



Office of the
Assistant Secretary
for Administration

ACQUISITION OPERATING PROCEDURE (AOP)

Office of Procurement
and Property
Management

FROM: Richard R. Jiron
Head of Contracting Activity Designee

Procurement
Operations Division

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

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◆ **PURPOSE:** This Acquisition Operating Procedure provides guidance for unauthorized commitments to implement a process for the Federal Acquisition Regulation (FAR) Subpart 1.6, Ratification of an Unauthorized Commitment. An unauthorized commitment is an agreement that is not binding because the government representative who made it lacked the authority to enter into that agreement with a contractor on behalf of the government. As required by FAR 1.601, contracts may be entered into and signed on behalf of the government by contracting officers or individuals delegated by the contracting officers (CO) as ordering officials with limited authority on the contract. 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.

◆ **SCOPE:** This AOP applies to the Departmental Management and Staff Offices for all acquisitions issued by the contracting officers under the authority of Head of the Contracting Activity Designee.

◆ **EFFECTIVE DATE:** This AOP is effective on December 9, 2015 .

◆ **REVISIONS:** This AOP is revised in its entirety: This AOP replaces AOP No. 4, dated June 9, 2014.

◆ **AUTHORITIES:**

- a. Executive Order 12731, Principles of Ethical Conduct for Government Officers and Employees
- b. Federal Acquisition Regulation, Subpart 1.602-3
- c. Agriculture Acquisition Regulation, Subpart 401.602-3, Ratification of Unauthorized Commitments

Ratifying Officials

Head Contracting Activity Designee (HCAD)
Contracting Branch Chiefs

Dollar Thresholds

\$10,000.01 and above
Up to \$10,000

◆ **PROCESS:**

a. Responsibility of the Employee making the Unauthorized Commitment:

1. Complete the “Ratification of an Unauthorized Commitment,” (*Attachment 1*) and include all the facts and pertinent documentation to support the request for ratification.
2. Consult with the CO if you have any questions concerning the information required to complete the request for ratification to ensure the accuracy of the information being submitted; and provide an editable copy of the request for ratification to the CO so comments/changes can be recommended.
3. Ensure the Ratification request is signed by the budget official and all managers in the employee’s supervisory chain, ending with the signature of employee’s Director or Head of the Organization.
4. Send the completed “Ratification of an Unauthorized Commitment, (*Attachment 1*) to the CO.
5. If the request for ratification is approved by the Ratifying Official, 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.
6. The AOP is found on the POD website at <http://www.dm.usda.gov/oppm/pod/aop.htm>.

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

b. Responsibility of Supervisors and Director/Head of Organization of the Employee making 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 director shall take positive action to prevent unauthorized commitments and ensure this procedure is distributed and communicated to employees within their organization.
2. Ensure the employee making the unauthorized commitment provides information that is accurate and complete, and includes facts and pertinent records or documentation, if applicable, to support the request for ratification.
3. Ensure the budget official and all appropriate managers in the employee’s supervisory chain, ending with director/head of the organization signs the request for ratification (*Attachment 1*).
4. Disciplinary actions remains with the individuals’ supervisory and director chain. The supervisor and director/head of organization 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 to mislead by someone else.

c. Responsibility of the CO:

When contracting personnel learn 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:

Immediately, the CO must:

1. Notify the vendor and the government officials (*employee making the unauthorized commitment **and** the employee's director/head of the organization*) 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, and 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 <http://www.acquisition.gov/far>.”*
 - iv. Vendor's invoice.

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 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 proper invoice through the Invoice Processing Platform (IPP).
2. Place the written notification in reference c(1)(i) above in the contract file with the request for Ratification of the Unauthorized Commitment action.
3. Provide the “Ratification of an Unauthorized Commitment,” (*Attachment 1*) to the employee making the unauthorized commitment action.
4. Assist the employee making the unauthorized commitment with addressing the data and information needed in the request for ratification.
5. Ensure the accuracy and completeness of the request for the Ratification of Unauthorized Commitment information received from the employee making the unauthorized commitment; and also ensure the appropriate line supervisors and director/head of organization have approved (signed) the request for ratification.

6. Complete the CO Determination and Findings (*Attachment 2*) to support the CO's decision to recommend **or** disapprove the request for ratification of the unauthorized commitment.
7. Request review by legal counsel, as appropriate.
8. Submit the request for ratification of the unauthorized commitment for review and approval through the contracting team leads and/or branch chief above the CO.
9. May recommend the action for review by the Ratifying Official, if the findings support the request to be ratified. If the CO feels the justification is not sufficient, engage in discussion with and/or return the request to the customer to get additional information so that a recommendation can be made to the Ratifying Official. If the information ultimately provided does not justify the ratification, then the Ratifying Official would either engage a manager from the customer organization or take appropriate action by not ratifying the action.
10. Immediately, advise the employee making the unauthorized commitment action of the decision of the CO, Ratifying Official and/or legal counsel regarding the request to ratify.
11. Maintain a copy of the decisions of the CO, legal counsel and Ratifying Official for the request for ratification in the contract file.
12. Immediately, after receiving the Ratifying Official's approval negotiate, *if necessary*, 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.
13. 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 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 Team Leads and Contracting Branch Chiefs

1. Ensure the information in the request for ratification is accurate and complete, and includes facts and pertinent records or documentation, if applicable.
2. Ensure the budget official and all appropriate managers in the employee's supervisory chain, ending with director/head of the organization signs the request for ratification (*Attachment 1*).
3. Requests for ratification requiring the HCAD's review will be sent to the Procurement Analyst. The Procurement Analyst will review and provide the request for ratification with comments/changes, if applicable, to the HCAD.

e. Responsibility of the Ratifying Officials:

1. Will review the Ratification document and if changes are required will return the documents to the CO for changes.
2. *May* approve or disapprove the request for Ratification, depending on the circumstances and the supporting data (*Attachment 2*).
3. A copy of the approved/disapproved request for Ratification will be submitted to the appropriate Contracting Officer and the Procurement Analyst.

f. Official Ratification Log and Ratification Control Number

1. The official Ratification Log will be maintained in the office of HCAD by the Procurement Analyst.
2. The Procurement Analyst will assign and annotate control numbers on the official Ratification Log saved on the shared drive.
3. The CO should send an email request to the Procurement Analyst with the data below to obtain a control number for the unauthorized commitment.

Name CO	Date CO Notified	Employee making the Unauthorized Commitment	Description of Action	Amount	Vendor
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◆ **EXPIRATION DATE:** This AOP will remain in effect until canceled.

Control #: _____
 (Assigned by Procurement Analyst/POD)

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 of the events that led to the unauthorized commitment that occurred, including the conversation(s) with the vendor; and describe the supplies/services rendered by the vendor)

*(Employee making the
 Unauthorized Commitment)*

Print Name

Title

Office

Email

- 2. Name of Vendor:** (List the vendor's name and address that provided the supplies/services)

- 3. Estimated Amount:** (List the estimated/agreed dollar amount of the supplies/services) \$ _____

(Explain how the parties settled on the estimated 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 normal contracting process was 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)

6. **Date Accepted:** *(List the date the supplies/services were accepted by the Government)* _____/_____/_____
Month / Day / Year

List the official/COR that
accepted the supplies/services: _____
Print Name Title Office

7. **Bona Fide Need:** *(Explain why the Government had a bona fide need for the supplies/services)*

8. **Benefits:** *(Explain the benefit(s) that the Government received from the supplies/services received)*

9. **Funds Availability:** *(Explain the data used to verify that funds **were** available at time of the Unauthorized commitment and funds **will be** available if the action is ratified)*

10. **Preventive Actions:** *(Explain actions taken to prevent recurrence of unauthorized commitments)*

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

REVIEW AND APPROVAL:

➤ **Budget Official**

I used the _____ (*Explain or attach screen print data used*)
to certify that funds were available at the time of the unauthorized comments and that funds are available to process the ratified unauthorized commitment.

Funds/Budget Official Signature Print Name Title Organization Date

➤ **Employee making the Unauthorized Commitment**

Based on the facts and circumstances, the information above is accurate and complete.

Employee Signature Print Name Title Organization Date

➤ **Immediate Supervisor of Employee making 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: _____

Supervisor Signature Print Name Title Office Date

➤ **Employee's Second, Third, Line Supervisor** [*add additional line supervisors as appropriate*]

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

2nd Supervisor Print/Signature Title Office Date I []do []do not concur to ratify.

Comments noted: _____

3rd Supervisor Print/Signature Title Office Date I []do []do not concur to ratify.

Comments noted: _____

➤ **Director / Head of Organization**

____I concur with the facts above to ratify. ____I do not concur with the facts above to ratify.
Additionally, I propose the following plan of actions to prevent reoccurring unauthorized commitments within my organization: _____

Signature Print Name Title Organization Date

CONTRACTING OFFICER’S DETERMINATION AND FINDINGS

Findings:

- 1. Date the Contracting Officer (CO) became aware of the unauthorized commitment action: _____.
- 2. Explain CO’s action to immediately inform the Vendor to discontinue performance:
- 3. Fair and Reasonable Price is based on (Explain/show price analysis/cost breakdowns and attach pricing data).

- 4. Funds [] were [] were not available at the time of the unauthorized commitment and [] are [] are not available to pay the ratified action.
- 5. State if the Government benefitted from the action:

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 [] were not satisfactorily explained; procedures to prevent reoccurrence [] are [] are not sufficient; a resulting contract [] would [] would not have been proper; and there [] does [] does not appears to be conflicts of interest and laws violated, such as: _____; and that the vendor is not debarred or ineligible for award as shown in _____, verified date _____.

Ratification of the action [] is [] is not recommended. Comments:

Contracting Officer Signature

Print Name

Date

REVIEW AND APPROVAL:

I do do not concur to ratify.

Contracting Team Lead Signature
Comments: *[To continue, add separate page]*

Office

Date

I do do not concur to ratify.

Contracting Branch Chief Signature
Comments: *[To continue, add separate page]*

Office

Date

GENERAL COUNSEL *(if applicable)*

Approved Disapproved Approved Subject to the attached conditions:

Signature of Legal Counsel

Print Name

Title

Date

DECISION OF THE RATIFYING OFFICIAL:

____ Approved:

____ Disapproved:

____ Approved Subject to the listed conditions:

Signature of Ratifying Official

Print Name

Title

Date