

NO. 43**RATIFICATION OF UNAUTHORIZED COMMITMENTS****43-1.0 References.**

- (a) City Charter § 6.20.
- (b) Chapter 74 of the Code of the City of Richmond (2004), as amended.
- (c) Purchasing Policies and Procedures Manual dated 09-01-02.
- (d) Procurement Services Agency Desktop Toolkit 2006.

43-2.0 Definitions. For purposes of this regulation, the terms defined in this section have the meanings ascribed to them in this section unless the context clearly indicates that another meaning is intended.

43-2.1 “*Ratification*” refers to the process for legitimizing an unauthorized commitment by an official with the authority to make that commitment. The verb “ratify” also has this meaning.

43-2.2 “*Unauthorized commitment*” means an agreement that is not binding on the City solely because the City representative who made the agreement lacked the authority to enter into the agreement on behalf of the City. An unauthorized commitment may be cured by ratification.

43-2.3 “*Unauthorized purchase*” means a purchase order or contract that is made (i) contrary to the procurement laws or (ii) without available funds. An “unauthorized purchase” cannot typically be cured by ratification.

43-3.0 Background.

43-3.1 City Code § 74-7 prohibits officials and employees from purchasing or contracting for any goods, services, insurance or construction subject to the procurement laws other than by and through the Director of Procurement Services. The approval of the Director of Procurement Services is required for all such contracts with a value in excess of \$5,000.

43-3.2 City Code § 74-7 also provides that the City shall not be bound by any purchase order or contract made (i) contrary to the procurement laws or (ii) when sufficient funds are not available. In addition, Charter § 6.20:

- (a) Prohibits the expenditure of funds or the incurrence of obligations in the absence of a valid appropriation as certified by the Director of Finance or a designee thereof and provides penalties for violating this prohibition; and
- (b) Provides that “every official who shall knowingly authorize or make such payment [i.e., without appropriated funds available] or knowingly take part therein and every person who shall knowingly receive such payment or any part

thereof shall be jointly and severally liable to the city for the full amount so paid or received.” Thus, both the employee and the contractor are liable to the City in this situation.

- 43-3.3 City Code § 74-9(d) (derived from Va. Code § 2.2-4352) provides that “[u]nless otherwise provided under the terms of the contract for the provision of goods or services, every agency that fails to pay by the payment date shall pay any finance charges assessed by the supplier that shall not exceed one percent per month.” The agency shall pay any finance charges (i.e., interests and other penalties) for late payment not exceeding one percent per month.
- 43-3.4 City Code § 74-63 provides that “no fixed-price contract that will increase the amount to be expended under such contract in an amount in excess of \$100,000.00 in the aggregate shall be made unless the Chief Administrative Officer approves such change in writing in advance of such modification being made.” *An agreement to increase an applicable contract without the approval required by this provision constitutes an unauthorized commitment.*
- 43-4.0 **Policy.** Ratification may only occur when all of the following apply:
- 43-4.1 Funds are available and were available for the unauthorized commitment at the time that the unauthorized commitment was made.
- 43-4.2 The unauthorized commitment would have been made in compliance with applicable procurement laws and regulations if made by the appropriate official or officials.
- 43-4.3 The appropriate ratifying official or officials approve the unauthorized commitment. The ratifying official or officials should only approve the unauthorized commitment if all of the following apply:
- 43-4.3.1 The ratifying official or officials have determined that both:
- (a) Funds are available in accordance with section 43-4.1 above and
 - (b) All other applicable procurement laws and regulations have been complied with in accordance with 43-4.2 above.
- 43-4.3.2 Goods or services have been provided to and accepted by the City.
- 43-4.3.3 The ratifying official or officials have determined the price agreed to in the unauthorized commitment to be fair and reasonable. Such determination shall be based upon a Fair Market Analysis for similar products or services provided under existing contract vehicles, currently existing bid or proposal prices, or publicly available catalogs or price lists.

43-5.0 Discussion.

43-5.1 Unauthorized commitments violate the City Code and circumvent established procurement policies and procedures designed to ensure compliance with the requirements of the Virginia Public Procurement Act applicable to the City.

43-5.2 Departments, agencies or individuals that exceed their purchasing authority but otherwise comply with applicable laws and regulations must obtain ratification of unauthorized commitments in accordance with this regulation.

43-5.3 Unauthorized purchases or contract modifications that departments, agencies or individuals make *without fulfilling competitive procurement requirements or other requirements* unrelated to whether the City representative who made the agreement lacked the authority to enter into the agreement on behalf of the City cannot be ratified. For example, a construction contract made without competitive sealed bidding (or competitive negotiation where allowed) cannot be ratified. However:

(a) City Code § 74-41 authorizes the Director of Procurement Services to establish and modify the procedures for small purchases. As such, the Director of Procurement Services is the ratifying official for unauthorized purchases or contract modifications up to the small purchase threshold.

(b) Separate rules govern the procurement of goods or services made pursuant to a declaration of emergency (see Policy No. 17, Emergency Purchases).

43-5.4 Unauthorized purchases or contract modifications that departments, agencies or individuals make *without funds available* due to a valid appropriation certified by the Director of Finance or a designee thereof cannot be ratified. However, both the City officers or employees responsible for the commitment and the contractor who accepts the payment can be liable to the City for the amount of the commitment.

43-5.5 Contractors who act on an unauthorized commitment (or a commitment in violation of City Code § 74-7) do so at their own risk. Contractors are not entitled to payment based on an unauthorized commitment unless and until the unauthorized commitment has been ratified in accordance with this regulation.

43-6.0 Procedures.**43-6.1 Ratifying Officials.**

43-6.1.1 For unauthorized commitments with a value up to and including \$5,000, the director or other head of the department or other agency which made the purchase is the ratifying official.

- 43-6.1.2 For unauthorized commitments with a value greater than \$5,000 up to and including \$100,000, the Director of Procurement Services is the ratifying official.
- 43-6.1.3 For unauthorized commitments with a value greater than \$100,000, both the Director of Procurement Services and the Mayor or the Mayor's designee must approve the ratification.
- 43-6.1.4 Ratification officials shall evaluate the ratification circumstances to determine whether it is appropriate to request that a manual check be issued by the Department of Finance.
- 43-6.2 **Reporting Requirements.**
- 43-6.2.1 By July 15 of each fiscal year, the director or other head of the department or other agency which made the purchase shall furnish the Director of Procurement Services with a report on all ratification actions by that department or agency for the preceding fiscal year. The report shall use the format in the Attachment and include the following data fields:
1. Brief description of service or item.
 2. Invoice amount (including any applicable finance charges).
 3. Invoice number.
 4. Invoice date.
 5. Contractor name.
 6. Contractor address.
 7. Name of person responsible for unauthorized commitment.
 8. Disciplinary action taken.
 9. Controls instituted.
 10. Payment date.
- 43-6.2.2 By August 30 of each fiscal year, the Director of Procurement Services shall furnish the Chief Administrative Officer with a report on all ratification actions for the preceding fiscal year. Such report shall contain substantially the same information as required of department and agency heads by section 43-6.2.1.
- 43-7.0 **Consequences.**
- 43-7.1 The department or agency in which an individual made an unauthorized commitment shall pay any finance charges (i.e., interests and other penalties) for late payment assessed pursuant to City Code § 74-9.
- 43-7.2 Any officer or employee of a department or agency responsible for an unauthorized commitment shall furnish the ratifying official with a detailed written explanation of his or her actions with regard to the unauthorized commitment.

- 43-7.3 In accordance with section 5.3 of the Personnel Rules for classified employees and Administrative Regulation 4.11, a department or agency head has the following options for disciplining an employee in that department or agency for making an unauthorized commitment:
1. Written reprimand.
 2. Suspension.
 3. Reduction in pay.
 4. Disciplinary demotion.
 5. Dismissal.
- 43-7.4 Pursuant to Charter § 6.20, knowingly authorizing or making payments when funding is not available “shall be deemed illegal and every official who shall knowingly authorize or make such payment or knowingly take part therein and every person who shall knowingly receive such payment or any part thereof shall be jointly and severally liable to the city for the full amount so paid or received.” In addition, if a City officer or employee knowingly authorizes or makes payments when funding is not available, that activity “may be cause for his/her removal.” Therefore, an employee may be personally liable to the City for making an unauthorized commitment and the contractor may be liable for the amount of any payment received.
- 43-7.5 For any officer or employee who makes an unauthorized commitment that must be ratified (or an unauthorized purchase as City Code § 74-7 uses that term), the purchasing and budgetary authority of that officer or employee may be reduced or eliminated. Such determination shall be made in writing to the appointing authority by the Director of Procurement Services in coordination with the Director of Finance and through the Office of the Mayor or the Mayor’s designee.

UNAUTHORIZED COMMITMENTS

POLICY NO. 43

RATIFICATION ACTIONS

DEPARTMENT: _____

DIRECTOR / DEPARTMENT HEAD: _____

THIS REPORT MUST BE SUBMITTED TO THE DIRECTOR OF PROCUREMENT SERVICES BY JULY 15

DESCRIPTION OF SERVICE OR ITEM	INVOICE AMOUNT (INCLUDING FINANCE CHARGES)	INVOICE NO.	INVOICE DATE	CONTRACTOR NAME & ADDRESS	NAME OF PERSON RESPONSIBLE FOR UNAUTHORIZED COMMITMENT		DISCIPLINARY ACTION TAKEN	CONTROLS INSTITUTED	PAYMENT DATE
					UNAUTHORIZED	COMMITMENT			
1									
2									
3									
4									
5									

Director Signature _____ Date _____

(Reference: Procurement Services Policies and Procedures Manual, Policy No. 43, dated August 9, 2007, Para. 43-6.2.1)