

B-259926

March 31, 1995

Mr. Dan J. Carney, Controller  
Federal Bureau of Prisons  
U.S. Department of Justice  
791 Chambers Road  
Suite 580  
Aurora, CO 80011

Dear Mr. Carney:

This responds to your December 30, 1994, request that we grant relief under 31 U.S.C. § 3528 (a) to \_\_\_\_\_, Alternate Certifying Officer for the Federal Bureau of Prisons' Management and Specialty Training Center (Center), Aurora, Colorado, for an improper payment. For the reasons stated below, it is not necessary to seek relief since no loss to the government was actually sustained. See B-241668, Feb. 19, 1991.

On October 12, 1993, \_\_\_\_\_, the contracting officer for the Center, issued a purchase order to \_\_\_\_\_ for seven courses in Institutional Leadership. On March 31, 1994, the order was modified to change the date of one course and cancel the September 28, 1994 class. In July 1994, due to enrollment needs, the Center's training manager contacted \_\_\_\_\_ to inform him that the September 1994 class was reinstated. The Center's training manager neglected to advise the contracting officer that the course was reinstated and \_\_\_\_\_ conducted the class in September as scheduled.

Subsequently, a payment voucher was submitted to the Financial Management Office but it was discovered that the class was not approved by the Contracting Officer and that, as a result, the procurement was unauthorized. You instructed the Financial Management Office that payment not be made until the unauthorized commitment was ratified. The ratification process was then initiated. However, on October 13, 1994, during your absence from the office, \_\_\_\_\_, unaware of these facts, approved the voucher for payment.

\_\_\_\_\_ is not liable since the government received the services for which it had bargained and suffered no monetary loss. B-241668, Feb. 19, 1991; B-223580, Aug. 22, 1986. Here the contractor provided the services in good faith and the government accepted the services and received value accordingly. Under such circumstances the contractor was entitled to payment under the equitable doctrine of quantum meruit.

Alternatively, this situation appears to satisfy the conditions for ratification. Federal Acquisition Regulation, § 1.602-3. Because the contractor was paid, although not under proper procedures, you were advised that such after-the-fact approval, or ratification, was inappropriate under the FAR. However, we see nothing in § 1.602-3 that would prohibit ratification. (Ratification is the equivalent of a previous authorization that relates back to the time when the ratified act was done. Black's Law Dictionary 1261 (6th Ed. 1990)). Thus, the contracting officer could ratify the contract change.

In either event, the problem presented results from a breakdown in your internal processes. In this regard, [redacted] should have been aware of all the circumstances surrounding the voucher including the instructions to withhold payment pending ratification of the contract change. In an effort to prevent further occurrences of premature approvals, the Center has initiated training of all staff in proper procurement. Accordingly, since the government suffered no monetary loss, there is in this case no need to grant relief.

Sincerely yours,

Gary L. Keplinger  
Associate General Counsel