

AFARS - PART 5101

Federal Acquisition Regulation System

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Subpart 5101.1 - Purpose, Authority, Issuance

5101.101 Purpose.

The Army Federal Acquisition Regulation Supplement (AFARS) implements and supplements the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS) and the DFARS Procedures, Guidance and Information (PGI) to establish uniform policies for Army acquisition. It does not restrict the exercise of good business judgment or stifle innovation.

5101.105-3 Copies.

The AFARS is available electronically via the Internet at <https://spcs3.kc.army.mil/asaalt/procurement/AFARS/Home.aspx>. The Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)), Procurement Policy Pillar, SAAL-PP will issue notices of AFARS revisions to all senior contracting officials (SCOs).

5101.108 FAR conventions.

(b) *Delegation of authority.* Each authority is delegable within the contracting chain of authority unless otherwise indicated by law, statute, or regulation. All delegations must reference the applicable AFARS citation. Delegations that do not include expiration dates remain effective until a higher authority supersedes or cancels them.

5101.108(b) (S-90) Introduction of delegations matrix at Appendix GG and instructions for use.

Delegations of certain procurement authorities are identified throughout the AFARS with a pointer to a matrix, labeled Appendix GG. Appendix GG outlines all delegations of authority within the FAR, DFARS and AFARS, and specifies whether the authority prohibits or allows for further delegation. The Army level of authority identified in the matrix is the lowest level of delegation.

5101.170 Peer reviews.

(a) *DoD peer reviews.*

(1) The SCO will concur, in writing, on all solicitation and contract packages submitted for each phase of any DoD peer review. For the first phase only, the SCO will send a copy of the written concurrence to the DASA(P) (see 5101.290) and provide a copy to the head of the contracting activity (HCA).

(i) In accordance with [Defense Pricing and Contracting \(DPC\) Class Deviation 2019-00010, Peer Reviews of Contracts for Supplies and Services](#), except for procurements of major defense acquisition programs above \$1 billion for which the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) is the milestone decision authority and USD(A&S) special interest programs, the DASA(P) is responsible for conducting preaward peer reviews for competitive procurements above \$1 billion. See Appendix GG for further delegation.

(2) Contracting activities shall provide their rolling annual forecast of acquisitions that will be subject to DoD peer reviews to the address at 5101.290(b)(2)(ii)(A) at the end of each quarter. See 5104.802(f)(4) for peer review forecast requirements.

(b) *Component peer reviews.*

(i) *Army peer reviews.* With the exception of acquisitions using sealed bidding procedures (see FAR Part 14), a Solicitation Review Board (SRB) and a Contract Review Board (CRB) will approve all procurements with an estimated value of \$50 million or more including the award of task and delivery orders. A CRB is required for contract modifications that increase total evaluated price or otherwise increase scope. A CRB is not

required for modifications that exercise an option, add incremental funding, or make administrative changes. The SRB and CRB will be independent, multi-functional teams comprised of senior level experts, which will, at a minimum, include representatives from the contracting activity, small business office, office of counsel, requirements community, and in the case of noncompetitive actions, the advocate for competition. The same members should participate in both the SRB and the CRB in order to ensure consistency.

(ii) *Objective of Army peer reviews.* The SRB/CRB will review and assess the presolicitation, solicitation and contract award documents for consistency, sufficiency, compliance and application of sound business practices. The SRB/CRB will verify that the procurement represents an overall good value to the Government and appropriate obligation of taxpayer funds.

(iii) *Resolution of comments.* The SCO will establish procedures for resolving all SRB and CRB comments.

(iv) *Peer review statistics.* Contracting activities will collect peer review statistics, to include annual data on the number of SRB/CRB reviews conducted and waived, identification of any systemic issues or trends, best practices, lessons learned, overall effectiveness of the process, and other data as determined necessary.

(v) *Preaward peer reviews for competitive procurements valued at less than \$1 billion and noncompetitive procurements valued at less than \$500 million.*

(A) The HCA will chair an SRB and a CRB for:

(1) Competitive procurements valued at \$250 million or more but less than \$1 billion or

(2) Noncompetitive procurements valued at \$250 million or more but less than \$500 million. See Appendix GG for further delegation.

(B) The SCO will chair an SRB and a CRB for all procurements valued at \$50 million or more but less than \$250 million. See Appendix GG for further delegation .

(C) HCAs, SCOs and chiefs of the contracting office may waive the requirement for a formal review board. The contracting officer will include the written waiver in the contract file.

(vi) *Postaward peer reviews of contracts for services valued at less than \$1 billion.*

(A) At least once during the period of performance the HCA will conduct a postaward peer review for contracts for services valued at \$250 million or more but less than \$1 billion. See Appendix GG for further delegation. The information identified in 5137.590-6(a)(8) and 5137.590-7 will serve as the starting point for the postaward reviews. For such reviews, the HCA will provide the Senior Services Manager a postaward peer review summary report. The summary report will address the postaward peer review of service requirements focus areas at DFARS PGI 201.170-3(b) and the postaward peer review required elements at DFARS PGI 201.170-4, and shall be submitted to the email address at 5101.290(b)(2)(ii)(F) no later than 60 days after completion of the review.

(B) The SCO will establish procedures for postaward peer reviews for contracts for services valued at \$50 million or more but less than \$250 million.

(S-90) If the DASA(P) identifies a procurement as special interest, the ODASA(P) will convene an HQDA review of the procurements. The DASA(P) will serve as the chairperson. Other Army peer reviews identified in 5101.170(b) are not required when the ODASA(P) conducts a special interest peer review for a procurement.

Subpart 5101.2 - Administration

5101.290 Routing documents and mailing addresses.

(a)(1) Contracting activities will obtain either head of the contracting activity (HCA) or, if delegated, SCO concurrence on all procurement document packages submitted for Headquarters, Department of the Army (HQDA) review, coordination, and/or approval. The SCO may not delegate this authority. Procurement document packages will include all reviews and coordination completed prior to submission to HQDA, including legal reviews. Unless otherwise specified in this regulation, individual and class deviations to this AFARS provision are prohibited. Send document packages via the HQDA Task Management Tool (TMT) to the ODASA(P) pillar groups associated with the email addresses listed in 5101.290(b)(2)(ii)(C) (except as provided elsewhere in this regulation).

(2) The contracting officer shall include the contract type determination required by FAR 16.103(d)(1) and 5116.103(d)(1) in HQDA-level approval packages that reference contract type, including the approvals required by FAR 6.304 and FAR 16.504(c)(1)(D)(1). If a written acquisition plan is required for the associated contract action, include the acquisition plan in the submission package and provide the acquisition plan citation in the applicable paragraph of the document submitted for review. If a written acquisition plan is not required, include the contract type determination from the contract file in the submission package.

(b) Frequently used addresses:

(1) For the Deputy Assistant Secretary of the Army (Procurement), use the following:

Deputy Assistant Secretary of the Army (Procurement)

Attn: SAAL-ZP

103 Army Pentagon

Room 2D528

Washington, DC 20310-0103.

The email address is usarmy.pentagon.hqda-asa-alt.list.dasa-p-primary-staff@mail.mil.

(2)(i) For the Office of the Deputy Assistant Secretary of the Army (Procurement), use the following:

Office of the Deputy Assistant Secretary of the Army (Procurement) (*Insert Pillar*)

Potomac Gateway North - 4th Floor

2800 Crystal Drive

Arlington, VA 22202.

The email addresses for the pillars appear in paragraph (2)(ii). Submit document packages requiring HQDA review, coordination, and/or approval via the TMT.

(ii) Specify the pillar and email address within paragraph (2)(i) as follows:

(A) SAAL-ZP-PP Procurement Policy Pillar, usarmy.pentagon.hqda-asa-alt.list.saal-zp-pp@mail.mil.

(B) SAAL-ZP-PS Procurement Support Pillar, usarmy.pentagon.hqda-asa-alt.list.saal-ps-staff@mail.mil.

(C) SAAL-ZP-PE Procurement Systems Pillar, usarmy.pentagon.hqda-asa-alt.saal-zp-pe@mail.mil.

(D) SAAL-ZP-PW Talent Management Pillar, usarmy.pentagon.hqda-asa-alt.list.saal-zp-pw@mail.mil.

(3) For the Office of the Assistant Secretary of the Army (Financial Management and Comptroller), use the following:

Office of the Assistant Secretary of the Army (Financial Management and Comptroller)
109 Army Pentagon
Washington, DC 20310-0109.

(4) For the Office, Chief of Legislative Liaison, use the following:

The Office, Chief of Legislative Liaison (OCLL)
Attn: SALL-SPA
1600 Army Pentagon
Washington, DC 20310-1600.

(5) For the Chief, Procurement Fraud Branch, U.S. Army Legal Services Agency, use the following:

Chief, Procurement Fraud Branch
Contract and Fiscal Law Division
U.S. Army Legal Services Agency
9275 Gunston Road, BLDG 1450
Ft Belvoir, VA 22060-5546.

(6) For the Office of the Command Counsel, Headquarters, U.S. Army Materiel Command, use the following:

Office of the Command Counsel
Headquarters U.S. Army Materiel Command
Attn: AMCCC
4400 Martin Road
Redstone Arsenal, AL 35898-5340.

(7) For the U.S. Army Contracting Command, use the following:

U.S. Army Contracting Command
ATTN: AMSCC

3334A Wells Road

Redstone Arsenal, AL 35898-5000.

(8) For the Directorate of Contracting, U.S. Army Corps of Engineers, use the following:

U.S. Army Corps of Engineers

Directorate of Contracting

CECT-ZA

441 G Street, N.W.

Washington, DC 20314-1000.

(9) For the Chief, Army Power Procurement Office, U.S. Army Center for Public Works, use the following:

Chief, Army Power Procurement Office

US Army Center for Public Works (CECPW-C)

7701 Telegraph Road

Alexandria, VA 22315-3862.

Subpart 5101.3 - Agency Acquisition Regulations

5101.301 Policy.

(a) The Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) acts for the Assistant Secretary of the Army (Acquisition, Logistics and Technology) in developing, coordinating, issuing and maintaining the AFARS.

(b) SCOs will coordinate with the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) Procurement Policy Pillar, SAAL-PP, to publish proposed internal acquisition regulations or instructions, policy letters, clause books, policies, procedures, clauses, or forms in the Federal Register for public comment when required. (See FAR 1.301(b) and DFARS 201.301(b).) Contracting activities will format coordination packages in accordance with FAR 1.304, DFARS 201.304, and 5101.304 and route them in accordance with 5101.290. SAAL-PP will assist the contracting activity with preparing the proposed notice, forward it to the Federal Register, and receive public comments. At the close of the public comment period, SAAL-PP will send all public comments to the contracting activity for analysis. When the contracting activity completes its analysis, it will -

(1) Send an updated request for deviation in accordance with 5101.402; or

(2) Send an updated request for approval, which does not involve a deviation, in accordance with 5101.304(1)(i); and

(3) Include the results of the publication and analysis under the heading IV Collaterals.

5101.303 Publication and codification.

(a)(i) The Code of Federal Regulations codifies the AFARS under chapter 51, in Title 48.

(ii) To the extent possible, number all AFARS text, whether implemental or supplemental, as if it were implemental. Use supplemental numbering only when the text cannot be integrated intelligibly with its FAR or DFARS counterpart.

(A) The AFARS implemental numbering sequence is the same as the FAR except-

(1) Insert the number 51 before the primary citation;

(2) Insert 0 if the primary citation is to a single digit part number; and

(3) When the text exceeds one paragraph, number subdivisions by skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence.

(B) The AFARS supplemental numbering sequence is the same as the FAR except -

(1) Insert the number 51 before the primary citation;

(2) Insert 0 if the primary citation is to a single digit part number;

(3) Add 90 to parts, subparts, sections, or subsections;

(4) Add S-90 to subdivisions; and

(5) When the text exceeds one paragraph, number subdivisions without skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence.

(D) Examples of AFARS implemental and supplemental numbering are in Tables 1-1 and 1-2 respectively:

TABLE 1-1, AFARS IMPLEMENTAL NUMBERING

	FAR	AFARS
1 paragraph implementing FAR 19.501	19.501	5119.501
3 paragraphs implementing FAR 19.501	19.501	5119.501 (1) (2) (3)
1 paragraph implementing FAR 19.501(a)	19.501(a)	5119.501(a)
3 paragraphs implementing FAR 19.501(a)	19.501(a)	5119.501 (a)(i) (ii) (iii)
3 paragraphs implementing FAR 19.501(a)(1)	19.501(a)(1)	5119.501 (a) (1)(A) (B) (C)
Further subdivisions follow the prescribed sequence	19.501(a)(1)(i)(A)(1)(i)	5119.501(1)(i)(A)(1)(i)

TABLE 1-2, AFARS IMPLEMENTAL AND SUPPLEMENTAL NUMBERING

FAR	Is Implemented As*	Is Supplemented As
19	5119	5119.90
19.5	5119.5	5119.590
19.501	5119.501	5119.501-90
19.501-1	5119.501-1	5119.501-1-90
19.501-1(a)	5119.501-1(a)	5119.501-1(a)(S-90)
19.501-1(a)(1)	5119.501-1(a)(1)	5119.501-1(a)(1)(S-90)

*Assumes one AFARS paragraph implementing one FAR or DFARS paragraph.

(iii) Contracting activities will contact SAAL-PP to obtain numbers for acquisition instruction or guidebook text and clauses.

(A) Chapter 51 reserves subsection numbers 90-99 for AFARS supplementary material with no FAR or DFARS counterpart.

(1) Headquarters, Department of the Army (HQDA) reserves numbers 100-199 for the Army Commands, the Army Service Component Commands, and the Direct Reporting Units with a head of the contracting activity for unique implementing material with no counterpart in higher-level regulations.

(2) HQDA reserves numbers 200 and above for Army Materiel Command and major subordinate command unique implementing material with no counterpart in higher-level regulations.

(B) Chapter 51 reserves numbers 9000 and above for supplementary clauses approved for use Army-wide, in specific commands, subordinate commands or contracting offices. (See 5152.101.)

5101.304 Agency control and compliance procedures.

5101.304-90 Army control and compliance.

(a) *Definitions.* As used in this section—

(1) Acquisition instruction means the set of governing local processes and procedures developed and maintained by the head of each contracting activity.

(2) Policy means direction to contracting organizations implementing statute, executive order, regulation, or other governing directives.

(3) Procedure means an outline of how to perform a process - who performs what action, what sequence they perform the steps in the task, and the criteria (i.e., standard) they must meet to accomplish the goal/end-state.

(4) Process means a high-level view or map of the tasks required by the policy described in

sufficient detail to direct the user to a desired outcome.

(b) All Army procurement policy is centralized under the ODASA(P), and ODASA(P) is the only Army organization authorized to issue procurement policy.

(c) HQDA and Army contracting activities will not supplement the FAR, DFARS, or AFARS or issue internal acquisition regulations or instructions except as provided in this section. HCAs, on a non-delegable basis, are responsible for procurement processes and procedures, to include processes and procedures intended for issuance below the HCA level, within their contracting activity. These shall be codified in an acquisition instruction. HCAs shall obtain DASA(P) approval for their baseline acquisition instruction. HCAs are to maintain, review, and update their acquisition instruction as necessary.

(1) Acquisition instructions require recurring certification by the Procurement Policy Pillar. The Procurement Policy Pillar shall evaluate the integrity of the acquisition instruction to ensure compliance with established procurement policies, procedures, and regulations. All substantive issues shall be resolved prior to recertification of the acquisition instruction.

(2) The first recertification evaluation shall be conducted in fiscal year 2022 between the months of January and March and every three years thereafter. HCAs shall submit their acquisition instruction for review to the DASA(P) in accordance with 5101.290(b)(2)(ii)(A).

(3) Acquisition instructions will be submitted electronically for evaluation as follows:

ACC AI 1 January 2022 and every three years thereafter

MEDCOM AI 1 February 2022 and every three years thereafter

NGB AI 1 February 2022 and every three years thereafter

USACE AI 1 March 2022 and every three years thereafter

(d) HCAs must obtain prior DASA(P) approval for actions that require Under Secretary of Defense (Acquisition, Technology, and Logistics) approval. (See DFARS 201.304(1)(i) and AFARS Appendix FF, Department of the Army Plan for Control of Nonstandard Clauses, for approval of nonstandard clauses or provisions.)

(e) HCAs shall submit requests for new Army policy to the DASA(P) in accordance with 5101.290(b)(2)(ii)(A). The DASA(P) will coordinate with the HCAs to validate the need for new policy and determine how the policy will be issued to the contracting enterprise.

Subpart 5101.4 - Deviations From the FAR

5101.402 Policy.

(2) The contracting officer will prepare all deviation requests in accordance with DFARS 201.402(2) and follow the procedures at 5101.301(b) to publish the deviation in the Federal Register.

5101.403 Individual deviations.

(1) SCOs, after obtaining a legal review, approve individual deviations from the FAR, DFARS, DFARS PGI, and AFARS other than those specified in DFARS 201.402(1) and DFARS 201.403(2).

5101.403-90 Deviation copy and control number.

The contracting activity will -

(a) Send one copy of each deviation to the address at 5101.290(b)(2)(ii)(A) at the time the approval

authority grants the deviation; and

(b) Assign a control number to each deviation.

5101.404 Class deviations.

(b)(ii) The senior procurement executive approves class deviations from the FAR, DFARS, DFARS PGI, and AFARS. This authority does not extend to deviations specified in DFARS 201.402(1) and DFARS 201.403(2). See Appendix GG for further delegation.

Subpart 5101.5 - Agency and Public Participation

5101.501-2 Opportunity for public comments.

(b) Army contracting personnel may submit agency, organizational, or individual comments on FAR and DFARS cases published in the Federal Register (see FAR 1.501-2(b)) in one of two ways:

(i) Official Army comments. Army contracting personnel may submit comments through their chain of command to the Army Policy Member to the Defense Acquisition Regulations (DAR) Council in the Office of the Deputy Assistant Secretary of the Army (Procurement) Procurement Policy Pillar, SAAL-PP. The DAR Council member will determine if the comments are consistent with the Deputy Assistant Secretary of the Army (Procurement) s official Army position and if they are, forward them to the Director of the DAR Council for adjudication with public comments. If the comments are inconsistent with the Deputy Assistant Secretary of the Army (Procurement) s official Army position, the DAR Council member will contact the commenter to address his or her comment within the Army.

(ii) Comments as a private citizen. Army contracting personnel may submit comments as a private citizen by following the instructions in the Federal Register notice. Private citizens must clearly state that their comments represent a personal opinion rather than an official position. They may refer to the extent of their relevant experience within the body of the comments. Private citizens will not submit comments using Army letterhead or reference the Army in a signature block; however, they may use Army email and fax, in accordance with Section 2-301(a)(2) of the Department of Defense Joint Ethics Regulation, DoD 5500.7-R.

Subpart 5101.6 - Career Development, Contracting Authority and Responsibilities

5101.601 General.

(1) Army contracting activities are listed in DFARS PGI 202.101.

5101.602-1 Authority.

5101.602-1-90 Departmental review and approval.

At any time during the procurement process, the Deputy Assistant Secretary of the Army for Procurement (DASA(P)) may direct the responsible SCO or source selection authority to submit a proposed contractual action to the Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) for review, notation, and/or approval. The SCO or source selection authority will provide any information, documents, and briefings requested, and will not take, or permit anyone else to take, final action on the proposed contractual action during the period of the DASA(P) review. In accordance with FAR 3.104-4(a), the ASA(ALT) has authorized personnel

within the Office of the DASA(P), the Office of the Army General Counsel, and other personnel designated by the DASA(P) to receive full access to contractor bid or proposal information and source selection information in connection with such review.

5101.602-2 Responsibilities.

(a) Refer to 5132.7 for instructions with regard to ensuring funds are available.

5101.602-2-90 Legal coordination.

Contracting officers will obtain a legal review and consider counsel s advice as follows:

(a) Include legal counsel as a member of the acquisition team (see FAR 1.102-3) throughout the acquisition process;

(b) Obtain a legal review for proposed contracting actions in accordance with locally established procedures and as otherwise required by law, regulation, or policy. It is not practicable to specify, in the AFARS, an inclusive list of actions requiring legal review at each contracting activity. Instead, counsel will routinely review a full range of acquisition-related actions that have potential legal significance. SCOs will work with local chief counsels, or equivalent official, to develop specific legal review protocols that are consistent with this provision.

(c) Obtain legal reviews on proposed actions to determine if the action is legally sufficient based on statute, regulation, and policy, and request details and a recommended course of action to resolve any insufficiency. Contracting officers will address and resolve counsel s objections at the lowest possible level. Contracting officers and counsel will elevate unresolved objections within the acquisition and legal channels, as appropriate, and in exceptional cases, to the head of the contracting activity (HCA).

(d) The contracting officer, under SCO direction, retains sole authority to determine matters that relate to the exercise of business judgment.

5101.602-2-91 Contracting officer s representative appointments.

(a) Contracting officers will appoint a properly trained contracting officer s representative (COR) upon contract award, consistent with DFARS 201.602-2. SCOs may specify additional training at their discretion within their contracting activity. Contracting officers shall execute the COR appointment in the DoD Procurement Integrated Enterprise Environment (PIEE) Joint Appointment Module (JAM) no later than one business day after receipt of the contract in the Electronic Data Access (EDA) system has been confirmed.

(b) Contracting officers will allow 45 calendar days after receipt of the procurement request (PR) package for the requiring activity (RA) to satisfy all COR requirements. If, after the 45 days, a COR has not been properly trained and nominated in PIEE JAM, contracting officers will cease further action on the PR package and return it to the supported RA.

(c) Contracting officers will validate COR and ordering officer records every 12 months in accordance with DFARS PGI 201.602-2(d)(vii) to ensure contractor compliance with the terms of the contract. Contracting officers will document the review in the contract file.

5101.602-2-92 Ordering officer appointments.

(a) *Policy.* The official (see 5101.603-1) appointing an ordering officer will state in the appointment letter that the ordering officer s authority may not be delegated further (see 5153.303-2 for a sample appointment letter).

(b) *Appointment and termination authority.* An appointing official may appoint an ordering officer, pursuant to 5101.603-3-90(a) through (f), when the official determines that the appointment is essential for the operation of the contracting mission. The purposes for which an appointing official may appoint an ordering officer and references to limitations of their authority are -

(1) To make purchases using imprest funds (FAR 13.305);

(2) To make purchases using Standard Form 44 (FAR 13.306, DFARS 213.306);

(3) To place orders against indefinite delivery contracts awarded by contracting officers of the Military Departments for the preparation for shipment, Government storage, and intra-city or intra-area movement of personal property, provided contract terms permit (see FAR subpart 47.2);

(4) To place Service Orders for Personal Property (DD Form 1164) against Commercial Warehousing and Related Services for Household Goods contracts for military and civilian personnel subject to the criteria and procedures prescribed in Chapter 2, DoD 4500.34-R, provided that no service order will be in excess of \$10,000; and

(5) To place orders against indefinite delivery contracts, in addition to those in (4), that contracting officers award, as long as the contract terms permit and provided all orders placed are within monetary limitations specified in the contract.

(c) *Responsibilities of appointing authority.*

(1) *Training and orientation.* The appointing authority will orient and instruct ordering officers either personally or in writing about -

(i) The proper procedure(s) the appointing authority will authorize the ordering officer to use;

(ii) The standards of conduct for Army personnel prescribed in the Joint Ethics Regulation (DoD 5500.7-R) and the procurement integrity provisions at FAR 3.104; and

(iii) The preparation and submission of information for contract action reporting purposes.

(2) *Surveillance.* The appointing authority will provide technical supervision of ordering officers. At least once each year, the appointing authority will examine ordering officer purchase documents and records. Any individual designated to perform this review must be well qualified in the contracting procedures that ordering officers use.

(i) Write inspection or review findings and include specific comments as to whether the ordering officer is -

(A) Operating within the scope and limitations of authority delegated and FAR subpart 3.1;

(B) Maintaining the standards of conduct prescribed in DoD 5500.7-R;

(C) Engaging in improper practices, including but not limited to splitting purchase transactions to avoid monetary limitations or delegating authority to others; and

(D) Submitting correct and timely information for reporting purposes.

(ii) Retain copies of inspection and review findings for one year in the ordering officer's files and the inspector's or reviewer's files.

(iii) If an appointing authority finds that an ordering officer is not properly performing assigned duties or promptly correcting the deficiencies noted in inspections or reviews, the appointing authority will terminate the ordering officer's appointment.

(3) *Termination.*

(i) An ordering officer's appointment will remain in effect until the ordering officer leaves his position via reassignment or termination or the appointing authority revokes the appointment. Appointing officials will not revoke an appointment retroactively.

(ii) Appointing officials will terminate appointments in writing except terminations that result when a contract expires.

(d) *Procedures.* Appointing officials will -

(1) Appoint ordering officers by a letter of appointment substantially in the format at 5153.303-2, but tailored to fit the circumstances of the appointment;

(2) Maintain the file of appointments and justification for the appointments;

(3) Require individuals appointed as ordering officers to acknowledge receipt of their letters of appointment and termination in writing;

(4) Distribute appointment letters to ordering officers, imprest fund cashiers, disbursing officers and other interested personnel as necessary;

(5) List the names of ordering officers appointed to place orders against the contracts in the contract, or furnish copies of ordering officer appointment letters to contractors, imprest fund cashiers, disbursing officers and other interested personnel; and

(6) Furnish copies of termination letters to imprest fund cashiers, disbursing officers and other interested personnel.

5101.602-3 Ratification of unauthorized commitments.

(b) *Policy.*

(3) HCAs may ratify unauthorized commitments and may delegate this authority as specified in Appendix GG.

5101.602-3-90 Ratification procedures.

(a) HCAs may ratify an unauthorized commitment. See Appendix GG for further delegation.

(b) The individual making the unauthorized commitment must send the following documentation, at a minimum, to the cognizant ratifying authority:

(1) A signed statement describing the circumstances, the reason normal contracting procedures were not followed, what bona fide Government requirement necessitated the unauthorized commitment, the benefit received and its value, and any other pertinent facts.

(2) All other relevant documents, including orders, invoices or other evidence of the transaction.

(c) If the commander concurs that the unauthorized commitment should be ratified, the documentation must be sent to the chief of the contracting office with an endorsement that -

(1) Verifies the accuracy and completeness of the documentation;

(2) Describes the measures taken to prevent a recurrence of unauthorized commitments, including a description of any disciplinary action to be taken; and

(3) Provides a complete purchase description and funding for the ratifying contract.

(d) The chief of the contracting office will assign the action to an individual contracting officer who will be responsible for -

(1) Reviewing the case and determining the adequacy of all facts, records, and documents and obtaining any additional material required; and

(2) Preparing a summary of facts to include a recommendation as to whether the individual responsible for approving the ratification (see 5101.602-3(b)) should ratify the transaction and

reasons for the recommendation. In a recommendation not to ratify, include an explanation as to whether the contracting activity should process the transaction under FAR part 50 and DFARS part 250, Extraordinary Contractual Actions and the Safety Act or by means of the claims or disputes process set forth in FAR subpart 33.2.

(e) Upon receipt and review of the complete file, the individual responsible for approving the ratification may approve the ratification if he or she considers it to be in the best interest of the Government, or may direct other disposition.

(f) HCAs must monitor compliance with this subsection, 5101.602-3-90, and take all necessary corrective action.

5101.603 Selection, appointment, and termination of appointment for contracting officers.

5101.603-1 General.

The Secretary of the Army or one of the following individuals may select, appoint, and terminate contracting officers:

- (1) The ASA(ALT).
- (2) The DASA(P).
- (3) The HCA. See Appendix GG for further delegation.

5101.603-2 Selection.

The HCA will establish criteria and procedures to ensure that prospective contracting officers with authority to award or administer contracts for amounts above the simplified acquisition threshold, have the knowledge and experience to effectively and efficiently support their customers and successfully fulfill their fiduciary responsibilities as required by DFARS 201.603-2 and 10 U.S.C. 1724. The HCA shall follow the policy set forth in the Contracting Officer Warranting Program Version 6. The policy is available in the Warranting tile on <https://procurement.army.mil> (PAM) at <https://spcs3.kc.army.mil/asaalt/zp/doccenter/Documents/Army%20Warranting%20Program%20v6%20%20Sep%202020.pdf>.

5101.603-3 Appointment.

(a) Appointing officials will utilize the Virtual Contracting Enterprise (VCE) Warrant Tool to appoint, suspend, terminate and otherwise document and maintain a complete file for each contracting officer. The file will include documentation of qualifications and the continuation of professional proficiency. The appointing official will update the files in the VCE Warrant Tool upon any change in the contracting officer's authority, and will review the files no less than biennially to ensure compliance with statutes and regulations.

5101.603-3-90 Other individuals authorized to procure supplies and services on behalf of the Army.

In addition to the ordering officers identified in AFARS 5101.602-2-92, a contracting officer or one of the appointing officials identified in AFARS 5101.603-1 may designate individuals to procure supplies or services on behalf of the Army as specified in paragraphs (a) through (f) in this subsection. Individuals in paragraphs (a) through (c) will prepare and submit information for reporting purposes to the supporting contracting office as specified by that office policy. Individuals

in (d) will report to the contracting office supporting the mobilization base.

(a) Contracting officers may authorize individuals to place calls under blanket purchase agreements. (See FAR subpart 13.3, DFARS subpart 213.3, and subpart 5113.3.)

(b) Appointing officials may authorize Army aviators and masters of Army-owned or operated vessels to use Standard Form 44 (see FAR 13.306 or provisions of Army Regulation 710-2 and Department of the Army Pamphlet 710-2-2) for emergency purchases of supplies (e.g., fuels, oils, parts) and services (e.g., mechanical services, hangar services, landing and docking fees and employment of civilian guards or watchmen to safeguard Government property) under any of the following conditions:

(1) Authorized flights or voyages during which mechanical or meteorological conditions prevent obtaining required supplies and services from Government facilities.

(2) Conditions under which continuation of flight, voyage or mission would constitute a hazard to safety or endanger public property.

(3) Conditions under which procurement of supplies and services from Government facilities would interfere with approved flight plans or voyages.

(c) Appointing officials may issue the Governmentwide commercial purchase card to individuals to use in accordance with FAR 13.301.

(d) Appointing officials may authorize individuals in Reserve Components to procure supplies or services on behalf of the Army in the event of mobilization using Standard Form 44 and U.S. Army Forces Command Mobilization and Deployment System, Volume III. Reserve Component unit commanders may purchase over-the-counter type items not exceeding the micro-purchase threshold per transaction. The commander will use Standard Form 44 when a Federal Mobilization Order, requiring unit movement to a mobilization station or site, or where procurement support is not readily available from a supporting installation. This temporary authority will expire upon resumption of procurement support by the contracting office at the mobilization station or supporting installation.

(e) Appointing officials may issue U.S. Government Travel Charge Cards to individuals for use on official travel.

(f) Appointing officials may authorize individuals identified in Army Regulation 725-50 to order supplies from General Services Administration Stores Depots using the Governmentwide commercial purchase card procedures.

5101.603-3-91 Restrictions.

(a) Personnel in the 1101 job classification series will not be appointed or serve as contracting officers. This requirement is not subject to an individual or class waiver.

(b) Commanders and others having administrative supervision over contracting officers must bear in mind that actions exceeding the authority of a contracting officer are not binding on the Government. Therefore, they will not direct, or otherwise exert influence, upon contracting officers to take such actions.

5101.690 Procurement management review assistance.

(a) Office of the Deputy Assistant Secretary of the Army (Procurement), Procurement Support Pillar, manages the Procurement Management Review (PMR) Program to perform oversight of Army contracting activities in accordance with Appendix CC.

(b) Once every 36 months, all HCAs will conduct PMRs for each of their contracting offices to ensure compliance with, at a minimum, laws, policies, regulations, directives, FAR, DFARS, AFARS and AFARS Appendix CC. HCAs will furnish copies of review reports to the HQDA PMR Team Leader at the address at 5101.290(b)(2)(ii)(B) within 60 days of completing a review.

5101.691 Management controls.

Management controls within each contracting organization are an element of day-to-day operations. Managers at all levels should refer to Appendix BB, Management Control Evaluation Checklist, to evaluate their organization's compliance with key management controls and to identify and correct weaknesses. The list of questions in Appendix BB is not all-inclusive nor are managers required to respond to all of them. Managers should tailor the list to include areas specific to each contracting office, and should include the Areas of Special Interest, which the DASA(P) issues each fiscal year.

5101.692 Head of the contracting activity.

(a) HCAs will ensure that only contracting officers selected and appointed in accordance with 5101.603 enter into contracts on behalf of the Army.

(b) HCAs will appoint a SCO. When selecting the SCO, the HCA must comply with the requirements of Department of Defense Instruction (DoDI) 5000.66 governing the selection of senior contracting officials.

(1) The HCA must assign to the SCO, or give him/her direct access to, the personnel and other essential resources necessary to perform all the functions that the HCA delegates to him/her.

(2) The HCA must notify in writing the addressee in 5101.290(b)(2)(i) when there is a newly assigned SCO.

(c) HCAs will attend semi-annual training facilitated by the Deputy Assistant Secretary of the Army (Procurement). Attendance in person is required.

(d) HCAs responsible for major weapon system procurements will attend quarterly PEO/DASA/HCA-SCO Summits facilitated by the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

5101.693 Senior contracting official.

(1) A SCO, defined as a critical acquisition position in 10 U.S.C. 1735 and a key leadership position in the DoDI 5000.66, must meet the additional position requirements listed in DoDI 5000.66, Table 1.

(2) SCOs will exercise procurement authority in accordance with the FAR and its supplements and perform delegated HCA contracting authorities. Procurement authority is delegated by the HCA and is not position dependent.

(3) The SCO, by virtue of the organizational position occupied, may execute command functions for the contracting activity, but these functions are separate and distinct from procurement authority.

(4) SCOs will -

(i) Report directly to the HCA on all matters regarding procurement.

(ii) Be evaluated by the HCA for performance appraisals, as required by the DoDI 5000.66.

(iii) Minimize the potential for undue influence and protects contracting professionals from internal or external pressure to perform improper actions.

(iv) Attend semi-annual training facilitated by the Deputy Assistant Secretary of the Army (Procurement). Attendance in person is required. SCOs from the Contracting Support Brigades (CSB) and Field Directorate Offices (FDO) may be exempt and can be represented

by their HCA or designee with concurrence from the DASA(P).

(v) SCOs responsible for major weapon system procurements will attend quarterly PEO/DASA/HCA-SCO Summits facilitated by the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

(vi) Direct contracting officers to submit Acquisition Critical Incident Reports (ACIRs) identifying time sensitive information needed by senior ASA(ALT) leadership in order to make critical and timely decisions. ACIR shall be submitted via the SharePoint site at <https://spcs3.kc.army.mil/asaalt/zp/SitePages/ACIR.aspx>.

Subpart 5101.7 - Determinations and Findings

5101.707 Signatory authority.

The head of the contracting activity or the SCO and the contracting officer will sign each Secretarial determination request.

Subpart 5101.90 - Nonappropriated Funds

5101.9001 Policy.

DoD policy for contract actions using nonappropriated funds is in DoD Directive 4105.67. See Army Regulation (AR) 215-1 and AR 215-4 for implementing policies and procedures for Army nonappropriated fund acquisitions.

5101.9002 Contracting authority.

SCOs may designate appropriated fund contracting officers as nonappropriated fund contracting officers. (See AR 215-4.)

Subpart 5101.91 - Authority to Award and Administer Grants, Cooperative Agreements, Technology Investment Agreements, and Other Transactions

5101.9101 Authority and responsibilities.

(a) Procedures governing grants, cooperative agreements, and technology investment agreements are set forth in the DoD Grant and Agreement Regulations (DoDGAR), currently codified at Chapter I, Subchapter C of Title 32, Code of Federal Regulations (CFR) and Chapter XI of Title 2, CFR (see Department of Defense Directive Number 3210.06). In the absence of an Army supplement to the DoDGAR this AFARS subpart provides a record of the Army's implementation of 32 CFR 21.425 - 21.435.

(b) Procedures governing Other Transaction Authority are set forth at 10 U.S.C. section 2371b and in the Other Transactions Guide for Prototype Projects, issued January 2017 by the Director for Defense Procurement and Acquisition Policy (DPAP). In the absence of an Army supplement this subpart provides a record of the Army's implementation of 10 U.S.C section 2371b and the DPAP guide.

(b)(1) Heads of contracting activities (HCAs) with grant and cooperative agreement

responsibilities are authorized to make and administer grant and cooperative agreement awards in accordance with specific delegations of authority from the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) and as otherwise authorized in 32 CFR 21.420(c).

(2) HCAs with other transaction responsibilities are authorized to make and administer other transaction agreement awards in accordance with specific delegations of authority from the ASA(ALT) and as otherwise authorized in 10 U.S.C. section 2371b.

(c) HCAs also are authorized to appoint grants officers and agreements officers and to broadly manage their contracting activity s functions related to assistance instruments.

(d) HCAs are responsible for grant and cooperative agreement awards made by their contracting activity and shall supervise and establish and maintain internal policies and procedures for that activity s awards.

(e) HCAs shall utilize the Virtual Contracting Enterprise (VCE) Warrant Tool to appoint, suspend, terminate and otherwise document and maintain a complete file for each grants and agreements officer. The file will include documentation of qualifications and the continuation of professional proficiency. The appointing official will update the files in the VCE Warrant Tool upon any change in the grants and agreements officer s authority, and will review the files no less than biennially to ensure compliance with statutes and regulations.

The HCA shall follow the policy set forth in the Contracting Officer Warranting Program Version 5. The policy is available via the Internet at:

<https://spcs3.kc.army.mil/asaalt/zp/doccenter/Documents/PARC%20Policy%20Alert%2017-23%20KO%20Warranting%20Program%20VCE%20Warrants%20Documentation%20Requirements%20SFrank.msg>.