PART 3401—ED ACQUISITION REGULATION SYSTEM

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Source: 88 FR 60542, Sept. 1, 2023, unless otherwise noted.

3401.000 Scope of part.

Subpart 3401.1—Purpose, Authority, Issuance

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3401.604-70 Contract clause.

Parent topic: SUBCHAPTER A—GENERAL

3401.000 Scope of part.

This part establishes a system of Department of Education (Department) acquisition regulations, referred to as the Education Acquisition Regulation (EDAR), for the codification and publication of policies and procedures of the Department that implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 3401.1—Purpose, Authority, Issuance

3401.104 Applicability.

(a) The FAR and the EDAR apply to all Department contracts, as defined in FAR part 2, except where expressly excluded. The EDAR implements or supplements the FAR and incorporates, together with the FAR, Department policies, procedures, contract clauses, solicitation provisions, and forms that

govern the contracting process or otherwise control the relationship between the Agency, including its sub-organizations, and contractors or prospective contractors.

(b) The statue at 20 U.S.C. 1018a provides the Performance-Based Organization (PBO) with procurement authority and flexibility associated with sections (a) through (l) of the statute.

Subpart 3401.3—Agency Acquisition Regulations

3401.303 Publication and codification.

(a) The EDAR is issued as chapter 34 of title 48 of the CFR.

(1) The FAR numbering illustrations at FAR 1.105–2 apply to the EDAR.

(2) The EDAR numbering system corresponds with the FAR numbering system. An EDAR citation will include the prefix "34" prior to its corresponding FAR part citation; *e.g.,* FAR 25.108–2 would have corresponding EDAR text numbered as EDAR 3425.108–2.

(3) Supplementary material for which there is no counterpart in the FAR will be codified with a suffix beginning with "70" or, in cases of successive sections and subsections, will be numbered in the 70 series (*i.e.,* 71–79). These supplementing sections and subsections will appear to the closest corresponding FAR citation; *e.g.,* FAR subpart 16.4 may be augmented in the EDAR by citing EDAR 3416.470 and FAR 16.403 may be augmented in the EDAR by citing EDAR 3416.403–70. (*Note:* These citations are for illustrative purposes only and may not actually appear in the published EDAR). For example:

Table 1 to Paragraph (a)(3)

FAR	Is implemented as	Is augmented as
15	3415	3415.70
15.1	3415.1	3415.170
15.101	3415.101	3415.101–70
15.101–1	3415.101–1	3415.101–170

(c) Guidance that is unique to an organization with Head of the Contracting Activity (HCA) authority contains that activity's acronym directly preceding the cite. The following activity acronyms apply: FSA—Federal Student Aid.

Subpart 3401.4—Deviations

3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Senior Procurement Executive (SPE).

3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Chief Acquisition Officer (CAO).

Subpart 3401.6—Career Development, Contracting Authority, and Responsibilities

3401.601 General.

(a) Contracting authority is vested in the Secretary. The Secretary has delegated this authority to the CAO. The Secretary has also delegated contracting authority to the SPE, giving the SPE broad authority to perform functions dealing with the management direction of the entire Department's procurement system, including implementation of its unique procurement policies, regulations, and standards. Limitations to the extent of this authority and successive delegations are set forth in the respective memorandums of delegations.

3401.602-3 Ratification of unauthorized commitments.

(a) *Definitions.* As used in this subpart, *commitment* includes issuance of letters of intent and arrangements for free vendor services or use of equipment with the promise or the appearance of commitment that a contract, modification, or order will, or may, be awarded.

(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 or by contracting officers acting in excess of the limits of their delegated 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.

(2) The HCA must review and sign or reject all ratification requests, with the exception that the Chief of the Contracting Office is authorized to review and sign or reject ratification requests for unauthorized commitments up to $25,000.

3401.604-70 Contract clause.

Contracting officers must insert a clause substantially the same as the clause at 3452.201–70 (Contracting Officer's Representative (COR)), in all solicitations and contracts for which a COR will be (or is) appointed.