Subpart 601.6—Career Development, Contracting Authority, and Responsibilities

Parent topic: PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

601.601 General.

The Procurement Executive is the agency head for the purposes of FAR 1.601.

601.601-70 Delegations of authority.

(a) *Delegations.* As stated in 601.603–3(a), there is no contracting officer authority conferred by virtue of position. Pursuant to 601.602–1(b), the Procurement Executive has designated the following as contracting activities as defined in FAR 2.101. These authorities are not redelegable. In addition, specific individuals are designated as heads of contracting activities (HCAs) (*see* FAR 2.101):

(1) *Overseas posts.* Each overseas post shall be regarded as a contracting activity to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services. The Principal Officer, the Management Officer, or the Supervisory General Services Officer are designated as HCAs; *provided,* that he/she has a contracting officer's warrant issued by the Procurement Executive. The Procurement Executive (or authorized A/OPE staff) may delegate to a contracting officer, on a case-by-case basis, the authority to award a contract or modification which exceeds the contracting officer's warrant level.

(i) No authority is delegated to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts. Design/build solicitations and contracts may only be entered into with the written approval of A/OPE and OBO. Proposed construction contracts exceeding $500,000 and any related architect-engineer contracts must have prior A/OPE approval.

(ii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named in paragraph (a)(1) introductory text of this section may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is required to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Logistics Management; Office of Acquisition Management (A/LM/AQM).* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies and services, including construction, is delegated to the Director or designee as the HCA.

(3) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 *et seq.*), is

delegated to the Director of the Foreign Service Institute, the Executive Director, the Deputy Executive Director, and the Supervisory Contracting Officer as the HCA.

(4) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 *et seq*.), is delegated to the Director, Office of Foreign Missions, and the Administrative Officer as the HCA.

(5) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C.287), is delegated to the Counselor for Administration as the HCA.

(b) *Other delegations.* Several DOS offices have been delegated limited procurement authority, although they have not been designated as HCAs. Matters requiring HCA resolution are referred to the A/LM/AQM. These delegations are provided only to warranted contracting officers in the respective offices. They are as follows:

(1) *Office of Language Services.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation for interpreting, translating, conference reporting, and related language support and escort services.

(2) *Office of Overseas Schools.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended.

(3) *Library.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended, and for the acquisition of newspapers, books, maps, and periodicals.

(4) *Office of International Conferences.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended.

(5) *Bureau of International Narcotics and Law Enforcement Affairs.* The authority to enter into and administer simplified acquisition transactions under FAR part 13, to enter into and administer contracts over the simplified acquisition threshold but not exceeding $500,000 for non-commercial item acquisitions; up to $6.5 million for the acquisition of commercial items using the simplified acquisition procedures under the Test Program of FAR subpart 13.5; orders against existing contracts up to the maximum ordering threshold or limitation and personal services contracts pursuant to the Foreign Assistance Act of 1961, as amended; and, 48 CFR Chapter 7, Agency for International Development Acquisition Regulation (AIDAR), including any amendments thereto. INL follows the AIDAR guidance for doing personal service contracts. All other contracting actions follow the DOSAR and DoS regulations. These authorities extend to any acquisition performed by any Department of State contracting activity on behalf of INL.

(6) *Office of Small and Disadvantaged Business Utilization.* The authority to enter into and administer 8(a) purchase orders and contracts as a third party pursuant to the Memorandum of Understanding signed with the Small Business Administration.

(7) *Bureau of Administration, Office of Operations.* The authority to enter into and administer

simplified acquisition transactions for emergency or contingency operations necessary to protect life or federal property. This authority is limited to cases when a contracting officer in the Office of Acquisitions Management is unavailable.

(8) *Regional Procurement Support Offices.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) at the following locations:

(i) RPSO Frankfurt in conjunction with Consulate General Frankfurt; and

(ii) RPSO Florida in conjunction with the Florida Regional Center.

(c) *Execution of delegated authority.*

(1) Whenever the contracting officer makes use of the various statutory authorities available to the Department to waive the application of the Federal Acquisition Regulation or laws governing acquisition, such as those provided in the Foreign Assistance Act (22 U.S.C. 2291) or the Foreign Service Buildings Act (22 U.S.C. 294), a written determination of the basis for using the authority must be prepared and included in the file.

(2) If the statute or current practice of the requiring office does not specify a particular format, use the following format.

DETERMINATION FOR USE OF AUTHORITY TO WAIVE _____[fill in what is being waived]

SUBJECT: [State title of program or project]

DESCRIPTION OF REQUIREMENT: [Briefly describe what is being acquired]

STATUTORY AUTHORITY: [Cite specific statute, such as 22 U.S.C. 2291(a)(4) for INL, and provide quotation from the law that conveys authority for the waiver at issue]

SCOPE OF WAIVER: [Describe what is being waived, such as (but not limited to) the Federal Acquisition Regulation (FAR) in its entirety, the Competition in Contracting Act as implemented in FAR Parts 5 and 6, or FAR Part 32 limitation on advance payments, etc.; also identify the individual acquisition or class of acquisitions for which the waiver is being sought.]

JUSTIFICATION: [Describe the need to use the authority and the anticipated impact of not doing so; discuss alternatives considered, if any]

CONCURRENCE:

Contracting Officer

Date

Legal Advisor

Date

APPROVAL/SIGNATURE:

Approving Official

Date

(3) The determination may be made for an individual acquisition or on a class basis, as appropriate. The Contracting Officer must ensure that the proper official makes the determination in question. There may already be a Department of State delegation of authority to a specific individual to make the determination.

601.602 Contracting officers.

601.602-1 Authority.

(a) DOS contracts are awarded pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS regulations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including FAR-covered interagency acquisition agreements, for the expenditure of funds involved in the acquisition of personal property, services, and for the sale of personal property. The Procurement Executive may further delegate this authority to those DOS employees appointed or designated to the contracting activities enumerated in 601.601–70.

(c) The contracting officer shall not award, modify, or terminate a contract unless all reviews, clearances, and approvals prescribed in the FAR or the DOSAR have been obtained, and all applicable requirements of law, the FAR, the DOSAR, and other regulations have been met.

601.602-3 Ratification of unauthorized commitments.

(b) *Policy.*

(1) The Government generally is not bound by unauthorized commitments. Unauthorized commitments violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DOSAR, and proper acquisition practice. Therefore, such unauthorized commitments are serious violations that could result in disciplinary action against the transgressor, e.g., withdrawal of a contracting officer's warrant or a Contracting Officer's Representative delegation or collection action.

(2)

(i) Unauthorized commitments not exceeding $1,000. The head of the contracting activity is delegated the authority to serve as the ratifying official for unauthorized commitments not

exceeding $1,000, including unauthorized commitments from other agencies where a DOS employee serves as the contracting officer for that action. The head of the contracting activity may refer any actions not exceeding $1,000 to the DOS Procurement Executive for ratification if he or she so chooses.

(ii) Unauthorized commitments exceeding $1,000. All DOS unauthorized commitments in excess of $1,000 shall be submitted to the DOS Procurement Executive for ratification. Unauthorized commitments in excess of $1,000 from other agencies may be referred to the other agency's representative at post for resolution in accordance with that agency's ratification process.

(3) *Claims.* Unauthorized contractual commitments that would involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be processed in accordance with FAR subpart 33.2 and subpart 633.2.

(4) *Disciplinary action.* The Procurement Executive may refer egregious cases of unauthorized commitments to HR/ER for possible disciplinary action in accordance with 3 FAM 4370 or 3 FAM 4540. Examples might include repeated unauthorized commitments knowingly made by an employee; failure to take responsibility for a deliberate unauthorized commitment; or similar reasons. The Procurement Executive may revoke the appointment certificate of any contracting officer who makes an unauthorized commitment. The Procurement Executive may direct a contracting officer to revoke the appointment memorandum of a Contracting Officer's Representative or Government Technical Monitor who makes an unauthorized commitment.

601.602-3-70 Procedures.

(a)

(1) The person who made the unauthorized commitment shall submit all records and documents concerning the unauthorized commitment to the contracting officer assigned the ratification action. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed; a statement justifying a sole source acquisition (Justification for Other Than Full and Open Competition) if the unauthorized commitment exceeds $100,000; why and how the vendor was selected; a list of other sources considered; a description of work or products; a statement regarding the status of performance; an estimated or agreed price; certified funding citations; a statement as to why he/she should not be personally liable for the cost, e.g., a public purpose was served and no personal benefit was received; a statement as to whether the individual has ever been responsible for any other unauthorized commitments in the Department of State; and, a statement as to the number of unauthorized commitments processed by the responsible office within the last three calendar years and the circumstances surrounding each of these actions.

(2) When the person who made the unauthorized contractual commitment is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized commitment.

(3) In addition, a cognizant management official from the office that employed the individual who made the unauthorized commitment at the time the unauthorized commitment was made shall provide a statement detailing actions that he/she will take to ensure that such commitments will not occur again under the same or similar circumstances.

(4) This statement shall be cleared by the Executive Director of the Bureau that employs (or employed) the person who made the unauthorized commitment.

(b) The contracting officer assigned the ratification action shall prepare and execute a recommendation to the ratifying official. The contracting officer shall either recommend that the ratifying official approve and ratify the unauthorized commitment; or, disapprove the ratification of the unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602–3(c)(1) and (c)(3) through (6); and a recommendation to the ratifying official as to whether the unauthorized commitment should be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the ratifying official could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; that the ratifying official hereby ratifies (or disapproves) the unauthorized commitment in the amount specified; and a date and signature block for the ratifying official.

(c) The information required in paragraph (b)

(1) of this section shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit the complete file to the ratifying official. For actions exceeding $1,000, the file shall be submitted through the head of the contracting activity to the Procurement Executive.

(e) Upon receipt and review of the complete file, if the ratifying official ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity if the action exceeds $1,000, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the ratifying official shall return the request to the head of the contracting activity (if over $1,000) or to the contracting officer (if under $1,000) with a written explanation for the decision and a recommendation for disposition of the action.

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

601.603-1 General.

Details of the Department's acquisition career management program are described in 14 FAH–3, Acquisition Career Management Program Handbook, which is available on the Internet at *http://www.state.gov/m/a/dir/regs/fah/14fah03/index.htm*

601.603-3 Appointment.

(a) *General.* There is no contracting officer authority conferred upon any DOS employee by virtue of position. The Procurement Executive appoints all DOS contracting officers, in conformance with FAR

1.603–3, with the one exception as noted in paragraph (b) of this section. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive. Only qualified employees shall be appointed as contracting officers. A/OPE is responsible for providing guidance and oversight in managing such appointments.

(b) *Temporary warrants.* The Chief of Mission is delegated the authority by the Procurement Executive to issue temporary contracting officer warrants for periods up to 90 calendar days in order to cover emergency, post-specific operational requirements (e.g., staffing gaps, medical evacuations, extended leave, etc.). These temporary appointments shall be executed on the Standard Form 1402, and a copy shall be furnished to A/OPE. The warrant shall contain both a dollar limitation of no more than $100,000 and a specific time period (not to exceed 90 days) during which the warrant is effective.

(c) *Non-Federal employees.* Only United States Government employees shall be appointed as contracting officers. For acquisitions at $25,000 and below only, this includes locally employed staff (*i.e.,* Foreign Service Nationals and Third Country nationals). Personal services contractors are not eligible for appointment as DOS contracting officers.

(d) *Personal services agreements.* Individuals who may sign personal services agreements (PSAs) are limited to the following:

(1) The Human Resources Officer;

(2) The Human Resources/Financial Management Officer; or,

(3) The Management Officer or an American Foreign Service Officer designated to perform human resource functions.

(e) *Real property leases.* The FAR and DOSAR do not apply to leases of real property. A contracting officer certificate of appointment is not required. Authority to sign real property leases is as follows:

(1) *Domestic real property leases.* The General Services Administration has delegated domestic leasing authority to the Department of State's Office of Real Property Management (A/OPR/RPM). This delegation is accomplished on a case-by-case basis.

(2) *Real property leases abroad.* Authority to sign real property leases abroad is held by the Director/Chief Operating Officer (DIR/COO) of the Bureau of Overseas Buildings Operations (OBO), through the Secretary of State, under the Foreign Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq*.). Leases at post may be executed by the General Services Officer or by other post administrative personnel as authorized by OBO.