

Subchapter 3001.3 Agency Acquisition Regulations

3001.301 Policy.

(a)(1) *Delegations of FAR and HSAR procurement authority.* The following is applicable with respect to delegations of FAR and HSAR procurement authority included in this manual:

(i) *Agency head delegations.* Certain FAR and HSAR functions are non-delegable and reserved by the Secretary. All reserved and delegated functions (either to the Office of the Secretary (OSDHS) or the Components) are indicated in the applicable chapters of this manual. Lower organizational levels for FAR and HSAR agency head functions shall be authorized by the CPO (who will coordinate with other DHS officials as deemed appropriate).

(ii) *Head of the Contracting Activity (HCA) functions.* Certain FAR and HSAR functions which are non-delegable and reserved for the HCA or equivalent organizational level are indicated in the applicable chapter of this manual. For delegable functions, compliance with the level indicated in the applicable chapter of this manual or the HSAR is required unless otherwise authorized by the HCA. The HCA may retain both delegable and non-delegable functions assigned to the HCA. Approved HCA functional delegations which are different from those specified in this manual shall be in writing and stored in a centralized location within the Component. A copy of the delegation shall be submitted to the CPO within 30 days of issuance. The HCA retains authorities in this manual for delegations to the Chief of the Contracting Office (COCO) when COCOs have not been designated within the Component.

(iii) Authorities of this manual, except for those defined in (i) or (ii) above, may be assigned to a higher level within the Component unless specified otherwise. HSAM authorities reassigned or redelegated by a Component pursuant to this subparagraph shall be in writing and stored in a centralized location within the Component. A copy of the assignment/redelegation shall be submitted to the CPO within 30 days of issuance.

(2) Agency head approval or delegation requests must be prepared in the format established by the DHS Office of the Executive Secretary (ESEC), available at DHSConnect. Components shall ensure proper coordination through their ESEC Component's Liaison official and allow adequate time for processing agency head approval or delegation requests through the CPO as designated in this Manual.

3001.301-70 Amendment of HSAM.

(a) HSAM changes may be the result of suggestions by internal DHS personnel, other Government agencies, or the public. Submit proposed changes to this manual, along with the rationale for the change, to the Executive Director, Acquisition Policy and Legislation (APL) (or through the HSAM Feedback and Change Request Portal on DHSConnect at the OCPO policy page under Regulations, Supplements & Deviations and click on HSAM).

(b) The HSAM is maintained by OCPO in electronic form. Maintenance of the HSAM will be made through the HSAR/HSAM change process.

(1) *HSAM Chapters*. This manual will contain internal DHS acquisition procedures within chapters that supplement or implement FAR and HSAR material.

(2) *HSAM Notices*.

(i) Updates to the HSAM will be summarized in a HSAM Notice. The APL Executive Director will transmit HSAM Notices to alert HCAs of HSAM changes. HSAM Notices are also published on DHSConnect at the OCPO Acquisition Policy page under the HSAM tab. When a HSAM Notice is issued, the electronic HSAM is updated to incorporate the changes.

(ii) HSAM Notices disseminate information relevant to the HSAM and are normally integrated into the HSAM. When necessary, a HSAM Notice may occasionally contain new material that is issued quickly without following the HSAR/HSAM change process before its release. However, subsequent to its issuance, the HSAM Notice will be reviewed using the HSAR/HSAM change process and change pages to the HSAM Chapters will be issued as appropriate.

(3) *HSAM Appendices, Attachments, and Exhibits*. At the end of the HSAM, Notices, and Bulletins, appendices may be used to provide supplementary material not suitable for insertion in the HSAM issuance itself (e.g., tables, other agency issuances). Appendices may contain attachments with or without exhibits. Attachment(s) supplement the appendix, and exhibit(s) supplement the attachment. Both are made part of the appendix.

3001.301-71 Effective date of HSAM Notice.

Unless otherwise stated, the following applies—

(a) Statements in HSAM Notices that the content is "effective upon receipt," "upon a specified date," or that changes set forth in the document are "to be used upon receipt," mean that any new or revised procedures or forms shall be used when issuing solicitations, contracts, or modifications thereafter; and

(b) If solicitations are already in process or negotiations complete when the HSAM Notice is received, the new procedures or forms need not be used if it is determined by the Chief of the Contracting Office (COCO) that it would not be in the best interest of the Government. In no case shall the authority be delegated below the level of COCO.

3001.301-72 HSAM Notice numbering.

HSAM Notices will be numbered consecutively on a fiscal year basis beginning with number "01" prefixed by the fiscal year (e.g., 2010-01).

3001.304 Agency control and compliance procedures.

(a) DHS's goal is to ensure the HSAR and HSAM are consistent with the FAR unless the FAR prescribes otherwise. Due to the lead time necessary to implement FAR changes, conflict or inconsistency may exist between the FAR, HSAR and HSAM. In those cases, the FAR takes precedence over the HSAR and HSAM.

(1) *Rulemaking requirements for agency acquisition regulations.* The Rulemaking process is required when an agency procurement policy, regulation, procedure, or form has a significant effect beyond internal operating procedures of the agency or has a significant cost or administrative impact on contractors or offerors. See 41 U.S.C. 1707 and FAR 1.301(b).

(2) *Proposed Component-Specific Regulations.* The authority to issue agency acquisition regulations is vested in the Secretary. DHS Delegation Number 00701 delegates this authority to the Chief Acquisition Officer. DHS Delegation Number 00702 further delegates this authority to the CPO. When a Component proposes to issue a Component-specific acquisition regulation, or use a solicitation provision or contract clause on a repetitive basis:

(i) the Component shall:

(A) Prepare a Rulemaking notice to incorporate the proposed regulation into the HSAR as a supplemental regulation that pertains only to that Component. The Component shall apply the numbering conventions at HSAR 3001.303 for incorporating Component-specific acquisition regulations into the HSAR.

(B) Coordinate the proposed regulation in accordance with Component internal procedures (including review by Component legal counsel) to ensure compliance with FAR 1.301 before submission of the proposed regulation and Rulemaking notice to the CPO.

(ii) The proposed regulation shall be approved by the HCA, without redelegation, and submitted to the CPO for review and approval at the initial stages of the regulatory process (i.e., before proceeding to the public comment process); include a Paperwork Reduction Act (see HSAM 3001.404(a)(2)) and Regulatory Flexibility Act analysis, as appropriate; and be supported by a justification of need for the regulation.

(iii) The regulation shall be signed by the CPO and must be integrated within the HSAR with access on the Internet at <http://www.dhs.gov/publication/hsar>.

(iv) The CPO shall evaluate all proposed regulations to determine if the substance could apply to other Components (and to determine if the substance could apply to other agencies and to make recommendation for inclusion in the

FAR). If the CPO determines the proposed regulation should apply to all Components, the proposed regulation will be amended accordingly by the OCPO and finalized by the OCPO. If the CPO determines the proposed regulation should apply to another Component or several other Components but not all of them, the Component seeking the approval shall coordinate the regulation with the other affected Component(s), amend it accordingly, and resubmit the amended Rulemaking notice for CPO approval. If another Component is seeking to adopt a Component-specific regulation that has been previously approved by the CPO, that Component shall prepare a separate Rulemaking notice for CPO consideration.

(3) Each HCA may implement internal component acquisition procedures, which shall:

(i) Contain no material which duplicates unless necessary for clarity (this is expected to be minimally required), paraphrases, or is inconsistent with the contents of the FAR, HSAR, and this manual;

(ii) Be consistent with the policies and procedures of the FAR, HSAR, this manual, and other Departmental guidance and follow the format, arrangement, and numbering system specified in HSAM 3001.105-270 and HSAM 3001.301-70 to the extent practicable; and

(iii) Be reviewed, as deemed appropriate, in accordance with internal operating procedures and the following:

(A) Components shall provide an electronic version of promulgated internal Component-wide acquisition guidance implementing or supplementing this manual to the CPO.

(B) The HCA is responsible for ensuring that contracting offices limit their promulgation of internal Component acquisition procedures and, if procedures are necessary, to ensure they comply with subparagraphs (1) and (2) above.