



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration

Office of Procurement
and Property
Management

Procurement
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ACQUISITION OPERATING PROCEDURE (AOP)

FROM: Shawn E. Kerkes *Shawn E. Kerkes*
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NOV 13 2012

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 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.

- ◆ **REVISIONS:** Under Process: (c), (8) the text was revised and items (9) and (10) were added. This AOP replaces AOP No. 4, dated September 29, 2012.
- ◆ **AUTHORITIES:** Federal Acquisition Regulation 1.602-3 and Agriculture Acquisition Regulation 401.602-3, Ratification of Unauthorized Commitments.

Ratifying Official

Senior Procurement Executive

Dollar Threshold

All dollar amounts

◆ **PROCESS:** When the Contracting personnel learns that an unauthorized commitment has resulted or is the contractor is performing services from the actions of a Government Official:

a) **Immediately**, the appropriate Contracting Officer (CO) will:

1. Notify the vendor and the Government official of the unauthorized commitment action and that performance must stop, and/or that performance is being provided at the vendor's own risk.
2. Provide the "Ratification of an Unauthorized Commitment," (*Attachment 1*) to the individual responsible for the unauthorized commitment action.
3. Contact the Procurement Analyst in the Procurement Operations Division to obtain a ratification control number for tracking purposes.

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

1. Complete the “Ratification of an Unauthorized Commitment,” (Attachment 1) and ensure the appropriate Budget Official and Division Director 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 Finding to support the CO’s decision to recommend or not recommend ratification of the unauthorized commitment.
3. Submit the request for Ratification of an Unauthorized Commitment through the proper approvers above the level of the CO.
4. May request review of the legal counsel, as appropriate.
5. May recommend the action for review by the Ratifying Official, if the findings are proper to support the action to be ratified. The Ratifying Official may approve or disapprove the request, depending on the circumstances and/or supporting data.
6. Immediately, advise the person responsible for 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, Ratifying Official and/or legal counsel of the request to ratify in the contract file.
8. Immediately, after receiving the Ratifying Official’s approval, request the contractor to submit a proper invoice with the appropriate contract number and revised invoice date, if applicable. 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.

9. Immediately, issue the appropriate contract document after receipt of approval of the ratification by the Ratifying Official.

10. In the contract, include the statement below in the “*Header*” description field of the Integrated Acquisition System (IAS) ***and*** in description field of the Federal Procurement Data System - Next Generation record:

“This Action is a Ratification of an Unauthorized Commitment”

Control #: _____
 (Procurement Operations Division assigns)

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
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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
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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:

(List the approved requisition number that shows funds are still available for the unauthorized commitment)

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)

