

801.602

in both the FAR and the VAAR contain some contracting officer limitations and it is incumbent upon each contracting officer to be aware of those limitations.

(b) Personnel, other than those designated in 801.602, may determine quality, quantity and delivery requirements for items or services to be purchased. However, under no circumstances will individuals who have not been delegated contracting authority commit the Government for purchases of supplies, equipment or services. Individuals making such commitments may be held financially liable for the amount of the obligation.

801.602 Contracting officers.

(a) Except as otherwise provided by law, VA regulations, VAAR and FAR, the authority vested in the Secretary to do the following is delegated to the Senior Procurement Executive and is further delegated to the Procurement Executive:

(1) Execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds involved in the acquisition of personal property, service (including architect-engineer services), construction, issuing Government bills of lading, and for the sale of personal property, leases, sales agreements and other transactions;

(2) Prescribe and publish acquisition policies and procedures;

(3) Establish clear lines of contracting authority;

(4) Manage and enhance career development of the procurement work force;

(5) Examine, in coordination with the Office of Federal Procurement Policy, the procurement system to determine specific areas where Governmentwide performance standards should be established and applied, and to participate in the development of Governmentwide procurement policies, regulations and standards; and,

(6) Oversee the competition advocate program.

(b) Further delegation to execute, award, and administer contracts, purchase orders and other agreements will be made in accordance with the Contracting Officer Certification Program

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as prescribed in (VAAR) 48 CFR 801.670 and 801.690.

[61 FR 1526, Jan. 22, 1996]

801.602-2 Responsibilities.

(a) In the administration of a contract, many problems can and do arise that make the advice and assistance of the General Counsel either desirable or necessary. The final decision as to the action to be taken, however, must be made by the contracting officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the contracting officer shall, except as provided in paragraph (c) of this section, submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

(b) While legal review and concurrence of the General Counsel is required prior to a default termination, in some cases where a quick response is necessary, this review can be expedited by express mailing or telefaxing the default letter and related documents which are required to make an evaluation directly to the General Counsel (025). The default termination letter should contain, at a minimum, the following:

(1) The proposed termination (FAR 49.102);

(2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;

(3) A statement that the factors set forth in FAR 49.402-3(f) have been fully considered; and

(4) Final decision language and appeal rights.

(c) Contracts containing a mutual termination clause may be terminated without reference to the General Counsel.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989]

801.602-3 Ratification of unauthorized commitments.

(a) Contracting officers shall not ratify contractual commitments made by other VA personnel without prior approval as prescribed below. Such unauthorized commitments include commitments made by other contracting

officers which exceed their respective contracting authority as well as unauthorized commitments made by individuals lacking contracting authority.

(1) At field stations, for supplies, services and construction, the approving authority is the director of the field facility concerned.

(2) For central office contracting officers, for supplies, services, and construction, the approving authorities are the heads of the administrations and directors of the staff offices concerned, and the Deputy Assistant Secretary for Acquisition and Materiel Management.

(3) For acquisitions of leasehold interest in real property the approving authority is:

(i) The Chief Facilities Management Officer, Office of Facilities Management, for 1-5,000 square feet, and for 1-100 parking spaces costing less than \$50,000 per annum.

(ii) The Assistant Secretary for Management for 5,001-20,000 square feet, and for parking spaces exceeding 100 which cost less than \$100,000 per annum.

(iii) The Deputy Secretary for 20,001 square feet and above, and for parking spaces exceeding 100 which cost more than \$100,000 per annum.

(4) This approval authority shall not be redelegated.

(b) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the 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 procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the file and forward it to the approving authority specified in para-

graph (a) of this section with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the approving authority will coordinate the request for ratification with the Office of the General Counsel or the District Counsel, as appropriate.

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

(c) In the case of otherwise proper contract awards made by contracting officers in excess of the limits of their delegated authority, the need for ratification will be brought to the attention of the head of the contracting activity. That individual will take such action as may be indicated to preclude future instances of such awards.

[54 FR 31962, Aug. 3, 1989, as amended at 61 FR 11585, Mar. 21, 1996; 63 FR 69217, Dec. 16, 1998]

801.602-70 Legal/technical review requirements to be met prior to contract execution.

(a) The following categories of proposed contracts and agreements will be reviewed and concurred in by the Office of Acquisition and Materiel Management prior to contract execution. (Additionally, the Office of Acquisition and Materiel Management may, when considered necessary, request preaward technical review regardless of dollar value). Office of General Counsel legal reviews of such proposed contracts and agreements will be performed when requested and determined necessary by the Office of Acquisition and Materiel Management. (Excluded from this requirement is the National Acquisition Center which will perform its own technical reviews at the thresholds herein prescribed. The National Acquisition Center will receive preaward legal review of solicitation from the General Counsel staff located in Hines, Illinois).

(1) All negotiated and sealed bid contracts (except as specified in (a)(2) and (a)(3)) exceeding \$250,000 in either appropriated or nonappropriated funds. This includes indefinite quantity contracts when expenditures of \$250,000 or more can reasonably be expected, and multiyear contracts in which \$250,000