

**COMMERCE ACQUISITION MANUAL
1301.602**

DEPARTMENT OF COMMERCE
RATIFICATION OF UNAUTHORIZED COMMITMENTS

COMMERCE ACQUISITION MANUAL 1301.602

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RATIFICATION OF UNAUTHORIZED COMMITMENTS

SECTION 1 – Overview

1.1 Background

Federal Acquisition Regulation Subpart 1.6 provides that only a contracting officer has the authority to enter into contracts or otherwise bind the government to a contractual commitment. It is the policy of the Department of Commerce that all acquisitions are to be made only by government officials having authority to make such commitments. Unauthorized commitments occur when the Department of Commerce (the Department) accepts goods or services in the absence of an enforceable contract entered into by an individual with delegated contracting authority. The Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. Payment for goods or services accepted in the absence of an authorized commitment may be made only through the ratification process.

The preventive measures contained herein as well as the multi-level review for all ratifications of unauthorized procurement actions required by this Chapter emphasize the Department's goal to minimize these actions.

1.2 Purpose

The purpose of this policy is to set forth the requirements to implement measures to avoid unauthorized procurement actions and prescribe the ratification process.

1.3 Applicability

This policy is applicable to all operating units within the Department of Commerce.

1.4 Unauthorized Commitments

Examples of unauthorized commitments include, but are not limited to:

- a. A request for a proposal from an educational institution, state agency, or other vendor, including those assumed to be sole or required sources, with an implied commitment for a contract;
- b. a 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 exceeding the level of authority delegated to the individual or position.

1.5 Roles and Responsibilities

1.5.1 Senior Procurement Executive (PE)

The Senior Procurement Executive is responsible for establishment of policy supporting the avoidance of unauthorized commitments; oversight of preventive measures implemented by the operating units; and approval of ratifications with contractual value of \$50,000 or above.

1.5.2 Senior Bureau Procurement Official (BPO)

The Senior Bureau Procurement Official is responsible for implementation of preventive measures; compliance with the review and concurrence requirements of this policy; and the approval of ratifications with contractual value up to \$50,000.

1.5.3 Office of General Counsel (OGC)

The Office of General Counsel, Assistant General Counsel for Finance and Litigation, Contract Law Division is responsible for review and concurrence with all proposed ratifications based on the facts and circumstances contained in the supporting documentation.

1.5.4 Head of Contracting Office (HCO)

The Head of Contracting Office is responsible for supporting the implementation of preventive measures; and review and concurrence of all ratification requests.

1.5.5 Contracting Officer (CO)

The contracting officer is responsible for performing preventive measures; contract oversight; initial review of and concurrence with ratifications; and cancellation of contracting officer representative appointment, as necessary.

1.5.6 Responsible Party

The responsible party is the individual who created the unauthorized commitment. This individual may be a program official or the contracting officer representative. The responsible party must perform the documentation requirements contained in this policy and may be subject to appropriate disciplinary actions.

1.5.7 Responsible Party's Supervisor

The immediate supervisor of the responsible party must review and concur with the documentation provided by the responsible party prior to submission to the contracting officer for processing of the ratification request.

1.5.8 Contracting Officer Representative (COR)

The contracting officer representative is responsible for compliance with contract administration functions as described in the COR appointment letter; and avoidance of circumstances that obligate or appear to obligate the government.

END OF SECTION 1

SECTION 2 – Prevention of Unauthorized Commitments

2.1 Background

Unauthorized commitments must be avoided to the maximum extent possible. Effective contract administration and outreach efforts which reinforce the limitations of authority for those without delegations will mitigate the risk of these occurrences.

2.2 Preventive Measures

The following steps shall be taken to avoid unauthorized commitments:

- a. Contracting officers shall provide specific information on the duties and responsibilities of appointment as a COR including those responsibilities that are delegated and those responsibilities that are not delegated.
- b. Heads of Contracting Offices shall ensure appropriate monitoring and administration of contract performance in coordination with the contracting officer and contracting officer representative in order to preclude the occurrence of an unauthorized commitment.
- c. Senior Bureau Procurement Officials shall conduct appropriate outreach efforts to ensure that all program officials involved with contract and award and administration are familiar with delegated authority and limitations to authority, regardless of their official role in the process.

2.3 Disciplinary Actions

Unauthorized commitments may be considered matters of serious misconduct and may subject the responsible employees to appropriate disciplinary actions.

END OF SECTION 2

SECTION 3 – Ratification Procedures

3.1 Background

Thorough documentation of an unauthorized commitment is required to ensure that the requested ratification is appropriate; that the underlying cause(s) of the unauthorized commitment is clearly understood and that preventive measures can be tailored to avoid recurrence.

3.2 Procedures

3.2.1 Documentation Requirements

When an unauthorized commitment action has occurred, the Responsible Party shall submit a memorandum through his/her immediate supervisor and senior managers to the Head of Contracting Office that details all the facts, circumstances and limitations concerning the unauthorized action as detailed below. All supporting documentation shall be included in the package.

a. Facts and Circumstances

The memorandum shall include statements addressing each of the following facts and circumstances:

- i. A statement regarding the nature of the unauthorized procurement action and the individual(s) involved, including all program officials who knew of the action and allowed it to take place;
- ii. A discussion of the program requirements and an explanation of how the unauthorized procurement action occurred, and why it was considered valid and necessary to meet program requirements;
- iii. An explanation of the selection of the proposed contractor, i.e., the “sole source justification”, if any; and names, addresses, phone numbers and quotes received from any other sources that were considered;
- iv. A statement of any approvals or clearances received for the unauthorized procurement action, including a listing of who told the contractor to proceed and on what date the contractor was so notified;
- v. A description of the work performed or products furnished, including the date work started;
- vi. The estimated or agreed to purchase price and the estimated or agreed to completion date and the date when they were agreed to (include how price or cost reasonableness was evaluated and who agreed to it);
- vii. A copy of the most current invoice;
- viii. A description of what has been done to prevent recurrence, including any disciplinary action taken;

- ix. A description of any attempts made to involve properly authorized procurement personnel before any commitment was made to the contractor (include any factors which prevented such involvement); and
- x. Any other pertinent information regarding the unauthorized procurement action or the ratification request.

b. Limitations

Statements addressing each of the following limitations shall be included in the memorandum:

- i. 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;
- ii. The approving official has the authority to enter into a contractual commitment;
- iii. The resulting contract would otherwise have been proper if made by an appropriate contracting officer;
- iv. The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;
- v. The contracting officer recommends payment and legal counsel concurs in the recommendation;
- vi. Funds are available and were available at the time the unauthorized commitment was made; and
- vii. The ratification is in accordance with Department of Commerce policies and procedures.

3.2.2 Review and Clearance

Once the memorandum has been submitted, the Head of Contracting Office shall conduct a stringent analysis of the underlying facts, circumstances and limitations of the unauthorized commitment and forward the documents to the Office of General Counsel for written review and clearance.

3.3 Approval

Upon clearance by the Head of Contracting Office and the Office of General Counsel, the ratification package shall be forwarded to the appropriate approving official as outlined in Subsections 3.3.1 and 3.3.2.

3.3.1 Unauthorized Commitments Up to \$50,000

The Senior Bureau Procurement Official is authorized to approve ratifications of unauthorized commitments in amounts up to \$50,000.

3.3.2 Unauthorized Commitments Above \$50,000

The Senior Procurement Executive is authorized to approve ratifications of unauthorized commitments in amounts above \$50,000. Ratifications above \$50,000 shall obtain the review and clearance of the Senior Bureau Procurement Official.

3.4 Ratification Release

Payment for approved ratifications can be processed either through modification of an existing contract or order or through establishment of a new contract or order. The contract action must contain language which documents and limits the action. The following language shall be included in all contract actions providing payment resulting from the ratification of an unauthorized commitment:

3.4.1 Contract Language

(a) The Government agrees to pay the contractor \$ _____ for the following items/services:

(b) In consideration for the sum stated above, which is to be paid to the Contractor, or its assignees, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

(1) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows: (or state "None").

(2) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in said contract.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability) including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.

(c) The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that it will comply with provisions of the said contract, including without limitation, those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

Contractor's Signature: _____

Date: _____

3.5 Non-Ratifiable Commitments

Unauthorized commitments that can not be ratified may be subject to resolution as recommended by the Government Accountability Office under its claim procedure or as authorized by Federal Acquisition Regulation Subpart 50.1. The Contract Law Division, Office of General Counsel for Finance and Litigation, shall be consulted regarding these cases.

END OF SECTION 3

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