

## **6 FAH-2 H-130 AUTHORITY**

*(TL:CORH-2; 11-19-2003)*  
*(Office of Origin: A/OPE)*

## **6 FAH-2 H-131 DELEGATION OF CONTRACTING AUTHORITY**

*(TL:CORH-2; 11-19-2003)*

a. In contrast with commercial contracting, where a principal is bound by the "apparent authority" of one of its agents, the U.S. Government is bound only by an individual who has been delegated contracting authority and who acts within the limits of that authority. This means that only a person who is formally designated as a contracting officer can solicit proposals, negotiate, award (sign), and change (modify) contracts on behalf of the U.S. Government.

b. The Procurement Executive (A/OPE) appoints all contracting officers in the Department of State. This is done through the issuance of Form SF-1402, *Certificate of Appointment as a Contracting Officer*, also known as a "warrant".

c. This means that the COR is not authorized in any way to commit the U.S. Government. The COR's role is to identify program requirements and the funds needed to acquire them. Any actions taken by a COR or any unauthorized person which obligates the Department to pay for goods and services require ratification before payment can be made. CORs can also be held personally liable for obligating the U.S. Government, or receive disciplinary/adverse action (see 6 FAH-2 H-132).

## **6 FAH-2 H-132 UNAUTHORIZED COMMITMENTS**

*(TL:CORH-2; 11-19-2003)*

a. The FAR defines an unauthorized commitment as an agreement that is not binding solely because the U.S. Government employee who made it lacked the authority to enter into that agreement on behalf of the U.S. Government.

b. An unauthorized commitment occurs when someone other than a warranted contracting officer commits the U.S. Government to a contractual action, such as directing a contractor to perform work or deliver items. This

also includes cases where a contractor is asked to continue performance under an existing contract without adequate funding. Only a warranted contracting officer may bind the U.S. Government contractually.

c. Unauthorized commitments may result in personal liability for the individual who made the commitment. Department personnel responsible for unauthorized commitments must provide detailed written explanations of their actions and may be subject to disciplinary action, especially if violations are flagrant and/or continuous. Unauthorized commitments may result in a violation of the Anti-Deficiency Act if funds are not available.

d. In addition, contractors who act on unauthorized commitments do so at their own risk. They are not entitled to consideration (money) unless and until the unauthorized commitment is ratified. Payment is therefore substantially delayed or may not be forthcoming at all if the action is not ratified.

## **6 FAH-2 H-132.1 Ratification**

*(TL:CORH-2; 11-19-2003)*

a. Ratification is the process whereby designated individuals convert an unauthorized commitment to a legal contract.

b. At the Department of State, only the heads of the contracting activities may ratify actions up to \$1,000; the Procurement Executive must ratify actions exceeding \$1,000. (See DOSAR 601.603-70 for the list of heads of contracting activities.)

c. The authority to ratify an unauthorized commitment, however, has certain limitations. Ratification may occur only when all of the following conditions are met:

(1) The supplies or services have been provided to and accepted by the U.S. Government, or the U.S. Government otherwise has obtained or will obtain a benefit;

(2) The resulting contract would otherwise have been proper if made by a warranted contracting officer;

(3) The price is determined to be fair and reasonable;

(4) The contracting officer recommends payment (he or she may request concurrence from the Office of the Legal Adviser (L/BA) if there is a question of propriety or a legal issue);

(5) Funds are available and were available at the time the unauthorized commitment was made; and

(6) All requirements of Department of State Acquisition Regulation (DOSAR) 601.602-3-70 for documentation and explanation of unauthorized commitments have been met. That process is described below.

The ratification process is onerous, and for a good reason. Unauthorized commitments violate Federal law and Department acquisition regulations and carry severe negative consequences for all parties.

## **6 FAH-2 H-132.2 Ratification Procedures**

*(TL:CORH-2; 11-19-2003)*

a. The individual who made the unauthorized commitment must submit all records and documents concerning the unauthorized commitment to the contracting officer. That individual must provide a complete written signed statement of the facts, including why normal acquisition procedures were not followed, why and how the vendor was selected, a list of other sources considered, a description of work or products, a statement regarding the status of performance, an estimated or agreed price, certified funding citations, and a statement as to why he or she should not be personally liable for the cost, e.g., a public purpose was served and no personal benefit was received. For the format, see the sample Ratification Request for an Unauthorized Commitment.

b. If the individual who made the unauthorized commitment is no longer available to attest to the circumstances, an officer from the responsible office must provide the documentation; the statement must identify the individual responsible for the unauthorized commitment.

c. In addition, a cognizant management official from the office that employed the individual who made the unauthorized commitment at the time the unauthorized commitment was made must provide a statement detailing actions that he or she will take to ensure that such commitments will not occur again under the same or similar circumstances.

d. The request for ratification shall be cleared by the executive director of the bureau that employs (or employed) the person who made the unauthorized commitment.

e. The contracting officer will review the documentation and prepare a recommendation to the ratifying official. The contracting officer must either recommend approval; or, disapprove the ratification of the unauthorized commitment.

f. The contracting officer will submit the complete file to the ratifying official for review and determination.

g. If the ratifying official ratifies the unauthorized commitment, he or she will return the file to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the ratifying official will return the request to the head of the contracting activity (if over \$1,000) or to the contracting officer (if under \$1,000) with a written explanation for the decision and a recommendation for disposition of the action.

h. If the ratification is approved, the ratifying official will prepare a letter to the contractor involved in the ratification. The letter must state the reason(s) why the ratification was approved and provide cautionary language to the contractor regarding future instances of ratification actions.

i. If the ratification is not approved, the head of the contracting activity will prepare a letter to the contractor advising that the ratification was not approved. The letter must cite the reason(s) for the disapproval.

## **6 FAH-2 H-133 THROUGH H-139 UNASSIGNED**