United States Department of Agriculture

Office of the Assistant Secretary for Administration

Office of Procurement and Property Management

Procurement Operations Division

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Washington, DC
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ACQUISITION OPERATING PROCEDURE (AOP)

FROM: Jodey A. Exhem
Head of Contracting Activity Designee

JUN 18 2013

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

◆**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 24 2013.

◆**REVISIONS:** Process: a(1) through (4) text removed/added and renumbered; b(3) paragraph added; c(2), (3), (4), (8), (9) and (10) paragraphs revised and text added; d paragraph added; and Attachment 1, paragraph 10 text revised; and CO Determination text added.

This AOP replaces AOP No. 4, dated November 13, 2012.

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

Ratifying Official	***Dollar Threshold***
Senior Procurement Executive	All dollar amounts

◆ **PROCESS:** When contracting personnel learns 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*) that performance of the services must immediately cease and desist (*stop*). Any verbal notifications must be followed-up, in writing, and include at the minimum:

a. Summary, date and time of the verbal discussion instructing the vendor to cease and desist.

b. Description of the services being performed subjected to the unauthorized commitment.

c. Statement - "*A claim for payment for <u>any</u> 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.

<u>*Note:*</u> An invoice submitted prior to the ratified (approval) of an unauthorized commitment is not considered <u>*proper*</u> 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 <u>*proper*</u> invoice through the Invoice Processing Platform (IPP).

2. Placed the written notification in the file with the request for Ratification of the Unauthorized Commitment action.

3. Request the Contracting Branch Chief to cancel requisitions received in the Integrated Acquisition System (IAS) contracts module prior to the unauthorized commitment being ratified (approved) by the Ratifying Official.

4. Provide the "Ratification of an Unauthorized Commitment," (*Attachment 1*) to the person that caused the unauthorized commitment action.

b) <u>Responsibility of the Person that Caused the Unauthorized Commitment:</u>

1. Complete the "Ratification of an Unauthorized Commitment," (*Attachment 1*) <u>and</u> 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.

<u>***Note***</u>: 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.

3. Submit a requisition via IAS <u>after</u> the unauthorized commitment action has been ratified (approved) by the Ratifying Official. The CO will inform the person that caused the unauthorized commitments of the approval or disapproval of the action.

Note: Requisitions received in the contracting office prior to the unauthorized commitment action being ratified (approved) will be cancelled in IAS.

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.

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:

   a) Request the person that caused the unauthorized commitment to submit a requisition via IAS to the contracting office.

   b) Negotiate 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) Reviewing Officials:

1. Procurement Analyst will assign the control number, review and annotate comments on the request for ratification document and submit the document to the Head of the Contracting Activity Designee.

2. Head of the Contracting Activity Designee will review the documents and if changes are required, returned the documents to the CO for changes prior to submitting the action to the Ratifying Official.

3. Ratifying Official *may* approve or disapprove the request, depending on the circumstances and the supporting data.

◆ **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*

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*

CONTRACTING OFFICER'S DETERMINATION:

Contracting office notified of unauthorized commitment action: *(Enter date)*

Contracting Officer's action for performance to cease and desist: *(Explain the CO actions that informed the vendor that performance must cease and desist)* .

After review of the facts and circumstances that lead to the unauthorized commitment, I have determined the circumstances leading up to this action have been satisfactorily explained, procedures to prevent reoccurrence is sufficient, a resulting contract would have been proper, the price is fair and reasonable based on *(Explain or Attach the D&F)*, there appears to be no conflicts of interest, no laws violated, and verified on *(Enter date)* that the vendor is not debarred or ineligible for award. Attach comments if the action will not be recommended for review by the Ratifying Official.

Signature of Contracting Officer	*Print Name*	*Date*

Signature of Contracting Branch Chief	*Print Name*	*Title*	*Date*

GENERAL COUNSEL (*if applicable*)

[ ] Approved [ ] Disapproved [ ] Approved Subject to the attached conditions:

Legal	*Date*

DECISION OF THE RATIFYING OFFICIAL:

____ Approved:
____ Disapproved:
____ Approved Subject to the listed conditions:

Lisa M. Wilusz *Senior Procurement Executive* *Office of Procurement and Property Management*	*Date*