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United States General Accounting Office
Washington, DC 20548

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Office of
General Counsel

December 27, 1978

In Reply
Refer to: B-193539

Mr. William W. Thybony
Assistant Administrator
for Regulations
Office of Federal Procurement Policy
Office of Management and Budget
Executive Office of the President

Dear Mr. Thybony:

It has come to our attention that you are considering omitting from the proposed Federal Acquisition Regulation (FAR) the policy set forth in Federal Procurement Regulations (FPR) 1-1.405 concerning the ratification of unauthorized contracts. FPR 1-1.405 provides as follows:

"Execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. To be effective, such ratifications must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by a person authorized to ratify such acts..."

An agent's authority to ratify implied contracts has been reaffirmed over the years in both court decisions and in decisions by our Office. See United States v. _____, 180 U.S. 343 (1901); _____ v. United States, 17 Ct. Cl. 60 (1881); 22 Comp. Gen. 1083 (1943); Monitor Products Co., Inc., B-182437, July 27, 1976, 76-2 CPD 85. The section provides contracting officials with a regulatory foundation for the voluntary ratification of unauthorized contractual arrangements.

Under the current Defense Acquisition Regulation (DAR), comparable authority to ratify implied contracts has not been extended to contracting officials. As a result, our Office has been receiving 40 to 50 claims

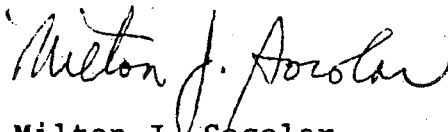


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each month involving charges for goods or services provided various military installations under agreements made by unauthorized agents or by contracting officers in excess of the limits of their authority. Since there is rarely a question as to the validity of these claims, payment is authorized on a quantum meruit basis (the reasonable value of work or labor) or a quantum valebant basis (the reasonable value of goods sold and delivered), and is grounded solely on the agency's report that the Government received and derived benefit from the goods or services, that the contractor performed the work in good faith, that charges shown on the invoices are reasonable and that it has been expressly or implicitly ratified by authorized contracting officials. See, for example, RCA Corporation, B-183289, December 3, 1975, 75-2 CPD 369.

We have been advised that there is some concern over possible abuse within the agencies if contracting officials have the authority to ratify implied contracts. We believe that the requirement for proper documentation of such ratification will minimize this problem. Moreover, we are confident that failure to provide such authority will result in a substantial increase in the number of claims submitted to our Office by agencies for final determination, in unnecessary delays in payments to contractors, and in greater strain on agency-vendor relationships. Therefore, we recommend that uniform procedures for handling implied contracts within a civilian agency or military department be included in the FAR to give all contracting officials authority comparable to that granted in FPR 1-1.405. To insure proper use of the authority, the regulations should also provide that administrative settlement is to be taken only in those cases where such action is clearly justified and that the procedure is not to deprive the contracting official or contractor of the right to have the matter determined by GAO.

Sincerely yours,



Milton J. Socolar
General Counsel