed in writing.

(d) The contracting officer shall include a copy of each authorized deviation in the contract file(s) to which it pertains.

Subpart 2401.6 - Career Development, Contracting Authority, and Responsibilities

2401.601 General.

2401.601-70 Senior Procurement Executive.

Unless otherwise designated by the Secretary through a delegation of authority, the Chief Procurement Officer is the Department's Senior Procurement Executive and is responsible for all departmental procurement policy, regulations, and procedures, and oversight of all HUD procurement operations. The Senior Procurement Executive is also responsible for the development of HUD's procurement system standards, evaluation of the system in accordance with approved criteria, enhancement of career management of the procurement workforce, and certification to the Secretary that the Department's procurement system meets approved criteria.

2401.602 Contracting Officers.

2401.602-3 Ratification of unauthorized commitments.

(b)

(1) Requests for ratification of unauthorized commitments shall be submitted in writing through the contracting officer to the ratification approval officials identified in paragraph (b)(3) of this section. The Assistant Secretary or equivalent official for the office that created the unauthorized commitment shall sign the request for ratification.

(3) In accordance with FAR 1.602-3(b)(3), the Senior Procurement Executive may delegate the authority to approve ratifications of individual unauthorized commitments down to, but not below, the level of an Assistant Chief Procurement Officer.

(c)(5) Concurrence by legal counsel in the Contracting Officer's recommendation for payment of an unauthorized commitment (see FAR 1.602-3(c)(5)) shall not be required when the value of the payment is equal to, or less than, the simplified acquisition threshold.

2401.603 Selection, appointment and termination of appointment.

2401.603-2 Selection.

(a) In selecting Contracting Officers, appointing authorities shall consider the experience, education, training, business acumen, judgment, character, reputation, and ethics of the individual to be appointed. Appointing authorities shall also consider the size and complexity of contracts the individual will be required to execute or administer, and any other limitations on the scope of the authority to be exercised.

(b) Individuals appointed to a position having Contracting Officer authority, and whose primary duties are performed as a Contracting Officer, other than contracting authority limited to simplified acquisition procedures, shall meet the following requirements:

(1) The education and specialized experience commensurate with the grade of the appointee as set forth in the qualification standards for the GS-1102 occupational series developed by the Office of Federal Procurement Policy under the authority of 41 U.S.C. 433, and two years of experience performing contracting, procurement, or purchasing operations in a government or commercial procurement office. Alternately, where appointment of a Contracting Officer involves a specialized procurement field, experience in that field may be considered as a criterion for appointment.

(2) Successful completion of contracting-related training as prescribed by the Senior Procurement Executive.

(c) The Senior Procurement Executive may waive education and specialized experience requirements as provided for in the qualification standards developed by the Office of Federal Procurement Policy under the authority of 41 U.S.C. 433.

2401.603-3 Appointment.

(a) Appointments to officials not expressly delegated procurement authority by a published departmental delegation of authority shall be made in writing by the Head of the Contracting Activity. The Certificate of Appointment (SF 1402) shall constitute the appointing official's determination that the appointee meets the selection requirements set forth at 2401.603-2.