



POLICY STATEMENT

Policy Statement 5606

Policy Area: Procurement

Effective Date: **AUG 07 2007**

Approved: *Paul A. Quander, Jr.*
Paul A. Quander, Jr., Director

Ratification of Unauthorized Commitments

I. COVERAGE

This Policy Statement and its appended procedures apply to all Court Services and Offender Supervision Agency (“CSOSA” or “Agency”) employees, excluding the Pretrial Services Agency.

II. BACKGROUND

In accordance with Federal Acquisition Regulations (FAR 1.602-3(b)(3)) only the “Chief of the Contracting Office” may ratify commitments started, or approved by, unauthorized employees on behalf of the government which resulted in supplies delivered or services provided to the government. Absent such ratification, the employees may be held personally liable for such unauthorized commitments.

III. POLICY

To comply with Federal laws, only an employee with proper delegated procurement authority may enter into and sign contracts on behalf of the Government. The procedures appended to this Policy Statement identify the required process to ratify unauthorized commitments made by Government representatives lacking the authority to enter into agreements on behalf of the Government.

IV. AUTHORITIES, SUPERSEDURES, REFERENCES, AND ATTACHMENTS

A. Authorities.

National Capital Revitalization and Self-Government Improvement Act of 1997, Section 11233 of the Pub. Law 105-33, 111 Stat. 748, codified at D.C. Official Code § 24-133.

Office of Federal Procurement Policy Act of 1974, Pub. L. 93-400, amended by Pub. L. 96-83.

48 C.F.R. § 1.6 (2005), Career Development, Contracting Authority, and Responsibilities.

48 C.F.R. § 1.7 (2005), Determinations and Findings.

41 U.S.C. § 423 (1988). Procurement Integrity Act

C.F.R. 3.104 (2005), Improper Business Contacts and Conflicts of Interest.

B. Supersedures

None.

C. Procedural References.

Policy Statement 5601, Procurement Requests, (*Draft*) dated March 9, 2005

D. Attachments.

Appendix A – General Procedures

Appendix B – Sample Ratification Format

APPENDIX A GENERAL PROCEDURES

A. Unauthorized Commitments

CSOSA employees must not instruct, or otherwise notify, any vendor/contractor to deliver supplies or to start performance for services unless such supplies or services have been approved by a Contracting Officer or authorized Purchase Cardholder with proper delegated authority. Employees without delegated proper authority do not have the authority to bind the U.S. Government; nor should anyone other than a Contracting Officer, or authorized Purchase Cardholder, make verbal or written changes to a previously-issued order/contract for supplies or services. Contractual agreements may only be entered into on behalf of the Government by properly appointed Contracting Officers or Purchase Cardholders; employees with delegated procurement authority.

B. Definitions

Unauthorized Commitment: An agreement that is not binding solely because the government representative who made it lacked the authority to enter into a contract on behalf of the government. (Only Contracting Officers or authorized Purchase Cardholders acting within the scope of their authority; are authorized to enter into contracts or make modifications thereto on behalf of the government.)

Ratification: The act of approving an unauthorized commitment by an official who has the authority to do so, (ratifying official).

C. Process for Ratification of an Unauthorized Commitment

1. The Government is not bound by unauthorized commitments unless they are ratified.
 - a. Unauthorized commitments made by CSOSA employees may only be ratified by the ratifying official, the Director of the Office of Procurement.
 - b. Ratification should not be viewed as an alternative to sound contracting procedures. Unauthorized commitments made to circumvent the procurement statutes and regulations may not be ratified. The ratifying official must find that the commitment resulted from an urgent or emergency need, or from a mistake of fact on the part of Government personnel. The ratifying official must also find the contractor relied on the apparent authority of the officer or employee making the unauthorized commitment.

- c. Ratifications shall not be effected if the resulting contracting action would not otherwise be proper. Examples include instances when funds were not available for obligation at the time the commitment was made or if the Government was otherwise prevented by law from acquiring the supplies delivered or services provided.
 2. The following documentation is necessary in order to process a ratification in the Office of Procurement:
 - a. A statement signed by the individual who made the unauthorized commitment describing the circumstances, including the reason that standard contracting procedures were not followed. The statement shall also identify the bona fide Government requirement which necessitated the commitment, the benefit(s) received, its value, relevant dates and any other pertinent facts;
 - b. Contractor supporting data, including original invoices and other documents that substantiate the transaction. In addition, the contractor may be requested to provide a letter explaining why the firm provided the product/service without a signed order or contract to authorize the procurement;
 - c. A complete purchase description and a requisition or funding document for the ratifying order signed by a fiscal officer certifying that funds are currently available and were available at the time the unauthorized commitment was made; and
 - d. Documentation verifying fairness and reasonableness of price, based on evaluation of actual costs incurred.
 3. After analyzing the documentation submitted under paragraph 2 above, the Office of Procurement will prepare a Determination and Findings (D&F), which substantiates the following:
 - a. A valid requirement for the supplies/services existed at the time of the unauthorized commitment;
 - b. Supplies/services were provided to, and accepted by, the Government. The Government obtained, or will obtain, a benefit resulting from the performance of the unauthorized commitment;
 - c. Standard acquisition procedures could have been used for this acquisition;
 - d. The contracting action resulting from ratification would have otherwise been proper if made by an authorized Contracting Officer or Purchase Cardholder;

- e. Funds are available and were available at the time the unauthorized commitment was made; and
- f. The price is (or is not) fair and reasonable.
- g. The D&F must also include a recommendation for approval (or disapproval) with a short, supporting rationale.

4. Approval of the Ratification

The documentation required in Section C 2, along with the D&F prepared in accordance with preceding Section C 3, shall be forwarded to the Director, Office of Procurement for review and approval.

- a. If approved, the Office of Procurement will prepare a bilateral contracting action. This action will include the following text:

STATEMENT OF RELEASE

In consideration of the (*delivery/purchase/task order or contract*), which is agreed to as complete payment for (*supplies or services*) provided on (*date*), the contractor hereby releases the Government from any and all liability for further claims attributable to such facts and circumstances giving rise to this (*delivery/purchase/task order or contract*).

- b. If disapproved, the Office of Procurement will consult with the Office of General Counsel before further action is taken with the contractor.

APPENDIX B
SAMPLE RATIFICATION FORMAT

Determination and Findings (D&F)
for Ratification Action

FINDINGS

1. The Office of Procurement, Court Services and Offender Supervision Agency (CSOSA), proposes to issue a "purchase/delivery/task order or contract" to pay for "descriptive title of supplies or services obtained" accepted by "individual name, CSOSA office and address" which will reflect a ratification action for the "supplies (or) services" provided by "name and address of contractor."
2. These "supplies (or) services" were obtained for the purpose of "state bona fide Government need that was met." This was a valid Government requirement that existed at the time of the unauthorized commitment. Standard acquisition procedures could have been used for obtaining these "supplies (or) services."
3. "Briefly describe what happened to result in a need for ratification, including whether this was the result of an urgent or emergency need, or from a mistake of fact on the part of Government personnel."
4. The Government has "or will" obtain(ed) the benefit of having "list supplies delivered or describe services performed."
5. The following invoice(s) has/have been submitted:

Invoice Number _____, dated _____ for \$ _____
(If more than one invoice, list each invoice separately.)
6. The amount invoiced, "\$ _____," is considered fair and reasonable to the Government since the prices are "fill in the price reasonableness rationale for the supplies/services pricing."

DETERMINATION

1. There is sufficient cause to support ratification of the amount invoiced by "contractor name", in that the firm acted in good faith and relied on the apparent authority of the officer or employee making the unauthorized commitment. The contractor also believed their actions to provide the "supplies or services" would be reimbursed by the CSOSA.
2. The action resulting from ratification would have otherwise been proper, if made by an authorized Contracting Officer or Purchase Cardholder.

3. It is recommended that the commitment should be authorized and a “purchase/delivery/task order or contract” be issued to “contractor name” in the amount of “\$_____” in payment for “list supplies delivered or describe services performed” for the “name of CSOSA office.”

Contracting Officer (or Purchase Cardholder)

Date

APPROVAL

Based on the foregoing, it is my determination that “name of contractor” is entitled to payment in the amount of “\$_____” for the “product delivered/services performed” in accordance with FAR 1.602-3(c). The Government has obtained a benefit resulting from this unauthorized commitment. It is further determined that award of this “purchase/delivery/task order or contract” would be in the Government’s interest and, for the reasons stated in the preceding D&F, the recommendation is hereby approved.

Director, Office of Procurement

Date