



To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation, and Team Spirit.

REVISION: This revised directive supersedes TSA MD 300.2, *Ratification of Unauthorized Commitments*, dated May 22, 2006.

SUMMARY OF CHANGES: Section 5, Responsibilities, updates authorities for ratification approval and removes responsibilities previously assigned to the Deputy Assistant Administrator; Section 6, Policy, has been updated; and Section 7, Procedures, modifies the processes for ratification approval consistent with the Federal Acquisition Regulation.

1. **PURPOSE:** This directive provides TSA policy and procedures for ratification of unauthorized commitments.

2. **SCOPE:** This directive applies to all TSA organizational elements.

3. **AUTHORITIES:**

A. Federal Acquisition Regulation 1.602-3, *Ratification of Unauthorized Commitments*

B. Homeland Security Acquisition Manual 3001.602-3, *Ratification of Unauthorized Commitments*

4. **DEFINITIONS:**

A. Contracting Officer's Technical Representative (COTR): An employee appointed in writing by a Contracting Officer to perform designated contract administration activities in regards to technical issues.

B. Contracting Officer's Warrant: Written delegation of contracting authority to enter into a contract, agreement, interagency agreement, or other business arrangement with a contractor, state or local government, or another Federal agency that actually or potentially commits or expends Federal funds.

C. Ratification: An act of approving an unauthorized commitment.

D. Ratification Official: The management official designated to consider and approve a request for ratification.

E. Unauthorized Commitment: A contract or business arrangement made by a Government employee who does not have the authority to commit the Government. The resultant contract or business arrangement is non-binding.

5. **RESPONSIBILITIES:**

A. Assistant Administrators or designees are responsible for:

- (1) Precluding unauthorized commitments and holding accountable employees whose actions lead to unauthorized commitments;

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- (2) Discerning an unauthorized commitment that may have resulted from a simple mistake from those that may have resulted from misconduct, and applying an appropriate response to affix accountability there from;
- (3) Ensuring employees are familiar with the prescribed acquisition process and are aware of the policy regarding unauthorized commitments; and
- (4) Taking the appropriate disciplinary action up to, and including, removal from the agency when employees make unauthorized commitments.

B. Assistant Administrator for Acquisition is responsible for:

- (1) Serving as the Ratification Official for unauthorized commitments and taking all necessary actions required regarding the ratification, and
- (2) Providing extensive formal training on the prescribed acquisition process and direct assistance to program offices in requirements development, investment review, market research, and acquisition planning.

6. POLICY:

- A. Only Contracting Officers and those government employees who have been delegated specific acquisition authority from the Office of Acquisition, and who act within the scope of their stated authority, shall enter into contracts or other business arrangements on behalf of TSA. COTRs do not have the authority to enter into contractual agreements, modifications, or otherwise direct the efforts of contractors outside the authority of their delegation.
- B. Offices shall use proper acquisition procedures in obtaining goods and services to support the mission. Mission need does not in itself justify an unauthorized commitment or serve as the basis for ratification.
- C. Avoiding Unauthorized Commitments
 - (1) TSA employees shall consult with the Office of Acquisition for procurement planning when they have not been delegated acquisition authority and are in need of products or services to complete their mission; or when employees with delegated acquisition authority need products or services estimated to exceed their delegated authority.
 - (2) Employees shall conduct market research with the vendor community. To avert potential confusion, employees who conduct market research shall state that their actions are conducted strictly for the purposes of market research and do not constitute a request for proposal, a contract, a promise to contract, or a commitment of any kind. Further assistance and guidance on market research is available from the Office of Acquisition.
 - (3) COTR's and other TSA employees who function as "technical monitors" shall not direct the contractor to perform any task that would result in a change to the cost, schedule, or scope of the contract, unless specifically authorized to do so by the Contracting Officer or specific delegated authority. Other TSA employees shall seek assistance and guidance from formally appointed COTR's prior to any interaction with contractors.

- (4) Individuals who serve as the Government's point of contact on a contract shall be familiar with the contract's requirements and terms. Providing amplifying information contrary to stated contract terms, placing an order or directing tasks against an expired contract, or directing contractors to perform in advance of a formal contract modification all result in unauthorized commitments. This includes ordering goods or services under contract options before that option has been exercised by a contract modification.
- (5) COTRs and other TSA employees shall adhere to special procedures concerning coordination of emergency veterinary care for TSA service animals. (see Section 7B)

7. PROCEDURES:

A. Ratification Requests:

- (1) When an organization discovers that an employee has made an unauthorized commitment, the cognizant organizational element shall take immediate action to examine the circumstances surrounding the action and determine whether a request for ratification of that unauthorized commitment is an appropriate course of action.
- (2) The immediate supervisor shall report the unauthorized commitment to the next level in the functional chain of command, and these employees should then consult with their higher management level prior to requesting ratification. If the higher management level concurs with the plan to request ratification, the immediate supervisor and employee shall prepare a written request for ratification in memorandum format containing the following items:
 - (a) A description of the bona fide Government requirement that necessitated the unauthorized commitment;
 - (b) The reasons why the responsible employee(s) did not follow required acquisition procedures;
 - (c) A detailed description of the circumstances that caused the unauthorized commitment;
 - (d) A statement whether TSA incurred any benefit as a result of receipt of the unauthorized supplies or services;
 - (e) The total dollar value of the unauthorized commitment;
 - (f) Current status of performance;
 - (g) The rationale used by the responsible employee(s) for their selection of the vendor and identification of other sources they may have considered;
 - (h) The name of the employee who made the unauthorized commitment, and identification of any higher-level supervisors or officials in the organization who were aware of the unauthorized commitment at the time it was made;
 - (i) A statement regarding the training, counseling, and disciplinary action applied to the employee who made the unauthorized commitment and higher level supervisors or officials in the organization to preclude the event from recurring. The statement must provide a rationale and amplifying remarks if the responsible officials plan no disciplinary action;

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- (j) A specific recommendation that the transaction be approved and ratified;
 - (k) A determination that funds are now available and were available at the time the unauthorized commitment was made; and
 - (l) A copy of any other pertinent documents including invoices, receiving reports, or other evidence concerning the unauthorized commitment.
- (3) The employee who made the unauthorized commitment must sign the request for ratification and the employee's supervisor must endorse the same memorandum. By signing the memorandum, the employee and supervisor attest to the accuracy and completeness of the information submitted. In instances where the employee may have since left employment in the TSA, the organization having access to information regarding the unauthorized commitment shall prepare the memorandum, and the former employee's supervisor shall sign it.
- (4) The requesting office must then send the request for ratification to the cognizant Assistant Administrator or equivalent for endorsement. The requesting office, upon endorsement by the cognizant Assistant Administrator, must submit the request for ratification to the Contracting Officer for review and recommendation.
- (5) The Contracting Officer may recommend approval of the ratification request if the Contracting Officer can:
- (a) Determine the price to be fair and reasonable;
 - (b) Recommend that payment is in the best interest of TSA;
 - (c) Determine that settlement of the unauthorized commitment would not involve a contract dispute subject to resolution under the Contract Disputes Act; and
 - (d) Determine that the purchase would have been authorized, and the resulting contract otherwise proper had an authorized Contracting Officer awarded the contract.
- (6) If the Contracting Officer is unable to make an affirmative determination in all of the above areas, the Contracting Officer shall notify the requesting office that the action cannot be ratified.
- (7) If the Contracting Officer is able to make an affirmative determination and recommendation in all of the above areas, the Contracting Officer will forward the ratification package to the Deputy Chief Counsel, Procurement Law Division, Office of Chief Counsel, for legal review and concurrence.
- (8) Upon completion of the required legal review and receipt of legal concurrence in requesting ratification, the cognizant Assistant Administrator or equivalent must send the ratification package, along with a funded Procurement Request in the amount of the unauthorized commitment, to Assistant Administrator for Office of Acquisition for ratification approval.
- (9) The ratification official will only consider a request for ratification submitted by the Assistant Administrator or equivalent-level official that made the unauthorized commitment. The ratification official will ratify an unauthorized commitment request, only if it meets the criteria set herein, and the ratification is determined to be in the best interest of TSA.

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(10) If ratification is requested and then approved by the ratification official, the Office of Acquisition will then take steps to initiate and complete the appropriate contract action to conclude the ratification process.

B. Special Procedure for Emergency Veterinary Care for TSA Service Animals: In the event of an emergency requiring TSA to obtain veterinary care for animals, the following procedures apply instead of those described previously.

- (1) In each instance of emergency, the Program Manager must immediately contact the Contracting Officer with responsibility for the affected program account with all pertinent information.
- (2) Together with the Contracting Officer, the Program Manager will document and certify in a memorandum the circumstances surrounding the emergency, attest to the accuracy and completeness of the information submitted, and identify the appropriate course of action to issue any contract necessary for such care.
- (3) The appropriate Office of Acquisition Division Director must endorse the memorandum to make a positive determination that the care was required on an emergency basis and approve the course of action to satisfy the obligation, otherwise the ratification process for unauthorized commitments as otherwise prescribed by this management directive shall be executed.
- (4) The Program Manager will be required to provide an appropriately funded Purchase Request to the Office of Acquisition.

8. EFFECTIVE DATE AND IMPLEMENTATION: This policy is effective immediately upon signature.

APPROVAL

Signed

5/22/2009

Domenico Cipicchio
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Date

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