

3401.403

preceding the cite. The following activity acronyms apply: FSA—Federal Student Aid.

Subpart 3401.4—Deviations

3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Senior Procurement Executive (SPE).

3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Chief Acquisition Officer (CAO).

Subpart 3401.6—Career Development, Contracting Authority, and Responsibilities

3401.601 General.

(a) Contracting authority is vested in the Secretary. The Secretary has delegated this authority to the CAO. The Secretary has also delegated contracting authority to the SPE, giving the SPE broad authority to perform functions dealing with the management direction of the entire Department's procurement system, including implementation of its unique procurement policies, regulations, and standards. Limitations to the extent of this authority and successive delegations are set forth in the respective memorandums of delegations.

3401.602-3 Ratification of unauthorized commitments.

(a) *Definitions.* As used in this subpart, *commitment* includes issuance of letters of intent and arrangements for free vendor services or use of equipment with the promise or the appearance of commitment that a contract, modification, or order will, or may, be awarded.

(b) *Policy.* (1) The Government is not bound by agreements with, or contractual commitments made to, prospective contractors by individuals who do not have delegated contracting authority or by contracting officers acting in excess of the limits of their delegated authority. Unauthorized commitments do not follow the appropriate process for the expenditure of Government

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funds. Consequently, the Government may not be able to ratify certain actions, putting a contractor at risk for taking direction from a Federal official other than the contracting officer. See FAR 1.602-1. Government employees responsible for unauthorized commitments are subject to disciplinary action.

(2) The HCA must review and sign or reject all ratification requests, with the exception that the Chief of the Contracting Office is authorized to review and sign or reject ratification requests for unauthorized commitments up to \$25,000.

3401.604-70 Contract clause.

Contracting officers must insert a clause substantially the same as the clause at 3452.201-70 (Contracting Officer's Representative (COR)), in all solicitations and contracts for which a COR will be (or is) appointed.

PART 3402—DEFINITIONS OF WORDS AND TERMS

Subpart 3402.1—Definitions

Sec.

3402.101 Definitions.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 88 FR 60542, Sept. 1, 2023, unless otherwise noted.

Subpart 3402.1—Definitions

3402.101 Definitions.

As used in this chapter—

Chief of the Contracting Office or *COCO* means an official serving in the contracting activity (Contracts and Acquisition Management (CAM) or FSA Acquisitions) as the manager of a group that awards and administers contracts for a principal office of the Department. See also definition of *Head of the Contracting Activity* or *HCA* in this section.

Department or *ED* means the United States Department of Education.

Head of the Contracting Activity or *HCA* means those officials within the Department who have responsibility

Department of Education

for and manage an acquisition organization and usually hold unlimited procurement authority. The Executive Director, Federal Student Aid Acquisitions, is the HCA for FSA. The Director, Contracts and Acquisitions Management (CAM), is the HCA for all other Departmental program offices and all boards, commissions, and councils under the management control of the Department.

Performance-Based Organization or *PBO* is the office within the Department that is mandated by Public Law 105-244 to carry out Federal student assistance or aid programs and report to Congress on an annual basis. It may also be referred to as “Federal Student Aid.”

Requiring activity means the principal office charged with meeting or supporting a mission and delivering requirements. The requiring activity is responsible for obtaining funding or developing the program objectives. The requiring activity may also be the organizational unit that submits a written requirement or statement of need for services required by a contract.

Senior Procurement Executive or *SPE* means the single agency official appointed as such by the head of the agency and delegated broad responsibility for acquisition functions, including issuing agency acquisition policy and reporting on acquisitions agency-wide. The SPE also acts as the official one level above the contracting officer when the HCA is acting as a contracting officer.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

The contracting officer must insert the clause at 3452.202-1 (Definitions—Department of Education) in all solicitations and contracts in which the clause at FAR 52.202-1 is required.

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 3403.1—Safeguards

Sec.

3403.104 Procurement integrity.

3403.104-7 Violations or possible violations.

3403.203

Subpart 3403.2—Contractor Gratuities to Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

3403.204 Treatment of violations.

Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

Subpart 3403.4—Contingent Fees

3403.405 Misrepresentation or violations of the covenant against contingent fees.

Subpart 3403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

Subpart 3403.7—Voiding or Rescinding Contracts

3403.704 Policy.

3403.705 Procedures.

Subpart 3403.9—Whistleblower Protections for Contractor Employees

3403.905 Procedures for investigating complaints.

3403.906 Remedies.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 88 FR 60542, Sept. 1, 2023, unless otherwise noted.

Subpart 3403.1—Safeguards

3403.104 Procurement integrity.

3403.104-7 Violations or possible violations.

(d)(2)(ii)(B) The Senior Procurement Executive (SPE) is the agency head for the purposes of FAR 3.104-7(d)(2)(ii)(B).

Subpart 3403.2—Contractor Gratuities to Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause at FAR 52.203-3 must be reported to the HCA in writing detailing the circumstances.

(b) The HCA evaluates the report with the assistance of the Designated