1501.602-3 Ratification of unauthorized commitments.

(a) *Applicability.* The provisions of this section apply to all unauthorized commitments, whether oral or written and without regard to dollar value. Examples of unauthorized commitments are;

(1) Ordering supplies or services by an individual without contracting authority;

(2) Unauthorized direction of work through assignment of orders or tasks;

(3) Unauthorized addition of new work;

(4) Unauthorized direction of contractors to subcontract with particular firms; or

(5) Any other unauthorized direction which changed the terms and conditions of the contract.

(b)

(1) *Ratification Approval*. The Senior Procurement Executive (SPE) as defined in 1502.100 is the ratifying official for all ratification actions $25,000 and above.

(2) The Chief of the Contracting Office (CCO) as defined in 1502.100 is delegated authority to be the ratifying official for all ratification actions below $25,000.

(3) The CCOs defined in 1502.100 for purposes of ratification authority only must meet the following criteria:

(i) Must possess a contracting officer's warrant and be in the 1102 job series;

(ii) Are prohibited from re-delegating their ratification authority;

(iii) Are prohibited from approving a ratification if he/she acted as a contracting officer in preparing the determination and findings required under paragraph (c)(3) of this section; and

(iv) Must abide by the other limitations on ratification of unauthorized commitments set forth in FAR 1.602-3(c) and the EPAAR.

(2) The CCOs defined in 1502.100 for purposes of ratification authority only must meet the following criteria:

(i) Must possess a contracting officer's warrant and be in the 1102 job series;

(ii) Are prohibited from re-delegating their ratification authority;

(iii) Must submit copies of ratification actions to the cognizant Office of Acquisition Management Division Director at Headquarters; and

(iv) As with other ratifying officials, must abide by the other limitations on ratification of unauthorized commitments set forth in FAR 1.602-3(c) and the EPAAR.

(c) *Procedures.*

(1) The program office shall notify the cognizant contracting office by memorandum of the circumstances surrounding an unauthorized commitment. The notification shall include:

(i) All relevant documents and records;

(ii) Documentation of the necessity for the work and benefit derived by the Government;

(iii) A statement of the delivery status of the supplies or services associated with the unauthorized commitment;

(iv) A list of the procurement sources solicited (if any) and the rationale for the source selected;

(v) If only one source was solicited, a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303, and 1506.303, or for simplified acquisition procedures exceeding the competition threshold in FAR 13.106, a sole source justification as required by 1513.170;

(vi) A statement of steps taken or proposed to prevent reoccurrence of any unauthorized commitment.

(2) The Division Director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, the program office shall include a Procurement Request/Order, EPA Form 1900-8, with funding sufficient to cover the action. The appropriation data cited on the 1900-8 shall be valid for the period in which the unauthorized commitment was made.

(3) Upon receiving the notification, the Contracting Officer shall prepare a determination and findings regarding ratification of the unauthorized commitment for the ratifying official. The determination and findings shall include sufficient detail to support the recommended action. If ratification of the unauthorized commitment is recommended, the determination and findings shall include a determination that the price is fair and reasonable. To document the determination, additional information may be required from the Contractor. Concurrence by the Office of General Counsel is not mandatory, but shall be sought in difficult or unusual cases.

(4) The ratifying official may inform the Inspector General (IG) of the action by memorandum through the Head of the Contracting Activity (HCA). For ratification actions exceeding the small purchase limitation, the ratifying official shall submit a memorandum to the Assistant Administrator for Administration and Resources Management through the HCA for transmittal to the Assistant, Associate, or Regional Administrator (or equivalent level) of the person responsible for the unauthorized commitment. This memorandum should contain a brief description of the circumstances surrounding the unauthorized commitment, recommend corrective action, and include a copy of any memorandum sent to the IG. Submission of a memorandum to the appropriate Assistant, Associate, or Regional Administrator for unauthorized commitments at or below the small purchase limitation is optional and may be accomplished at the discretion of the ratifying official.

(d) *Paid Advertisements.*

(1) EPA is generally not authorized to ratify improperly ordered paid advertisements. The ratifying official, however, may determine payment is proper subject to the limitations in FAR 1.602-3(c) if the individual responsible for the unauthorized commitment acted in good faith to comply with Agency acquisition policies and procedures.

(2) The paying office shall forward invoice claims received in its office for improper paid advertisements to the cognizant ratifying official for a determination regarding ratification of the

action.

(3) If the ratifying official determines that an unauthorized commitment cannot be ratified by the Agency, the ratifying official shall instruct the submitter to present its claim to the General Accounting Office in accordance with the instructions contained in 4 CFR part 31, Claims Against the United States, General Procedures.

(e) *Payment of Properly Ratified Claims.* After the unauthorized commitment is ratified, the Contractor must submit an invoice (or resubmit an invoice if one was previously submitted) citing the appropriate contract or purchase order number.

Parent topic: Subpart 1501.6—Contracting Authority and Responsibilities