



**DEPARTMENT OF DEFENSE
EDUCATION ACTIVITY**

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ARLINGTON, VIRGINIA 22203-1635

Procurement Division

DoDEA Administrative Instruction 8000.2
March 23, 2005

**DEPARTMENT OF DEFENSE EDUCATION ACTIVITY
ADMINISTRATIVE INSTRUCTION**

SUBJECT: Ratification of Unauthorized Commitments

- References: (a) DoDEA Administrative Instruction 8000.2, "Ratification of Unauthorized Commitments," November 20, 2000 (hereby canceled)
(b) Federal Acquisition Regulation, Part 1 of the FAR, "Federal Acquisition Regulations System," current edition
(c) DoD Regulation 5500.7-R, "Joint Ethics Regulation (JER)," August 30, 1993
(d) DoDEA Regulation 5751.9, "Disciplinary and Adverse Actions," August 27, 1999

1. REISSUANCE AND PURPOSE

This Administrative Instruction:

- 1.1. Reissues reference (a) to update policy and responsibilities regarding the Department of Defense Education Activity (DoDEA) procedures for processing ratification actions in accordance with reference (b).
- 1.2. Establishes DoDEA procedures for ratification of an unauthorized commitment.

2. APPLICABILITY

This Administrative Instruction applies to the Office of the Director, Department of Defense Education Activity; the Director, Domestic Dependent Elementary and Secondary Schools, and Department of Defense Dependent Schools, Cuba (DDESS/DoDDS-Cuba); the Director, Department of Defense Dependents Schools, Europe (DoDDS-E); the Director, Department of Defense Dependents Schools, Pacific, and Domestic Dependent Elementary and Secondary Schools, Guam (DoDDS-P/DDESS-Guam); and all DoDEA District Superintendents, School Principals, Teachers and Support Staff.

3. DEFINITIONS

3.1. Ratification. The approval of an unauthorized commitment by an official who has the authority to do so.

3.2. 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.

4. POLICY

It is DoDEA policy that:

4.1. The Department of Defense Education Activity, as a Department of Defense Field Activity requires that employees not take any action which could be construed as a promise to obligate the Government or that constitutes an expenditure of public funds.

4.2. Only formally warranted DoDEA Contracting Officers (COs) or Government Purchase Card (GPC) holders are authorized to obligate funds on behalf of the Government up to their level of warrant or cardholder's appointment letter.

4.3. Employees shall not make a commitment or promise relating to the award or performance of a contract, or any representation that could be considered as such a commitment.

4.3.1. Agreements made by employees who are not COs are considered unauthorized commitments.

4.3.2. Employees who arrange for the delivery of supplies and/or equipment, authorize performance of services, or commit to a lease without following appropriate contractual procedures potentially could be personally liable for payment to the vendor. Additionally, such actions violate the standards of conduct for Federal employees (reference (c)).

4.3.3. Employees who make unauthorized commitments may be subject to appropriate administrative disciplinary action by the Agency.

4.4. Under certain limited circumstances in accordance with reference (b), the FAR permits the ratification of unauthorized commitments by the Chief, Procurement Division, Department of Defense Education Activity.

4.4.1. In rare instances where an unauthorized commitment necessitates the processing of a ratification action, the DoDEA component seeking ratification will support that action with sufficient justification and documentation as required by enclosure 1. Unauthorized commitments which do not meet those requirements will not be ratified.

4.4.2. Ratification of an unauthorized commitment does not preclude disciplinary action against the person responsible.

5. RESPONSIBILITIES

5.1. The Director, Department of Defense Education Activity, as the Head of the Contracting Activity, shall exercise authority, direction, and control over the Chief, Procurement Division, Department of Defense Education Activity.

5.2. The Chief, Procurement Division, Department of Defense Education Activity, shall:

5.2.1. Develop overall ratification policy.

5.2.2. Ensure effective management controls are in place.

5.2.3. Approve unauthorized commitments according to ratification procedures under reference (b).

5.2.4. Issue unauthorized commitment offenses and remedies (enclosure 2).

5.3. The Chief, Procurement Policy and Compliance, Department of Defense Education Activity shall:

5.3.1. Provide coordination amongst DoDEA Procurement Branches to ensure the ratification package is routed to the Chief, Procurement Division, DoDEA for consideration and approval.

5.3.2. Return the ratification package to the CO who will take the necessary steps to complete the ratification process (e.g., award a new contract, modify an existing contract, or issue a delivery or purchase order).

5.3.3. Manage, oversee, track, and support the ratification program.

5.3.4. Ensure proper oversight/management controls are in place and working.

5.3.5. Identify and report fraud and abuse of the program.

5.4. The DoDEA Contracting Officers shall:

5.4.1. Review the submitted documents upon receipt of the purchase request, invoice, and memorandum; to determine whether the unauthorized commitment is subject to ratification.

5.4.2. Prepare a memorandum (enclosure 1). The memorandum will document all relevant facts and circumstances related to the unauthorized commitment, and will include a determination as to why payment would be in the Government's best interest.

5.4.3. Forward the ratification package from the requestor to the Chief, Procurement Policy and Compliance, DoDEA after it has been routed through the requestor's supervisor, Resource Management Division, DoDEA and General Counsel, DoDEA.

5.4.4. Take the necessary steps to either award a new contract, modify an existing contract, or issue a delivery or purchase order, upon ratification package approval from the Chief, Procurement Division, Department of Defense Education Activity.

5.5. The Department of Defense Education Activity; the Domestic Dependent Elementary and Secondary Schools and the Department of Defense Dependents Schools, Cuba; the Department of Defense Dependents Schools, Europe; the Department of Defense Dependents Schools, Pacific and Domestic Dependent Elementary and Secondary Schools, Guam, Personnel, shall:

5.5.1. Create a Determination of Unauthorized Commitment Form (enclosure 1) for each unauthorized commitment. Include the following information on the form:

5.5.1.1. Date of the unauthorized commitment.

5.5.1.2. Dollar value of the unauthorized commitment.

5.5.1.3. The name of the person who committed the act and the reason the act occurred.

5.5.1.4. The vendor involved.

5.5.1.5. The events involved.

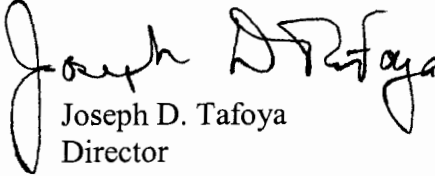
5.5.1.6. The reason the unauthorized commitment should be ratified.

5.5.1.7. The statement of the individual's supervisor.

5.5.2. Prepare and submit a purchase request with certified funding for each unauthorized commitment action. The purchase request, along with a copy of the contractor's invoice, and the Determination of Unauthorized Commitment Form (received from the supervisor of the individual who committed the unauthorized act) are to be sent to the CO that is responsible for processing the requirement.

6. EFFECTIVE DATE

This Administrative Instruction is effective immediately.


Joseph D. Tafoya
Director

Enclosures -- 2

- E1. Determination to Ratify Unauthorized Commitment
- E2. Schedule of Potential Unauthorized Commitment Offenses and Remedies

E1. ENCLOSURE 1

DETERMINATION TO RATIFY UNAUTHORIZED COMMITMENT

Part I. Background (to be completed by the individual who committed the unauthorized act):

Unauthorized Commitment by (name of the individual who committed the unauthorized act):

1. Location.
2. Service or Supply that was Performed.
3. Contracting Office.
4. Requisition/Unauthorized Commitment Amount.
5. Vendor Name, Address, and Phone Number.
6. Contract Number: (N/A or include contract number if the actions is against an existing contract).
7. Performance/Delivery Date.
8. Reason for Unauthorized Commitment/Statement of Facts and Circumstances: (This should be a complete yet concise description of the events related to the commitment. Provide all relevant details, including personnel involved, dates).

(Name and Signature)

Date

Part II. To be completed by Supervisor:

1. Statement of Facts and Circumstances: (Address, as well, action taken to ensure a reoccurrence does not take place.)

(Name and Signature)

Date

Part III. To be completed by Resource Manager:

I certify funds were available at the time the commitment was made, and that funds are/are not available if the above action is ratified.

(Name and Signature)

Date

Part IV. Determination in Accordance with Information Required by FAR 1.602-3 (To be completed by the Contracting Officer):

1. Services/supplies 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
3. If sole source over \$2,500, provide a justification. Cite FAR Part 6.302-1 exemption for "Only One Responsible Source" and attach a Justification and Approval (J&A).
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.

Recommended/Not Recommended

(Contracting Officer's Name and Signature) Date

Part V. To be completed by the General Counsel:

Based on the information contained herein, ratification is considered legally sufficient.

(Name and Signature) Date

Part VI. To be completed by the Procurement Branch Chief:

Based on the information contained herein, I recommend that this commitment be ratified. The purchase, if properly executed, would have been valid and benefit was received by the Government. Prices for this ratification are considered fair and reasonable.

Recommended/Not Recommended

(Name and Signature)

Date

Part VII. To be completed by the ratification authority as set forth according to FAR, Part 1.6:

Pursuant to my authority under FAR 1.6, the above unauthorized ratification is:

APPROVED/DISAPPROVED

(Name and Signature)

Chief, Procurement Division

Date

E2. ENCLOSURE 2

SCHEDULE OF POTENTIAL UNAUTHORIZED COMMITMENT OFFENSES AND
REMEDIES

E2.1. Purchase Card misuse or fraud may have the following potential consequences for the cardholder (reference(d)):

- E2.1.1. Counseling.
- E2.1.2. Notation in employee performance evaluation.
- E2.1.3. Cancellation of the purchase card.
- E2.1.4. Reprimand.
- E2.1.5. Suspension of employment.
- E2.1.6. Termination of employment.
- E2.1.7. Criminal prosecution.

E2.2. The schedule below depicts potential charge card offenses, remedies or penalties for such offenses in accordance with reference (d). The magnitude and severity of disciplinary action depends upon the nature and severity of the infraction. The deciding authority/supervisor will comply with all applicable law and regulatory guidance for remedy issued. The sample below is not intended to be all inclusive:

E2.2.1. First Offense: Disciplinary action shall range from the minimum action: a letter of counseling issued by the Chief, Procurement Division, DoDEA, or designee; to the maximum action: termination of employment and/or criminal prosecution.

E2.2.2. Second Offense: Disciplinary action shall range from the minimum action: a 14-day suspension of employment; to the maximum action: termination of employment and/or criminal prosecution.

E2.2.3. Third Offense: Disciplinary action shall range from the minimum action: a 30-day suspension of employment; to the maximum action: termination of employment and/or criminal prosecution.