



PROCUREMENT POLICY

SUBJECT: RATIFICATION OF UNAUTHORIZED COMMITMENTS

ORIGINATING OFFICE: OFFICE OF CONTRACTING & PROCUREMENT

1. **PURPOSE**. The purpose of this policy is to establish procedures for the ratification of unauthorized commitments.
2. **AUTHORITY**. This policy is being promulgated pursuant to section 901 of the *District of Columbia Procurement Practices Reform Act of 2010* ("PPRA"), effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §2-359.01).
3. **APPLICABILITY**. This policy shall apply to the Office of Contracting and Procurement and all District government agencies that are under the procurement authority of OCP.
4. **DEFINITIONS**.
 - 4.1 **Agency Director**. The Agency Director (AD) includes the principal officer, director or commissioner of an office, department, board, commission or other entity within the District government, or the principal executive officer of an independent agency of the District government.
 - 4.2 **Chief Procurement Officer**. The Chief Procurement Officer (CPO) refers to the position established in section 201 of the PPRA (D.C. Official Code §2-352.01).
 - 4.3 **Contracting Officer**. A Contracting Officer (CO) is the employee authorized in writing by the Chief Procurement Officer to engage in procurement actions to commit the District to procure goods or services.
 - 4.4 **Ratification**. A ratification is the action by the CPO to authorize payment for goods or services received by the District government without a valid written contract.
 - 4.5 **Ratification Package**. The completed documents that are approved by the CPO before a vendor is paid for an unauthorized commitment.

4.6 **Unauthorized Commitment.** An unauthorized commitment is the acceptance by the District government of goods or services without a valid written contract.

5. GENERAL RULES PROHIBITING UNAUTHORIZED COMMITMENTS.

5.1. No District employee shall authorize payment for the value of goods or services received without a valid written contract. (D.C. Official Code §2-359.01)

5.2. This provision shall not apply to a payment required by court order, a final decision of the Contract Appeals Board, a settlement, or ratification approved by the CPO in accordance with section 8 of this policy.

5.3. No District employee shall enter into an oral agreement with a vendor to provide goods or services to the District government without a valid written contract.

5.4. Any violation of this subsection shall be cause for the employee's termination. If a District employee, at the direction of a supervisor, enters into the oral agreement, the supervisor shall be terminated.

5.5. Except as authorized in accordance with section 5.2, any vendor who enters into an oral agreement with a District employee to provide goods or services to the District government without a valid written contract shall not be paid.

6. RATIFICATION PACKAGE PREPARATION AND TRANSMITTAL PROCESS.

6.1 The agency that received the goods or services for which payment is at issue will be the initial point of contact for vendors seeking payment for goods or services rendered without a valid written contract. The agency that received the goods or services must submit the following to OCP:

6.1.1 A letter or other documents from the vendor providing the following information:

- (a) A description of the goods or services provided;
- (b) The date(s) on which the goods or services were provided;
- (c) The charges for the goods or services provided;
- (d) A description of how the charges were determined, including a copy of any contract, letter or other document which describes the basis for the charges for the subject goods or services; and
- (e) A certification that no payment has been received for the goods or services in question.

- (f) Copies of all relevant documentation (*e.g.*, invoices, correspondence from the vendor or the District describing the goods or services provided and the related charges, prior contracts or purchase orders).

6.1.2 A certification by the agency director (**Appendix A**) stating:

- (a) The specific goods or services which were received and accepted by the agency;
- (b) The dates or period of time when the goods or services were provided;
- (c) The agency received and accepted the goods and services;
- (d) The amount claimed by the vendor is fair and reasonable (or if the amount claimed is disputed, the amount disputed by the agency and the basis for the dispute);
- (e) The agency has budget authority for the amount of the ratification request, and the agency will prepare appropriate vouchers or other documents to have the approved ratification request paid out of agency appropriations when presented with the Chief Procurement Officer's approval;
- (f) A written notification of the disciplinary action taken by the relevant personnel authority against the responsible employee (the identity of the employee subject to the disciplinary action should not be revealed to OCP);
- (g) A description of the steps taken to prevent unauthorized commitments in the future; and
- (h) The name and telephone number of the agency official who is most knowledgeable about the ratification request, and of the agency official who is authorized to resolve any disputed ratification requests by agreeing to pay a negotiated amount.

6.1.3 The completed Settlement Agreement and Release (**Appendix B**) signed by the vendor and the agency director.

6.2 Agencies shall transmit the complete ratification package to:
ocp.ratificationsrequests@dc.gov.

6.2.1 Agencies needing further information on the process or the status of any request may contact this OCP mailbox.

7. OCP REVIEW OF RATIFICATION PACKAGE.

- 7.1 The Chief Procurement Officer will review the information provided by the agency director and approve or disapprove the ratification request.
- 7.2 The CPO may establish a Ratification Review Committee (RRC) to assist in the review of ratification packages.
 - 7.2.1 The RRC, if established, will consist of:
 - (a) The OCP Chief of Staff, who shall serve as the chairperson;
 - (b) The Assistant Director for the Office of Procurement Integrity and Compliance; and
 - (c) A representative from the Office of the General Counsel.
 - 7.2.2 The RRC may make recommendations to the CPO as to whether a ratification request should be approved.
- 7.3 The CPO retains the right to approve or disapprove any ratification package without the RRC's review or recommendation.

8. APPROVAL PROCESS.

- 8.1 The CPO shall review the ratification package and any Ratification Committee recommendation and render a final decision approving or denying the request.
- 8.2 If the CPO approves the ratification request, the CPO shall forward the approval to the agency director, so that that agency will process the necessary vouchers or other documents to have the ratification request paid out of the agency's appropriation.

9. APPENDICES.

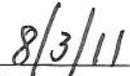
- 9.1 **Appendix A:** The Agency Director Ratification Request and Certification Form.
- 9.2 **Appendix B:** Sample Settlement Agreement and Release.

10. RESCINDED POLICIES. This policy supersedes OCP Policy 1800.04 (August 9, 2006), OCP Policy 1800.5 (August 9, 2007) and OCP Policy 1800.6 (October 1, 2007).

11. EFFECTIVE DATE. This policy shall become effective on the date of issuance.

12. EXPIRATION DATE. This policy shall remain in effect until rescinded.


James D. Staton, Jr.
Chief Procurement Officer


Date

APPENDIX A
Agency Director Ratification Request and
Certification Form
(2 pages)



AGENCY DIRECTOR RATIFICATION REQUEST AND CERTIFICATION FORM

I, [insert Agency Director name and title], hereby certify, based upon the certification of [insert receiving official name and title] that the [insert agency name] received the following and goods or services from [insert vendor name]:

[insert description of goods or services]

The above-described goods were received by my agency on or about [insert date] or the above-described services were received by my agency from _____ through

_____.

[insert date]

I further certify:

(a) Based upon the certification of [insert receiving official name and title] that the amount requested to pay the vendor [insert dollar amount] is fair and reasonable, and consistent with any agreement to provide the goods or services for which payment is claimed;

(b) My agency has budget authority to pay the above-stated amount and that my agency will promptly prepare an appropriate payment document to have the amount paid out of agency appropriations when presented with approval by the Chief Procurement Officer and a signed settlement and agreement release from the vendor; and

(c) The following disciplinary action was taken against the responsible employee:

[Do not identify the employee by name or title.]

(d) The following steps have been taken to prevent unauthorized commitments in the future: _____

Date

[insert Agency Director's printed name]

Agency Director

[insert name of Agency and Agency Code]

AGENCY FINANCIAL OFFICER CERTIFICATION

I () agree () disagree that the agency has sufficient appropriated funds to pay

_____ the requested amount of \$ _____

to satisfy the payment for the unauthorized commitment. The agency will promptly prepare appropriate payment documents to have the amount paid out of agency appropriations when presented with a signed settlement agreement and release.

Date

[insert Agency Fiscal Officer or Cluster ACFO's printed name]

Agency Financial Officer or Cluster ACFO

APPENDIX B
Sample Settlement Agreement and Release
(4 pages)

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered by and between [vendor’s full name] [vendor’s short name] and the District of Columbia, by and through its authorized representatives (collectively the “Parties”). This Agreement shall be effective on the date of its execution by the District of Columbia (“Effective Date”).

WITNESSETH:

WHEREAS, [vendor’s short name] is a [state of incorporation] corporation with a place of business at [local business address]; and

WHEREAS, the District of Columbia (“District”) is a municipal corporation; and

WHEREAS, [vendor’s short name] has provided [description of goods or services] to [agency name] without a valid written contract; and

WHEREAS, the District has accepted those [goods or services]; and

WHEREAS, [the goods were provided to the agency on or about _____, 20__ or the services were provided to the agency from _____, 20__ through _____, 20__]; and

WHEREAS, the total value of the [goods or services] is _____ dollars and _____ cents (\$_____.); and

WHEREAS, [vendor’s short name] submitted a claim against the District seeking amounts due pursuant to this unauthorized commitment (“Claim”); and

WHEREAS, the Parties hereto have determined that settlement of the Claim is in their mutual best interests, and

WHEREAS, the District’s Chief Procurement Officer authorized payment to the [vendor’s short name] for the Claim in accordance with D.C. Official Code §2-359.01(d).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration as hereinafter recited, the receipt and adequacy of which is hereby acknowledged, it is hereby agreed between the Parties fully and finally, with the intent to be legally bound, to settle the claim and to completely dispose of all existing or potential issues, claims, grievances, and disputes between [vendor's short name] for itself and for its successors, administrators, executors, assigns, and any other person claiming by, through, or under [vendor short name] and the District and its agencies, present or former officers, agents, servants, and employees as follows:

1. Payments: Subject to the availability of an appropriation and cash, [agency name] agrees to pay [vendor's short name] the total amount of _____ dollars and _____ cents (\$_____.__) in full satisfaction of the Claim, and all other claims, interest, attorneys' fees, costs and expenses incurred in connection with, arising under, or relating to [vendor's short name] claim. [Agency name] shall, subject to an appropriation and availability of cash, within thirty (30) calendar days of the Effective Date of this Agreement, process and issue a check in the amount of _____ dollars and _____ cents (\$_____.__) made payable to [vendor's short name].

2. [Vendor's short name] agrees and acknowledges that it is solely responsible for any taxes owed, if any, on the payments made payable to it under this Agreement by any taxing authority, whether federal, state or local. [Vendor's short name] agrees to defend, indemnify and hold harmless the District with respect to any liability to any taxing authority, whether federal, state or local, arising from payments contemplated by this Agreement. [Vendor's short name] acknowledges and understands that the District will report to the U.S. Internal Revenue Service the payment set forth in this Agreement.

3. Payment made in accordance with paragraph 1 of this Agreement shall constitute full and complete compensation in settlement and satisfaction of all agreements, actions, cases, causes of action, claims, compromises, controversies, costs, damages, debts, demands, disputes, expenses, judgments, liabilities, payments, promises, and suits of any nature whatsoever, including attorneys' fees, whether or not known, relating to, arising under, or in connection with [vendor's short name] Claim.

4. In consideration of the premises of this Agreement, and upon receipt of the payment required by paragraph 1, above, [vendor's short name], its successors and assigns, hereby remise, release and forever discharge the District, its officers, agents, servants and employees, its past and present members and employees of and from all agreements, actions, cases, causes of action, claims, compromises, controversies, costs, damages, debts, demands, disputes, expenses, judgments, liabilities, payments, promises, and suits of any nature whatsoever, including attorneys' fees, whether or not known, relating to, arising under, or in connection with [vendor's short name] Claim, without exception, through the Effective Date; the intention hereof being to release the District, its present and former officers, agents, servants or employees, completely, finally and absolutely from all liabilities, whatsoever, arising wholly or partially from [vendor's short name] Claim.

5. In consideration of the premises of this Agreement, [vendor's short name], its successors and assigns hereby indemnify and hold harmless the District, its officers, agents, servants, employees, successors and assigns, against any and all further claims for damages, costs, attorneys' fees and expenses relating to, arising under, or in connection with amounts due for [vendor's short name] Claim.

6. The District has entered into this Agreement solely for the purpose of avoiding the burdens and expense of litigation, and the making of this Agreement is not intended, and shall not be construed, as an admission that the District or any of its officers, agents, servants, or employees have violated any federal, state or local law (statutory or decisional), ordinance or regulation, breached any contract or committed any wrong, whatsoever, against [vendor's short name]. The Parties further understand and agree that, upon receipt of the payment, neither Party shall be considered a "prevailing party" for any reason, including but not limited to, an award of attorneys' fees or costs under any statute or otherwise.

7. The Parties understand and agree that neither this Agreement nor any payments hereunder shall be subject to assignment.

8. This Agreement represents the entire agreement of the Parties. [Vendor's short name] acknowledges and agrees that the District, or any representative, agent or employee of the District, has not made any representation or promise to it other than as set forth herein. No other promises or agreements shall be binding unless in writing and signed by the Parties.

9. This Agreement shall be interpreted in accordance with the laws of the District of Columbia and shall not be construed against either Party as the drafter. In any action arising under, in connection with or relating to this Agreement, the Parties shall be subject to the jurisdiction of the Superior Court of the District of Columbia.

10. The Parties to this Agreement expressly represent and warrant that they are legally competent to execute this Agreement, that they have been fully informed and have had an opportunity to consult counsel concerning the contents and meaning of this Agreement, and that they shall take any necessary steps to obtain the requisite approvals to consummate the payment set forth in this Agreement.

11. This Agreement shall be executed by the Parties in three (3) identical writings, which writings taken together shall constitute one written agreement by and between the Parties.

IN WITNESS WHEREOF, the Parties, by and through their duly authorized representatives, have executed this SETTLEMENT AGREEMENT AND RELEASE on the date following their respective signatures.

DISTRICT OF COLUMBIA

[VENDOR'S FULL NAME]

By:
Chief Procurement Officer
Office of Contracting and Procurement

By:

Dated: _____, 201__

Dated: _____, 201__

[AGENCY NAME]

By:
Director: _____
Dated: _____, 201__