

Request to Ratify an Unauthorized Commitment

This action is the result of an unauthorized commitment as defined in the Federal Acquisition Regulation (FAR) 1.602-3.

Employee who made the Unauthorized Commitment

<i>Print Name</i>	<i>Title</i>	<i>Office</i>	<i>Email</i>	<i>Phone No.</i>
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- 1. Nature of Action:** *(Explain who, how and when the events that led to the unauthorized commitment occurred, including the conversation(s) with the vendor, and describe the supplies/services rendered.)*

- 2. Name of Vendor:** *(List the name, address, and DUNS number for the vendor that provided the supplies/services and confirm active registration in SAM.)*

- 3. Estimated Amount:** *(List the dollar amount of the supplies/services.)
(Explain how the parties settled on the amount.)*

- 4. Competition Effort:** *(Explain how the vendor was selected and provide a list of other vendors that were considered to provide the supplies/services.)*

- 5. Contracting Process:** *(Explain why the contracting process 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 was not followed.)*

Control #: _____

6. **Date Accepted:** *(List the date the supplies/services were accepted.)* _____

List the official that accepted the supplies/services:

_____	_____	_____	_____
Name	Title	Email	Phone

7. **Benefits:** *(Explain benefit(s) received (FAR 1.602-3(c)(1)) from the supplies/services received.)*

8. **Funds Availability:** *(Explain data used to verify that funds were available at the time of the unauthorized commitment and that funds are available if the action is ratified (FAR 1.602-3(c)(6)).*

9. **Preventive Actions:** *(Explain in detail actions taken to prevent recurrence of unauthorized commitments as well as disciplinary action taken. If this is a repeat offense, address what actions taken.)*

10. **Other Supporting Facts:** *(Provide other pertinent facts.)*

REVIEW AND APPROVAL

➤ **Fund/Budget Official**

I certify that funds were available at the time of the unauthorized commitment and that funds are currently available to ratify the unauthorized commitment.

Signature *Print Name* *Title* *Office* *Date*

➤ **Employee who made the Unauthorized Commitment**

By signing this document I confirm that the facts and circumstances provided above are accurate and complete.

Signature *Print Name* *Title* *Office* *Date*

➤ **Immediate Supervisor of Employee who made the Unauthorized Commitment**

To the best of my knowledge, the facts and circumstances of the information above is believed to be accurate and complete. This is the ___ (**1st, 2nd, 3rd, etc.**) unauthorized commitment initiated by the individual; and I have had ___ (**0, 1, 2, etc.**) unauthorized commitments previously initiated by other staff in my office. I have taken the corrective actions (**employee/staff training, internal controls, etc. provide details of what, when, who**) below to preclude unauthorized commitments from recurring within my office:

Signature *Print Name* *Title* *Office* *Date*

➤ **Employee's Second and Third Level Supervisor (as applicable)**

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

2nd line Supervisor: Concur ___ Do Not Concur ___

Signature *Print Name* *Title* *Office* *Date*

3rd Line Supervisor: Concur ___ Do Not Concur ___

Signature *Print Name* *Title* *Office* *Date*

➤ **Senior Executive Service member**

Concur ___ Do Not Concur ___

Control #: _____

Attachment 1

Additionally, I propose the following plan of actions to prevent reoccurring unauthorized commitments within my organization: *(Give explanation)*

Signature

Print Name

Title

Office

Date

UAC -- CONTRACTING OFFICER'S DETERMINATION AND FINDINGS

1. Date the Contracting Officer (CO) became aware of the unauthorized commitment action:

Month / Day / Year

2. Describe the action to immediately inform the Vendor to discontinue performance:

3. Statement that the price is fair and reasonable (provide explanation/basis).

4. Funds were available at the time of the unauthorized commitment and are available to pay for the ratified action.

Yes ___ No ___ Accounting Code: _____

5. The resultant contract would otherwise have been proper if made by an appropriate contracting officer.

Yes ___ No ___

6. Confirm the Government has obtained or will obtain a benefit resulting from performance of the unauthorized commitment.

Yes ___ No ___

Determination:

After review of the facts and circumstances that led to the unauthorized commitment, I have determined the circumstances leading up to this action were:

Satisfactorily explained? Yes ___ No ___

Procedures to prevent reoccurrence were in place? Yes ___ No ___

Resulting contract would have been proper? Yes ___ No ___

No conflicts of interest or laws were violated and that the vendor is not debarred or ineligible for award as shown for award in System for Award Management? Yes ___ No ___ Date Verified in SAM _____

Check one:

_____ I recommend ratification.

_____ Unauthorized commitment cannot be ratified because *{insert rationale}*; however, the government did receive and accept goods and services. Payment ___ was ___ was not made by government purchase card prior to the ratification request. If payment is due, follow mission area procedures. No further elevation is required.

Control #: _____

_____ I do not recommend ratification.

Comments (*If unauthorized commitment cannot be ratified, but payment is due, use this space to further document findings as appropriate):

Contracting Officer Signature

Print Name

Date

REVIEW AND RECOMMEND

NOTE: No one should recommend approval if the action was not "otherwise proper".

Contracting Supervisor:

Recommend for approval for ratification: Yes ___ No ___

Comments:

Signature

Print Name

Title

Date

Chief of the Contracting Office (if applicable):

Recommend ratification: Yes ___ No ___

Comments:

Signature

Print Name

Title

Date

RATIFYING OFFICIAL DECISION TO RATIFY:

(MASCO)

___ Approved:

___ Disapproved:

___ Approved subject to the listed conditions: _____

Signature

Print Name

Title

Date

AGAR PGI APPENDIX B

UNAUTHORIZED COMMITMENT PROCEDURES

BACKGROUND:

FAR 1.602-3(b) requires agencies to take positive action to preclude the need for ratification actions. Although procedures are available in cases where it is necessary to ratify an unauthorized commitment, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

FAR 1.602-3(c) further stipulates that ratification authority may be exercised only when the following conditions are met:

- (1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;
- (2) The ratifying official has the authority to enter into a contractual commitment;
- (3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;
- (4) The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;
- (5) The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;
- (6) Funds are available and were available at the time the unauthorized commitment was made; and
- (7) The ratification is in accordance with any other limitations prescribed under agency procedures.

Examples of unauthorized commitments include: (a) Government purchase cardholder makes a purchase over their single purchase limit. (b) Commitment for construction, alteration or renovation. (c) Commitment for continuation of services or research, or delivery of supplies under an expired contract, purchase order, or delivery order. (d) Commitment for performance of work or delivery of supplies prior to issuance of a contract, purchase order, or delivery order. (e) Commitment which exceeds the call order limit on a blanket purchase agreement. (f) Commitment under a blanket purchase agreement by a person who is not delegated authority. (g) Commitment which continues contract services over and above the original scope and dollar amount; or a commitment made by an otherwise authorized contracting officer. (h) Government purchase cardholder makes multiple purchases from the same vendor on the same day, the total of which exceeds the single purchase limit and the total requirement was known at the time of the first purchase.

Non-Ratifiable Commitments

While GAO is clear that improper actions may not be ratified, they are also clear that the Government is liable for the reasonable value of any goods or services received by the Government. In such cases, the CO should document that although the UAC cannot be ratified, the vendor is

entitled to fair and reasonable payment for goods and services accepted (not necessarily the same amount as the UAC). The CO should resolve the UAC in a different manner by contacting the mission area finance office.

If it is determined the non-ratifiable commitment should not be paid (i.e., the Government did not receive and accept services) and/or the vendor seeks review of a disallowance (in full or in part) the CO should seek legal advice.

PROCESS:

a. Responsibility of the Employee who made the Unauthorized Commitment:

1. Complete the "Request to Ratify an Unauthorized Commitment," (*Attachment 1*) and include all the facts and pertinent documentation to support the ratification request.
2. Consult with the Contracting Officer (CO) if you have any questions concerning the information required to complete the request to ensure the accuracy of the information being submitted; and provide an editable copy of the request to the CO so comments/changes can be recommended.
3. Ensure the request to ratify is signed by the budget official and all managers in the employee's supervisory chain, ending with the signature of employee's Line Officer.
4. Send the completed "Request to Ratify an Unauthorized Commitment," (*Attachment 1*) to the CO.
5. If the request is approved by the Ratifying Official, and over the micro purchase threshold then submit a funded requisition in the Integrated Acquisition System (IAS) to the contracting office so that the CO can issue the proper contract document. The vendor must be registered in the System for Award Management (SAM).
6. If the request is approved by the Ratifying Official and does not exceed the micro purchase threshold and payment has not been made, then either; (a) submit a "no-commit" requisition in IAS, create an IAS record of the transaction and specify that payment will be made by the GPC or; (b) submit a funded requisition in IAS and the CO can issue the proper contract document.
7. Government Purchase Card (GPC) and fleet cardholders who exceed their micro-purchase authority while using purchase cards or checks are also subject to these procedures. All purchase card or convenience check unauthorized commitments over the micro-purchase threshold shall have a "no-commit" requisition created in IAS and then an IAS record created for the ratification specifying that payment will be made by the GPC.

Note: If the unauthorized commitment is not ratified (approved) by the Ratifying Official, the employee making the unauthorized commitment may be held personally liable for payments of the supplies/services.

b. Responsibility of the Supervisor and Senior Executive Service (SES) member for the Employee who made the Unauthorized Commitment

1. Unauthorized commitments violate federal laws and regulations and may result in personal liability or adverse personnel action for the employee(s) found to be responsible.

- The supervisor shall take positive action to prevent unauthorized commitments and ensure this policy is communicated to employees within their organization.
2. Ensure the employee who made the unauthorized commitment provides information that is accurate and complete, and includes facts and pertinent records or documentation, if applicable, to support the ratification request.
 3. Ensure the budget official and all appropriate managers in the employee's supervisory chain, including the line officer signs the ratification request.
 4. Disciplinary actions are at the discretion of the individuals' supervisor and line officer. The supervisor should consider factors such as the dollar value of the unauthorized commitment action; whether the individual has repeatedly committed unauthorized actions; nature of the action, i.e. due to lack of knowledge or training, or pressure by someone else.

c. Responsibility of the CO:

When contracting personnel learn that an unauthorized commitment has occurred or the vendor is performing services due to the actions of a government official that lacked the authority to bind the government, the CO is required to:

1. Immediately notify the vendor and the government officials (*employee who made the unauthorized commitment **and** the employee's supervisor*) to immediately discontinue performance. Any verbal notifications must be followed-up in writing (*email or letter*) and include at the minimum:
 - i. Summary of the verbal discussion instructing the vendor to immediately discontinue performance, which shall include the date and time.
 - ii. Description of the services being performed subjected to the unauthorized commitment.
 - iii. 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 <https://www.acquisition.gov/browsefar>."*
 - iv. Vendor's invoice.

Note: An invoice submitted prior to ratification is not considered proper because no contract was in place at the time of the unauthorized commitment. If the unauthorized commitment action is ratified (approved), the CO will issue the contract and will instruct the contractor to submit a proper invoice through the Invoice Processing Platform (IPP). If paying with GPC, see paragraphs a.6 and a.7 above. If the unauthorized commitment cannot be ratified and the CO determines payment is due, the CO will request a revised invoice.

2. Place the written notification in reference c(1)(i) above in the contract file with the Request to Ratify an Unauthorized Commitment.
3. Contact the MASCO to obtain an assigned control # and provide pertinent tracking information (see f.4 below).
4. Provide the “Request to Ratify an Unauthorized Commitment,” (*Attachment 1*) to the employee making the unauthorized commitment action.
5. Assist the employee who made the unauthorized commitment with addressing the data and information needed in the request for ratification, as appropriate.
6. Ensure the accuracy and completeness of the information received from the employee who made the unauthorized commitment; and also ensure the appropriate supervisor and line officer have approved (signed) the ratification request.
7. Complete the CO Determination and Findings (*Attachment 2*) to support the CO’s decision to recommend approval or disapproval of the request to ratify the unauthorized commitment. If the UAC cannot be ratified but the government has received and accepted goods or services, the CO should determine fair and reasonable payment due, and resolve the UAC (FAR 1.602-1 authority to ‘make related determinations and findings’) by contacting your mission area finance office for payment processes. Notify the employee who made the unauthorized commitment.
8. If ratification is appropriate, submit the request for review and approval through the supervisory chain to the MASCO.
9. Immediately advise the employee who made the unauthorized commitment of the decision of the Ratifying Official to ratify or not to ratify.
10. Maintain a copy of the CO’s recommendation and Ratifying Official decision in the contract file.
11. Issue the appropriate contract document and associate the proper requisition received in IAS. On the contract document, include:
 - i. Statement below in the *description fields* in IAS and in the Federal Procurement Data System - Next Generation (FPDS-NG) record:
“This Action is a Ratification of an Unauthorized Commitment”
 - ii. 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. Responsibility of Contracting Supervisors

1. Ensure the information in the ratification request is accurate and complete, and includes facts and pertinent records or documentation, if applicable. To include:
 - a. Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from the performance of the unauthorized commitment.
 - b. The action would have been proper if made by an appropriate contracting officer.
 - c. The contracting officer reviewing the unauthorized commitment determines the price is fair and reasonable.
2. Ensure the budget official and all appropriate managers in the employee's supervisory chain, to include the SES, sign the request.

e. Responsibility of the Ratifying Officials:

1. Review the ratification document and if changes are required or additional documentation needed return the documents to the CO.
2. Approve or disapprove the Request to Ratify, depending on the circumstances and the supporting data (*Attachment 2*).
3. Provide a copy of the approved/disapproved Request to Ratify to the appropriate contracting officer and the procurement analyst.

f. Official Unauthorized Commitment Log and Control Number

MASCOs are required to maintain a log and files of unauthorized commitments and provide annual updates to OCP. By October 30th of each year please provide a listing of previous fiscal year unauthorized commitments to procurement.policy@usda.gov. At a minimum, the listing should include *description, date, and \$ amount*.