Subpart 5101.6 - Career Development, Contracting Authority and Responsibilities

Parent topic: Part 5101 - Federal Acquisition Regulation System

5101.601 General.

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

5101.601-90 Department of the Army contracting authorities and responsibilities.

(a) General. Heads of the Contracting Activity (HCAs) have the authority to procure supplies and services to support all customer requirements, unless such procurements fall within the scope of unique contracting authorities assigned to another HCA as described in paragraph (b) below. This framework supports Category Management (CM) reforms, and promotes habitual customer relationships that leverage subject matter expertise to achieve greater contracting outcomes. The list of unique contracting authorities set forth in paragraph (b) is not all-inclusive and will continue to update as CM initiatives evolve. See AFARS PGI 5101.601-90-1 for Guidance for Alignment of Contracting Activities to Categories. Additionally, the authorities described in paragraph (b), sub-paragraphs (2-4), do not apply to contingency requirements outside the continental United States and overseas.

(1) Delegation of any Army HCA contracting authority is limited to officials within the Department of Army at the levels prescribed in Appendix GG .

(2) If a requiring activity presents a requirement in one of the designated commodity areas, to a contracting office not listed in paragraph (b) of this section, that contracting office shall refer the requiring activity to the designated HCA and coordinate with the designated HCA to determine which organization will provide support. If an HCA other than the designated HCA retains that requirement and executes a contract action for the designated commodity:

(A) The supporting HCA shall coordinate with the designated HCA as early as practicable in the procurement planning process, to leverage the subject matter expertise of the designated HCA and ensure the solicitations and contracts are properly structured.

(B) The supporting HCA should ensure the requisite contracting and technical/program personnel are properly trained in the contract award and administration of the designated commodity.

(C) The supporting HCA and designated HCA shall maintain a record of the coordination for contract award. The ODASA(P) will review the records during the Procurement Management Reviews.

(b) Assignment of Unique Contracting Authorities to Army HCAs. The assigned responsibilities are as follows:

(1) The Deputy Assistant Secretary of the Army (Procurement) has the following overarching authorities and responsibilities:

(A) Serves as the Enterprise HCA for the Department of the Army.

(B) Serves as the principal advisor to the Army Senior Procurement Executive (SPE).

(C) Subject to the authority, direction, and control of the SPE, directs other Army HCAs in connection with any procurement or procurement-related matter.

(D) Reviews all Senior Contracting Official (SCO) selections prior to SCO appointment by an Army contracting activity's HCA.

(E) Acts in the absence of another Army contracting activity's specifically-designated HCA.

(F) Chairs the Army Contracting Enterprise Executive Committee.

(G) Appoints Program or Project-specific SCOs on a temporary basis within the responsible Army contracting activity. The Program or Project-specific SCO focuses solely on the management of that program's contract action(s).

(2) The HCA for the U.S Army Contracting Command is responsible for awarding and administering the following contract actions:

(A) Ammunition.

(B) Aviation and Missiles. [Army Contracting Command-Redstone Arsenal is the exclusive contracting center for Army Fixed Wing and non-tethered lighter than air platform aircraft and supporting services; and non-standard rotary wing aircraft].

(C) Combat and Tactical Vehicles.

(D) Construction related materials and services [Mission and Installation Contracting Command (MICC) is the secondary contracting center; the U.S. Army Corps of Engineers (USACE) is the primary contracting activity].

(E) Environmental services.

(F) Facility related materials and services [MICC is the primary contracting center; USACE is the secondary contracting activity].

(G) Information Technology, to include: software (including software development), hardware, consulting, security, outsourcing, and telecommunications. [Contracts or agreements primarily for software development efforts will not be executed by the MICC; however USACE, NGB, and MEDCOM may continue to execute contracts for software development, subject to the guidance issued by the Contracting Center of Excellence for Digital Capabilities at ACC-APG.]

(H) Transportation and Logistics Services, to include: logistics support services, transportation of things, motor vehicles (non-combat), and transportation equipment. .

(3) The HCA for USACE is responsible for awarding and administering the following contract actions:

(A) Architect-Engineer services. (See also 5136.601-90 for other Army contracting offices with architect-engineer contracting authority).

(B) Civil works.

(C) Construction related materials and services [USACE is the primary contracting activity; MICC is the secondary contracting center].

(D) Environmental services.

(E) Facility related materials and services [USACE is the secondary contracting activity; MICC is the primary contracting center].

(F) Facilities purchase and lease.

(4) The HCA for the U.S Army Medical Command is responsible for awarding and administering the following contract actions:

(A) Medical equipment accessories and supplies.

(B) Healthcare services.

(5) The HCA for the National Guard Bureau (NGB) is responsible for awarding and administering the contract actions, grants, and agreements for supplies and services to support the Army and Air National Guard in 50 states, District of Columbia, and 3 U.S. Territories.

(6) The HCA for the Rapid Capabilities and Critical Technologies Office (RCCTO) is responsible for awarding and administering the following contract actions, grants, and agreements:

(A) Rapid Prototyping and initial equipping of strategically important capabilities to meet commanders' warfighting needs, consistent with the Army's modernization priorities.

(B) Technologies that address urgent and emerging threats on an accelerated timeline while supporting acquisition reform efforts.

(7) The HCA for the Small Business Innovative Research (SBIR) is responsible for awarding and administering Phase I and Phase II SBIR contract actions, grants, and agreements.

(c) Information on contracting responsibility with regards to traceability of funds is provided at AFARS PGI 5101.601-90(c)-1 .

5101.602 Contracting officers.

5101.602-1 Authority.

5101.602-1-90 Departmental review and approval.

(a) At any time during the procurement process, the Deputy Assistant Secretary of the Army for Procurement (DASA(P)) may designate a proposed contractual action as Special Interest, and direct the responsible SCO or source selection authority to submit the 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.

(1) 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. The SCO shall coordinate all proposed major decision points (e.g. Source Selection Authority appointments), with the DASA(P).

(2) The DASA(P) will customize the departmental review requirements on a case-by-case basis..

(3) 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. The Contracting officer, under SCO direction, shall ensure the Virtual Contracting Enterprise Paperless Contract File contains all documents related to the proposed contractual action. (See AFARS 5104.802 Contract files).

(b) The DASA(P), as Enterprise HCA, or other Army HCAs may appoint Program or Project-specific SCOs in conjunction with this subpart. (See AFARS 5101.693-90)

5101.602-2 Responsibilities.

(a) Refer to AFARS 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 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 officers 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 AFARS 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 AFARS 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 AFARS 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 AFARS 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, AFARS 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 Army Warranting Guide. The policy is available on the Army Warranting Program tile on https://procurement.army.mil (PAM).

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 AFARS 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

Insight/Oversight Directorate, 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 usarmy.ncr.hqda-asa-alt.mesg.pi-pmr-team@army.mil within 60 days of completing a review.

5101.691 Management controls.

See AFARS PGI 5101.691-1 for guidance on the Army Enterprise Audit Tracker.

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 AFARS 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. Prior to appointing the SCO, the HCA shall coordinate the proposed SCO selection directly with the Enterprise HCA.

(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 may appoint Program or Project-specific SCOs on a temporary basis within the responsible Army contracting activity. The Program or Project-specific SCO focuses solely on the management of that program's contract action(s). (See AFARS 5101.693-90)

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

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.

5101.694-90 Program or Project-specific Senior contracting official.

(1) A Program or Project-specific SCO focuses solely on the management of that program's or project's contract action(s). The appointment may be tailored to align with the risk or complexity, and dollar value of the pertinent program or project. The Program or Project-specific SCO 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.

(2) Program or Project-specific SCOs may be appointed on a temporary basis, typically for the duration of that contract action(s), within an Army contracting activity. The individual must meet the position requirements listed in DoDI 5000.66.

(3) Program or Project-specific SCOs will –

(i) Report directly to the HCA on all matters regarding the pertinent contract action(s).

(ii) Have direct access to the personnel and other essential resources necessary to perform all assigned functions.