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Policies and Procedures

Title: Approval of Ratification Actions within REE

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Distribution: ARS Area Administrative Officers, ARS Procurement Assistance Officers, PPD, FD, CSREES, ERS, and NASS

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

Change dated 2/16/99:

Removed title of Facilities Div Director when pertaining to delegated procurement authority.

Change dated 12/10/01:

Include title of Chief, Facilities Contract Branch, Facilities Division when pertaining to delegated procurement authority.

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1. 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 \$100,000:

- Chief, Contracts Branch, Procurement and Property Division (PPD)
- Chief, Procurement and Property Branch, PPD
- Procurement Assistance Officers (PAOs) in all Area Offices of ARS
- Chief, Facilities Contract Branch, Facilities Division

Authority to approve unauthorized contract actions over \$100,000 remains at the HCAD level.

2. 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 unauthorized 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. The subject of unauthorized contract awards/ratification actions is included in the Basic and Advanced Field Acquisition Seminars, and the topic is covered in the ARS Field Acquisition Manual 213.2.

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

The enclosed form, "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. This form 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. Enclosed are 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 AD-838/SF-26 which ratifies the

action. Once the action has been ratified at the appropriate level, any contracting officer with delegated authority for the dollar amount of the action can sign the AD-838/SF-26.

If ratification 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 General Accounting Office under its claim procedures, or as authorized by FAR Part 50 as “extraordinary contractual actions.” If the ratifying official for actions under \$100,000 or the recommending official for actions over \$100,000 has any questions concerning a non-ratifiable action, the HCAD should be contacted.

4. Report Requirement for Ratification Actions Approved at the Contracting Office Level

An annual report listing all ratifications processed for each ARS Area Office/PPD Branch/FD shall be submitted to the Policy Branch, PPD, by November 1 for the previous fiscal year. This report shall include the item description, the name and location of the person who committed the unauthorized commitment, and the dollar amount.

5. 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 Management Reviews performed by the Policy Branch, PPD, and the Department.

6. Ratification Actions Requiring HCAD Approval

Review and approval of previously unauthorized contract actions over \$100,000 shall remain at the HCAD level. Such actions must be forwarded to the Director, PPD, for approval and must include evidence of compliance with FAR and AGAR, as cited above. The completed form, “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 forwarded action.

7. Summary of Responsibilities

HCAD (Director, PPD)

- When acting as the ratifying official, reviews the completed form, “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” included as enclosure 1 and determines if ratification is justified and proper.
 - If ratification is adequately justified and proper, signs the determination which ratifies the action.
 - If ratification is not justifiable, provides the person who made the unauthorized commitment, the recommending official, and unauthorized contractor with an 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 PAOs and PPD or FD Branch Chiefs concerning non-ratifiable actions upon request.
- Forwards the memoranda shown as enclosures (2) and (3) upon ratification of the action.

Branch Chief/PAO

- 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 \$100,000 be ratified by the HCAD, ensures that the form, “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” is completed and forwards to the HCAD.
- When acting as the ratifying official, reviews the completed form, “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” included as enclosure 1, and determines if ratification is justified and proper.
 - If ratification is adequately justified and proper, signs the determination which 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, contacts the HCAD.

- Forwards memorandums shown as enclosures 2 and 3 upon ratification of the action.

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 the form “Ratifying Official’s Determination to Ratify Unauthorized Commitments”; and
- forwards to appropriate PPD or FD Branch Chief/PAO for ratification.

Person Who Made the Unauthorized Commitment

- Furnishes the contracting office that would otherwise have handled the purchase, all records and documents concerning the commitment and a complete, written statement of facts as prescribed by AGAR 401.602-3(c)(3).
- If the employee who made the unauthorized commitment is no longer with REE, the former employee’s supervisor provides the information to the contracting office, along with the name of the employee who made the commitment.

JANE L. GILES
Deputy Administrator
Administrative and Financial Management

3 Enclosures

Ratifying Official's Determination to Ratify Unauthorized Commitment

Part 1 - Background Information:

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

- 4. AD-700: _____ \$ _____ _____
 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 a justification.

- If over \$100,000 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.

Recommending Individual in the Procurement Office

Date

Based on the information contained herein, this unauthorized commitment is hereby ratified.

(PAO/PPD/FD Branch Chief
(HCAD if over \$100,000)

Date

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 _____. This ratification is based on the fact that the contractor provided the supplies/services in good faith, and the Government received a benefit.

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 procurement 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 0.735-11(a)(5), FAR 1.602-3, and AGAR 401.602-3).

Because of Government publicity on alleged fraud, abuse, and waste 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

Enclosure 3

SUBJECT: Ratification of Unauthorized Act

TO: _____
Purchasing Agent, Area/Location

FROM: Chief of the Contracting Office

Enclosed is the signed determination ratifying the unauthorized act committed by

_____ for the purchase of _____.

Enclosures