

September 5, 199

SMITHSONIAN INSTITUTION



ANNOUNCEMENT

Subject: Unauthorized Contracting

The fiscal year 1990 Audit Report by Coopers and Lybrand to the Audit and Review Committee of the Board of Regents noted instances of unauthorized contracting and mentioned the significant loss of value, revenue and resources, and the risk to the Institution that results from unauthorized contracting.

Unauthorized contracting occurs when individuals without delegated contracting authority make purchases or enter into agreements and contracts. The examples cited in the audit report of such violations cover the spectrum of Smithsonian activities, both those federally funded and trust funded, including income producing agreements. According to the report, unauthorized contracting can be traced to directors of bureaus and offices who mistakenly believe they possess contracting authority by virtue of their positions. However, contracting authority is normally authorized by a specific written delegation.

Beyond being contrary to regulation, those acting without officially delegated authority may not be adequately trained, skilled or experienced. As a result, these individuals are not necessarily cognizant of the potential financial and legal implications for the Institution or of the potential risk of personal liability. Moreover, they are not certified to bind the Institution contractually or to render an official decision in the case of a contract dispute, if federal funds are involved. Specifically, agreements and actions set into motion which are not properly executed or legally binding deny the Smithsonian important rights of protection, recourse, appeal and oversight, and they greatly diminish our negotiating leverage. In addition, such unauthorized agreements could, in fact, be in conflict with other Smithsonian contracts, and could expose the Smithsonian to unnecessary liability.

The early involvement of the Office of Contracting and Property Management (OCPM) increases the efficiency of the contracting process, affords the Institution the maximum opportunity to protect itself, and produces a better business deal for the Institution while still enabling it to present a professional and consistent image. Referring your contractual requirements through the system established for this purpose will ensure maximum service for your activity and, where expenditures are concerned, best value through an adequate and competitive process. If timing is of paramount concern, the appropriate Contracting Officer will be pleased to work with you to expedite actions without compromising the Institution's best interest.

Therefore, each bureau and office is hereby notified and cautioned that only those individuals who have been properly delegated procurement or contracting authority in

writing may obligate the Smithsonian to contracts or agreements, either written or oral. These designations of authority can be conferred only in writing by the Secretary or the Director, Office of Contracting and Property Management; or, in the case of business activities, through the Smithsonian Staff Handbook 340 to directors of designated auxiliary activities within specific dollar limitations. Those without delegated contracting authority, when communicating with an outside vendor, sponsor or third party, need to be extremely careful not to obligate the Smithsonian to a purchase or other contract. Employees may, for example, contact vendors for information about new and improved products or services or to check out the capabilities of various potential vendors, but they must stress that the contact is for information only. More serious discussions shall be held only by authorized contracting officers who may obligate the Institution only up to the dollar limits of their authority using a competitive process, where appropriate, based on a predefined requirement.

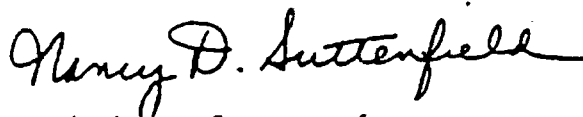
The Office of Sponsored Projects (OSP) is responsible for the execution of incoming research contracts and grants. In this regard, the Director, OSP, has delegated contracting authority from the Secretary. In addition, related contracts which obligate Smithsonian funds in furtherance of incoming research grants and contracts are also executed by the Director, OSP under authority from the Director, OCPM.

The General Counsel has sole authority, delegated by the Secretary, for contracting for legal services from outside counsel.

Contract negotiation and preparation is a cooperative effort between OCPM and the bureau or office involved. The Office of General Counsel is often involved in an advisory capacity during contract preparations and negotiation. In many cases it is useful for contract documents in draft form to be exchanged between the Smithsonian and the contractor and any other third party participants. During this process, no contractual commitment shall be made, and no final contract documents will be completed and sent to the contractor or other third parties except by or with the express authorization of a Contracting Officer.

Typically, higher value contracts and revenue producing agreements are beyond the limits of the delegated authority of most individuals outside of OCPM. These contracts must be forwarded to the Office of Contracting and Property Management for processing or, where appropriate, for initial guidance, assistance and approval.

Every Smithsonian employee must realize that making any unauthorized contractual obligation could subject them to administrative penalties, including suspension without pay or removal from office, and fines or criminal penalties also may be imposed.

A handwritten signature in cursive script that reads "Nancy D. Suttentfield".

Assistant Secretary for
Finance and Administration