



Rural Development  
Business Center

July 29, 2021

Procurement  
Management Office

TO: National Office Officials  
State Directors  
Associate Enterprise Directors

1400 Independence  
Ave SW  
Washington, DC  
20250

THROUGH: Eric Dilworth /s/ **Eric Dilworth**  
Chief Operating Officer

Voice 202.692.0244

FROM: Lori Lloyd /s/ **Lori Llyod**  
Acquisitions Director

SUBJECT: Policy for Unauthorized Procurement Related Commitments and  
Corrective Actions

**Purpose:**

- To address corrective actions related to unauthorized procurement-related commitments made by government employees
- To ensure all Rural Development (RD) personnel are aware of the proper procurement procedures and the consequences of making unauthorized commitments (see Attachment 1 for definitions)

**Authority:**

- [FAR 1.602-3](#)
- [AGAR PGI Appendix B](#)
- [48 CFR § 1.602-3](#)

**Policy**

The Federal Acquisition Regulation (FAR) defines an unauthorize commitment as an agreement that is not binding solely because the government employee who made it lacked the authority to enter into that agreement on behalf of the government. **Only approved credit card holders and Contracting Officers (CO) have authority to enter into agreements, place orders, and request goods or services.** Any actions which imply that goods or services ordered by individuals without this authority can result in an unauthorized commitment of the government to pay for these goods or services.

Over the past several years, RD has struggled with government employees who, without the proper authority or direct knowledge of the implications of their actions, committed the government to an obligation. These actions often lead to wasteful spending, as well as unfavorable and unnegotiated terms for the government.

Due to the legal nature of an unauthorized commitment that results in an unofficial contractual agreement, the government is not legally bound to accept or pay for services resulting from the improper actions of the government agent. Therefore,

EXPIRATION DATE:  
July 31, 2022

FILING INSTRUCTIONS  
Administrative/Other Programs

depending on the nature of the unauthorized commitment, the government may not be able to ratify certain actions, putting both the government agent and contractor at risk.

An unauthorized commitment violates federal law and the Federal Acquisition Regulation (FAR). Failure to follow statutory and regulatory processes for the expenditure of government funds is a serious matter that may lead to disciplinary and financial actions.

If an employee makes an unauthorized commitment, the government can hold this individual accountable for the costs and make them pay out of pocket for the unauthorized action. Specifically, if the government cannot ratify an unauthorized commitment, the employee making the unauthorized commitment, regardless of their intention, can be held personally liable for payment of the supplies/services. Contractors who accept direction from unauthorized officials, regardless of the apparent authority, are also at risk.

#### **Examples of Unauthorized Commitments:**

- Government purchase cardholder makes a purchase over their single purchase limit
- Commitment for continuation of services or delivery of supplies under an expired contract, purchase order, or delivery order
- Commitment for performance of work or delivery of supplies prior to issuance of a contract, purchase order, or delivery order
- Commitment which exceeds the call order limit on a blanket purchase agreement
- Commitment under a blanket purchase agreement by a person who does not have delegated authority
- Commitment which continues contract services over and above the original scope and dollar amount
- Commitment made by an otherwise authorized CO
- Government purchase cardholder makes multiple purchases from the same vendor on the same day, the total of which exceeds the single purchase limit, and the total requirement was known at the time of the first purchase

#### **Common Reasons for Unauthorized Commitments:**

- Failure to plan procurement needs far enough in advance to utilize normal contracting procedures
- Encountering emergency program requirements and not believing there is enough time to go through normal procurement procedures
- Failure to expeditiously review, approve, and transmit procurement requests to the Procurement Office
- Failure to perform extensive market research before taking an action
- Government officials not understanding the parameters of their actual authority or lack thereof
- Government official not understanding that agreeing to an option presented by a contractor could be an unauthorized action if it creates more work or expense

## **Ratification Process**

A ratification is the official process that gives the appropriate authorities the ability to ratify unauthorized commitments and legally use government funds to pay for improperly purchased supplies and services, otherwise purchased illegally. It is a lengthy and tedious process that attracts negative attention to the individual, their organization, and the entire department. If specific conditions were not met when the unauthorized commitment occurred, then the appropriate authorities cannot ratify the action.

### **Conditions for Approving a Ratification:**

1. The government received and accepted the supplies or services and obtained or will obtain a benefit resulting from performance of the unauthorized commitment
2. The ratifying official has the authority to enter into a contractual commitment
3. The resulting contract would otherwise be proper if made by an appropriate CO
4. The CO reviewing the unauthorized commitment determined the price to be fair and reasonable
5. The CO recommends payment and legal counsel concurs with the recommendation unless Agency procedures expressly do not require such concurrence
6. Funds are available and were available at the time of the unauthorized commitment
7. The ratification is in accordance with any other limitations prescribed under Agency procedures

### **Potential Reasons for Non-Ratification:**

- The employee made repeated unauthorized commitments
- The employee failed to take responsibility for a deliberate unauthorized commitment
- The employee knowingly, willfully, and intentionally performed actions that would lead to an unauthorized commitment

Per [FAR 1.602](#), agencies should take positive action to preclude, to the maximum extent possible, the need for ratification actions. This can only be done through adequate planning and observation of the business rules when working with contractors. By working with the CO for all contractual needs and taking a completely transparent approach in your daily dealings when working with outside vendors, you can avoid making unauthorized commitments.

## **Criminal Investigation**

If a CO's or the employee's unauthorized commitment involved any type of perceived criminal misconduct, the employee's supervisor must immediately report the matter to the Office of the Inspector General for further investigation.

## **Corrective Actions for Unauthorized Commitments**

Corrective actions are at the discretion of the employee's chain of command and their respective delegated authority. Leadership must consider appropriate corrective actions needed to prevent further infractions.

**Factors for Consideration:**

- Dollar value of the unauthorized commitment action
- Whether the individual has repeatedly committed unauthorized actions
- Nature of the action — lack of knowledge or training or pressured by a person of influence

Depending on the circumstances, an employee who makes an unauthorized commitment may be subject to administrative (corrective) action, up to and including removal from federal service.

**Potential Corrective Actions (these options are not all-inclusive):**

- Provide the employee with verbal or written counseling
- Hold the employee personally responsible for paying the cost of the commitment
- Revoke the CO's appointment certificate
- Revoke the Contracting Officer Representative's or government technical monitor's appointment memorandum
- Use the incident as a teaching or demonstration opportunity
- Provide the employee with a Letter of Reprimand
- Suspend the employee
- Demote the employee
- Remove the employee from government service

The employee's leadership should work with the Mission Area Senior Contracting Official and the Employee Relations Office to determine the appropriate disciplinary and/or corrective action, as the ratifying official will take into consideration the procedures implemented to prevent future occurrences before a ratification is finalized.

If you have questions about these procedures, please contact the Procurement Management Office (PMO) Policy Branch at [RD.PMO.POLICY@USDA.GOV](mailto:RD.PMO.POLICY@USDA.GOV).

Thank you for your cooperation.

Attachments: 1

SUBJECT: Policy for Unauthorized Commitments and Corrective Actions-Attachment-Definitions

**Definitions:**

**Corrective Action:** The action to correct inappropriate behavior or conduct, motivate employees to conform to acceptable standards of conduct, and preclude future infractions.

**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.

**Ratification:** The act of approving an unauthorized commitment by an official who has the authority to do so.