

**FDA STAFF MANUAL GUIDES, VOLUME III - GENERAL ADMINISTRATION**

**PROCUREMENT AND SUPPLY MANAGEMENT**

**PROCUREMENT**

**RATIFICATION OF UNAUTHORIZED PROCUREMENTS**

Effective Date: 09/16/2005

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**1. PURPOSE**

This guide establishes the Food and Drug Administration's (FDA) policy and procedures for ratifying unauthorized procurements.

**2. REFERENCES**

- A. Federal Acquisition Regulation Subpart 1.602-3--Ratification of Unauthorized Commitments.
- B. Health and Human Services Acquisition Regulations Subpart 301.602-3--Ratification of Unauthorized Commitments.
- C. FDA Staff Manual Guide 1440.1--Procurement Authority (Agency-wide).

**3. INTRODUCTION**

- A. The FDA's procurement authority lies with the Director, Office of Acquisitions & Grants Services (OAGS), as set forth in Staff Manual Guide 1440.1--Procurement Authority (Agency-wide). B. The Director, OAGS, has procurement authority to enter into contractual agreements for property and services needed to operate the FDA. The Director, OAGS, may delegate this authority as deemed appropriate. All delegations of procurement authority shall be in writing.

- B. Only employees with delegated procurement authority shall obtain goods or services for the FDA and only up to the limit of their written delegation. No other FDA employee shall obtain goods or services for the FDA.
- C. An unauthorized procurement results when an FDA employee without procurement authority obtains goods or, through their actions, causes services to be performed for the FDA.
- D. An unauthorized procurement can also result when an authorized government-wide purchase cardholder orders supplies or services from a vendor without verifying in advance that the vendor accepts the purchase card as a method of payment.
- E. The government is not bound by agreements or contractual commitments made to prospective contractors by employees to whom contracting authority has not been delegated. However, under certain conditions, the FDA may ratify the unauthorized procurement giving it the same effect as if a contracting official had originally authorized it.

#### **4. POLICY**

The FDA's policy is to minimize the occurrence of unauthorized procurements. All unauthorized procurements will be carefully reviewed and only those that meet the statutory requirements in the Federal Acquisition Regulation and the Department of Health and Human Services Acquisition Regulations will be ratified.

#### **5. AUTHORITY**

The Head of the Contracting Activity (HCA), located in the Office of Acquisitions & Grants Services, has authority to ratify unauthorized procurements and to take steps to minimize their recurrence.

#### **6. RATIFICATION RESPONSIBILITIES AND PROCEDURES**

- A. The individual who made the unauthorized procurement must request ratification by preparing a written and signed statement describing the relevant circumstances. He/she must provide related records and documents to OAGS through their Executive Officer. Requests should be sent to the Director, OAGS, HFA-500.
- B. The person requesting ratification must:
  - 1. Address why the procurement office was not used.
  - 2. Address why the proposed contractor was selected.

3. Provide a list of other sources considered.
  4. Provide a description of work performed or products furnished.
  5. Provide an estimated or agreed upon contract price.
  6. State where and when the contractor began performance.
  7. Provide a signed statement from the Budget Officer in their organization that "Funds are available and were available at the time the unauthorized commitment was made."
  8. State what corrective action is being taken to avoid such situations from occurring in the future.
  9. Include an iProcurement requisition that has all the necessary Center/ORR approvals. The requisition must also state that it is an unauthorized procurement.
  10. Send the complete request for ratification package through their Executive Officer to the Director, OAGS, HFA-500.
- C. If legal review is needed, the HCA or designee will coordinate the request for ratification with the Office of General Counsel, General Law Division, Department of Health and Human Services.
- D. The HCA will then review the complete package and decide whether to ratify the action.
- E. When the HCA authorizes ratification, the memorandum and other documents will be returned to the Contracting Officer who will advise the Program Office when a Purchase Order, Contract Modification or Contract is issued.
- F. When a request for ratification is denied, the Contracting Officer will inform the Center's Program Office and return the request to them, through their Executive Officer, with an explanation of why the unauthorized procurement was not ratified.
- G. The HCA will retain a record of the number and dollar amount of the unauthorized procurements ratified each fiscal year.
- H. Invoices for unauthorized commitments shall not be paid until the unauthorized commitment has been approved and ratified.

## 7. EFFECTIVE DATE

The effective date of this guide is September 16, 2005.

## 8. Document History -- SMG 2610.8, Ratification of Unauthorized Procurements

<b>STATUS (I, R, C)</b>	<b>DATE APPROVED</b>	<b>LOCATION OF CHANGE HISTORY</b>	<b>CONTACT</b>	<b>APPROVING OFFICIAL</b>
Initial	09/09/2005	N/a	Office of Acquisitions and Grants Services	(HFA-500) Hugh Hurwitz, Director, OAGS

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