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Department of Labor

Delegation of Authority and Assignment of Responsibility to the Chief Acquisition Officer and Assistant Secretary for Administration and Management, and Related Matters; Notice

DEPARTMENT OF LABOR**Office of the Secretary**

[Secretary's Order 02–2009]

Delegation of Authority and Assignment of Responsibility to the Chief Acquisition Officer and Assistant Secretary for Administration and Management, and Related Matters

1. *Purpose and Scope.* The purpose of this Secretary's Order is to delegate authorities and assign responsibilities for implementation of the Services Acquisition Reform Act (SARA) of 2003 and related laws, and to specify those authorities and responsibilities of the Chief Acquisition Officer (CAO).

2. *Authority.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 of 1950 (5 U.S.C. Appendix); Public Law 101–576, the Chief Financial Officers Act of 1990; Title VII of Division B of Public Law 98–369, the Competition in Contracting Act of 1984; Public Law 108–199, Division F, Title VI, Section 647(b) of the Consolidated Appropriations Act, 2004; the Economy Act (31 U.S.C. 1535); Public Law 105–270, the Federal Activities Inventory Reform Act of 1998; Public Law 103–355, the Federal Acquisition Streamlining Act of 1994; the Federal Grant and Cooperative Agreements Act (31 U.S.C. 6301–6308); Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251–266a); Public Law 103–62, the Government Performance and Results Act of 1993; Public Law 93–400, the Office of Federal Procurement Policy Act; Title 40 of the United States Code (Public Buildings, Property and Works); Sections 503(a), 504, and 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793(a), 794, 794d); Section 3 of Public Law 103–141, the Religious Freedom Restoration Act (42 U.S.C. 2000bb–1(b)); Public Law 108–136, Division A, Title XIV, the Services Acquisition Reform Act; Public Law 85–536, the Small Business Act; Executive Order 12615, Performance of Commercial Activities by Private Sector (November 19, 1987); Executive Order 12549, Debarment and Suspension (February 18, 1986); Executive Order 12689, Debarment and Suspension (August 16, 1989); Executive Order 13198, Agency Responsibilities with Respect to Faith-Based and Community Initiatives (January 29, 2001); the Federal Acquisition Regulations System, 48 CFR Chapter 1, parts 1–99; Department of Labor Acquisition

Regulation, 48 CFR Chapter 29, parts 2901–2953.

3. *Background.* Section 1421 of SARA (41 U.S.C. 414) amended the Office of Federal Procurement Policy Act to create the position of CAO and assigned principal responsibility for agency acquisition policy and activities to the CAO. Secretary's Order 2–2007 (January 30, 2007) formally created the position of CAO within the Department of Labor. This Secretary's Order supersedes and cancels Secretary's Order 2–2007, and updates the roles and responsibilities of the CAO to delegate responsibility for determining whether a recipient of a grant awarded or administered by the Office of the CAO is entitled, pursuant to the Religious Freedom Restoration Act, to an exemption from a religious non-discrimination provision of a statute or regulation enforced by the Department.

4. *The Chief Acquisition Officer.* The CAO will have acquisition management as his or her primary duty. The CAO will report to the Secretary, but may receive day-to-day guidance and direction from the Deputy Secretary. In addition to the acquisition management responsibilities established by SARA, the CAO also will have responsibility for overseeing other Department activities as set forth below, including the solicitation, award and administration of Departmental assistance instruments (grants, cooperative agreements, and other assistance instruments).

5. *Assignment of Responsibilities to the CAO.*

A. The CAO will have the following duties, which are assigned to the CAO by Section 1421 of SARA (amending Section 16 of the Office of Federal Procurement Policy Act, 41 U.S.C. 414):

- (1) Advising and assisting the Secretary on the appropriate business strategy to achieve DOL's mission.
- (2) Advising and assisting the Secretary and other DOL officials in ensuring that acquisition activities contribute to achieving DOL's mission.
- (3) Monitoring and evaluating the performance of DOL acquisition programs based on applicable performance measurements.
- (4) Establishing policies, procedures, and practices that increase the use of full and open competition in the acquisition of goods and services by the executive agency.
- (5) Increasing appropriate use of performance-based contracting and performance specifications in DOL acquisition activities.
- (6) Making DOL acquisition decisions, consistent with all applicable law, regulations, and policies.

(7) Establishing clear lines of authority, accountability, and responsibility for DOL acquisition decisions.

(8) Managing the direction of DOL acquisition policy, including implementation of DOL's acquisition regulations, policies, and standards.

(9) Developing and maintaining a DOL acquisition career management program to ensure that DOL has an adequate professional acquisition workforce.

(10) As part of DOL's strategic planning and performance evaluation process:

(a) Reviewing current requirements for DOL personnel regarding knowledge and skill in acquisition resources management and determining whether such requirements adequately facilitate the achievement of the performance goals established for DOL acquisition management.

(b) If necessary, developing strategies and specific plans for hiring, training, and professional development for DOL acquisition personnel.

(c) Reporting to the Secretary on the progress made in improving DOL acquisition management capability.

(11) Serving on the Chief Acquisition Officers Council.

B. The CAO will perform any additional duties that are assigned to the CAO by applicable law or regulation.

6. *Delegation of Authorities and Assignment of Additional Responsibilities to the CAO.* Except as otherwise provided by law, regulation, or this or another Secretary's Order, the CAO is delegated the following authority and assigned the following responsibilities:

A. Authorities and responsibilities of the Department or Secretary under the following laws (including any amendments) and any related regulations, executive orders, or OMB circulars or memoranda:

- (1) Title VII of Division B of Public Law 98–369, the Competition in Contracting Act of 1984.
- (2) Public Law 108–199, Division F, Title VI, Section 647(b), the Consolidated Appropriations Act, 2004 (which requires an annual report on competitive sourcing).
- (3) The Economy Act (31 U.S.C. 1535).
- (4) In coordination with the ASAM, Sections 2(d) and (e) of Public Law 105–270, the Federal Activities Inventory Reform Act of 1998.
- (5) Public Law 103–355, the Federal Acquisition Streamlining Act of 1994.
- (6) The Federal Grant and Cooperative Agreements Act (31 U.S.C. 6301–6308).

(7) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251–266a).

(8) Public Law 93–400, the Office of Federal Procurement Policy Act, including:

(a) Designating a Senior Procurement Executive, who will report directly to the CAO without intervening authority and who will be responsible for:

(1) Managing the direction of the DOL procurement system, including implementation of DOL procurement policies, regulations, and standards.

(2) Carrying out all powers, functions, and duties of the Secretary with respect to implementation of Section 37 of the Office of Federal Procurement Policy Act, including the establishment of policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency.

(b) Designating for the Department and for each procuring activity of the Department one officer or employee (other than the Senior Procurement Executive) to serve as a Competition Advocate, who will be responsible for promoting full and open competition, promoting the acquisition of commercial items, and challenging barriers to such acquisition, as well as performing any other responsibilities assigned to the Competition Advocate by law, regulation, or policy.

(c) In consultation with the Office of Federal Procurement Policy and the DOL Chief Information Officer (CIO), establishing, maintaining, and using, to the maximum extent practicable and cost-effective, procedures and processes that employ electronic commerce in the conduct and administration of the Department's procurement system.

(9) Title 40 of the United States Code, Subtitle I, Chapter 11, Selection of Architects and Engineers.

(10) Public Law 108–136, Division A, Title XIV, the Services Acquisition Reform Act.

(11) Executive Orders 12549 and 12689 on Debarment and Suspension.

(12) Executive Order 12615, Performance of Commercial Activities by Private Sector.

B. Prescribing regulations, policies and procedures regarding the solicitation and award of, and overseeing the administration of, all Departmental acquisitions and assistance instruments (e.g., procurement contracts, cooperative agreements, grants, inter- or intra-agency acquisition instruments, and similar documents) that obligate Federal funds or resources for the purpose of obtaining goods and services for the

Department or other Federal agencies, or promoting Departmental programs and objectives through financial assistance. Funds paid out of the appropriation, “State Unemployment Insurance and Employment Service Operations” are excluded from this authority.

C. In coordination with the ASAM, CIO, and Assistant Secretary for the Office of Disability Employment Policy (ODEP), establishing and ensuring implementation of policies, procedures and practices to ensure that all DOL acquisitions and assistance instruments comply with Sections 503(a), 504 and 508 of the Rehabilitation Act of 1973 (29 U.S.C. 793(a), 794, 794d).

D. Performing any acquisition or procurement responsibilities assigned to the ASAM under Secretary's Order 5–94, “Procurement and Use of Environmentally Preferable Products and Services.”

E. Assisting the CIO on the acquisition of information technology.

F. Coordinating with the ASAM to ensure that the Department's acquisition management processes are integrated into its strategic and operational planning processes.

G. Assisting the Director of the Office of Small Business Programs (OSBP) on procurement actions related to OSBP's responsibilities under Secretary's Order 4–2002 and on the Department's Annual Acquisition Plan and Procurement Forecast.

H. Assisting the Director of the Center for Faith-Based and Community Initiatives (CFBCI) on acquisition or assistance actions related to CFBCI's responsibilities under Executive Order 13198 or similar authority.

I. Coordinating with the Chief Financial Officer (CFO):

(1) To ensure that the Department's internal management controls relating to the CAO's responsibilities are consistent with all laws, regulations, OMB guidance, and policies governing DOL management control processes, including Secretary's Order 14–2006, Internal Control Program (dated June 20, 2006).

(2) To ensure that the CFO is informed on a timely basis of all management control issues arising within the scope of the CAO's functions.

(3) On the acquisition of financial management systems and asset management systems throughout the Department.

J. Establishing and overseeing an advisory board (the current Procurement Review Board or equivalent), which will address significant acquisition and assistance issues, as determined by the CAO.

K. Maintaining and publishing, in a prominent manner, a list of DOL contracting and grant officers which also identifies the limits on these officers' authority.

L. Determining whether a recipient of a grant awarded or administered by the Office of the CAO is entitled, pursuant to the Religious Freedom Restoration Act, to an exemption from a religious non-discrimination provision of a statute or regulation applied and/or enforced by the Department.

M. Performing any other related duties that are assigned by the Secretary.

7. *Responsibilities of the Director of the Office of Small Business Programs.* The OSBP Director is responsible for coordinating, as necessary, with the CAO on procurement actions related to OSBP's responsibilities under Secretary's Order 4–2002 and on the Department's Annual Acquisition Plan and Procurement Forecast.

8. *Responsibilities of the Director of the Center for Faith-Based and Community Initiatives.* The CFBCI Director is responsible for coordinating, as necessary, with the CAO on acquisition or assistance actions related to CFBCI's responsibilities under Executive Order 13198 or similar authority.

9. *Responsibilities of the Assistant Secretary for the Office of Disability Employment Policy.* The Assistant Secretary for ODEP is responsible for coordinating with the CAO, ASAM, and CIO to establish policies, procedures and practices ensuring that all DOL acquisitions and assistance instruments comply with Sections 503(a), 504 and 508 of the Rehabilitation Act of 1973.

10. *Responsibilities of the Solicitor of Labor.* The Solicitor of Labor is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration and implementation of this Order. The bringing of legal proceedings, the representation of the Secretary and other officials of the Department, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

11. *Responsibilities of the Chief Information Officer.* The CIO is responsible for:

A. Consulting with the CAO on the establishment, maintenance, and use (to the maximum extent that is practicable and cost-effective) of procedures and processes employing electronic commerce in the conduct and

administration of the Department's procurement system.

B. Coordinating with the CAO on the acquisition of information technology.

C. Coordinating with the CAO, ASAM, and Assistant Secretary for ODEP to establish policies, procedures and practices ensuring that all DOL acquisitions of information technology are consistent with Sections 503(a), 504 and 508 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794, 794d).

12. *Responsibilities of the Assistant Secretary for Administration and Management.* The ASAM is responsible for:

A. Overseeing the Department's compliance with the Government Performance and Results Act, including coordinating with the CAO to ensure that the Department's acquisition management processes are integrated into its strategic and operational planning processes.

B. Exercising the Secretary's authority under Section 1413 of SARA (41 U.S.C. 433 note) to determine that certain acquisition positions are shortage category positions in order to use the authorities in 5 U.S.C. 3304, 5333 and 5753 to recruit and appoint highly qualified persons directly to such positions in the Department.

C. Coordinating with the CAO and other agency heads, as appropriate, to fulfill the Department's responsibilities under the Federal Activities Inventory Reform Act of 1998.

D. Coordinating with the CAO, CIO and Assistant Secretary for ODEP to establish policies, procedures and practices ensuring that all DOL acquisitions and assistance comply with Sections 503(a), 504 and 508 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794, 794d).

13. *Responsibilities of the Chief Financial Officer.* The CFO is responsible for coordinating with the CAO:

A. To ensure that the Department's internal management controls relating to the CAO's responsibilities are consistent with all laws, regulations, OMB guidance, and policies governing DOL management control processes, including Secretary's Order 14-2006, Internal Control Program (dated June 20, 2006).

B. To ensure that the CFO is informed on a timely basis of all management control issues arising within the scope of the CAO's functions.

C. On the acquisition of financial management systems and asset

management systems throughout the Department.

14. *Responsibilities of Agency Heads.* Consistent with their statutory responsibilities and other applicable Secretary's Orders and guidelines, all DOL Agency Heads are assigned responsibility for ensuring compliance by their organizations with the laws identified in Paragraph 6.A. above, as well as related regulations, and DOL and OMB guidance and policies.

15. *Directives Affected:*

A. Secretary's Order 2-2007 is superseded and cancelled. All Secretary's Orders and other DOL documents (including policies and guidance) which reference Secretary's Orders 2-2007 or 4-76 are amended to refer to this Order instead. Delegations or transfers of authority made by the ASAM under Secretary's Order 4-76 will continue in effect unless modified or terminated by the CAO.

B. This Order does not affect the authorities or responsibilities of the Assistant Secretary for Public Affairs under Secretary's Order 8-2006, relating to the review of audio-visual work done under contract, to assure compliance with appropriate contract terms and achievement of minimum acceptable quality.

C. This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, unless otherwise expressly so provided in this or another Order.

D. This Order does not affect the authorities or responsibilities of the Office of Inspector General (OIG) under the Inspector General Act of 1978, as amended, or under Secretary's Order 4-2006.

E. This Order does not affect the authorities or responsibilities of the Chief Financial Officer under the CFO Act, Secretary's Order 14-2006, Secretary's Order 1-92, or Secretary's Order 1-97.

F. This Order amends Secretary's Order 5-94 to shift acquisition and procurement responsibilities relating to environmentally preferable products and services from the ASAM to the CAO.

G. This Order does not affect Secretary's Order 1-2001, which delegates authorities and assigns responsibilities to the Assistant Secretary for the Office of Disability Employment Policy.

H. This Order does not affect Secretary's Order 1-2008, which delegates authorities and assigns responsibilities to the Assistant

Secretary for Employment Standards and Other Officials in the Employment Standards Administration.

I. This Order amends Secretary's Order 4-2002 (which assigns responsibilities and delegates duties related to small businesses) to shift certain procurement responsibilities from the ASAM to the CAO, but does not otherwise affect the responsibilities delegated in that Order.

J. This Order does not affect Secretary's Order 5-2007 which, inter alia, provides grantmaking authority to the Commissioner of Labor Statistics under the Occupational Safety and Health Act.

K. This Order amends Secretary's Order 3-2003 (which assigns responsibilities and delegates duties to the CIO) to shift certain procurement responsibilities from the ASAM to the CAO, but does not otherwise affect the responsibilities delegated in that Order.

L. This Order does not affect Secretary's Order 1-2004 which delegates authorities and assigns responsibilities for DOL's Internal Equal Employment Opportunity Programs.

M. This Order does not affect the authority delegated by the Secretary to the Employment and Training Administration under section 173 of the Workforce Investment Act to administer dislocated worker programs, including national emergency grants.

16. *Reservation of Authority.* The following functions are reserved to the Secretary:

A. No delegation of authority or assignment of responsibility under this Order will be deemed to affect the Secretary's authority to continue to exercise or further delegate such authority or responsibility.

B. The submission of reports and recommendations to the President and Congress concerning the administration of the statutory provisions and executive orders listed above is reserved to the Secretary.

17. *Redelegations and Transfers of Authority.* Unless provided otherwise in this or another Secretary's Order, the authority delegated in this Order may be redelegated or transferred, as permitted by law or regulation.

18. *Effective Date.* This Order is effective immediately.

Dated: January 9, 2009.

Elaine L. Chao,

Secretary of Labor.

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