

3501.404 Class deviations.

Requests for class deviations to the PAR shall be submitted in advance by the HCA through the General Counsel to the Procurement Executive for processing in accordance with FAR 1.404 and this section. Requests submitted shall include the same type of information as required for individual deviations as prescribed in 3501.403. The Procurement Executive may approve class deviations to the FAR and the PAR and shall transmit copies of approved class FAR deviations to the FAR Secretariat as required by FAR 1.404.

3501.405 Deviations pertaining to treaties and executive agreements.

(d) The Procurement Executive is designated as the central control point within the Commission for transmittal of deviations from the FAR required to comply with treaties and executive agreements to which the United States is a party. Copies of the text of any deviation authorized in accordance with FAR 1.405 (b) or (c) shall be forwarded by the HCA to the Procurement Executive through the General Counsel for further transmittal to the FAR Secretariat.

(e) When a deviation required to comply with a treaty or executive agreement is inconsistent with FAR coverage based on law, the Procurement Executive shall forward a request for deviation to the FAR Secretariat for processing as required by FAR 1.405(e).

Subpart 3501.6—Contracting Authority and Responsibilities**3501.601 General.**

(a) Commission contracting activities are established within the General Services Bureau for the acquisition of supplies and services, and the Engineering and Construction Bureau for the acquisition of construction, including architect-engineer services and other services related to construction. The Directors of these bureaus are designated by the Administrator as Heads of Contracting Activities and are the officials who have the authority and responsibility to appoint contracting officers to contract for authorized sup-

plies and services, including construction and architect-engineer services, that fall within the scope of their respective contracting activities.

(b) In addition, bureau directors and heads of independent units are delegated contracting authority, not to exceed amounts established by the General Services Director, for the decentralized procurement of supplies and services on Division Purchase Orders (see 3513.505-71). This authority is granted to assist Commission activities in expediting minor purchases. Such authority may be redelegated pursuant to 3513.505-71(b)(1)(ii).

3501.602 Contracting officers.**3501.602-3 Ratification of unauthorized commitments.****(a) Definitions.**

Responsible contracting officer, as used in 3501.602-370, means the individual at the appropriate level of contracting authority who can execute any contractual document that may be required to formalize an unauthorized commitment. Depending on the circumstances, the term can apply to the existing contracting officer, the prospective contracting officer (when a purchase order or contract does not exist) or, in the case of a contracting officer who acted in excess of the limits of his delegated authority, the next individual in the chain of contracting authority who has the appropriate authority to execute the necessary contractual document.

(b) *Policy.* (1) Unauthorized commitments do not legally obligate the Commission for the expenditure of funds. If an unauthorized commitment would have been valid had it been authorized by a contracting officer acting within the limits of his delegated authority, then the unauthorized commitment may be ratified in accordance with the procedures prescribed in 3501.602-370. If an unauthorized commitment is otherwise improper, it cannot be ratified and the Commission must deny legal liability, in which case the individual who made the unauthorized commitment may be personally liable for such action.

(2) The cognizant Head of the Contracting Activity (HCA) is the ratification official for the approval of unauthorized commitments and the Procurement Executive is the reviewing official for such approvals. The HCA may ratify an unauthorized commitment only if:

(i) The conditions in FAR 1.602-3(c) are applicable, and

(ii) The Procurement Executive concurs with the proposed ratification.

3501.602-370 Procedures.

These procedures apply to all unauthorized commitments, whether written or oral and without regard to dollar value. Unauthorized commitments (other than claims to be processed in accordance with FAR subpart 33.2) shall be processed as follows:

(a) Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitment, that person shall be advised by the cognizant contracting office that such work is being or was performed at that person's own risk pending establishment of valid contractual coverage.

(b) The individual who made the unauthorized commitment shall furnish to the responsible contracting officer all records and documents concerning the commitment and a complete, written statement of the facts including, but not limited to, a description of the work or product ordered; why the work or product was necessary to and for the benefit of the Commission; the estimated or agreed upon price; citation of funds available at time of commitment; the current status of performance by the actual or prospective contractor; the reason why normal acquisition procedures were not followed and, if a contract does not exist, a statement as to why the prospective contractor was selected including, if applicable, identification of other sources that were considered.

(c) The responsible contracting officer shall—

(1) Obtain from the head of the requisitioning office with appropriate approval authority:

(i) Affirmation that the Commission has or will obtain a benefit from the unauthorized commitment,

(ii) A written certification by the responsible funding certification officer that funds presently are available and were available at the time the unauthorized commitment was made, and when applicable,

(iii) A statement of corrective action that office will take to preclude repetition of the incident;

(2) Review and determine the adequacy of all facts, records, and documents furnished, and when necessary, obtain any additional material or information pertinent to the review and evaluation of the unauthorized commitment;

(3) Determine whether the price is fair and reasonable, and state in the record the reason therefor;

(4) Prepare, certify, and obtain any necessary written approval of a justification for other than full and open competition when required pursuant to FAR subpart 6.3;

(5) State in the record the corrective action to be taken to preclude repetition of the incident if the individual that made the unauthorized commitment is under the supervision of the responsible contracting officer; and

(6) Forward the request for ratification (i.e., all the information required in paragraphs (b) and (c) of this subsection) to the cognizant HCA, together with a written recommendation of an appropriate course of action including, at a minimum, a specific recommendation as to whether payment should be made and the reasons therefor.

(d) The cognizant HCA, upon receipt and review of the request for ratification file, shall determine whether ratification is in order. If so, the HCA shall forward the file to the Procurement Executive for review. If not, the HCA shall return the file to the responsible contracting officer, together with a written explanation for the decision and instructions for disposition of the case.

(e) The Procurement Executive shall review proposed ratifications submitted by HCAs. If the Procurement Executive concurs that ratification is in order, he shall obtain General Counsel concurrence that payment may be