



JUN 9 2014

United States
Department of
Agriculture

ACQUISITION OPERATING PROCEDURE (AOP)

Office of the
Assistant Secretary
for Administration

FROM: Richard R. Jiron
Head of Contracting Activity Designee

Office of Procurement
and Property
Management

SUBJECT: AOP No. 4: Ratification of an Unauthorized Commitment

Procurement
Operations Division

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◆ **PURPOSE:** This Acquisition Operating Procedure is to provide guidance to request the Ratification of an Unauthorized Commitment, which resulted from an agreement that is not binding solely because the Government official lacked the authority to enter into the agreement on behalf of the Government. Contracting officers (CO) have the authority to enter into, administer, or terminate contracts and to make determinations and findings relating to the contracts.

This procedure does not encourage unauthorized commitments being made by Government officials, but outlines a process for the review of such actions after-the-fact, if there is appropriate rationale.

◆ **EFFECTIVE DATE:** This AOP is effective on JUN 17 2014.

◆ **REVISIONS:** *Authorities:* Changed the Ratifying Official and dollar threshold. *Process:* replaced “cease and desist” with “immediately discontinue performance” and revised the text in a(1) and (a); added a reference in a(2); revised text in a(3); deleted b(3); revised text in c(5); deleted c(8)(a) and (b), and moved text in c(8)(b) to 8; added “if necessary” in 8; changed “Reviewing” to “Ratifying” in d; revised text and renumbered d(1), (2) and (3) and added d(4); and added e(1) and (2). *Submitted for Review and Approval:* Moved to 2nd page of attachment. *Contracting Officer’s Determination:* Separately paged; replaced “cease and desist” with “immediately discontinue performance;” and added “Ratification is/is recommended” and Team Lead signature line. *Decision of Ratifying Officials:* Removed SPE and added the Ratifying Official signature.

This AOP replaces AOP No. 4, dated June 18, 2013.

◆ **AUTHORITIES:** Federal Acquisition Regulation 1.602-3 and Agriculture Acquisition Regulation 401.602-3, Ratification of Unauthorized Commitments.

Ratifying Official

Head Contracting Activity Designee (HCAD)
Contracting Branch Chiefs

Dollar Threshold

\$10,000.01 and above
Up to \$10,000

◆ **PROCESS:** When contracting personnel learn that an unauthorized commitment has resulted or the vendor is performing services due to the actions of a Government Official that lacked the authority to bind the Government:

a) Immediately, the CO must:

1. Notify the vendor and the government official (*person that caused the unauthorized commitment action*) to immediately discontinue performance. Any verbal notifications must be followed-up, in writing (*email or letter*), and include at the minimum:
 - a. Summary of the verbal discussion instructing the vendor to immediately discontinue performance, and include the date and time.
 - b. Description of the services being performed subjected to the unauthorized commitment.
 - c. Statement - "*A claim for payment for any future unauthorized commitment action will be subject to resolution of the Federal Acquisition Regulation (FAR) 1.602-3(b)(5) under the Contract Disputes Act of 1978, and should be processed in accordance with FAR Subpart 33.2, Disputes and Appeals. This regulation is found at <http://www.acquisition.gov/far>."*
 - d. Vendor's invoice.

Note: An invoice submitted prior to the ratified (approval) of an unauthorized commitment is not considered proper because there was no contract issued prior to the unauthorized commitment action. If the unauthorized commitment action is ratified (approved), the contracting officer will issue the contract and will instruct the contractor to submit a proper invoice through the Invoice Processing Platform (IPP).

2. Place the written notification in reference 1.a above in the file with the request for Ratification of the Unauthorized Commitment action.
3. Annotate "Ratification" on the requisition workload log to show the status of requisitions pending the Ratifying Official's approval that were received in the Integrated Acquisition System (IAS) contracts module.
4. Provide the "Ratification of an Unauthorized Commitment," (*Attachment 1*) to the person that caused the unauthorized commitment action.

b) Responsibility of the Person that Caused the Unauthorized Commitment:

1. Complete the "Ratification of an Unauthorized Commitment," (*Attachment 1*) and ensure the appropriate Budget Official and managerial signatures are obtained prior to sending the documents to the CO.
2. Send the completed "Ratification of an Unauthorized Commitment," (*Attachment 1*) to the CO.

Note: If the unauthorized commitment action is not ratified (approved) by the Ratifying Official, the person that caused the unauthorized commitment action may be held personally liable for payments of the supplies/services rendered by the vendor.

c) Responsibility of the CO:

1. Ensure the accuracy and completeness of the request for the Ratification of Unauthorized Commitment information received from the person that caused the unauthorized commitment.
2. Complete the Determination and Findings section of the request for Ratification of an Unauthorized Commitment, which will support the CO's decision to recommend or disapprove the request for ratification of the unauthorized commitment.
3. Request review by legal counsel, as appropriate.
4. Submit the request for ratification of the unauthorized commitment through the proper approvers above the level of the CO.
5. May recommend the action for review by the Ratifying Official, if the findings support the request to be ratified. If the CO feels the justification is not sufficient, engage in discussion with and/or return the request to the customer to get additional information so that a recommendation can be made to the Ratifying Official. If the information ultimately provided does not justify the ratification, then the Ratifying Official would either engage a manager on the customer side or take appropriate action by not ratifying the action.
6. Immediately, advise the person that caused the unauthorized commitment action of the decision of the CO, Ratifying Official and/or legal counsel regarding the request to ratify.
7. Maintain a copy of the decisions of the CO, legal counsel and Ratifying Official for the request for ratification in the contract file.
8. Immediately, after receiving the Ratifying Official's approval negotiate, if necessary, with the vendor a shared-cost for the unauthorized services performed and prepare the negotiation memo for the contract file under the applicable tab on the contract file index.
9. Issue the appropriate contract document and associate the proper requisition received in IAS.
10. On the contract document, include:
 - a. Statement below in the "Header" description field in IAS and in the description field of the Federal Procurement Data System - Next Generation record:

"This Action is a Ratification of an Unauthorized Commitment"

- b. Instruct the contractor to submit a *proper* invoice with the appropriate contract number and any other revised invoice information through IPP.

***Note:** An invoice submitted prior to the ratified approval of an unauthorized commitment is not considered proper because there was no contract issued prior to the unauthorized action. The Prompt Payment Act authorizes interest after a properly completed invoice is submitted and a specified time has elapsed without payment. Interest cannot accrue until the ratified action is authorized and a proper invoice is submitted.*

d) Ratifying Officials:

1. Will review the Ratification document and if changes are required will return the documents to the CO for changes.
2. *May* approve or disapprove the request for Ratification, depending on the circumstances and the supporting data.
3. Prior to submitting a request for Ratification to the HCAD, the Contracting Branch Chief will review/approve the request. The Procurement Analyst will review and provide comments for requests to be reviewed by the HCAD.
4. A copy of the approved/disapproved request for Ratification will be submitted to the appropriate Contracting Officer and the Procurement Analyst.

e) Official Ratification Log

1. The official Ratification Log will be maintained in the office of HCAD by the Procurement Analyst. The Contracting Branch Chiefs *may* maintain individual Ratification logs for the applicable branches.
2. The Procurement Analyst will assign and annotate control numbers on the official Ratification log that will be saved on the shared drive.

◆ **EXPIRATION DATE:** This AOP will remain in effect until canceled.

Control #: _____
 (assigned by Procurement Operations Div.)

Request for Ratification of an Unauthorized Commitment

This action is the result of an unauthorized commitment as defined in the Federal Acquisition Regulation (FAR) 1.602-3, and Agriculture Acquisition Regulation 401.602-3, Ratification of Unauthorized Commitments.

1. Nature of Action:

 (Explain who, how and when the unauthorized commitment occurred, including the conversation(s) with the vendor; and describe the supplies/services rendered by the vendor)

 (List the person that caused the unauthorized commitment action)

Print Name	Title	Organization	Email

2. Name of Vendor:

 (List the vendor's name and address that provided the supplies/services)

3. Price or Costs:

 (List the dollar amount of the supplies/services)

4. Fair & Reasonableness:

 (Explain how the agreed price or costs was determined to be fair and reasonable)

5. Competition Effort:

 (Explain how the vendor was selected and provide a list of other vendors that were considered to provide the supplies/services)

6. Contracting Process:

 (Explain why the normal contracting procedures were not followed requiring an approved requisition be sent to the contracting office and a valid contract to be issued by the Contracting Officer prior to obtaining the supplies/services)

7. Date Accepted:

 (List the date the supplies/services were accepted by the Government)

 (List the Official/COR that accepted the supplies/services)

Print Name	Title	Organization

- 8. Bona Fide Need:** _____
(Explain why the Government had a bona fide need for the supplies/ services)
- 9. Benefits:** _____
(Explain the benefit(s) that the Government received from the supplies/ services received)
- 10. Funds Availability:** _____
(Explain the data used to verify that funds were available at time of the unauthorized commitment and funds will be available if the action is ratified.)
- 11. Preventive Actions:** _____
(Explain actions taken by the Supervisor to prevent recurrence of unauthorized commitments by this individual)
- 12. Other Supporting Facts:** _____
(Provide any other pertinent facts, e.g., invoice)

SUBMITTED FOR REVIEW AND APPROVAL:

- I certify that funds were available at the time of the unauthorized comments and funds are available to process the ratified unauthorized commitment.

Signature of Funds/Budget Official Print Name Title Organization Date

- Based on the facts and circumstances, we determined the information above to be accurate and complete.

Signature of Person Caused Action Print Name Title Organization Date

Signature of Division/Higher level Print Name Title Organization Date

