

Subpart 401.6 - Contracting Authority and Responsibilities

Parent topic: [PART 401 - AGRICULTURE ACQUISITION REGULATION SYSTEM](#)

401.601 General.

(a) The authority and responsibility vested in the Secretary to manage USDA's acquisition function is delegated through the Assistant Secretary for Administration to the SPE. This broad authority includes, but is not limited to, the following responsibilities:

- (1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.
- (2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.
- (3) Designating contracting officers.
- (4) Establishing clear lines of contracting authority.
- (5) Evaluating and monitoring the performance of USDA's acquisition system.
- (6) Managing and enhancing career development of the contracting work force.
- (7) Participating in the development of Government-wide acquisition policies, regulations, and standards; and determining specific areas where government-wide performance standards should be established and applied.
- (8) Determining areas of Department-unique standards and developing unique Department-wide standards.
- (9) Certifying to the Secretary that the acquisition system meets approved standards.

(b) The SPE may delegate contracting authority to the Heads of Contracting Activities (HCA's) and the responsibility to manage their acquisition function.

(c) Unless prohibited by the FAR, the AGAR, or by other applicable statutes and regulations, the SPE may redelegate to HCA's the authority to make determinations as the agency head in order to implement the policies and procedures of the FAR. Such delegations shall be in writing, but need not be published.

(d) Unless prohibited by the FAR, the AGAR, or by other applicable statutes or regulations, each HCA may designate one individual from the contracting activity to carry out the functions of the HCA (HCAD). The HCAD may exercise all authority delegated to the HCA.

401.602 Contracting officers.

401.602-3 Ratification of unauthorized commitments.

(a) *Definitions. Ratification*, as used in this section, means the signed, documented action taken by an authorized official to approve and sanction a previously unauthorized commitment.

Unauthorized commitment, as used in this section, means an agreement made by a Government representative who lacked the authority to enter into a contract on behalf of the Government.

(b) *Policy*. The HCA may delegate ratification authority to the chief of the contracting office.

(c) *Procedure*. Whenever an official of the cognizant contracting activity who is authorized to ratify unauthorized commitments learns that a person or firm has assumed work as a result of an unauthorized commitment, that official shall take the following actions:

- (1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;
- (2) Inform the individual who made the unauthorized commitment of the seriousness of the act and the possible consequences;
- (3) Ensure that the individual who made the unauthorized commitment furnishes all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to: a statement as to why a contracting officer was not used; why the vendor was selected and a list of sources considered; a description of work to be performed or products to be furnished; the estimated or agreed price; whether an appropriation is available for the work; and whether performance has begun. Under exceptional circumstances, such as when the individual who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the ratifying official may waive these requirements; and
- (4) Decide whether ratification is proper and proceed as follows:
 - (i) If ratification is not justifiable, provide the cognizant program office, contracting office, and the unauthorized contractor with an explanation of the decision not to ratify.
 - (ii) If ratification appears adequately justified, ratify the action and retain or assign the contract to a successor contracting officer if necessary.
 - (iii) Maintain related approval, decisional, and background documents in the contract file for audit purposes.
 - (iv) Notify the cognizant program supervisor or line officer about the final disposition of the case; the notification may include a recommendation that the unauthorized commitment should be further considered a violation of USDA's employee conduct regulations.

401.603 Selection, appointment, and termination of appointment.

401.603-1 General.

An HCA may delegate contracting authority to the extent authorized by the SPE in a general delegation of acquisition authority, by appointing qualified individuals as contracting officers, in accordance with the USDA Contracting Officer Warrant System, Departmental Regulation 5001-1.