

(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

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made and return the file to the cognizant HCA for that individual's ratification and subsequent return to the responsible contracting officer together with, when appropriate, instructions to issue a purchase order, contract, or contract modification, as applicable. If the Procurement Executive does not concur with the proposed ratification, he shall return the file to the HCA, together with a written explanation for the decision and instructions for disposition of the case. He will provide a copy to the General Counsel.

3501.603 Selection, appointment, and termination of appointment.

3501.603-1 General.

Heads of Contracting Activities may appoint as contracting officers one or more capable and qualified individuals of their respective staffs. These appointments may be made by memorandum delegating contracting authority, including any limitations to such authority, to positions or to named individuals. Appointments shall be evidenced by a "Certificate of Appointment", as required by FAR 1.603-3. If contracting authority is delegated to a position by memorandum, the "Certificate of Appointment" shall state the name of the individual assigned to the position.

3501.670 Legal review of proposed contract actions.

3501.670-1 Contract actions requiring legal review.

The following contract actions shall be submitted to the General Counsel for review for legal sufficiency:

- (a) All proposed contracts with an estimated cost of \$100,000 or more (in advance of issuance);
- (b) All alleged mistakes in bids, other than apparent clerical mistakes that can be corrected pursuant to FAR 14.406-2;
- (c) All determinations and findings required under the FAR;
- (d) All proposed utility contracts;
- (e) All proposed contracts containing insurance requirements not prescribed in the FAR or this PAR;
- (f) In sealed bid procurements, all proposed awards to other than the lowest responsible and responsive bidder;

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(g) Rejections of all bids and cancellations of invitations for bids;

(h) Proposed letter contracts;

(i) Written protests, whether before or after award;

(j) Unusual, novel, or unique proposed agreements, and unsolicited proposals that are to be negotiated pursuant to FAR subpart 15.5 and subpart 3515.5;

(k) Proposed ADP contracts of \$25,000 or more when purchase is to be from other than a Federal Supply Service contract source;

(l) Termination actions, including pre-termination letters;

(m) All actions taken under the Disputes clause, including final decisions;

(n) Any action concerning suspension or debarment of an individual or concern;

(o) Deviations from the FAR or PAR;

(p) Any contract matter relating to litigation, disputes, or protest resolution before the courts of the United States or of the Republic of Panama, or before the Corps of Engineers Board of Contract Appeals or the Comptroller General of the United States;

(q) Determinations of nonresponsibility;

(r) Any proposed contract modification, including proceed orders, which may result in a change in the contract price of more than \$25,000, or any proposed contract modification or proceed order granting a time extension of more than 20 calendar days;

(s) Any proposed contract modification resulting from either a contractor's settlement proposal under the Termination for Convenience clause, or a contractor's claim under the Suspension of Work clause, regardless of the contract value or the terms of the proposed modification;

(t) Freedom of Information Act and Privacy Act matters involving contractors or arising under or in relation to any contract;

(u) Administrative setoffs to recoup Government funds under any contract; and

(v) Requests for approval of advance payments on contracts other than those excluded in FAR 32.404.