

February 2, 2011

ACQUISITION ALERT 11-04

Delegation of Invoice Approval Authority

This Acquisition Alert is being transmitted to all NOAA Heads of Contracting Offices (HCOs) for dissemination within their respective Acquisition Divisions and to Acquisition Management Advisory Committee members for appropriate dissemination within their respective line and staff offices, including Contracting Officer Technical Representatives.

Effective immediately, the attached policy regarding delegation of authority to approve invoices shall be followed by the Acquisition and Grants Office (AGO) staff and designated Contracting Officer Technical Representatives.

Questions concerning this Alert should be directed to Jerry Rorstrom-Lee at Jerry.Rorstrom-Lee@noaa.gov or by telephone at 301-713-0833 ext. 146.

Delegation of Invoice Approval Authority

A. Background

Prompt payment to contractors for supplies and services delivered is the government's obligation under Federal contracts. The government expects the contractor to meet all contract requirements for quality, quantity and timeliness. In return the contractor expects the government to meet its obligation for timely and accurate payment for supplies and services received.

It is incumbent upon NOAA program, procurement, and finance officials to understand clearly their roles and responsibilities related to reviewing, processing, and paying invoices* to ensure that payment is made timely to contractors who perform in accordance with contract terms and conditions. It is equally important that such payments are made in accordance with the pricing set forth in the contract or order price schedule, and that any contract requirements on which payment is conditioned are complied with.

NOAA Administrative Order (NAO) 203-31, Payment of Invoices, establishes the responsibilities for the payment of goods and services acquired from contractors under NOAA contracts, orders, and other purchase agreements. The provisions of that Order apply to all organizational units of NOAA ordering, receiving, accepting, and paying for goods and services from contractors. NOAA contracting officers, program and finance staff directly involved in the payment process are also bound to comply with the applicable payment clauses prescribed in Federal Acquisition Regulation Part 32 that are incorporated into the contract or order.

Authority to approve or disapprove payment of invoices, where such express approval/disapproval is required by the Finance Office to make payment, is the responsibility of the contracting officer, unless the contracting officer elects to delegate the function to his/her designee. NAO 203-31, Section 6.02, authorizes NOAA contracting officers to delegate authority to review and approve invoices to other designated officials. Such delegation of invoice approval authority can reduce invoice processing time, effect more timely contract payments to contractors, and minimize interest costs charged to NOAA program offices for late payments.

B. Purpose

Effective immediately, it is Acquisition and Grants Office policy that all invoices submitted on NOAA contracts and orders shall be reviewed and approved by Contracting Officer Technical Representatives (COTR*), unless this authority is expressly retained by the Contracting Officer. The purpose of this Acquisition Alert

The term "invoice" also refers to vouchers submitted under cost-type contracts. The term "COTR" as used herein includes technical points of contact designated by the contracting officer in purchase orders and task orders.

is to establish procedures for NOAA contracting officers to delegate this authority to approve invoices for payment pursuant to NAO 203-31. Such delegations are authorized to be made to designated COTRs to assist the contracting officer in the administration of contracts and orders.

In exercising this invoice approval authority, it is incumbent upon COTRs to familiarize themselves with any contract terms upon which payment is conditioned and to ensure that invoices submitted, including any supporting documentation required, comply with those terms, the contract payment clauses, and the contract price schedule before approving invoices for payment.

The COTR's approval of an invoice will affirm that:

- To the best of the COTR's knowledge, the invoice reflects the nature, type, and quantity of effort or materials being expended, progress of work completed under the contract, or items/services required to be delivered.
- Amounts billed are appropriate to the work completed within the period covered by the invoice or the items/services delivered.
- Billings are in accordance with the contract price schedule (e.g., labor rates comply with established contract prices) and are allowable under the applicable FAR Part 52 payment clauses and any other pertinent contract terms.
- No payments have been authorized for any delivered items or services that have been rejected under the inspection provisions of the contract.

C. Applicability

This policy relates to all contract and order payments processed through NOAA Finance Offices and is applicable to approval of invoices for interim, partial, progress, and final payments under all types of contracts and orders

D. Roles and Responsibilities

- a. **Heads of Contracting Office (HCO):** Pursuant to NAO 203-31, Section 6.02, HCOs, through designated contracting officers, will:
 - Review and approve invoices for payment or delegate such authority to other officials
 - Determine the acceptability of goods and services delivered or delegate such authority to other officials.

- b. **Contracting Officer:** Contracting Officers shall:
- Officially delegate authority to approve invoices under a specified contract to the COTR in the COTR's delegation of authority memorandum. Where technical points of contact apply, the authority will be set forth in the contract/order document. Existing contracts/orders will be modified, if required, to reflect the delegation.
 - Provide a copy of all delegation memoranda, or copies of contracts and orders containing the delegation, to the Finance Office.
 - Ensure that the address of the COTR/technical point of contact is identified in the contract/order as the designated billing office to receive invoices. Copies of invoices may be required to be sent to the AGO Acquisition Division if deemed necessary by the Contracting Officer.
 - Ensure that the individual delegated approval authority has a clear understanding of the price schedule and any terms or conditions that apply to payments to be made under the contract, including the FAR Part 52 payment provisions applicable to the contract type.
 - Rescind the delegation of approval authority in any instance where the delegated official's failure to comply with proper invoice processing, contract pricing, applicable contract terms or conditions, or advance approval requirements poses an unacceptable risk to NOAA.
 - Determine when it is necessary to retain such invoice approval authority either partially (e.g., final invoices under cost-type contracts) or completely to protect NOAA's interests.
- c. **Contracting Officer Technical Representatives (COTRs):** COTRs (or other delegated officials) shall:
- Annotate invoices with the actual date of receipt at the time of receipt.
 - Process invoices timely and in accordance with the payment provisions of the contract or order, including promptly returning improper invoices within the required timeframes.
 - Ensure that any documentation or approvals required by FAR Part 32 and/or contract terms are obtained prior to approving invoices for advance payments or unusual progress payments.
 - Coordinate with the Contracting Officer to determine the appropriate payment reduction required for any rejected items, materials and/or services that do not conform to contract requirements.

- Communicate with the Contracting Officer to obtain any guidance or direction needed when processing invoices for payment, or if disputes arise with the contractor regarding payments due or made.

E. Procedures to Delegate Invoice Approval Authority

For formal contracts, contracting officers shall effect the delegation by inclusion of such delegation in the COTR Delegation and Appointment Memorandum (Attachment 1) and provide a copy of the memorandum to the applicable NOAA Finance Office processing payments under that contract/order. In instances where a formal delegation of authority to the COTR is not required for a contract or order, the delegation shall be included in the award document provided to the Finance Office (Attachment 2). No formal delegation of authority or inclusion of a clause in the order is required for simplified acquisitions.

NOAA contracting officers may retain or rescind this approval authority in those instances where the facts or circumstances surrounding a particular contract or order make it necessary or prudent to do so.

F. Effective Date

This policy is effective immediately and shall remain in effect unless rescinded.

G. Point of Contact

Questions concerning this policy should be directed to Jerry Rorstrom-Lee at Jerry.Rorstrom-Lee@noaa.gov or by telephone at 301-713-0833 ext. 146.

Attachment 1 – Sample COTR Delegation and Appointment Memorandum
Attachment 2 – Sample Submittal of Invoices Clause

National Oceanic and Atmospheric Administration
Host Agency Serving:

Bureau of Industry and Security
Economic Development Administration
International Trade Administration
Minority Business Development Agency



U.S. DEPARTMENT OF COMMERCE
Eastern Region Acquisition Division
Norfolk Federal Building
200 Granby Street, Room 815
Norfolk, VA 23510

(Insert Date)

MEMORANDUM FOR: *(Insert COTR Name)*
(Title)

FROM: *(Insert Name)*
Contracting Officer

SUBJECT: Delegation and Appointment Memorandum: Instructions to the
Contracting Officer's Technical Representative

You are hereby appointed the Contracting Officer's Technical Representative (COTR) for Contract *(insert Contract Number)* for *(insert description of supplies/services)* with *(insert contractor name)*. You and your immediate supervisor are required to sign the last page of this memorandum and return it to this office within seven calendar days to acknowledge your appointment as COTR and your receipt of this memorandum.

The Contracting Officer (CO) is the exclusive agent of the Government with authority to enter into and administer contracts. Thus, the CO has the responsibility to see that all requirements of law and regulation are followed. However, as the CO's representative you are delegated the authority to monitor the technical effort being performed under the contract. You should familiarize yourself with the requirements of the contract, and communicate with the Contractor as necessary to ensure the contractor is making satisfactory progress in performance of the contract. Other than the CO, you are the only Government employee who may direct the flow of technical matters between the Government and the Contractor.

A contract is a legally enforceable agreement that contains the rights and remedies of the parties. If the Contractor deviates from the terms of the contract, it is a matter between the Government (represented by the CO) and the Contractor. You must keep the CO fully informed so that legally effective solutions can be applied to problems as they develop. Your suggestions to the Contractor may be construed as instructions and lead to claims for additional compensation or to a release of the Contractor from its obligations under the contract. Suggestions sometime work out, but often lead to misunderstandings. Therefore, while you can and must make technical decisions, do not take any contract administration actions unless they are clearly authorized by this delegation and appointment memorandum.

Your delegated responsibilities as the COTR are to:

1. Advise on or determine a need for a product or service.
2. Collect and analyze market research data to establish technical requirements or identify potential contractors.
3. Develop the independent government cost estimate.
4. Establish requirements, prepare requirements documents, and write statements of work.
5. Define performance objectives, criteria, and measurements for evaluating proposals.
6. Establish technical terms and conditions of the solicitation.
7. Participate in contract negotiations.
8. Perform evaluations of bids and proposals.
9. Maintain an arms-length relationship with the contractor in the interest of procurement integrity as well as sound contract management.
10. Keep the CO fully informed of any technical or contractual difficulties encountered during performance. You should also advise the CO of any potential problem areas under the contract.
11. Assure the CO that the Contractor is performing the technical requirements of the contract in accordance with the contract terms, conditions, and specifications.
12. Inform the Contractor of failures to comply with the technical requirements of this contract, and inform the CO of any failures to do so, particularly if the Contractor does not make corrections.
13. Coordinate site entry for Contractor personnel, if applicable, complying with requirements of HSPD-12 in your role as a Sponsor.
14. If the contractor's system(s) interconnect to the DOC network, or the contract is for services where sensitive DOC information is stored, manipulated or transmitted by the contractor, the COTR is responsible for the following:
 - a. Ensure the review by DOC IT Security Professionals of Contractor's IT Security, to include review of the Security Plan (SP) and Certification and Accreditation (C&A) Package where required by contract, to ascertain

acceptability, and ensure the performance of NIST SP 800-26 based assessments for all interconnected systems and service providers.

b. Work with the appropriate DOC/NOAA IT Security Manager/Officer to bring about certification and accreditation of the contractor system, as required.

c. Ensure all interconnections are approved in writing by all affected system Authorizing Officials for the DOC/NOAA network. Approval must be supported by a DOC/NOAA provided NIST SP 800-26 Assessment demonstrating contractor's compliance with DOC and NOAA policies and procedures.

15. If the Contractor(s) have access to DOC sensitive information, the COTR is responsible for the following:

a. Monitor performance of contractor to ensure compliance with contract terms relating to IT security policy and procedures to include requisite annual IT security awareness training.

b. Assist Contracting Officer with resolution of unacceptable Contractor performance, including termination as appropriate.

e. Ensure that system access is deleted for all contractor employees granted access under the contract by requesting the appropriate system administrator to delete all access rights when the contractor leaves a NOAA contract. Per DOC policy, system access rights (including e-mail) must be removed/deleted within 24 hours of a contractor employee leaving the contract with DOC.

16. Ensure that Government furnished property, if any, is available when required, and report any accountable property to the appropriate property personnel.

17. Ensure that all required items, documentation, data, and/or reports are submitted to you as required by the contract. If additional time is required by the Contractor, the Contractor should submit a formal request for a time extension to the CO through you. You should indicate your concurrence or state the reasons why you do not concur, and forward the request to the CO for finalization.

18. Evaluate proposals for and participate in negotiation of changes, modifications and claims at the request of the CO.

19. Review and approve invoices and vouchers in accordance with the payment provision of the contract or order and immediately forward to the designated Finance Office.

20. Process all invoices and vouchers in a timely manner in accordance with the Prompt Payment Act to include returning improper invoices within the required timeframe.

21. Document actions taken and decisions that you have made as the COTR, and maintain adequate records to sufficiently describe the performance of your duties as COTR during the life of this contract. As a minimum, the COTR file should contain copies of the following:
 - a. COTR appointment memorandum and acknowledgment.
 - b. Contract and any modifications.
 - c. All contract correspondence.
 - d. Records of COTR inspections.
 - e. Records of conversations with the contractor.
 - f. Invoices/vouchers.
22. Provide the CO with a copy of any correspondence (including e-mail) you send to the Contractor.
23. If the contract is for construction or services and you visit the site where work is being performed, check to see that the Department of Labor and Equal Employment Opportunity posters and applicable wage determination rates are posted in full view of employees.
24. Perform final inspection and acceptance of all work required under the contract, including the review and approval of reports and assist the CO with contract closeout activities as requested. See Commerce Acquisition Manual Part 4, Chapter 3, on Contract Closeout for specific procedures.
25. Submit reports on contractor performance, such as the SG 1421 for A&E work.
26. Evaluate contractor performance in accordance with Federal Acquisition Regulations (FAR) Part 42 and acquisition office procedures.

Contractor past performance information is an assessment of a contractor's performance on current and previous contracts. The information gathered for inclusion into the performance evaluation will be used in the future when using source selection procedures, in that, past performance *must* be one of the areas evaluated. The benefit of past performance information on future procurements, is far reaching and can only be realized through careful and thorough completion of the Contractor Performance Report (CPR) also know as a performance evaluation.

In your capacity as **COTR** you **DO NOT** have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. All contractual agreements, commitments, or modifications shall be made only by the CO.
2. Make any commitments or otherwise obligate the Government, or to make any changes to the contract.
3. Grant deviations from or waive any of the terms and conditions of the contract.

4. Impose or place a demand upon the Contractor to perform any task or permit any substitution not specifically provided for in the contract.
5. Increase the dollar limit of the contract, or authorize work beyond the dollar limit of the contract, or authorize the expenditure of funds.
6. Give direction to the Contractor or to the employees of the Contractor except as provided for in the contract.
7. Change the period of performance.
8. Authorize the purchase of equipment, except as required under the contract.
9. Authorize the furnishing of Government property, except as required under the contract.
10. Authorize subcontracting or the use of consultants.
11. Approve shifts of funding between line items of the budget.
12. Approve travel and relocation expense over and above that provided for in the contract.
13. Authorize the use of overtime.

Your appointment as COTR shall remain in effect through the life of the contract unless sooner revoked by the CO, and any such revocation of the appointment shall be in writing. If your appointment is revoked for any reason before completion of this contract, turn your records over to the successor COTR or obtain disposition instructions from the CO. If you are reassigned or separated from service, request termination and relief from your duties from the CO sufficiently in advance of your reassignment or separation to permit timely selection and designation of a successor COTR.

If you have or may have direct or indirect financial interests which would place you in a position where there is a conflict between your private interests and the public interests of the United States, you shall immediately advise your supervisor and the CO of the conflict so that appropriate action may be taken. You shall avoid the appearance of such conflict to maintain public confidence in the Government's conduct of business with the private sector. Note Department Administrative Orders 202-735 and 202-735A which cover employee responsibilities and conduct for U. S. Department of Commerce personnel.

[AS AN INDICATION THAT YOU HAVE READ, UNDERSTAND AND AGREE TO COMPLY WITH YOUR COTR ROLE AND RESPONSIBILITIES, PLEASE COMPLETE THE NEXT PAGE OF THIS MEMORANDUM AND RETURN IT TO THE CONTRACTING OFFICER WITHIN 7 CALENDAR DAYS OF THE DATE OF THIS APPOINTMENT.]

MEMORANDUM FOR: *(insert name)*
Contracting Officer

The undersigned acknowledges the COTR appointment on Contract No. _____ and accepts the duties, responsibilities and limitations described in the delegation and appointment memorandum.

I understand and accept that you, as the Contracting Officer, reserve the authority to cancel this COTR appointment in accordance with conditions set forth in the Department of Commerce COTR Certification Program, set forth in Commerce Acquisition Manual 1301.670.

As such:

I agree to satisfy and perform the contract management duties assigned to me in accordance with the ethical standards of conduct for procurements and for federal employees.

I agree to diligently monitor the technical performance of the contractor to ensure that technical requirements under the contract are met by the delivery date or within the period of performance set forth in the contract.

I agree to partner with the CO by keeping him/her informed of any technical difficulties arising under the contract.

I agree to promote fair and open competition whenever possible.

I agree not to make any commitments or otherwise obligate the Government to make any changes to the contract.

I agree not to make any commitments or obligations that would otherwise go beyond the limits of my COTR delegation.

COTR (Typed name and signature)

Date

Supervisor Acknowledgement:

Supervisor (Typed name and signature)

Date

SAMPLE SUBMITTAL OF INVOICES CLAUSE

SUBMITTAL OF INVOICES

The Contractor shall prepare and submit an invoice to the Contracting Officer's Technical Representative (COTR) for approval *[with a copy to the Contracting Officer for information]*. All payments shall be submitted by the 10th day of the subsequent month.

To constitute a proper invoice, the contractor's invoice shall be prepared in accordance with, and contain all elements specified in, the paragraph entitled "Contractor's Invoice" of the applicable prompt payment provision of the contract (e.g., FAR 52.232-25 Prompt Payment, FAR 52.232-26 Prompt Payment for Fixed-Price Architect Engineer Contracts, or FAR 52.232-27 Prompt Payment for Construction Contracts). For contracts and orders for commercial items and services, paragraph (g) of FAR 52.212-4 entitled "Invoices" applies.

If the invoice does not comply with the applicable prompt payment provision of the contract, the COTR will return it to the contractor within seven (7) days after the date the designated office received the invoice along with a statement as to the reasons why it is not a proper invoice.