

# PENTAGON RENOVATION PROGRAM RATIFICATION PROCEDURES

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## 1.0 Purpose

This document establishes Pentagon Renovation Program (PENREN) policy and procedures concerning the ratification of unauthorized contracting commitments. It applies to all organizations within PENREN.

## 2.0 Definitions

- 2.1 Ratifying Official: the official who may approve unauthorized commitments.
- 2.2 Ratification: the act of approving an unauthorized commitment by an official with the authority to do so.
- 2.3 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, to include any action by a person other than one authorized to do so [i.e., Contracting Officer (KO), Ordering Official, etc.] that results in 1) contractual performance by a contractor beyond the expiration date or the price established by a procurement instrument, or 2) the commencement of contract work in advance of the issuance of a formal procurement instrument properly executed by a duly authorized KO.

## 3.0 Policy

- 3.1 The requirements of Federal Acquisition Regulation (FAR) 1.602-3 are incorporated in this policy document. The potential for a ratification action is triggered whenever there is an unauthorized commitment situation. The procedures described below then become operative. However, our primary aim should be to avoid such situations.
- 3.2 FAR 1.602-3(b)(1) requires that positive actions be taken to preclude, to the maximum extent possible, the need for ratification actions. All PENREN employees must be made aware of the imperative need to avoid unauthorized commitment and ratification situations. Disciplinary action may be taken against those responsible for unauthorized commitments. Therefore, Contracting Officers, Group Leaders, and Integrated Product Team Leaders must periodically brief all team members concerning potential unauthorized commitment situations. PENREN training courses related to contracting activities or interaction with contractors will include some discussion of potential unauthorized commitment situations. All PENREN employees will be electronically notified of the publication of this policy document. This document will be posted on the PENREN Internet Site, on the Intranet, and on the PENREN G-drive so that all persons associated with PENREN will have easy access to its contents. Prior to the commencement of contract activities, all contractors will be formally notified as to the identity of the persons authorized to obligate the Government on their contracts and the fact that no other persons have that authority.
- 3.3 The procedures stated below apply to all potential PENREN ratification actions **except** those involving Other Procurement Army (OPA) funds. Following the completion of the initial Contracting Officer (KO) investigation discussed in Section 4 below, the entire ratification package will be forwarded to the Information Management & Telecommunications (IM&T) Project Manager for review and disposition when OPA contract funds are involved. The IM&T Project Manager is designated as the Ratifying Official for ratification actions involving OPA contract funds. The IM&T Project Manager may determine an action was the result of an administrative oversight and ratify it by a written determination stating the ratification is proper and in accordance with FAR 1.602-3. Such a ratification must have the formal concurrence of PENREN legal counsel. If the action was not the result of an administrative oversight, the IM&T Project Manager may ratify the action, decide not to ratify the action, or return the package to the KO for further investigation. Following final action by the IM&T Project Manager, the entire package will be returned to the KO through the Acquisition Group Leader and the affected supervisor.

## 4.0 Procedures

- 4.1 The Acquisition Group Leader, as head of the PENREN contracting office, is hereby designated as the Ratifying Official for any ratification valued at less than \$5,000. The DPM is designated as the Ratifying Official for all ratification actions valued at \$5,000 or more.
- 4.2 Upon receipt of notice of a potential unauthorized commitment, the KO responsible for the contract in question or, if no existing contract is involved, the KO designated by the Acquisition Group Leader will initiate an investigation of the relevant circumstances. If possible, the KO will obtain a signed statement from the person alleged to have committed the unauthorized obligation. At a minimum, this statement will include:
- a. a complete description of the facts surrounding the incident,
  - b. an explanation as to why normal procedures were not followed,
  - c. what bona fide Government requirement necessitated the action,
  - d. what benefit was received,
  - e. the value of the commitment,
  - f. an evaluation of the contractor's performance,
  - g. the rationale for selecting the particular contractor involved,
  - h. the current status of performance.
- 4.3 Relevant documents will accompany the statement. At a minimum, these documents will include:
- a. a copy of all relevant contract documents and records,
  - b. a copy of the contractor's invoice, if submitted, and
  - c. a completed Request for Funding Action.
- 4.4 The entire package will be forwarded to the KO through the individual's immediate supervisor. The supervisor will submit the package to the KO with a statement addressing:
- a. the supervisor's personal experience related to the alleged unauthorized commitment,
  - b. a discussion of planned disciplinary action or why no disciplinary action is deemed appropriate, and
  - c. actions taken to prevent the recurrence of similar unauthorized commitments.
- 4.5 The KO will conduct such additional investigation and interviews as deemed necessary. Relevant documents, including evidence of receipt of benefit by the Government, will be part of the ratification package. The KO will then prepare a comprehensive statement of the facts. If the amount in question is over \$2,500, a cost or price analysis should be obtained to support a KO opinion that the amount involved is fair and reasonable. If the contractor has invoiced, a copy of the invoice will be included in the package along with any relevant correspondence with the contractor.
- 4.6 If the individual has not provided a statement that was forwarded through the individual's supervisor in accordance with Section 4.2 above, the KO will obtain a statement from the supervisor or Integrated Product Team Leader where the violation allegedly occurred. This statement will include a description of any disciplinary action being considered. If no disciplinary action is considered appropriate, the statement will indicate why disciplinary action is deemed inappropriate. The statement will also indicate all action taken to prevent a reoccurrence of the unauthorized action. The complete ratification package will be forwarded to the PENREN legal counsel for review. Following legal review, the entire ratification package will be forwarded to the Acquisition Group Leader.
- 4.7 If the Acquisition Group Leader determines in writing that the action, regardless of the value, resulted from an administrative oversight, the Acquisition Group Leader may ratify the action with a written determination stating the ratification is proper and in accordance with FAR 1.602-3. Such ratification must have the formal concurrence of PENREN legal counsel. Following ratification for administrative oversights, the complete package will be returned to the KO through the effected Group Leader and supervisor.
- 4.8 If the unauthorized action is not the result of an administrative oversight and the amount of the action is less than \$5,000, the Acquisition Group Leader may ratify the action, decide not to ratify the action, or return the package to the KO for further investigation. Following final action on such packages by the Acquisition Group Leader, the ratification package will be returned to the KO through the effected Group Leader and supervisor. If appropriate, disciplinary action against the individual responsible for any unauthorized act will be initiated.

- 4.9 If the unauthorized action is not the result of an administrative oversight and the amount of the action is \$5,000 or more, the Acquisition Group Leader will forward the complete package through the effected Group Leader to the DPM with a written recommendation for appropriate disposition.
- 4.10 The DPM may ratify the action, decide not to ratify the action, or return the package for further investigation. Following final action by the DPM, the ratification package will be returned to the KO through the Acquisition Group Leader, the effected Group Leader, and the supervisor. If appropriate, disciplinary action against the individual responsible for any unauthorized act will be initiated.
- 4.11 The Acquisition Group Leader will establish and list all ratification actions on a single ratification log. A ratification file will be maintained for each ratification action. The ratification log will track the number of ratification actions, the position of the alleged responsible party, the amounts involved in each action, the contract numbers, and the final disposition. Ratification action entries will remain on the log for two fiscal years. A summary of ratification actions, if any, will be forwarded through the effected Group Leader and the Deputy Program Manager (DPM) to the Program Manager (PM) monthly. Ratification files will be maintained for two fiscal years.

**5.0 Ratification and Post-Ratification Action**

- 5.1 The Ratifying Official will issue a written ratification statement when ratification is approved. The statement will state substantially as follows:

“Pursuant to the authority vested in me by the Federal Acquisition Regulation (FAR) and Pentagon Renovation Program Policy 99-34, I hereby ratify the act of (name, title, grade, and organization) who on or about (date) authorized (company name) to (describe commitment). The dollar value of the transaction is (dollar amount). Ratification is deemed to be in the best interest of the Government and is within the authority and limitations of FAR Subpart 1.6.”

- 5.2 Written contracts are not required to finalize ratification actions, but such factors as the furnishing of Government Furnished Property, promised delivery dates, and invoice price disputes should be considered when determining whether or not to prepare a formal contract document.
- 5.3 Following ratification, an invoice must be obtained from the contractor if it has not been obtained prior to that time. The KO will prepare a memorandum approving the invoice for payment. The invoice and KO memorandum should be submitted to the paying office together with a copy of the Request for Funding Action, the Ratifying Official’s formal ratification memorandum, and a copy of the contract, if one was executed following ratification.
- 5.4 A copy of the ratification action will be placed in the contract file. Another copy will be kept in the file maintained by the Acquisition Group Leader.
- 5.5 If the action was not ratified, the KO will notify the contractor. Unauthorized commitments that could involve claims should be processed in accordance with FAR 33.2, Disputes and Appeals.

**This PMP is effective immediately. It will remain in effect until modified or rescinded. It supercedes all previous PENREN guidance on this subject.**

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**WALKER LEE EVEY**  
**Pentagon Renovation Program Manager**

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