

Head of the Contracting Activity Authorities, Functions, and Responsibilities

Version 1.0



U.S. DEPARTMENT
of ENERGY

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References: [\[FAR 1.401\]](#)

Overview

This guide provides a summary of Head of Contracting Activity (HCA) authorities based on statute, the Federal Acquisition Regulation (FAR), Department of Energy Acquisition Regulation (DEAR), and Department of Energy (DOE) Orders. It serves as a general guide to the authorities that may be conferred via a formal delegation of HCA authority from the DOE Senior Procurement Executive (SPE) and the National Nuclear Security Administration (NNSA) SPE. This formal delegation prescribes the specific source and scope of the HCA's authority with respect to that individual's contracting actions. HCA delegations are unique and specific to the individual program or field activity, based on mission, workload, performance and other factors considered by the DOE and NNSA SPEs.

Objective

The attached tables provide a digest of the responsibilities that accompany the delegation/designation and provide an understanding of the roles, responsibilities, and authorities of the HCA within the overall acquisition framework.

Guidance

Authority delegated to an HCA may be either non-delegable or delegable. Non-delegable authority is one that cannot be re-delegated by the HCA to someone else, e.g., authorities which are deemed of such importance or sensitivity that the personal attention, expertise, or involvement of the HCA is considered necessary. A list of non-delegable authority and references are provided in Table-I.

A delegable authority is one that may be conferred or re-delegated to another individual. When such authority is re-delegated, it does not imply that the delegated authority is relinquished by the HCA. Although certain authorities may be re-delegated, the HCA retains full responsibility and accountability for ensuring compliance with applicable law, regulation, policy, and procedures. Before re-delegating any authorities, the HCA must understand the extent to which such re-delegation is permissible. These limitations and conditions are prescribed in the HCA's specific delegation/designation letter. A list of potentially delegable HCA authorities and references are summarized or listed in Table-II.

Although certain statutes, the FAR, DEAR, and DOE Orders provide for the delegation of certain procurement authorities and functions to the HCA, some have been retained by the Senior Procurement Executive. These authorities are listed under Table-III.

References to authorities pertaining to sales contacts may be delegated to an HCA are listed in Table-IV.

Attachments

HCA Authorities, Functions, and Responsibilities Tables

Table I Non-Delegable HCA Functions and Responsibilities

A non-delegable authority is one that cannot be transferred by the HCA to another. Typically, the types of authority that cannot be delegated are those which are deemed of such importance or sensitivity that the personal attention, expertise, or involvement of the HCA are considered necessary.

Ratification of Unauthorized Commitments	1. Ratify unauthorized commitments in accordance with FAR 1.405. Note: DEAR 901.602-3(b)(3) limits the HCA ratification authority only to individual unauthorized commitments of \$250,000 or less and states that HCA ratification authority is nondelegable.
Appointment of Contracting Officers	2. As stipulated in DEAR 901.601(a), the HCA is responsible for making formal contracting officer appointments within their respective contracting activity.
Improper Business Practices and Conflicts of Interest	3. Approve the waiver of any general rule or procedure of FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest, if in the Government's best interest in accordance with FAR 9.503 as authorized by DEAR 909.503. Note: This authority may not be delegated below the level of HCA in accordance with FAR 9.503. 4. FAR Subpart 3.7—Voiding and Rescinding Contract, states that the Government has authority to void and rescind contracts involving criminal or ethical violations related to the acquisition process, specifically, where (1) A final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement; or (2) the Agency head or designee determined that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal Agency procurement (18 U.S.C. 218 and 41 U.S.C 423) 5. FAR clause 52.203-8, subparagraph (a)(2)(ii) stipulates that the Government may rescind a contract with respect to which the HCA has determined, based on a preponderance of the evidence, that a Contractor or someone acting for a Contractor has engaged in conduct constituting an offense punishable under Section 27(e)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 423). See FAR 3.704, however, which provides that the HCA may consider voiding or rescinding a contract if the Agency Head or designee determines, based upon the preponderance of the evidence, that a Contractor or someone acting for a Contractor has violated Section 27(e) of the Act.
Contract Type	6. FAR 16.401-2 requires that for all incentive- and award-fee contracts, a determination and findings, signed by the HCA, shall be completed, justifying that the use of this type of contract is in the best interest of the Government.
Cancellation of Invitation For Bids (IFBs)	7. Approve a determination to cancel an IFB and reject all bids before award but after opening in accordance with FAR 14.305(b) and optionally to approve the completion of the acquisition through negotiation in accordance with FAR 14.305(e). These authorities are delegated without power of further delegation by DEAR 914.404-1.
Mistake In Bids	8. Approve a determination in cases of mistakes in bids alleged after opening of bids and before award and make all administrative determinations regarding withdrawal of bids in accordance with FAR 14.304-3 as authorized without power of further delegation by DEAR 914.407-3.

Table I Non-Delegable HCA Functions and Responsibilities

Waiver of Cost or Pricing Data	9. Waive the requirement for submission of cost or pricing data without power of further delegation in accordance with FAR 15.403-2(c)(4).
Protest	10. Provide corrective relief in response to a protest for a procurement with a total value within the HCA's delegated authority, without power of further delegation in accordance with DEAR 933.102(b). 11. In accordance with DEAR 933.103(f), agency level protests filed with the contracting officer before or after award shall be decided by the HCA except for the following, which shall be decided by the SPE: (i) the protester requests that the protest be decided by the SPE, (ii) the HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made, (iii) the HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on DOE acquisition policy; or (iv) the SPE elects to decide the protest. 12. As set forth in DEAR 933.103(g), agency level protests shall be decided within 35 days of receipt of the protest with DOE unless a longer period of time is determined to be needed. 13. Authorize award of a contract after receiving notice from the GAO of a protest being filed directly with the GAO without power of further delegation in accordance with FAR 33.105-2(b). Prior to issuing such authorization, the HCA shall obtain concurrence from the DOE counsel handling the protest, obtain endorsement from the Senior Program Official, and the approval of the SPE in accordance with DEAR 933.104(b). 14. Authorize continuation of contract performance after receiving notice of a GAO protest received after contract award without the power of further delegation in accordance with FAR 33.105-2(b). Prior to issuing such authorization, the HCA shall obtain concurrence from the DOE counsel handling the protest, obtain endorsement from the Senior Program Official, and the approval of the SPE in accordance with DEAR 933.104(c).
Labor Standards for M&O Contracts Involving construction	15. Approve a determination that management and operating (M&O) contracts or work items are "non-covered" by the Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act, as authorized without power of further delegation by DEAR 922.406-1(c).

Table II Delegable HCA Functions and Responsibilities

A delegable authority is an authority that may be conferred or re-delegated to another individual. The term does not imply a giving up of authority but, rather, the conferring of authority to another individual to do things that otherwise must be done by the HCA. When a delegation occurs, it does not free the HCA from their duty to ensure that performance is properly complied with.

Identified below are functions that the HCA has the authority to delegate, but the level to which it is re-delegated may be limited as is the nature of the re-delegation.

Improper Business Practices and Conflicts of Interest	1. Authorize an individual disqualified from participation on a procurement, due to discussions with an offeror regarding possible employment, to resume participation in the procurement or determine a period of disqualification for that individual in accordance with FAR 3.104-5(c)(2).
	2. Investigate and resolve possible violations of procurement integrity rules in accordance with FAR 3.104-7. The HCA may delegate this authority only in accordance with FAR 3.104-7(g) and DEAR 903.104-7.
	3. Evaluate reports of suspected violations of the “Gratuities” clause, FAR 52.203-3, and report positive findings to the SPE for disposition in accordance with DEAR 903.203(a).
	4. Where there has been a final conviction for procurement integrity offenses punishable under Subsection 27(e) of the Office of Federal Procurement Policy Act, or if the Agency head or designee has determined that such an offense has occurred, the HCA shall consider declaring void or rescinding a contract, recover the amounts expended under the contract, and recommend the initiation of suspension or debarment proceedings as authorized by, and in accordance with the requirements of FAR 3.704(c). Note that DEAR 949.101 also requires the HCA to notify the SPE prior to taking any action to terminate contracts for the operation of Government-owned facilities, any prime contract or subcontract in excess of \$10 million, and any contract termination which is likely to provoke unusual interest.
	5. Concur with a contracting officer’s determination to reduce fee or amounts payable to a contractor based on a violation by the contractor or any of its employees of a rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information, or concur with a contracting officer’s determination that no fee reduction is warranted for a particular performance failure(s) that would otherwise warrant a reduction, in accordance with DEAR 904.402(b)(5) and 923.7002(a)(4).
	6. Approve contracting officer conflict of interest plans in accordance with FAR 9.504(c).
	7. Approve resolution of conflict or potential conflict of interest issues in accordance with FAR 9.506(d)(3).
Competition	8. Authorize the use of paid advertisements in newspapers and trade journals in accordance with DEAR 905.502(a).
	9. Approve class justifications for other than full and open competition that are within the HCA’s level of delegated authority for certain types of contracts listed at DEAR 906.304.
	10. Appoint a contracting activity competition advocate in accordance with DEAR 906.501.
	11. Appoint a Contracting Activity Ombudsman for task and delivery order contracts in accordance with FAR 16.507-2(b) as authorized by DEAR 916.505(b)(8). The FAR requires that the person be a senior agency official who is independent of the contracting officer and the DEAR requires that the person appointed be a senior manager.
	12. Approve the direct purchase of “special purpose vehicles” for use by DOE and its authorized contractors in accordance with DEAR 908.7101-3.

Table II Delegable HCA Functions and Responsibilities

Special Items	13. Arrange to sell, as exchange sales, used motor vehicles being replaced and to apply the proceeds to the purchase of similar new vehicles in accordance with DEAR 908.7101-4(b).
	14. Authorize the purchase of used vehicles based on “special circumstances” in accordance with DEAR 908.7101-5.
	15. Authorize the replacement of materials handling equipment earlier than the date specified in Federal Management Regulation at 41 CFR chapter 102 and DOE-PMR 41 CFP 109-25.4 in accordance with DEAR 908.7112.
Cost and Price	16. Waive the requirement for inclusion of clause 52.214-27, “Price Reduction for Defective Cost or Pricing Data – Modifications – Sealed Bidding,” in a contract with a foreign government or agency in accordance with FAR 14.208(b)(2).
	17. Waive the requirement for inclusion of clause 52.214-28, “Subcontractor Cost or Pricing Data – Modifications – Sealed Bidding,” in a contract with a foreign government or agency in accordance with FAR 14.208(c)(2).
	18. Approve a determination that it is in the best interest of the Government to make award to an offeror that did not comply with the requirement to submit cost or pricing data or information other than cost or pricing data in accordance with FAR 15.403-1(d).
	19. Approve a determination that the weighted guidelines method for computing fee is unsuitable and therefore not required for a procurement given “unusual pricing situations” in accordance with DEAR 915.404-4740(c).
	20. Approve a contracting officer’s unilateral determination of reasonable price and fee in the definitization of a letter contract in accordance with FAR 16.603-2(c).
Precontract Costs	21. Approve a finding authorizing precontract costs for a period greater than 15 days in accordance with DEAR 931.205-32(b)(1).
Contract Type	22. Approve the use of two-step sealed bidding in accordance with DEAR 914.502(c).
	23. Approve the use of a clause providing price adjustments based on cost indexes of labor or materials in accordance with FAR 16.203-4(d)(2) as authorized by DEAR 916.203-4(d)(2).
	24. Authorize the use of a fixed-ceiling-price contract with retroactive price redetermination in accordance with FAR 16.205-3(d).
	25. Authorize the use of a letter contract in accordance with FAR 16.603-3.
	26. Authorize the use of a multi-year contract in accordance with FAR 17.103-1(a).
	27. FAR 16.601-3(a)(2) requires that prior to executing a T&M or Labor Hour contract a determination and finding must be made that no other contract type is appropriate. Approval of the HCA is required when the base plus option periods exceeds three years.
Socio-Economic Issues	28. Appoint a small business specialist for the contracting activity in accordance with DEAR 919.201(c).
	29. Issue a decision in response to an appeal of a contracting officer’s rejection of a Small Business Administration recommendation to set aside a procurement for small businesses in accordance with FAR 19.102(f).
	30. Approve a determination to continue a procurement action following receipt of an appeal of a contracting officer’s rejection of a Small Business Administration recommendation to set aside a procurement for HUBZone small businesses in accordance FAR 19.102(f) and 19.105-2(d).
	31. Issue a decision in response to an appeal of a contracting officer’s rejection of a Small Business Administration recommendation to set aside a procurement for HUBZone small businesses in accordance with FAR 19.102(f) and 19.105-2(d).

Table II Delegable HCA Functions and Responsibilities

	32. Approve a determination to continue a procurement action following receipt of an appeal of a contracting officer's rejection of a Small Business Administration recommendation to set aside a procurement for Service-Disabled Veteran-Owned small businesses in accordance FAR 19.102(f) and 19.106-2(d). 33. Issue a decision in response to an appeal of a contracting officer's rejection of a Small Business Administration recommendation to set aside a procurement for Service-Disabled Veteran-Owned small businesses in accordance with FAR 19.102(f) and 19.106-2(d).
Labor	34. Designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay timely contract performance in accordance with FAR 22.102-2(a). 35. Approve straight time wage rates and overtime rates for laborers and mechanics engaged in work under cost-reimbursement construction contracts performed within the United States in accordance with FAR clause 52.222-16.
Buy American Act	36. Approve a determination that the Buy American Act is not applicable because an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality in accordance with FAR 25.103(b)(2). Note: DEAR 925.102 authorizes contracting officer's to make this determination for procurements valued at \$1 million and less. 37. Approve a determination that the Buy American Act is not applicable because a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality in accordance with FAR 25.202(a)(2). Note: DEAR 925.202 authorizes contracting officer's to make this determination for materials valued at \$100K and less.
Bonds and Insurance	38. Approve the use of bonds in connection with acquiring supplies and services other than those types of bonds recognized under FAR 28.1, in accordance with FAR 28.105. 39. Approve the substitution of a new surety bond covering all or part of the obligations on a bond previously approved in accordance with FAR 28.106-2.
Contract Financing	40. Approve a determination authorizing the use of advance payments in accordance with FAR 32.202-1 as authorized by, and in accordance with the further requirements of, DEAR 932.402(e)(1). 41. Authorize the use of progress payments based on a percentage or stage of completion in accordance with FAR 32.102(e)(2) as authorized by, and in accordance with the further requirements of, DEAR 932.102(e)(2). 42. Requests for "unusual progress payments" pursuant to FAR 32.501-2, which are considered favorable, shall be forwarded by the HCA, in accordance with DEAR 932.501-2(a)(3), with supporting information, to the Senior Procurement Executive, who, after coordination with the Chief Financial Officer, Headquarters, will approve or deny the request. 43. Approve the use of "unusual" contract financing for commercial item purchases in accordance with FAR 32.202-1(d).
Construction and A&E	44. Approve performance of cost-plus-fixed-fee, price-incentive, or other contracts with cost variation or cost adjustment features concurrently at the same construction work site with fixed-price, lump sum, or unit price contracts in accordance with FAR 36.101-1(b)(4). 45. Establish criteria to be considered by the contracting officer when deciding to use two-phase design-build selection procedures, in accordance with FAR 36.101-2(a)(3)(vi).

Table II Delegable HCA Functions and Responsibilities

	46. Provide general direction to the evaluation board when acquiring architect-engineering services in accordance with FAR 36.202-1(b).
	47. Approve a determination applicable to a fixed-price architect-engineer contract that cost limitations are secondary to performance considerations and additional funding can be expected in accordance with FAR 36.102-4(a)(1).
Property (Including Nuclear Material)	48. Approve an exception allowing the use of cost-reimbursement contracts, or subcontracts, for the fabrication of end items using special nuclear material in accordance with DEAR 945.170-1(b).
	49. Approve an exception allowing the use of other than fixed-price contracts, or subcontracts, for the conversion or scrap recovery of special nuclear material in accordance with DEAR 945.170-1(c).
	50. Approve a determination that it is necessary to install Government production and research property on land not owned by the Government in such a way as to be nonseverable in accordance with FAR 45.102(e).
Acquisition Planning & Source Selection	51. Approve the use of solicitations for information or planning purposes in accordance with DEAR 915.201(e).
	52. Concur with a Source Selection Official's decision to employ non-Federal evaluators or advisors, including employees of DOE M&O contractors in Source Evaluation Boards, in accordance with DEAR 915.207-70(f)(3).
Data Rights	53. Concur with a contracting officer's determination that contractor restrictive markings of data under a contract are not authorized in accordance with FAR 27.404-5(a)(2).
Protests	54. Review a contracting officer's final decision to demand reimbursement of Government costs in a case where a post-award protest is sustained as the direct result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification in accordance with FAR 33.103(b)(3)(iii).
Utilities	55. Approve a determination that a written contract cannot be obtained and that issuance of a purchase order is not feasible for ordering utility services in accordance with FAR 41.202(c)(2).
	56. Approve a determination that use of a GSA area-wide utility contract is not advantageous to the Government in accordance with FAR 41.204(e).
Contract Administration	57. Approve the delegation of authority to a contract administration office authorizing it to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule in accordance with FAR 42.202(c)(2).
Value Engineering	58. Approve a determination for the Government not to share collateral savings derived from a value engineering change proposal given that the cost of calculating and tracking the collateral savings will exceed the benefits to be derived in accordance with FAR 48.201(e).
Contract Termination	59. Establish settlement review boards for contract terminations as authorized by, and in accordance with the requirements of, DEAR 949.111.

Table II Delegable HCA Functions and Responsibilities

Contractor Use of Government Sources	60. Authorize contractors performing under cost-reimbursement contracts and subcontractors performing under cost-reimbursement subcontracts, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR 8.105-2, as authorized by DEAR 951.102.
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Table II Delegable HCA Functions and Responsibilities

M&O Contracts	62. Determine applicability of Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act (Statute), on a case-by-case basis. Delegate to the contracting officer the authority to prescribe classes of work to which applicability or non-applicability of the Statute are clear as authorized by, and in accordance with the requirements of, DEAR 922.406-1(f)(2).
	63. Determine the period of time which an M&O contract employee must have been separated from work under a DOE contract prior to being eligible to assist in the preparation of a proposal or bid for services which are similar or related to those being performed under the DOE contract, which are to be performed by the contractor or its parent or affiliate organization for commercial customers in accordance with DEAR 970.2704-1(b).
	64. Approve an M&O contractor's "employee benefits plan" in accordance with DEAR 970.2803-1(b)(3).
	65. Authorize the direct acquisition and furnishing to M&O contractors of Government furnished property, equipment, material, or services in accordance with DEAR 970.2903-2(b).
	66. Authorize a contracting officer to consider an M&O contractor's request for additional compensation, requesting fee in addition to its normal fee (in the case of a contractor managing and operating a laboratory) or compensation based on actual cost, in accordance with DEAR 970.3102-370(a)(3).
	67. Receive, assess, and make recommendations to the Senior Procurement Executive regarding reduction or suspension of advance, partial, or progress payments, in accordance with DEAR 970.3200-1(c).
	68. Authorize advance payments without interest and approve the findings, determinations and contract terms and conditions concerning advance payments in accordance with DEAR 970.3204-1(a).
	69. Approve a deviation from the requirements of DEAR 970.3204-1(c) pertaining to the Government's contract with an M&O contractor and the financial institution where advance payments will be deposited, in accordance with DEAR 970.3204-1(d).
	70. Approve deviations from the standard financial management clauses specified in paragraphs (a) and (b) of DEAR 970.3270 in accordance with DEAR 970.3270(c).
	71. Waive the requirement for an M&O contractor to certify that its submission for settlement of costs contains only allowable costs in accordance with DEAR 970.4207-302(e).
	72. Establish thresholds within the HCA's delegated authority, by subcontract type and dollar level, for the review and approval of proposed subcontracting actions by M&O contractors in accordance with DEAR 970.4401-2(a).
	73. Take such action as may be required to ensure compliance with the procedure for purchasing from contractor-affiliated sources or the purchase of specific items, or classes of items, which by the terms of the contract may require DOE approval, pursuant to DEAR 970.4401-2(c).
	74. Assure that the contracting activity establishes and maintains files of the documents associated with the review and approval of subcontract actions subject to DOE review and approval, pursuant to DEAR 970.4401-2(h).
	75. Establish the value threshold for Government review of M&O contractor purchases from contractor-affiliate sources in accordance with DEAR 970.4401-3(a)(2).
	76. Approve M&O contractor determinations that the Buy American Act does not apply because of "non-availability" for items in excess of \$500,000 in accordance with DEAR clause 970.5244-1, "Contractor Purchasing System", paragraph (g).
	77. Authorize M&O contractors with approved purchasing systems to make determinations that the Buy American Act is not applicable because of "non-availability" for items valued at \$500,000 or less in accordance with DEAR clause 970.5244-1, "Contractor Purchasing System", paragraph (g).
	78. Approve subcontractor indemnification requests (in consultation with local legal counsel), except for Price-Anderson Nuclear Hazards Indemnity, in accordance with DEAR clause 970.5244-1, "Contractor Purchasing System", paragraph (l).

Table III Authorities Not Delegated to DOE HCAs.

While the FAR allows the delegation of the functions identified below, DOE has established that the authority will not be delegated to the HCAs.

1. A Government official no lower than the HCA may authorize an exception to the prohibition from awarding contracts to Government employees or to firms owned by Government employees in accordance with FAR 3.602. Note: DEAR 903.603 designates the Senior Procurement Executive as the deciding official for this issue.
2. FAR 32.501-2 authorizes the HCA to approve the provision of “unusual” progress payments, however, DEAR 932.501-2 reserves this approval for the Senior Procurement Executive.

Table IV HCA Authority With Respect To Sales

The following are synopses of specific authorities granted to an HCA pertaining to sales. The list does not address specific responsibilities.

Strategic Partnership Projects: DOE Order 481.1E, authorizes the Heads of DOE and NNSA Field Elements to assess, and where appropriate approve, delegations of authority to the contractor for executing bilateral sales contracts with non-Federal entities that are consistent with DOE-approved standard terms and conditions and satisfy the requirements of DOE O 481.1E.