

Subchapter 3001.6 Career Development, Contracting Authority, and Responsibilities

3001.601 General.

The CPO, without delegation, is authorized to establish a new contracting activity at DHS Headquarters and delegate authority to manage functions within the activity. The Secretary, Under Secretary of Management, CPO, and HCAs are considered contracting officers within DHS by virtue of their positions; no Certificate of Appointment is required.

3001.601-70 Designation of the Head of Contracting Activities and Chiefs of Contracting Offices.

(a) The CPO is delegated the authority to appoint HCAs. The Component shall nominate the individual in writing to the CPO by providing a copy of the individual's resume or other selection document which outlines the candidate's experience, education and training. The DHS HCA listing is available at Appendix A.

(b) HCAs, without redelegation, shall designate individuals as COCOs. Components shall submit a copy of the signed designation to the CPO within 5 days of issuance.

3001.602 Contracting officers

3001.602-2 Responsibilities.

Contracting officers may delegate limited responsibilities to an authorized representative(s) (e.g., Governmentwide commercial purchase card recipient, Contracting Officer's Representative (COR), etc.). Any delegation of responsibility shall be in writing to specified individuals (by name, not position) and clearly enumerate the delegated responsibilities and any limitations attached thereto. COR selection, training, certification, and appointment are discussed in HSAM 3042.270 and in Component policy.

3001.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

(1) "Ratifying official" means the individual having the authority to authorize the issuance of a contract award, purchase order, or other procurement instrument providing for the ratification of an unauthorized commitment.

(2) "Unauthorized commitment", as defined in FAR 1.602-3, includes, but is not limited to, any action by a person other than the contracting officer that results in: (i) continued performance by a contractor beyond the expiration date or the price established by the procurement instrument; or (ii) the commencement of performance of work in advance of issuance of a formal procurement instrument properly executed by a duly authorized contracting officer.

(b) *Policy.*

(2) The HCA, with authority to redelegate to no lower than the COCO, is delegated authority to ratify unauthorized commitments.

(c) *Limitations.*

(7) The following procedures shall be used for ratification of an unauthorized commitment:

(i) It is the responsibility of the individual who made the unauthorized commitment to provide the following information to the ratifying official:

- (A) A discussion describing the circumstances causing the unauthorized commitment;
- (B) Reasons why normal procurement procedures were not followed;
- (C) What bona fide Government requirement necessitated the commitment;
- (D) Whether any benefit was received;
- (E) The dollar value of the commitment and an evaluation of the contractor's effort in terms of appropriateness of the hours expended, type of labor used, and other costs expended;
- (F) Rationale for the contractor selected and identification of other sources considered;
- (G) Status of performance;
- (H) Any other pertinent facts including invoices, receiving report, or other documentary evidence of the transaction;
- (I) The signature, following the above information, of the employee who created the unauthorized commitment certifying to the accuracy of the information provided;
- (J) Recommendations, signed by the employee's second level supervisor, for corrective action to preclude the situation from recurring; and
- (K) A complete procurement request (i.e., DHS Form 700-20, Procurement Request or Component authorized funding document), including a certification that the funds included in the purchase request for

the ratifying action were available at the time the unauthorized commitment occurred.

(ii) If the individual who made the unauthorized commitment is not available, the office responsible for the commitment shall provide the information described in subparagraph (i) above with the name (vice signature) of the individual who made the unauthorized commitment.

(iii) A written contract, as defined under FAR 2.101, is not required to confirm the ratification of an unauthorized commitment. The contracting officer, on a case-by-case basis, shall decide if a contract or other written means would be appropriate for a particular situation. Such factors as the furnishing of Government property, promise of product delivery, dispute over invoiced prices, etc., are to be considered when determining if a contract will or will not be used.

(A) The complete file containing all the ratification documentation requirements of subparagraph (c)(7)(i) (also see (B) below), shall be provided to the ratifying official for a determination to ratify or not to ratify the action.

(B) Before ratification of an action, a letter requesting payment or an invoice from the contractor who provided the supply or service shall be received. If not already received, the contracting officer shall obtain an invoice after ratification for submission to the finance office.

(C) A memorandum signed by the contracting officer who approves the invoice shall be sent to the finance office along with the invoice. The original certified DHS Form 700-20, Procurement Request, (covering the total amount of the invoice), a copy of the ratifying official's ratification, and the document confirming the ratification (see subparagraph (iii) above), shall be attached to the memorandum.

(D) A copy of the memorandum, DHS Form 700-20, invoice, and original ratification documentation shall be retained in the contract office file.

(E) A letter explaining the disposition of the unauthorized commitment shall be sent to the contractor by the contracting officer if payment will not be made.

(iv) Each contracting office shall establish a file system to ensure those actions for which a ratification was requested can be identified with the documentation below in paragraphs (A) through (G). Each ratification request included in the office file shall be retained for 6 years and 3 months after final payment or after the ratifying official determines that the action will not be ratified. The office file pertaining to a ratification action shall contain the following:

- (A) The name of the office and person that made the unauthorized commitment;
- (B) A brief description of the commitment, the amount of the action, and a written determination, with supporting documentation, that either the request should not be ratified or that the ratified price is fair and reasonable;
- (C) The name of the firm or person to whom the commitment was made (if not in the ratification document);
- (D) The date the commitment was either ratified (if not in the ratification document) or not ratified;
- (E) A copy of the ratification document as applicable;
- (F) Evidence of legal counsel concurrence with any ratification that is 10 percent or more of the simplified acquisition threshold; and
- (G) Any disciplinary action taken or an explanation as to why none was considered necessary.

(d) *Nonratifiable commitments.* If an unauthorized commitment is disapproved for ratification (nonratifiable), the contracting officer shall promptly notify the individual who made the unauthorized commitment, in writing, stating the reasons for disapproval and recommending the individual obtain legal advice. The contracting officer shall also advise the individual that the nonratifiable commitment will not be paid in accordance with prescribed contracting methods of payment. If the unauthorized commitment involves the Governmentwide commercial purchase card or payment has already been made via the SMART PAY program, the responsible individual may be billed or other reimbursement action taken.

3001.603 Selection, appointment, and termination of appointment.

3001.603-1 General.

The HCA, with authority to redelegate to no lower than the COCO, is delegated authority to select, appoint, and terminate the appointment of contracting officers.

3001.603-2 Selection.

Acquisition Workforce Policy Number 064-04-011, Contracting Officer Warrant Program, establishes DHS policy and procedures on obtaining and maintaining contracting officer warrants.

3001.670 Responsibility of other Government personnel.

(a) Responsibility for the decision of what to buy and when to buy rests mainly with program and certain staff offices. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Program personnel, using the contracting process to accomplish their programs, shall support the contracting officer in ensuring that:

- (1) Advanced Acquisition/Forecasts and Acquisition Plans are completed, as required;
- (2) Requirements are clearly defined and specified;
- (3) Competitive sources are solicited, evaluated, and selected;
- (4) Quality standards are prescribed and met;
- (5) Performance or delivery is timely;
- (6) Prices, estimated costs, and fees are reasonable; and
- (7) Files are documented to substantiate the judgments, decisions, and actions taken.

3001.671 Selection, Appointment and Termination of Non-Warranted Ordering Officials.

3001.671-1 General.

This policy applies only to non-warranted, non GS-1102 ordering officials placing orders in excess of the micro-purchase threshold. Contracts must have established fixed terms and prices, as ordering officials are not authorized to negotiate, determine price reasonableness or determine best value.

3001.671-2 Selection.

HCA (or written designee) must ensure that nominated ordering officials possess the necessary skills and abilities to successfully perform the assigned duties. DHS MD Number 0783, Ordering Official Certification, details the requirements for the DHS ordering officials.

3001.671-3 Procedures.

(a) Authority of ordering officials. If the HCA (or written designee) determines that the appointment of ordering officials is essential for the operation of the contracting mission, the following situations are authorized:

- (1) For contract actions deemed appropriate, a DHS non-warranted federal employee may be appointed as an ordering official to place delivery orders for supplies under DHS Electronic Mall (EMALL).

(2) For contract actions deemed appropriate, a DHS non-warranted federal employee may be appointed as an ordering official to place delivery orders for supplies against indefinite delivery contracts and blanket purchase agreements (BPAs), that were awarded by DHS contracting officers, provided the contract terms permit placement of the orders and orders placed are within monetary limitations specified in the contract.

(b) *Appointment of ordering officials.*

(1) *Documentation.* The HCA (or written designee) shall maintain a file of appointments, including waivers for temporary appointment and terminations, for all ordering officials.

(2) *Qualifications.* Appointees shall have sufficient knowledge and experience to perform ordering official duties. Appointees shall hold a DHS certification for ordering officials and must acknowledge the requirement to attend skills currency training during the appointment duration to maintain certification. Appointees shall be familiar with and comply with appropriate DHS regulations and be responsible for identifying any potential conflict of interests relating to their appointment.

(3) *Appointment.* Each ordering official shall be issued a unique appointment letter that delegates authority to the ordering official and that delineates his or her duties, responsibilities, and limitations of authority. The delegated authority may not be redelegated by the ordering official. The duties of the ordering official should be considered when determining the appropriate dollar level for the ordering authority. The written appointment must be signed and shall not contain authority to sign contractual documents, order contract changes, modify contract terms, or create any commitment or liability on the part of the Government different from that set forth in the contract.

(4) Upon receipt of the appointment, the ordering official shall advise the appointing authority in writing that he or she accepts the responsibilities. After acceptance of the appointment, the contractor (if appropriate), disbursing officers and other interested personnel are to be provided written notification of the name of the ordering official appointed to place orders, unless the ordering official is named in the contract.

(c) *Termination of ordering official appointment.* In accordance with DHS MD Number 0783, Section VI. B. Procedures, 2. Certification Application, states, "The Acquisition Certification Board will issue certifications, which will remain valid for four (4) years from the date issued, provided annual skills currency requirements are maintained."

(1) The ordering official appointment shall remain in effect until terminated by the HCA (or a designee identified in writing). Terminations of appointments shall be made in writing, except for terminations that result when contracts expire. Ordering officials shall acknowledge the appointment termination in writing. The HCA (or designee) is responsible for ensuring appointments are terminated when they are no longer valid or required.

- (2) After termination of the appointment, the contractor, disbursing officers and other interested personnel shall be provided written notification of the name of the ordering official who has been terminated and the name of the replacement ordering official, if available.

3001.671-4 Specialized Training.

The HCA (or designee identified in writing) has the authority to require an eligible ordering official to complete additional specialized training, which is considered relevant to a particular contract for assignment. This specialized training is in addition to the certification requirements and may be required for the ordering official to meet the needs of the appointment.

3001.671-5 Temporary Appointment.

Individuals may be temporarily appointed as ordering officials prior to receiving acquisition certification and training under the following conditions:

- (a) *Certification lacking.* Individuals who previously completed initial training, procurement ethics training and specialized training (if required), but who lack certification, may be temporarily appointed as an Ordering Official without a waiver.
- (b) *Training lacking.* Individuals unable to complete initial training, procurement ethics training and specialized training (if required) prior to their ordering official appointment may obtain temporary appointments through a waiver. The HCA (or a designee identified in writing) is authorized to issue one-time waivers for temporary appointments of ordering officials prior to completion of procurement ethics training and specialized training (if required) in unusual and compelling circumstances. In addition, the following conditions must be met:
 - (1) The ordering official shall complete the Federal Acquisition Institute (FAI) on-line course "Contracting Orientation" (or equivalent) prior to temporary appointment. The procurement ethics training and specialized training (if required) must be completed within 60 days or the ordering official's temporary appointment shall be terminated.
 - (2) One-time waivers may not be extended or reissued beyond the initial 60-day period without CPO approval.
- (c) Individual receiving temporary appointments must apply for ordering official certification within 60 days of temporary appointment. If the ordering official does not submit his or her acquisition certification application to the HCA (or a designee identified in writing) within 60 days of temporary appointment, or the application is denied, the temporary appointment shall be terminated.

3001.671-6 Surveillance of ordering officials.

- (a) The HCA (or designee identified in writing) shall provide technical supervision of ordering officials and shall:

- (1) Annually review activities of ordering officials by physical inspection of purchase documents and records to ensure compliance with policies and demonstration of sound judgment.
- (2) Perform an inspection and document specific comments as to whether the ordering official is operating within the scope and limitations of authority delegated.
- (3) Maintain copies of inspection and review findings for three years in the files of ordering officials and of reviewers.
- (4) If it is discovered that an ordering official is not properly performing assigned duties or is failing to take prompt action to correct deficiencies noted in inspections or reviews, the ordering officer's appointment shall be promptly terminated.