

University of the District of Columbia

Title: Unauthorized Procurements and Ratification Policy	President's approval: 04/28/2010
Related Policies and Procedures: UDC Procurement Rules (8 DCMR § 3000 <i>et seq.</i> UDC PASS (Procurement Automated Support System) Approver Policy	

I. Unauthorized Procurements

1. Only University Contracting Officers are authorized to enter into contracts, terminate contracts or contractually bind the University for the procurement of supplies, services, or construction. A contracting officer may bind the University only to the extent of their written delegated authority by the Chief Contracting Officer. Any contract or procurement for supplies, services, or construction entered into or conducted by an individual other than a University Contracting Officer shall be considered an unauthorized procurement. 8 DCMR § 3001.5.

Examples of unauthorized procurements include, but are not limited to, (i) a contract signed with a vendor by any employee or person other than a duly appointed Contracting Officer; (ii) instructing a vendor to begin work, without a valid contract and/or Purchase Order in place; (iii) informing a vendor that the vendor has been awarded a contract or will be engaged to deliver goods or perform services, without a valid contract and/or Purchase order in place.

2. Any employee responsible for originating an unauthorized procurement shall be subject to sanctions in accordance with Section III of this policy.

3. An unauthorized procurement may be ratified at the sole discretion of the University if (a) such ratification is in the best interest of the University; and (b) such ratification can be accomplished as a procurement conducted in accordance with the UDC Procurement Rules. 8 DCMR § 3001.6(a).

4. No obligation arising from an unauthorized procurement may be satisfied by the University unless it is ratified, except as the result of a judgment or settlement agreement.

II. Procedure for Ratification of Unauthorized Procurements

1. An unauthorized procurement shall be deemed ratified by the University only if it satisfies the requirements of this Section II.

2. For a ratification to be approved, each accompanying form listed in Section IV must be completed as follows: (i) the Ratification Request shall be fully completed by the appropriate Vice President or Dean and forwarded to the Office of Contracting and Procurement; (ii) the Ratification

Funds Certification shall be fully completed by the Office of Finance and forwarded to the Office of Contracting and Procurement; (iii) the Contracting Officer Determination and Finding Statement shall be fully completed by the Office of Contracting and Procurement and forwarded to the Managing Director of Finance; (iv) the Legal Certification for Ratification shall be completed by the Office of General Counsel and forwarded to the Managing Director of Finance.

3. The ratification of any unauthorized procurement requires **both** the recommendation of the Chief Contracting Officer, as contained in the Contracting Officer's Determination and Findings Statement, as well as the approval of the Managing Director of Finance, as contained in the Approval of Ratification Request form. The approval of the Managing Director of Finance on the Approval of Ratification Request form shall be the final action to approve the ratification of an unauthorized procurement.

4. Each form must bear the Ratification Case Number assigned by the Office of Contracting and Procurement.

5. The approval of any ratification by the University shall be contingent upon the execution by the University and vendor of a Settlement Agreement approved by the Office of General Counsel, unless the General Counsel determines in writing that such an agreement is not necessary under the circumstances.

III. Employee Responsibility and Sanctions for Unauthorized Procurements

1. Notwithstanding any provision of this Section III, an employee who enters into an unauthorized procurement that is not ratified may be personally responsible for any obligation to the vendor(s). *See 8 DCMR § 3001.6(c).*

2. The sanctions enumerated in Subsection III.3. may be applied regardless of whether a ratification occurs.

3. An employee or employees who originates or enters into an unauthorized procurement shall be subject to the following sanctions and/or corrective actions:

a. *Informal Sanctions—First Offense.* The employee or employees shall be required to attend a follow-up and training meeting with the Chief Contracting Officer or designee. PASS access of the employee or employees shall be suspended until training is completed. In addition, the employee or employees shall be given a written warning from the Chief Contracting Officer.

b. *Informal Sanctions—Second Offense.* The PASS access of the employee or employees shall be suspended for not less than sixty (60) days. In addition, if any sanctioned employee has approver authority in PASS, such approver authority shall be reduced by one monetary level. In addition, the employee or employees shall be required to attend a further follow-up and training meeting with the Chief Contracting Officer.

c. *Formal Sanctions—Third Offense or More.* The employee or employees shall be subjected to formal adverse action by the Office of Human Resources. In addition, the Chief Contracting Officer shall promptly report to the Internal Auditor when any employee

incurs three or more offenses.

d. *Formal Sanctions—Unauthorized Procurements over \$25,000.* No informal sanctions shall be available for unauthorized procurements in excess of twenty-five thousand dollars (\$25,000). Instead, the employee or employees shall be referred directly to the Office of Human Resources for formal adverse action.

4. No sanction shall be applied in respect of any unauthorized procurement if the appropriate Vice President or Dean determines, with the concurrence of the Managing Director of Finance, that it is in the best interest of the University to waive such sanction.

IV. Accompanying Forms

1. Ratification Request;
2. Ratification Funds Certification;
3. Contracting Officer Determination and Findings Statement;
4. Legal Certification for Ratification;
5. Approval of Ratification Request;
6. Settlement Agreement and Release.

History/Revision Dates

Origination Date: April 28, 2010 (OGC)

Last Amended Date:

Next Review Date:

Office of Contracting and Procurement Use Only

Date Received: _____

Ratification Case No.: _____

RATIFICATION REQUEST

I _____, hereby certify that the _____
(Vice President/Dean) (Department/Program)

University System of the District of Columbia received the following goods or services from

(Name of Contractor)

(Summary of goods or services described in (c), below)

The goods were received on or about _____ or the services were received
(Date)

during the period from _____ through _____
(Date) (Date)

The total amount for the goods or services claimed by the Contractor is _____
(Amount)

I certify that the total amount to be paid for the goods or services is fair and reasonable based on

CIRCUMSTANCES REGARDING THE NEED FOR THIS RATIFICATION ACTION:

- a) Describe why the normal procurement procedures were not followed.

- b) Describe the specific University requirement or need that caused the unauthorized commitment to be made

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- c) Describe the goods or services provided to and accepted by the University, the benefits received by the University as a result of the transaction, its value and any other pertinent facts and

- d) List and attach all other relevant documents including orders invoices or other evidence of the transaction

- e) Are there any shipping records, invoices, orders, or requests for payment or other documentary evidence of the transaction? YES _____ NO _____

Is the documentary evidence attached to this form? YES _____ NO _____

If “no,” please describe why appropriate documentary evidence is not available, and describe steps being taken to obtain it

Date Received: _____

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f) Remedial Follow-Up

- (f.1) Describe the measures taken to prevent a recurrence of unauthorized commitments.

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- (f.2) Has the appropriate disciplinary action been taken against the employee responsible for this unauthorized procurement in accordance with Section III of the UDC Unauthorized Procurements and Ratification Policy?

YES _____ NO _____

If “yes”, please describe the disciplinary action taken against the employee. (Do not include the employee’s name, title, grade or address). If “no”, why?

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- g) Provide the number of unauthorized commitments by your department in this fiscal year .

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Date Received: _____

Ratification Case No.: _____

PREPARER CERTIFICATION

I, the undersigned, with knowledge of the facts and circumstances surrounding the initiation, the facilitation, the authorization or the making of the unauthorized commitment, further certify that the information, circumstances, and details described above are complete, accurate and true, and hereby request that the Director of Contracting and Procurement approve this ratification request for payment for the goods or services received.

Print Name of VP/Dean

Signature

Date

Office of Contracting and Procurement Use Only

Date Received: _____

Ratification Case No.: _____

RATIFICATION FUNDS CERTIFICATION

To be completed by accounting & Finance

I hereby certify that as of this date, _____ has funds
(Department/Program)

available to pay the amount subject to ratification of, _____

Print Name of CFO/Budget Officer

Signature

Date

Funding Attributes:

Index/Account #: _____

Office of Contracting and Procurement Use Only

Date Received: _____

Ratification Case No.: _____

CONTRACTING OFFICER DETERMINATION AND FINDINGS STATEMENT

I, _____, hereby certify that, upon review of the Ratification
(Contracting Specialist)

Request that was assigned the above Ratification Case Number, and supporting documentation,
provided by _____ for the _____
(VP/Dean) (Department/Program)
pertaining to the following goods or services:

from _____ received by the University of the District of Columbia on or
(Vendor Name)

about _____
(Date)

I have determined the following:

- a) The unauthorized commitment _____ could _____ could not have resulted in a properly executed contract.

If the unauthorized commitment could have resulted in a properly executed contract,
state the basis for this determination:

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Date Received: _____

Ratification Case No.: _____

If the unauthorized commitment could not have resulted in a properly executed contract, the unauthorized commitment is not eligible for ratification.

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b) Funds _____ are _____ are not, available as certified by the Office of the Chief Financial Officer.

c) The total amount to be paid for the goods or services _____ is _____ is not fair and reasonable:

d) There _____ is _____ is no other relevant information that should be taken into consideration in determining appropriate action on the ratification request.

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Date Received: _____

Ratification Case No.: _____

CERTIFICATION BY THE OFFICE OF CONTRACTING AND PROCUREMENT:

I hereby certify that the information provided above is accurate and complete, and:

that the amount to be paid _____ **is** _____ **is not** fair and reasonable; and

I _____ **recommend** _____ **do not recommend** payment for the goods/services provided without a valid contract.

Date

Contract Specialist

Date

Director of Contracting &Procurement

Office of Contracting and Procurement Use Only

Date Received: _____

Ratification Case No.: _____

LEGAL CERTIFICATION FOR RATIFICATION

I hereby certify that I have reviewed (a) the Contracting Officer Determination and Findings Statement bearing the Ratification Case Number listed herein, and (b) the Ratification Request bearing the Ratification Case Number listed herein; and have found the Determination and Findings Statement _____ **to be** _____ **not to be** legally sufficient.

This Legal Certification, if given, is contingent upon the execution of an approved settlement agreement between the University and _____
(Vendor)

Settlement Agreement and Release is _____ **required** _____ **not required** based on the information provided.

Date

General Counsel

Office of Contracting and Procurement Use Only

Date Received: _____

Ratification Case No.: _____

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered by and between _____ (hereinafter the “Vendor”) and the University of the District of Columbia (hereinafter the “University”), by and through their authorized representatives (collectively the "Parties"). This Agreement shall be effective on the date of its execution by the University of the District of Columbia (“Effective Date”).

WITNESSETH:

WHEREAS, Vendor has a place of business at _____.

Vendor Address

WHEREAS, the University of the District of Columbia is an independent agency of the District of Columbia; and

WHEREAS, Vendor has provided _____
(collectively “the goods/services”), without an authorized commitment by the University; and

Description of goods/services

WHEREAS, the University has accepted the goods/services; and

WHEREAS, the goods/services were provided to the University from _____
through _____; and

Date

Date

WHEREAS, the total value of the goods/services claimed by the Vendor is \$ _____;

Value

and

WHEREAS, Vendor submitted a claim against the University seeking amounts due for the performance and/or delivery of the goods/services (hereinafter the “Claim”); and

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

Date Received: _____

Ratification Case No.: _____

WHEREAS, the University has authorized payment to Vendor in accordance with the UDC Procurement Rules (8 DCMR § 3001.6), subject to the execution by both parties of this Agreement.

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 arising under the Claim, as follows:

1. Payments: University agrees to pay Vendor the total amount of \$ _____ 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 the Claim. University shall within thirty (30) calendar days of the Effective Date of this Agreement, process and issue a check in the amount of \$ _____ made payable to Vendor.

2. Vendor 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 agrees to defend, indemnify and hold harmless the University with respect to any liability to any taxing authority, whether federal, state or local, arising from payments contemplated by this Agreement. Vendor acknowledges and understands that the University 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 the Claim.

4. For good and valuable consideration as set forth in this agreement, the sufficiency of which is hereby acknowledged, and upon receipt of the payment required by paragraph 1, above, Vendor, its successors and assigns, hereby remise, release and forever discharge the University, its employees and agents, 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 the Claim or the performance and/or delivery of the goods/services, without exception, through the Effective Date.

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Date Received: _____

Ratification Case No.: _____

5. In For good and valuable consideration as set forth in this agreement, the sufficiency of which is hereby acknowledged, Vendor, its successors and assigns hereby indemnify and hold harmless the University, its employees, agents, 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 the claim or the performance and/or delivery of the goods/services.

6. The Parties have 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 University or any of its officers, 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. Execution of, and performance of obligations under, this agreement shall not be construed as an admission of liability or wrongdoing of any nature. The Parties further understand and agree that, upon receipt of the payment, neither Party will 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 acknowledges and agrees that the University, or any representative, agent or employee of the University, 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.

Date Received: _____

Ratification Case No.: _____

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 expressly represent and warrant that they are legally authorized 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 will take any necessary steps to obtain the requisite approvals to consummate the payment set forth in this Agreement.

11. The Parties expressly acknowledge they are entering into this Agreement voluntarily. The Parties stipulate, agree, and warrant that they will not challenge or contest in any way the capacity or the authority of any party hereto to make agreements, covenants and stipulations herein.

12. The Parties hereby warrant and represent that they are the sole and lawful owners of all rights, title and interest in and to all matters released and compromised pursuant to this Agreement, and that they have not heretofore assigned or transferred or purported to assign or transfer, any such released matters, in whole or in part, to any other person or entity.

13. The Parties further covenant that they will not maintain any present or future action against each other that relate directly or indirectly to the Purchase Orders, including but not limited to claims for damages alleged or that could have been alleged against the Parties, whether known or unknown, regardless of whether such injuries, damages, or expenses were specifically alleged.

14. The invalidity or unenforceability of any particular provision in this Agreement and Release shall not affect the validity or enforceability of any other provision in this Agreement and Release, unless the elimination of the provision that is invalid or unenforceable causes the Agreement and Release to fail of its essential purpose.

Office of Contracting and Procurement Use Only

Date Received: _____

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15. Provided that all Parties hereto execute a copy of this Agreement, the Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile transmission or other comparable means. A PDF, facsimile or copy hereof shall be as valid and binding as the original.

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.

**University of the
District of Columbia**

Vendor Name

By: _____

By: _____

Date: _____

Date: _____

Office of Contracting and Procurement Use Only

Date Received: _____

Ratification Case No.: _____

APPROVAL OF RATIFICATION REQUEST

Upon the request of _____, for the ratification of an
(*Vice President/Dean*)

unauthorized procurement originating in _____, and upon the
(*Department/Program*)

recommendation of the Director of Contracting & Procurement, contained in the Contracting Officer's Determination and Findings Statement bearing the Ratification Case Number listed herein, that such unauthorized procurement be ratified, I hereby:

☐ **approve** the ratification of the unauthorized procurement as recommended by the Determination and Findings Statement bearing the ratification case number listed herein and determine that it is in the best interest of the University System of the District of Columbia to ratify the same.

☐ **disapprove** the ratification of the unauthorized procurement and determine that it is not in the best interest of the University System of the District of Columbia to ratify the unauthorized procurement associated with the above ratification case number.

If approved:

I hereby approve the payment to _____ an amount not
(*Vendor*)

exceeding _____, in full and fair satisfaction of the unauthorized procurement.

Date

Director of Contracting & Procurement