

# **Subpart 2901.6 - Career Development, Contracting Authority, and Responsibilities**

**Parent topic:** PART 2901 - DEPARTMENT OF LABOR ACQUISITION REGULATION SYSTEM

## **2901.601 General.**

(a) This section deals with contracting authority and responsibilities of the head of the agency as described in 2902.1, FAR subpart 1.6 and this subpart.

(1) The authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to the Assistant Secretary for Administration and Management.

(2) The Assistant Secretary for Administration and Management may delegate contracting authority to a bureau or agency within the Department of Labor as he/she delineates in writing.

(b) The Assistant Secretary for Administration and Management, acting through the Senior Procurement Executive, may delegate additional procurement authority subject to the issuance of warrants by the Senior Procurement Executive, and reserves the right to rescind any acquisition authority, if it is determined that such action is in the best interest of the Government.

## **2901.602 Contracting officers.**

### **2901.602-1 Authority.**

Contracting warrants, at all levels above the micro-purchase threshold, must be requested by the HCA in writing and signed by the Senior Procurement Executive. Warrants may be accompanied by letters of appointment that may provide requirements for maintaining the warrant (e.g., maintaining current documentation for the FAR, DOLAR, and other guidance, and recurrent training). Copies of the appointment shall be maintained in the Division of Acquisition Management Services.

Contracting officers must display the original warrant (and its limitations) in their workspace. A listing of current contracting officers may be available for review on the Internet at <http://www.dol.gov/oasam/grants/prgms.htm>. To modify a contracting officer's authority, the present appointment must be revoked and a new certificate issued.

### **2901.602-3 Ratification of unauthorized commitments.**

(a) If the HCA agrees that the commitment appears to be without valid authorization, the Division of Acquisition Management Services must be notified by the HCA in accordance with the procedures outlined in this section.

(b) *Ratifications - Thresholds.* The Department of Labor may only ratify acquisitions that were intended to fulfill a bona fide need and otherwise could have been authorized when made. If the

action to be ratified is not approved, then the employee who authorized the work may be liable for the entire cost of the action. Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

<b>Dollar threshold</b>	<b>Must be approved by (Ratifying official)</b>	<b>Steps to be followed</b>
Below the micro-purchase threshold	Head of the Contracting Office	1 through 5 & 7.
Between the micropurchase threshold and the Simplified Acquisition Threshold	Head of Contracting Activity	1 through 5 & 7.
Above the Simplified Acquisition Threshold	Assistant Secretary for Administration and Management, after review by the Procurement Review Board	1 through 7.

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**Step - Instruction**

(1) The individual is placed on notice by the contracting officer, in writing, that the purchase may be inappropriate because he did not have a purchasing request, funding, or authority to obligate the Government to make an expenditure of funds.

(i) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of the facts, including, but not limited to a statement as to why the acquisition office was not used, a description of work to be performed or products to be furnished, an estimated or agreed-upon contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance.

(ii) In the absence of such an individual, the head of the applicable office will be responsible for providing such information, including an explanation of why the individual who made the unauthorized commitment is unavailable to provide this information.

(2) The individual who made the unauthorized commitment or the head of the applicable office, as appropriate, shall provide a determination and finding (See FAR 1.704) to the contracting officer indicating that:

(i) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(ii) A procurement request and/or accompanying documentation including a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the source was selected, lists other sources considered, describes the work, and estimates or states the agreed upon price. (If the DOL employee who made the unauthorized commitment is no longer

available, appropriate program personnel must provide the information described in this paragraph); and

(iii) Funds are available and were available at the time of the unauthorized commitment.

(3) The contracting officer reviewing the unauthorized commitment shall determine whether the price is fair and reasonable and if payment is recommended to the ratifying official. (The contracting officer may rely upon written documentation submitted by managing staff above the individual who made the unauthorized commitment, in making his/her determination.)

(4) Legal review is required before ratification by the ratifying official.

(5) The ratifying official shall make an affirmative determination and finding that:

(i) The resulting purchase order or contract would otherwise have been proper if made by an appropriate contracting officer.

(ii) The contracting officer reviewing the unauthorized commitment has determined that the price is fair and reasonable and payment is recommended.

(6) For cases over the simplified acquisition threshold, all documentation for steps (1) through (5) must be forwarded to the Director, Division of Acquisition Management Services, for submission to the Procurement Review Board. However, the ratifying official is responsible for directing the receipt and acceptance for all products and deliverables received by the Government as a result of an unauthorized commitment.

(7) The supervisor of the individual who made the unauthorized commitment shall prepare a corrective action plan to preclude further unauthorized commitments (e.g., ethics, purchase card, or administrative procedures training, or other appropriate action). The ratifying official may approve the corrective action plan. The individual shall report to the ratifying official in writing when the corrective action has been initiated and again after it has been fully implemented.

## **2901.603 Selection, appointment, and termination of appointment.**

### **2901.603-1 General.**

(a) The Senior Procurement Executive will develop and manage an acquisition career management program for contracting personnel. Training requirements must conform to Office of Federal Procurement Policy Letters 92-3, 97-01, and the Federal Acquisition Institute's curriculum. These references are available at:

<http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL97-01.html>,

<http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL92-3.html>, and through the Federal Acquisition Institute (FAI) at:

<http://www.faionline.com/fai/campus/index4.htm>.

(b) The program must cover all contracting personnel in the following categories:

(1) *General Schedule (GS-1102) Contracting Series* (See also FAR 1.603);

(2) Contracting officers, regardless of General Schedule Series, with contracting authority above the simplified acquisition threshold;

(3) Purchasing Series (GS-1105), other individuals performing purchasing duties and individuals with contracting authority between the micro-purchase and simplified acquisition thresholds.

(4) All Contracting Officer Technical Representatives as identified in 2901.603-71.

## **2901.603-3 Appointment.**

*General.* In accordance with FAR 1.603-3, appointments will be made in writing on an SF 1402 for all warrants above the micro-purchase threshold. In addition, appointments may be made for specific functions unrelated to dollar threshold, such as indirect cost negotiation, debt management, and closeout functions.

(a) *Purchase Cards (micro-purchase threshold).* Purchase cardholders will be appointed in accordance with the DOL Guidelines for Purchase Card Use and the Agency/Office procedures approved by the HCA. Agency/Organization Purchase Card Coordinators requesting issuance of a purchase card must be responsible for ensuring that the purchase cardholder has taken an orientation course before issuance and/or use of the purchase card. A list of purchase cardholders is available at: <http://www.dol.gov/oasam/foia/hotfoia/citibank-list.htm>.

(b) *Simplified Acquisition Threshold (currently \$100,000).* The HCA may request a delegation of procurement authority not to exceed the simplified acquisition threshold based on education, training, and experience in the acquisition field. Effective July 26, 2004, all new appointments must comply with training requirements listed in "OFPP Policy Letter No. 92-3, Procurement Professionalism Program Policy-Training for Contracting Personnel", dated June 24, 1992.

(c) *\$500,000.* The HCA may request a delegation of procurement authority not to exceed \$500,000 based on the individual's education, training and experience in contracting. Although primarily reserved for those in the GS-1102 series, the HCA may consider business acumen, education, training, and experience. Effective May 27, 2004, all new appointments must comply with training requirements listed in "OFPP Policy Letter No. 92-3, Procurement Professionalism Program Policy-Training for Contracting Personnel", dated June 24, 1992.

(d) *Unlimited.* The HCA may request a delegation of procurement authority on an unlimited basis for individuals whose education, training, and experience in contracting warrant such authority. Although primarily reserved for those in the GS-1102 series, the HCA may consider length of service, training, and experience. Effective May 27, 2004, all new appointments must comply with training requirements listed in "OFPP Policy Letter No. 92-3, Procurement Professionalism Program Policy-Training for Contracting Personnel", dated June 24, 1992.

## **2901.603-4 Terminations.**

Termination of a contracting officer's appointment will be made in writing unless the warrant contains the basis for the termination (i.e., retirement, reassignment). Terminations may be immediate, but must not operate retroactively.

## **2901.603-70 Responsibility of other government personnel.**

(a) Only DOL personnel with contracting authority shall obligate DOL to any type of contractual obligation and only to the extent of their delegated authority. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Personnel responsible for determining agency needs should maintain a close and continuous relationship with their contracting officer to ensure that acquisition personnel are made aware of contemplated acquisition actions. This will be mutually beneficial in terms of better planning for acquisition action and more timely, efficient and economical acquisition.

(c) Personnel not delegated contracting authority or insufficient contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, DOL personnel who must use the contracting process to accomplish their programs must support the contracting officer to ensure that:

(1) Requirements are clearly defined and specified without being overly restrictive in accordance with FAR 11.002;

(2) Competitive sources are solicited, evaluated, and selected as appropriate;

(3) The FAR and the Competition in Contracting Act requirements for full and open competition are satisfied to the maximum extent practicable. Sole source purchases may only be permitted in accordance with FAR Subpart 6.3 or other applicable provisions of the FAR (e.g. FAR part 8) or federal law;

(4) Quality standards are prescribed, and met;

(5) Performance or delivery is timely;

(6) Files are documented to substantiate the judgments, decisions, and actions taken, including compliance with paragraphs (c)(2) and (3) of this section;

(7) Requirements are written so as to encourage competition and to comply with regulations and federal policy for meeting acquisition goals such as performance-based contracting, HUBZone contractors, etc. The contracting officer will identify these programs to the program office.

## **2901.603-71 Contracting Officer's Technical Representatives (COTR).**

(a) At the time a COTR is to become responsible for a contract, task order, or delivery order, the contracting officer must issue a written letter of delegation informing the individual by name of his or her authority, including a delineation of applicable limitations and responsibilities. This applies to

contracts awarded by the Department of Labor and those awarded by other agencies, such as Federal Supply Schedule Contracts or Economy Act transactions. Only the contracting officer cognizant of the contract action may make a COTR delegation. However, a contracting officer at any level above the cognizant contracting officer may sign the delegation letter, following his or her determination of its accuracy, completeness, and sufficiency.

(b) The functions of a COTR typically may include such actions as inspecting, testing, and accepting contract line items, monitoring the contractor's performance, controlling Government-furnished property, reviewing and approving and/or recommending to the contracting officer approval/disapproval of vouchers/invoices, etc. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them.

(c) Contracting officers may not delegate to the COTR the following authorities:

(1) The authority to issue task or delivery orders against a contract or any of the agreements defined under FAR 16.7;

(2) The authority to change any of the terms and conditions of a contract or any of the agreements defined under FAR 16.7;

(3) The authority to sign contracts or contract modifications;

(4) The authority to write letters to the contractor that will affect the cost or schedule of the contract. The authority to otherwise write letters to a contractor must require the COTR to send a copy of the letters to the contracting officer for the contract file;

(5) The authority to approve contractors' final invoices under cost-reimbursement contracts. However, the COTR must make a final payment recommendation to the contracting officer; or

(6) The authority to commit the Government to any adjustments to the price or cost of the contract or order (e.g., the contracting officer must sign all pre-negotiation and price negotiation memoranda including those which may be combined into one document for those adjustments valued at \$100,000 or less).

(d) The contracting officer's delegation must include the admonition that the COTR may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments must not be delegated through a COTR designation or by any means other than a contracting officer warrant.

(e) The contractor must be notified of the COTR designation in writing and a copy of the COTR letter of appointment also must be provided to the contractor. The contracting officer must provide the COTR with a copy of the COTR designation notification that was sent to the contractor.

(f) The letter delegating COTR authority must include the contract number, and must include the following information, at a minimum:

(1) Contracting officer's and contract specialist's/administrator's name and telephone number;

(2) COTR's specific authority and responsibilities;

(3) COTR's specific limitations, including the admonition that the COTR may be personally liable for unauthorized commitments;

(4) Detailed description of the types of files and the content of the files to be maintained by the COTR;

(5) Reference to meeting applicable requirements for ethics, procurement integrity, no conflict of interest, and proper standards of conduct, including a copy of FAR part 3, and other regulations, statutes, or directives governing these topics (e.g., 5 CFR part 2635 Standards of Conduct);

(6) A requirement that the COTR acknowledge receipt and acceptance of the letter and return it to the contracting officer;

(7) A description of the training required and information on obtaining such training.

(g) *Applicability.* The eligibility requirements of this subpart must apply to all individuals who are designated by the contracting officer as COTRs.

(h) *Eligibility standards.* To be determined eligible for an appointment as a DOL COTR, the following standards must be met:

(1) The candidate must attend and successfully complete a minimum of a 16-hour basic COTR course; and

(2) The candidate must attend a minimum of 1 hour of training specifically in procurement ethics, either through courses offered periodically by the Department of Labor, another federal agency's program, or a commercial vendor.

(i) *Limitations.* Effective May 27, 2004, each COTR appointment made by the contracting officer must clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(1) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(2) Obligate, in any manner, the payment of money by the Government;

(3) Make a final decision on any contract matter which is subject to the clause at FAR 52.233-1, Disputes; or

(4) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, or direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

(j) *Termination.*

(1) Termination of the COTR's appointment must be made in writing by a contracting officer and must give the effective date of the termination. The contracting officer must promptly modify the contract once a COTR termination notice has been issued. A termination notice is not required when the COTR's appointment terminates upon expiration of the contract.

(2) COTRs may be terminated for reasons (not an exhaustive listing) such as exceeding their authorities and limitations, conflicts of interest, unethical conduct, failure to perform, reassignment/resignation/retirement, and upon completion of the contract to which assigned.

(k) *Waivers.* No individual may serve as a COTR on any contract without the requisite training and

signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the HCA may waive the training requirements and authorize the individual to perform the COTR duties.

## **2901.603-72 Administrative procurement management reviews.**

(a) The Senior Procurement Executive is responsible for performing administrative procurement reviews for each procurement office in the Department of Labor, except the Office of the Inspector General (OIG). The purpose of these reviews is to audit internal controls to ensure compliance with established procurement law, regulations, policies, procedures and applicable directives. The reviews are to emphasize the development and improvement of managerial controls and best practices.

(b) The administrative procurement review system is a three-pronged approach that includes self-assessment, statistical data for validation, and flexible quality reviews and assessment techniques. This system is required to:

- (1) Evaluate the effectiveness and efficiency of office acquisition systems;
- (2) Assess the adequacy of policies, procedures and regulations governing the acquisition process; and
- (3) Identify and implement changes necessary to improve the systems.

(c) The Senior Procurement Executive shall establish procurement review procedures, which will focus on:

- (1) Conformance with policies of the FAR, DOLAR and the Department of Labor Manual Series 2-800 and 2-900.
- (2) Conformance with federal reporting requirements for the Department of Labor.
- (3) Understanding of new department-wide or government-wide initiatives (e.g., E-Procurement).
- (4) Government-wide procedures established by the Office of Management and Budget.

(d) HCAs are responsible for ensuring contracting activity compliance with law and regulations through the review and oversight process.

Note: DOL procurement policies require review by the Procurement Review Board of advisory and assistance services acquisitions above \$50,000 for competitive acquisitions and at any dollar amount for noncompetitive acquisitions, and waivers for contracts with employees and recently separated employees. Therefore, review by the PRB is required for unauthorized obligations at these lower thresholds.