

**301.501-3 Exceptions.**

(e) Comments will not be solicited from the public when the change or addition to the HHSAR or lower level acquisition regulation is deemed procedural in nature and concerns internal administrative directions aimed at departmental personnel (see FAR 1.301(b)).

[49 FR 13961, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984. Redesignated and amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

**301.503 Public meetings.**

Public meetings will not normally be used to solicit comments or views on HHSAR or lower level acquisition regulations. However, when the topic is so controversial that the Department or OPDIV believes a public meeting would be beneficial, public meetings will be convened.

[49 FR 13961, Apr. 9, 1984. Redesignated at 50 FR 23127, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

### Subpart 301.6—Contracting Authority and Responsibility

SOURCE: 53 FR 15562, May 2, 1988, unless otherwise noted.

**301.602-3 Ratification of unauthorized commitments.**

(b) *Policy.* (1) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. However, execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. The ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by the head of the contracting activity (HCA).

(2) The HCA or his/her designee is the official authorized to ratify an unauthorized commitment (but see (b)(3), below).

(3) Ratification authority may be re-delegated by the HCA, but not below

the level of the principal official responsible for acquisition (PORA).

(c) *Limitations.* (5) The concurrence of legal counsel concerning the payment issue is optional.

(7) The ratification shall be in written document form containing verification of each limitation stated in FAR 1.602-3(c)(1)-(6), and shall be processed in accordance with 301.602-3(e) *Procedures.*

(e) *Procedures.* (1) The individual who made the unauthorized contractual commitment shall furnish the reviewing contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to: a statement as to why the contracting office was not used, a statement as to why the proposed contractor was selected, a list of other sources considered, a description of work to be performed or products to be furnished, the estimated or agreed contract price, a citation of the appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the submitted material, and prepare the ratification document if he/she determines that the commitment may be ratifiable. The contracting officer shall forward the ratification document and the submitted material to the HCA or designee with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the HCA or designee will coordinate the request for ratification with the Office of General Counsel, Business and Administrative Law Division.

(3) If ratification is authorized by the HCA or designee, the file will be returned, along with the ratification document, to the contracting officer for issuance of a purchase order or contract, as appropriate.

(4) HCA's or their designees will report the number and dollar value of requests for ratifications received and ratifications authorized each calendar quarter. Reports shall be submitted in an original and one copy to the Deputy Assistant Secretary for Management and Acquisition to arrive no later than

30 calendar days after the close of each calendar quarter.

[53 FR 43206, Oct. 26, 1988]

**301.603 Selection, appointment, and termination of appointment.**

**301.603-1 General.**

(a) The appointment and termination of appointment of contracting officers shall be made by the principal official responsible for acquisition (PORA). This authority is not delegable. The head of the contracting activity shall ensure that only the PORA is redelegated, and exercises, this authority.

(b) Only GS-1105 and 1106 and GS/GM-1101 and 1102 personnel shall be appointed as contracting officers (see 301.603-3(b)).

(c) The appointment of contracting officers shall be made at one of the four levels specified under the HHS Acquisition Certification Program (see 301.603-3(b)).

(d) An individual shall be appointed only in instances where a valid organizational need for a contracting officer can be demonstrated or a replacement position is to be filled. Factors to be considered in assessing the need for a contracting officer appointment include volume of actions, complexity of work, and structure of the organization.

**301.603-2 Selection.**

(a) When an organizational need for a contracting officer is determined or a replacement is required, an official (usually the prospective contracting officer's immediate supervisor) will nominate a contracting officer candidate. The nomination shall be accompanied by the candidate's current Standard Form (SF) 171, Personal Qualifications Statement, that contains all relevant information, to include that stated in FAR 1.603-2, a copy of the nominee's most recent performance appraisal, and a copy of the certificate issued under the HHS Acquisition Certification Program indicating the current level of certification.

(b) The PORA shall review the submitted material to determine the candidate's ability to perform the contracting functions required to meet the organizational need. If the PORA re-

quires additional information to make the decision, it shall be provided expeditiously by the nominating official.

**301.603-3 Appointment.**

(a) Contracting officer appointments shall become effective when the PORA signs the Standard Form 1402, Certificate of Appointment. SF 1402's shall be prepared and maintained in accordance with FAR 1.603-3.

(b) Appointments shall be made at one of the four levels established by the HHS Acquisition Certification Program. Therefore, the contracting officer candidate must meet the minimum eligibility requirements of certification for one of the four stated levels. The level will be determined by the organizational need or position being re-filled (replacement). The four levels are as follows:

(1) *Level I—Purchasing Agent.* Mandatory for all personnel who have signature authority for small purchases (GS-1102, 1105, and 1106), including orders from GSA sources.

(2) *Level II—Acquisition Official.* Mandatory for those in the GS-1102 series. Sufficient for delegation of contracting officer authority to a maximum of \$100,000.

(3) *Level III—Senior Acquisition Official.* Mandatory for those in the GS-1102 series for delegation of contracting officer authority above \$100,000.

(4) *Level IV—Acquisition Manager.* Mandatory for preaward review and approval authority as specified in HHSAR Subpart 304.71.

(c) Changes to contracting officer appointments, either increasing or decreasing the warrant limitations, shall be made by the PORA. Changes must be made from one of the four certification levels to another, or within one of the certification levels, and must be implemented by the PORA's issuance of a new SF 1402 to replace the existing SF 1402.

(d) Personnel shall not ordinarily be appointed as contracting officers if they do not meet the qualifications prescribed for one of the four certification levels. However, if it is essential to appoint a contracting officer who does not fully meet the certification qualifications, an interim appointment may be granted by the PORA. The

PORA shall require as a condition of the interim appointment that all training or experience requirements be met within a six month time period. Usually, interim appointments shall not exceed six months. Failure to successfully complete the necessary training requirements or gain the experience within this time frame will result in termination of the appointment, unless the PORA determines that unusual circumstances prevented the attainment of either. In this instance, one additional six month interim appointment may be issued, but no more shall be allowed. The PORA shall fully document all interim appointment actions.

(e) The original SF 1402 shall be provided to the contracting officer, and a copy shall be retained by the PORA. Another copy of the SF 1402 along with the SF 171 material shall be forwarded to the servicing personnel office for inclusion in the individual's personnel file folder. Files on individuals should not be established by the PORA.

**301.603-4 Termination.**

Termination of contracting officer appointments shall be executed by the PORA in accordance with FAR 1.603-4.

**301.603-70 Delegation of contracting officer responsibilities.**

(a) Non-GS/GM-1101 or 1102 or GS-1105 or 1106 personnel shall only be delegated contracting officer responsibilities when determined necessary by a warranted contracting officer (holder of a valid SF 1402), and in accordance with this subsection. Personnel, such as a contracting officer's representative or an ordering officer, shall be delegated only the needed responsibilities by the warranted contracting officer in a written memorandum of delegation which clearly states any limitations on the delegation. Personnel who are not in the GS/GM-1101 or 1102 or GS-1105 or 1106 job series shall not be issued a SF 1402, Certificate of Appointment.

(b) Non-acquisition personnel who are delegated acquisition responsibilities shall be required to have the training, experience, and education requirements necessary for the responsibilities assigned. If, for example, responsibility is to be delegated for making small purchases, the training, edu-

cation, and experience for Level I—Purchasing Agent, or its equivalent as determined by the PORA, shall be required.

**301.670 Head of the contracting activity.**

**301.670-1 Responsibility.**

The head of the contracting activity (HCA) is responsible for conducting an effective and efficient acquisition program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted by qualified personnel, preferably assigned to positions other than in the contracting office being reviewed, to determine the extent of adherence to prescribed policies and regulations, and to detect a need for guidance and/or training.

**301.670-2 Designation.**

Each OPDIV head and PHS agency head has been designated as HCA along with the following officials:

- (a) Deputy Assistant Secretary for Management and Acquisition; and
- (b) Each Regional Director.

[53 FR 15562, May 2, 1988, as amended at 54 FR 24342, June 7, 1989]

**301.670-3 Redelegation.**

(a) The heads of contracting activities may redelegate their HCA authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the Federal Acquisition Regulation, by the HHS Acquisition Regulation, or by other regulations. However, HCA and other contracting approvals and authorities shall not be redelegated below the levels specified in the HHS Acquisition Regulation or, in the absence of coverage in the HHS Acquisition Regulation, the Federal Acquisition Regulation. To ensure proper control of redelegated acquisition authorities, HCA's shall maintain a file containing successive delegations of HCA authority through and including the contracting officer level.

(b) Personnel delegated responsibility for acquisition functions must possess a level of experience, training, and