

ARS □ ERS □ NASS □ NIFA

Policies and Procedures

Title: Approval for Acquisition Ratifications

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This Replaces: ARS 212.16 dated 02/15/2012

Distribution: ARS Business Service Center (BSC) Directors, BSC Acquisition and Property Branch Chiefs, APD, ERS, NASS, and NIFA.

This P&P has been updated to incorporate Enclosure 4 – Ratification of Unauthorized Commitments

This P&P has been updated to reflect process changes and the changes within the ARS organizational structure.

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1. Purpose

It is illegal for anyone other than a properly appointed contracting officer, ordering officer or cardholder to make a purchase for the Government.

Personnel without procurement authority who order supplies or services, who attempt to change the terms of an existing purchase, or who commit the Government to pay a vendor for anything received, may be held to disciplinary action and may be responsible for payment.

Such actions are called unauthorized commitments. This also applies to contracting officers who exceed the limitations stated on their warrant.

This P&P provides guidance on processing ratifications of unauthorized commitments within REE.

2. Definitions

Ratification. The approval of an unauthorized commitment by an official who has the authority to do so.

Unauthorized commitment. An agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

3. Delegation of Authority

The Agriculture Acquisition Regulation (AGAR) 401.602-3 authorizes the Head of the Contracting Activity (HCA) and HCA Designee (HCAD) for REE to delegate ratification authority to qualified individuals at the Chief of the Contracting Office level. Accordingly, the following individuals are hereby delegated the authority to ratify unauthorized actions up to \$150,000:

- Chief, Acquisition and Property Branch, Business Service Center (BSC)

Authority to approve unauthorized contract actions over \$150,000 remains at the HCAD level.

4. Regulatory Requirements

All ratification actions are to be processed in accordance with Federal Acquisition Regulation (FAR) 1.602-3 and AGAR 401.602-3. The authority to ratify an authorized commitment may

only be exercised when the conditions cited in FAR 1.602-3(c) exist. Procedures cited in AGAR 401.602-3 shall be followed upon learning of an unauthorized commitment.

5. Procedures for Ratification Actions Approved at the Contracting Office Level

Enclosure 1, “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” should be completed by the individual in the Contracting Office who is recommending the ratification and signed by the ratifying official for each ratification action processed (see Enclosure 1). This enclosure constitutes the ratification action required by FAR 1.602-3 and does not serve as a substitute for the information AGAR 401.602-3(c)(3) requires to be submitted by the individual who made the unauthorized commitment. Enclosures 2 and 3 provide samples of letters which should be forwarded upon approval of the ratification action. It is not necessary that the ratifying official sign the purchase order/contract for the ratification; however, the statement, “This is a ratification of an unauthorized commitment,” should be typed on the face of the OF-347 Order for Supplies, SF-26 Award/Contract, SF-1449 Solicitation/Contract/Order for Commercial Items that ratifies the action. Once the action has been ratified at the appropriate level, any contracting officer (CO) with delegated authority for the dollar amount of the action can sign the action.

If ratification of the action is not justifiable, the ratifying official must provide the person who made the unauthorized commitment, the recommending official, and the unauthorized contractor with an explanation of the decision not to ratify. Cases that are not ratifiable under FAR 1.602-3 may be subject to resolution as recommended by the Government Accountability Office under its claim procedures, or as authorized by FAR Part 50 as “extraordinary contractual actions.”

6. Review of Ratification Actions Approved at the Contracting Office Level

Ratification actions approved at the Contracting Office levels will be closely reviewed for compliance with FAR and AGAR requirements during Procurement and Property Management Reviews performed by the Acquisition Programs and Oversight Branch (APOB).

7. Ratification Actions Requiring HCAD Approval

Review and approval of previously unauthorized contract actions over \$150,000 shall remain at the HCAD level. Such actions must be forwarded to the HCAD, APD, for approval and must include evidence of compliance with FAR and AGAR, as cited above. A completed copy of Enclosure 1, “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” signed by the appropriate individual at the Chief of the Contracting Office level, as recommending official, must be forwarded to the HCAD for signature, along with the action to be ratified.

8. Summary of Responsibilities

Agency Administrator (Headquarters actions) / Area Director (field office actions) / Business Service Center Director (BSC actions)

- Ensures agencies/field offices take positive action to preclude, to the maximum extent possible, the need for ratification actions.
- When reviewing the written statement of facts prescribed by AGAR 401.602-3(C) (3):
 - verifies its completeness and accuracy.
 - signs the completed written statement of facts signifying that ratification of the unauthorized commitment is recommended.

HCAD

- When acting as the ratifying official, reviews the completed copy of Enclosure 1, “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” and determines if ratification is justified and proper.
 - If ratification is adequately justified and proper, signs the determination that ratifies the action.
 - If ratification is not justifiable, provides the person who made the unauthorized commitment, the recommending official, and unauthorized contractor with explanation of the decision not to ratify. If there are any questions concerning this matter, contacts the Office of General Counsel and the Human Resources Division.
- Provides counsel to the BSC-APB Chiefs concerning non-ratifiable actions upon request.
- Distributes memoranda shown in Enclosures 2 and 3 upon ratification of the action.

BSC-ABP Chief

- Ensures that all ratifications of unauthorized commitments are processed in accordance with FAR 1.602-3, AGAR 401.602-3, and this P&P.
- When recommending that actions above \$150,000 be ratified by the HCAD, ensures that Enclosure 1, “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” is completed and forwarded to the HCAD.

- When acting as a ratifying official, reviews the completed copy of Enclosure 1, “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” and determines if ratification is justified and proper.
 - If ratification is adequately justified and proper, signs the determination that ratifies the action.
 - If ratification is not justifiable, provides the person who made the unauthorized commitment, the recommending official, and the unauthorized contractor with an explanation of the decision not to ratify. If there are any questions concerning this matter, contact the HCAD.
- Distributes memoranda shown in Enclosures 2 and 3 upon ratification of the action.
- Signs the purchase order or contract document.

Contract Specialist/Purchasing Agent

When recommending that actions be ratified:

- ensures that the unauthorized official submits all records and documents concerning the commitment.
- submits a complete, written statement of facts as prescribed by AGAR 401.602-3 (C) (3).
- completes Enclosure 1, “Ratifying Official’s Determination to Ratify Unauthorized Commitment.”
- forwards to appropriate approving official for ratification.
- prepares the purchase order or contract document in IAS.

Person Who Made the Unauthorized Commitment

- Furnishes all records and documents concerning the unauthorized commitment and a complete, written statement of facts as prescribed by AGAR 401.602-3(c)(3) to the CO (see Enclosure 4). The written statement of facts must be approved for accuracy and completeness and signed by either the Agency Administrator (Headquarters actions), Area Director (field office actions) or the appropriate BSC Director.
- If the employee who made the unauthorized commitment is no longer with REE, the former employee’s supervisor provides the information to the CO, along with the name of the employee who made the unauthorized commitment.

MICHAEL BARNES
Head of the Contracting Activity Designee
Acquisition and Property Division

4 Enclosures

Ratifying Official's Determination to Ratify Unauthorized Commitment

Part I – Background Information:

1. Unauthorized Commitment by (name): _____
2. Location: _____
3. Supply/Service: _____

4. Requisition: _____ \$ _____
Date Amount Accounting Code
5. Contracting Office: _____
6. PO/Contract Amount: \$ _____
7. Vendor: _____
8. Competition Received: _____
9. Performance/Delivery Date: _____

Part II – Determination in Accordance with Information Required by FAR 1.602-3:

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. _____/_____
Yes No
2. Resulting contract would otherwise have been proper. _____/_____
Yes No

- If sole source, provide justification.

- If over \$150,000 cite FAR Part 6 exemption.

3. Price Reasonableness Determination.

4. Payment is recommended.

____/____
Yes No

5. Funds are available and were available at the time the unauthorized commitment was made.

____/____
Yes No

6. The ratification is in accordance with all limitations described under Agency procedures.

____/____
Yes No

Based on the information contained herein, ratification of this unauthorized commitment is recommended.

Ratifying Official

Date



United States Department of Agriculture

Research, Education, and Economics
Agricultural Research Service

SUBJECT: Ratification of Unauthorized
Contract Award

TO: Person who Committed the
Unauthorized Contract Action

FROM: Chief of the Contracting Office

I have reviewed the information submitted by _____ and have ratified your unauthorized act of purchasing supplies/services to _____.

Your unauthorized act is a violation of the following regulations:

- Federal Acquisition Regulation (FAR) 1.601 – “Contracts may be entered into and signed on behalf of the Government only by contracting officers.”
- FAR 1.602-1(b) – “No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.”

While I have ratified this act (enclosed), you are advised that future procurements and/or contractual actions in which you become involved must be submitted to the procurement office for execution. It is recommended that you review prohibited conduct as covered in the Employee Handbook, Appendix 1 (7 CFR 0.725-11(a)(5), FAR 1-602-3, and AGAR 401.602-3).

Because of Government publicity on alleged fraud, waste and abuse of Federal funds, this memorandum is provided to protect your interests and to caution you on future involvement with unauthorized procurement and/or contractual actions.

Enclosures

cc:
Cognizant REE Program Supervisor



United States Department of Agriculture

Research, Education, and Economics
Agricultural Research Service

SUBJECT: Ratification of Unauthorized Act

TO: _____
Purchasing Agent, BSC

FROM: Ratifying Official

Enclosed is the signed determination ratifying the unauthorized act committed by

_____ for the purchase of _____.

Enclosures



United States Department of Agriculture

Research, Education, and Economics
Agricultural Research Service

RATIFICATION OF UNAUTHORIZED COMMITMENTS

TO: "INSERT NAME" , "INSERT TITLE (ACO OR COR)"
FROM: "INSERT NAME" , CONTRACT SPECIALIST
SUBJECT: UNAUTHORIZED COMMITMENT OF GOVERNMENT FUNDS
PR #"CLICK HERE AND TYPE PROCUREMENT REQUEST NUMBER"
FOR "CLICK HERE AND TYPE PROJECT TITLE"
WITH "INSERT CONTRACTOR NAME"
DATE: _____
CC: "CLICK HERE AND TYPE NAME"

1. Your requisition to provide services/supplies is being returned to you for your action. It is an unauthorized commitment as defined by FAR 1.602-3. Specifically, the services performed were rendered without a valid award by a contracting officer. The Federal employee who made the commitment lacked the legal authority to bind the Government.
2. For this action to be ratified (i.e., approved by a contracting officer), the following information must be provided. Failure to ratify an unauthorized commitment will result in the vendor not being paid, and the individual who is responsible for the commitment may be held personally liable.
 - a. Each item should be addressed separately.
 1. What bonafide Government requirement necessitated the commitment?
 2. Why was a contracting officer not used?
 3. Why was the vendor selected? Provide a list of sources and prices considered.
 4. A description of the work to be performed or the products to be furnished.
 5. The estimated or agreed price and a rationale for why the price is fair and reasonable.
 6. Whether an appropriation is available for the work.
 7. Whether performance has begun.
 8. Any other pertinent facts.

9. If the action exceeds \$3,000, you must include a Justification for a Sole Source, explaining why only one vendor can supply the goods or services.

10. What steps are being taken to prevent this from occurring again?

Please attach all other relevant documents, including orders, invoices, or other evidence of this transaction.

- b. The above information must be signed by the individual who initiated the unauthorized commitment and approved by the individual's Director or Senior Supervisor, **along with the approval of the Agency Administrator or office actions**), verifying the accuracy and completeness of the documentation.
3. Upon our receipt of the above information, this office will determine whether ratification is proper. Approved actions will result in a signed award by a contracting officer. Disapproved actions will be returned to the initiating individual's Department for further action.
4. Questions may be directed to:

"Insert Name"

Contract Specialist

USDA/ARS/BSC-APB

"Insert Address Line 1"

ph: "(XXX) XXX-XXXX"