



The SBA's 417 Unauthorized Commitments Impacted
Mission-Related Services and Increased Costs



U.S. Small Business Administration
Office of Inspector General
Washington, D.C. 20416

REPORT TRANSMITTAL
REPORT NO. 13-14

DATE: March 28, 2013

TO: Jonathan I. Carver
Chief Acquisition Officer and Chief Financial Officer

SUBJECT: *Review of the Small Business Administration's Unauthorized Commitments*

This report presents the results of our audit, *Review of the Small Business Administration's Unauthorized Commitments*. The objective of this audit was to determine the extent and reasons unauthorized commitments occurred. We determined that the SBA received invoices associated with over 400 unauthorized commitments valued at more than \$1.4 million between November 2010 and May 2012. We believe the large number of unauthorized commitments indicates problems with the organizational culture of the acquisition process and contract management at the SBA.

Please provide your response to this report for each recommendation on the attached SBA Form 1824s, *Recommendation Action Sheets*, by April 29, 2013.

Consistent with OMB Circular A-50, your response should include the corrective action(s) taken or planned for each recommendation and the target date(s) for completion. If you disagree with the recommendations, please fully explain the reasons for disagreement. Please include the legal basis for disagreement based on interpretation of the law, regulations, or the authority of officials to take or not to take action. You may also propose alternative actions to those recommended that you believe would better address the issues presented in this report.

We appreciate the courtesies and cooperation of the Office of the Chief Financial Officer and the Acquisition Division during this audit. If you have any questions concerning this report, please call me at (202) 205-7390 or Riccardo Buglisi, Director, Business Development Programs Group, (202) 205-7489.

/s/ originally signed
John K. Needham
Assistant Inspector General for Auditing



Executive Summary: The SBA's 417 Unauthorized Commitments Impacted Mission-Related Services and Increased Costs

March 28, 2013
Report Number 13-14

What OIG Evaluated

This report presents the results of the OIG's audit of the SBA's unauthorized commitments. We conducted this audit in response to an OIG hotline complaint about the large number of unauthorized commitments occurring at the SBA. An unauthorized commitment occurs when a government official authorizes products or services without the necessary authority. The objective of this audit was to determine the extent of the unauthorized commitments and why they occurred. To achieve our objective, we obtained documents and interviewed the Acquisition Division personnel to determine the number of unauthorized commitments. We also determined how the Acquisition Division identified and processed these unauthorized commitments. We reviewed contract files for unauthorized commitments associated with nine selected vendors. We chose vendors based upon the total dollar value and total number of unauthorized commitments associated with that company. We also interviewed agency officials from the Office of the Chief Financial Officer (OCFO) and the Office of General Counsel.

OIG Recommendations and Agency Comments

The OIG recommended a total of seven actions: one action directed to the SBA Administrator and six directed to the Chief Acquisition Officer in coordination with the Senior Procurement Executive. We believe these actions will improve contract management at the SBA and significantly decrease the total number of future unauthorized commitments. On January 24, 2013, we provided a draft report to SBA management for official comment. On March 4, 2013, we received comments from the Chief Financial Officer—who is also the Chief Acquisition Officer. On March 13, 2013, we received comments from the Office of General Counsel on behalf of the SBA Administrator. Management was responsive to four recommendations, and non-responsive to three recommendations.

What OIG Found

Between November 2010 and May 2012, the SBA received invoices associated with 417 unauthorized commitments—more than \$1.4 million in inappropriately expended Agency funds. Federal regulations state that an unauthorized commitment is an agreement between a vendor and a government representative that is not binding solely because the Government representative who made the commitment lacked the authority to enter into that agreement on behalf of the Government. Additionally, the total number of unauthorized commitments at the SBA in the last two fiscal years greatly exceeded the total number of unauthorized commitments at six other federal agencies of a similar size.

The large number of unauthorized commitments directly impacted the ability of the Agency to legally and efficiently procure goods and services for its daily operations and limited its ability to provide needed support to small businesses. Also, the process of ratifying the large number of unauthorized commitments required additional staff resources and increased operating costs for the Acquisition Division.

The Acquisition Division has taken steps to prevent future unauthorized commitments including (1) decreasing the turnover rate in the Acquisition Division personnel, and (2) providing training to Program Office staff that participate in the acquisition process. Additionally, in fiscal year 2012, the SBA developed its first Advanced Acquisition Plan in five years, which documents the SBA's planned acquisitions for an upcoming fiscal year. While the SBA continues to make strides toward improving the acquisition process and preventing unauthorized commitments, transformation of the culture needs to occur so that changes can be sustained in the future. In order to implement a successful culture change, the SBA needs to hold its employees accountable for their actions, have detailed policy and guidance readily accessible to all of its employees, and provide meaningful acquisition training to all employees.

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Background

This report presents the results of our audit of the Small Business Administration's (SBA or the Agency) unauthorized commitments. We conducted this audit in response to an OIG hotline complaint about the large number of unauthorized commitments occurring at the SBA. We previously issued [Advisory Memorandum 12-22](#)¹ during this audit to inform SBA officials about the ratification process used to approve the unauthorized commitments, which warranted review prior to the issuance of our full report.

Re-Constituting of the Acquisition Function

The SBA's acquisition function has undergone significant change. According to Acquisition Division staff, a 2009 study revealed that the internal acquisition and procurement processes at the SBA had serious performance issues when located within the Division of Procurement and Grants Management (DPGM). The report, according to Acquisition Division staff, recommended that DPGM cease providing acquisition services and that the SBA establish a new program division.

The SBA moved the entire Acquisition Division from Washington, DC, to the Denver Finance Center (DFC) in October 2010. Additionally, the SBA hired all new contracting staff, except for two individuals who remained at Headquarters. Specifically, the transition to the DFC intended to: (1) separate the Acquisition Division from Program Office staff, (2) signify that the Acquisition Division's independence, and (3) place more emphasis on the Acquisition Division's role versus the Program Offices' roles in the acquisition process.

By January 2011, the re-constituted Acquisition Division began performing acquisition functions for the SBA. When the SBA received its fiscal year 2011 budget in May 2011, the new Acquisition Division awarded 60 percent of the Agency's contracts before the end of the fiscal year—nearly \$78 million in contracts.

However, as a result of the move to the DFC, a gap in contract services occurred due to high turnover of the DPGM staff related to the move. This gap in services resulted in a large number of contracts not being awarded prior to the performance period required by the Program Offices that had requested the contracts (or purchases). The Acquisition Division also inherited numerous problems from the previous acquisition function including a large number of unauthorized commitments made by various SBA Program Offices. Additionally, the OIG identified the SBA's acquisition process as a Management Challenge in October 2012. Our previous work showed that while the Agency has made improvements, continuing challenges exist, including (1) improper funding of contracts, (2) inadequate oversight, and (3) outdated guidance.

Roles of Contracting Officers and Contracting Officer's Representatives in Unauthorized Commitments

Generally, an unauthorized commitment occurs when a Government employee approves and accepts products or services without the appropriate authority. Unauthorized commitments violate regulatory and ethics standards, and legal and disciplinary action may be taken against any employee who makes an unauthorized commitment. The only Government employee authorized to commit the Government to receiving and paying for products or services is a warranted Contracting Officer (CO). The CO ensures that all laws, regulations, and other applicable procedures have been met in order to protect the interests of the Federal Government.

The COs appoint Contracting Officer's Representatives (COR) who serve as the Agency's representative to monitor and administer contracts, but with very specific limitations. Any Government employee can be appointed and certified as a COR—who also maintains the appropriate certification through required training. Importantly, CORs cannot make changes to the scope, price, schedule, terms, and conditions of the contract.

¹ SBA-OIG Advisory Memorandum 12-22, [The SBA's Ratification Process May Lead to Possible Anti-Deficiency Act Violations](#) issued September 28, 2012.

When a COR, and not the CO, makes commitments or changes to the contract, an unauthorized commitment will occur. Further, when a COR authorizes products or services to be provided without a valid contract in place, an unauthorized commitment will also occur.

Agencies can remedy an unauthorized commitment through the process of ratification, which approves the products or services so that related invoices can be paid. However, ratification should not be used in a manner that encourages unauthorized commitments to be made by Government employees.

SBA’s Unauthorized Commitments Impacted Mission-Related Services and Increased Costs

The SBA’s Unauthorized Commitments Occurred Across Various Type of Products and Services

The SBA received 417 invoices associated with unauthorized commitments totaling more than \$1.4 million between November 2010 and May 2012. The Acquisition Division received invoices for products or services associated with expired contracts—sometimes expired for more than one year—and invoices where a new or expired contract did not exist. Furthermore, these invoices were for products and services provided to the SBA without a valid contract in place for the work ranging from copier and Blackberry services to training support. Not only did the unauthorized commitments vary by product and service, they occurred across multiple SBA Program Offices. See Table 1 for a breakdown of the specific types of unauthorized commitments and the associated products or services.

Table 1 Unauthorized Commitments, by Type

Products or Services Received by the SBA	Total Number of Unauthorized Commitments	Total Value of Unauthorized Commitments
IT Support Services	2	\$437,950.33
Copier Services	177	\$341,046.23
Blackberry Services	3	\$145,201.40
IT Data Storage and Back-Up	1	\$139,584.69
Training Support	3	\$91,199.33
Credit Reports	44	\$67,045.57
Postage Meters	134	\$63,624.50
Others	53	\$125,092.74

Unauthorized Commitments at the SBA Far Exceed Those Occurring at Other Similarly-Sized Agencies

The SBA’s total number of unauthorized commitments for the last two fiscal years substantially exceeded the total number of unauthorized commitments at six federal agencies of similar size. When comparing the SBA’s unauthorized commitments to other small federal agencies with a similar contract portfolio, the six selected agencies had a total of 10 unauthorized commitments in the last two fiscal years. Further, we spoke with COs recently employed by the SBA who stated that they had never directly dealt with any unauthorized commitments at the other federal agencies in which they have previously worked.

Mission-Related Functions and Other Agency Activities Impacted by Unauthorized Commitments

The number of unauthorized commitments directly impacted the SBA’s ability to perform mission-related functions and other day-to-day activities. For example, by not properly planning for contracts, the SBA directly impacted the ability of SBA employees to perform activities to meet its mission of supporting small businesses. For example, the prior contract for the Business Development Management Information System² (BDMIS) expired without a new contract in place, and the vendor correctly took BDMIS offline. Subsequently, when responding to a press inquiry, the SBA stated that the BDMIS was not available due to a technical glitch, when in fact the reason for the “glitch” was that the contract had expired.

The SBA could not award an option year before the expiration of the existing contract because the Program Office did not provide notice to the Acquisition Division that it intended to exercise an option year in its contract. Further, the Program Office did not provide the required funding for the contract. In addition, while trying to award an option year for the

² The Business Development Management Information System is a web-based system for submission and processing of applications for certification under the 8(a) Business Development Program. This system also provides for the processing of annual reviews submitted by the 8(a) firms and processed by the SBA District Offices.

Figure 1 News Account of BDMIS “Glitch”

SBA system glitch leaves small firms unable to apply for 8(a) certification—Washington Business Journal

“Contractors hoping to apply for the Small Business Administration’s 8(a) program for small disadvantaged businesses are out of luck until at best mid-week, when the SBA expects to have its online application back up and running.

Apparently, the Business Development Management Information System—which small businesses use to apply for certification in the 8(a) Business Development Program and provide annual updates for continued eligibility—has been down since Nov. 2 due to a technical glitch.”

Source: Washington Business Journal, [SBA system glitch leaves small firms unable to apply for 8\(a\) certification](#), November 7, 2011

BDMIS, a senior program official stated in an email to the CO that while s/he knew the contract had expired and recognized the vendor’s rights not to provide services, s/he had hoped that the Acquisition Division would have “encourage[d] the contractor to continue to perform [services].” Had the contractor continued to provide services as the official requested, an unauthorized commitment would have occurred. Moreover, with this request, the senior official inappropriately asked a CO to violate federal regulations dictating their contract authority and designated warrant so that services could continue. Importantly, not tracking the period of performance on this contract, the COR put the mission of the Agency at risk and allowed an essential small business service to be unavailable. Since at least FY 2011, unauthorized commitments supported important mission-related functions and other operational activities in the Program Offices. Because there was no valid contract in place for those products or services, vendors should have discontinued services when the period of performance expired. If services were discontinued, the Agency would have lost essential tools that keep the SBA running on a daily basis, including Blackberry, copier, and postage meter services in Headquarters and District Offices throughout the country. For example, when a

contract for copiers is about to expire, the Program Office staff must submit an “Acquisition Package” to the Acquisition Division. This must be submitted by the recommended submission date to award a new contract or exercise an option year before the end performance date on the current contract. If this step is not completed, the Acquisition Division may not have enough time to award a new contract by the needed performance date. By not awarding a new contract or invoking an option year for the service, once the contract expires, any acceptance of copier services becomes an unauthorized commitment.

Ratification Process Diverted Staff and Increased Operating Costs for the Acquisition Division

In May 2012, the SBA’s Acquisition Division staff updated a ratification template. The intent of the template was to streamline the process used to ensure the Acquisition Division’s compliance with all seven requirements for ratifying unauthorized commitments in accordance with the FAR. Acquisition Division officials stated that they needed to ratify all of the unauthorized commitments as quickly as possible so they could focus on performing the more immediate or necessary contracting functions. With critical resources dedicated to ratifying unauthorized commitments, Acquisition Division staff could not focus solely on critical Agency needs and functions, which further delayed the acquisition process. Each ratification process required time and staff resources that would have otherwise been directed toward awarding new contracts for the Agency. Between November 2010 and May 2012, the SBA had ratified or closed out 241 invoices; however, 176 invoices still remained in the ratification process. The Acquisition Division staff estimated that the ratification of 1 to 2 invoices required the involvement of 17 employees involved in the process with a combined total of 31 hours to complete the ratification. Additionally, this “simple” ratification cost the SBA approximately \$1,500.00 per one to two invoices received. For more complex ratifications—such as the team combining all the invoices associated with a particular vendor—the cost and required time

from employees increased. The Acquisition Division estimated that a complex ratification required 17 employees a combined total of 127 hours, and a total cost of more than \$6,000.00. For example, the ratification process for unauthorized commitments associated with one vendor that provided copier services to the Agency began in August 2011 and took acquisition staff at least 11 months to complete.

Table 2 Comparison of Costs for a Simple and Complex Ratification at the SBA

Type of Ratification	Employees Involved	Total Hours Required	Total Cost
Simple	17	31	\$1,535.17
Complex	17	127	\$6,253.39

Source: Acquisition Data about the Estimated Cost of Ratification

Preventing Future Unauthorized Commitments Requires a Shift in Agency Culture to Sustain Recent Changes

Steps to Improve the Acquisition Process at the SBA Are Underway

According to SBA officials, the Acquisition Division has taken steps to prevent unauthorized commitments from re-occurring, and to ratify all previous unauthorized commitments. The SBA officials stated that efforts include decreasing the turnover rate in the Acquisition Division staff, and providing training to Program Office staff that participate in the acquisition process. Additionally, in FY 2012, the SBA developed an Advanced Acquisition Plan—the first one in five years. This plan lists all of the SBA’s planned acquisitions for an upcoming fiscal year based upon Advanced Acquisition Strategies submitted by the Program Offices. Further, the Agency increased the number of contracts awarded in the second and third quarters to decrease the “year-end crunch” and implemented an invoice notification system to decrease the amount of interest penalties incurred.

Sustaining Changes Will Require Improved Accountability, Planning, Guidance, and Training to Transform Culture

While SBA officials stated that strides have been made toward improving the SBA acquisition process and preventing future unauthorized commitments, transforming the organizational culture needs to occur so that changes can be sustained in the future. Culture is the underlying assumptions, beliefs, values, and attitude shared by its employees and directly impacts their behavior. The SBA has been struggling with changing its culture since at least 2009, and there is a recognized need to change the culture in the way the SBA does acquisition.

The following examples provided by the COs illustrate the practices of program management that override the system and impair the integrity of the acquisition process:

- ◆ For one contract, the Program Office contacted the vendor to obtain a quote and consequently developed the Statement of Work to directly

match the quote received. Contacting a vendor in this manner prior to solicitation is a direct violation of contract regulations.

- ◆ One vendor provided services on two occasions for a Program Office prior to a contract being awarded.
- ◆ Program Office staff pressured a CO to award a contract by a particular date because they had already arranged a meeting with the vendor prior to the contract being awarded.
- ◆ Vendors provided services to the SBA without a valid contract in place because that was how the SBA conducted business. The vendor would eventually be awarded a contract and receive payment.

Successfully changing the culture at the SBA requires that: (1) Agency management be committed to the change in both words and action; and (2) the Agency provide training that promotes and develops skills related to its desired values and beliefs. Specifically, the SBA needs to hold its employees accountable for their actions, have detailed policy and guidance readily accessible to all of its employees, and provide meaningful acquisition training to all employees.

Accountability

Effective programs hold employees accountable for their actions by linking those actions to performance ratings or other administrative actions, if necessary.

When an unauthorized commitment occurs, the SBA can take administrative, financial, or legal action against the SBA employee(s). Additionally, when an unauthorized commitment occurs, the government employee violates the *Standards of Ethical Conduct for Employees of the Executive Branch*, and may be held personally liable for such commitments. However, our review indicates that the SBA has not taken action against any SBA employee who improperly committed the Government. Furthermore, if an unauthorized commitment cannot be ratified, the vendor can take legal action against the employee to obtain payment

for the total value of the unauthorized commitment.

Moreover, an effective performance management system can be used to drive internal change and achieve desired results. Linking performance to Agency goals and core values reinforces individual accountability for results and helps create cultural change. By implementing a unified Agency goal of eliminating the unauthorized commitments that occur at the SBA, the Agency can then directly link that goal to individual performance and applicable ratings of all employees—including SBA managers.

Planning and Guidance

Effective planning and guidance is an important element of results-oriented framework; it helps to clarify priorities, unify the Agency in pursuit of common goals, and facilitate services.

Since the creation of the new Acquisition Division, the SBA has developed more guidance related to acquisition planning. However, existing guidance specific to unauthorized commitments is limited, and the Standard Operating Procedure (SOP) for contracts has not been updated in 28 years. Updated guidance for employees and managers related to the Agency’s goal of decreasing the total number of unauthorized commitments would signify the importance of preventing future unauthorized commitments.

Current agency guidance does not define an unauthorized commitment, outline the significance of the action, or provide examples on preventing unauthorized commitments. The SBA’s SOP about government contracts only includes limited information on ratification and states that, “individuals not delegated authority to obligate the government have been known to attempt to commit the government or have work performed without contracting officer authorization.”

Alternatively, some other federal agencies have more detailed guidance outlining unauthorized commit-

ments and ratification—[see Appendix V](#). These guides vary from detailed sections about unauthorized commitments and ratification in the agencies’ acquisition procedures and guidelines, to individual guidance supplements dedicated solely to unauthorized commitments and ratification. For example, the Department of Commerce guide states that:

The preventative measures herein as well as the multi-level review for all ratifications of unauthorized procurement actions required by this Chapter emphasize the Department’s goal to minimize these actions.

Additionally, these guides state that the Government can only avoid unauthorized commitments through attention to detail and strict adherence to official guidance by Agency personnel. The SBA has an Administrative Procedure for the ratification process and notes that the goal of the SBA is to “preclude, to the maximum extent possible, the need for ratification of actions.” However, the procedure only provides general information about the ratification process and no guidance to Agency personnel about how to prevent unauthorized commitments. Detailed guidance about unauthorized commitments would provide direction and tie day-to-day actions and performance to laws and regulations. This detailed guidance would provide the Agency greater authority to hold its employees accountable for their actions.

Training

Effective change requires training that promotes and develops skills related to the Agency’s performance expectations and underlying values and beliefs.

When the Acquisition Division moved to the DFC, it developed and updated the contracting procedures and responsibilities of CORs to be used by all Program Office staff in planning for and managing contracts. However, according to Acquisition Division staff and our review of contract files, not all Program Office staff properly planned for or managed their contracts.

Specifically, these planning and management issues were caused by a lack of training and confusion about acquisition procedures. Importantly, Federal Acquisition Certification for CORs dictate that a COR must remain up-to-date with required contract training. By not tracking required contract deadlines and submitting inadequate Acquisition Packages to the Acquisition Division, Program Office staff hindered the ability of the Acquisition Division to award contracts to meet their needs. Specifically, Acquisition Division staff indicated that some CORs had issues managing the timeframes of a new contract and knowing when to provide notice about using an option year. Additionally, prior to moving the Acquisition Division to the DFC, the SBA did not consistently follow applicable federal laws and regulations when funding contracts. After the move, the change from previous practices created confusion among the Program Office staff based upon our analysis of ratification documentation—thus directly impacting the ability of the SBA to acquire products or services efficiently. The SBA has been providing more training to its Program Office staff on properly contracting for needed products or services.

However, to fully effect the changes the Agency seeks, future training provided by the SBA needs to focus on contract planning. This includes developing contract requirements and the potential ramifications of poor contract planning, such as unauthorized commitments or a gap in services. When a Program Office or a COR does not effectively plan for its contracts and renewals, either the Agency will not receive consistent services or unauthorized commitments may occur again in the future when essential products or services are required. This poor contract management impairs the ability of the Agency to provide mission-related services and other operational functions. See [Appendix III](#) for more information about contract management regulations and best practices.

Conclusions and Recommendations

Conclusions

The large number of unauthorized commitments, and the reasons behind these occurrences at the SBA, indicate a breakdown in contract management practices. Because the SBA did not effectively perform basic acquisition functions, these unauthorized commitments put the Agency's mission and mission support activities at risk through potential loss of critical services. While federal regulations provide a means to ratify unauthorized commitments so the Government can pay for the services received, unauthorized commitments should be a very rare occurrence. Furthermore, the ratification process has diverted critical resources from other acquisition activities and added unnecessary cost to the acquisition process.

The SBA has made strides in implementing changes to improve the acquisition process, but sustaining these changes over the long term remains in doubt without transformation of the SBA's culture which permitted these problems to occur. Moreover, the Agency needs to ensure that the practices and behavior of its employees align with Federal law and regulations. Additionally, SBA managers and executives play a key role in setting the tone in support of the change, and ensuring that appropriate controls are in place to prevent management override of the acquisition process. Managers and executives at each level of the organization are responsible for developing an environment that encourages ethical and effective acquisition practices. This requires better planning, guidance, training, and ultimately holding people accountable for their actions. Until the Agency takes action to change the current culture, unauthorized commitments may occur in the future, and the Agency will continue to be placed at risk as a result.

Recommendations

We recommend that the SBA Administrator:

- 1) Determine whether it is appropriate and feasible to take administrative and/or legal actions against SBA employee(s) making unauthorized commitments in instances where an unauthorized

commitment cannot be ratified.

We recommend that the Chief Acquisition Officer in coordination with the Senior Procurement Executive:

- 1) In the short-term, issue a Procedural Notice identifying what an unauthorized commitment is and that under no circumstances should an unauthorized commitment occur. This Procedural Notice should also state that administrative and/or legal action may be taken against those employees who commit the Government without the authority to do so.
- 2) Update and implement the Agency Standard Operating Procedures for acquisitions to include the information provided in the Procedural Notice on unauthorized commitments.
- 3) Develop a separate acquisition process guide for SBA staff specific to unauthorized commitments and the ratification process.
- 4) Update the COR Acceptance Letter to include that SBA staff assigned as a COR will not make an unauthorized commitment, and will follow guidance related to unauthorized commitments.
- 5) Consider options for incorporating compliance with the COR Acceptance Letter and Federal Acquisition Regulations into the annual performance assessment for those SBA employees certified as CORs.
- 6) Provide annual training to SBA employees involved in the acquisition process on properly planning for and managing contracts at the beginning of the fourth quarter to include addressing how unauthorized commitments occurred in the past and how to prevent them.

Management Actions Taken and In Process

The SBA updated the ratification template and process as of May 2012 to address concerns raised by the audit team during this audit. The OIG discussed this ratification process and concerns in [Advisory Memorandum 12-22, The SBA's Ratification Process Could Lead to Possible Anti-Deficiency Act Violations](#).

Agency Comments and OIG Response

On January 24, 2013, we provided a draft of this report to the Agency for official comment with one recommendation directed to the SBA Administrator and six recommendations directed to the Chief Acquisition Officer and the Senior Procurement Executive. The SBA Administrator delegated responsibility for comment to the Office of General Counsel, which submitted official comments on March 13, 2013. Those comments are included in their entirety in [Appendix VI](#). The OIG received formal comments from the Chief Financial Officer—who is the designated Chief Acquisition Officer—on March 4, 2013. Those comments are included in their entirety in [Appendix VII](#). According to the Chief Financial Officer, the final comments submitted include comments from the Senior Procurement Executive, and for the purposes of this report serve as evidence of coordination between the Chief Acquisition Officer and the Senior Procurement Executive (SPE). However, in the audit recommendation follow-up process, because the Chief Acquisition Officer and the SPE are responsible for acquisition management, the OIG will require signed SBA Form 1824s, *Recommendation Action Sheets*, from both officials to close out our recommendations. We consider management comments to be responsive to four recommendations, and non-responsive to three recommendations. A summary of management’s general comments, recommendation-specific comments, and our responses follows.

General Management Comments (1)

The Chief Financial Officer (CFO) stated that he shares the OIG’s concern about unauthorized commitments and the potential ramifications. The CFO also agreed that the SBA should take steps to eliminate unauthorized commitments. Further, the CFO indicated that utilizing Agency staff and other resources to ratify these unauthorized commitments detracted, at times, from the daily operations of the Agency. The CFO further supports an agency-wide approach, at all

levels, to improve the culture through improved accountability, communication, and guidance. However, the CFO believes that our recommendations conflict with our audit conclusions because we only directed responsibility for responding to the Chief Acquisition Officer and SPE.

OIG Response

The Chief Acquisition Officer and SPE are the key drivers of acquisition policy within an agency and must work together to ensure the Agency: (1) buys smarter; (2) strengthens its acquisition workforce; (3) builds the right supplier relationships; and (4) advances mission performance.³ Furthermore, based on our conclusions, the Chief Acquisition Officer and the SPE, along with the CFO, are in the best position to prevent, to the maximum extent possible, unauthorized commitments from occurring given their duties required by their designation.

The SBA Administrator’s designation letter for the Chief Acquisition Officer at the SBA states that his official duties are outlined in 41 U.S.C. 414(b)—now 41 U.S.C 1702(b). The duties of the Chief Acquisition Officer help to ensure that the acquisition process operates in compliance with all federal acquisition laws and regulations in order to safeguard the interest of the Government. Guidance from the Office of Management and Budget (OMB) states that the Chief Acquisition Officer should ensure that acquisition issues receive high-level management attention to produce the best possible outcome and value for the taxpayer.⁴ Additionally, the OMB guidance provides that Chief Acquisition Officers should work closely with the SPEs in order to have the biggest impact on acquisition management at a federal agency. Having an effective SPE is an important factor in developing an efficient, effective, and accountable agency acquisition function. In accordance with 41 U.S.C. § 1702(c),⁵ the Senior Procurement Executives are responsible for the

³ *Memorandum for Chief Acquisition Officers and Senior Procurement Executives: Clarifying Chief Acquisition Officer Roles and Responsibilities*. Office of Federal Procurement Policy. October 18, 2012.

⁴ The Services Acquisition Reform Act of 2003 established the position of the Chief Acquisition Officer to ensure that acquisition issues receive high-level management attention. 41 U.S.C. Section 414.

⁵ 41 U.S.C. Section 1702(c) and 41 U.S.C. Section 414(c) – Senior Procurement Executive.

management direction of the agency's acquisition system, including implementation of agency-specific acquisition policies. Specifically, the SPE's role includes the development of the acquisition SOP, which is the subject of several of our recommendations. Moreover, to perform effective acquisition management, the Chief Acquisition Officer must also work closely with others (government-wide and within their agencies), including the Chief Information Officer, the Chief Human Capital Officer, and program and project managers to continuously improve the federal acquisition system.

Furthermore, based upon OMB guidance and their roles and duties, the Chief Acquisition Officer and SPE are the key officials that drive acquisition policy within an agency. Specifically, the Chief Acquisition Officer should coordinate with the SPE to monitor the performance of acquisition activities and acquisition programs at the SBA. To do this, the Chief Acquisition Officer and the SPE should coordinate with other senior management officials and program office officials to ensure that the Agency complies with all acquisition laws and regulations. Additionally, the Chief Acquisition Officer and the SPE should work together to evaluate the performance of those programs based on the applicable performance measurements. The Chief Acquisition Officer and the SPE must also advise and assist the SBA Administrator and other Agency officials to ensure that effective acquisition management helps achieve the SBA's mission and address any performance issues. Further, within their duties, the Chief Acquisition Officer and SPEs have the responsibility to address the large number of unauthorized commitments, monitor and improve the acquisition process at the SBA, and advise the SBA Administrator on appropriate strategies to prevent unauthorized commitments. As a result, we stand by our conclusions and direct responsibility for six of our recommendations to the Chief Acquisition Officer and the SPE. For more clarification on the role of the Chief Acquisition Officer and the SPE in implementing our recommendations, please see the OIG's response to each management comment below.

General Management Comments (2)

The CFO stated that the OIG report suggests responsibility and actions of the Acquisition Division, which fall beyond the scope of that Division. The CFO specifically mentions the areas of ethical conduct training for all employees and taking personnel actions against those employee(s) making unauthorized commitments.

OIG Response

The OIG does not contest that the responsibilities and actions of the Acquisition Division do not encompass ethics training and disciplinary action for those employee(s) who made an unauthorized commitment. We addressed our recommendation involving the SBA taking personnel action resulting when an unauthorized commitment occurs directly to the SBA Administrator. This recommendation directs the SBA Administrator to determine whether it is appropriate to take administrative and /or legal action against SBA employee(s) when those employee(s) execute an unauthorized commitment.

We did not make a recommendation to the Chief Acquisition Officer and the SPE about providing ethical conduct training, nor mention in the report that ethical conduct training should be the responsibility of the Acquisition Division. Our report does mention that making an unauthorized commitment is a violation of ethics standards; however, our report also states that making an unauthorized commitment violates federal acquisition regulations and policy. Our recommendation related to training directs the Chief Acquisition Officer and the SPE to provide training on the acquisition process and properly planning for and managing contracts. Furthermore, the CFO agreed with our training recommendation and stated that acquisition training will be provided to the entire Agency, and not just acquisition personnel.

General Management Comments (3)

The CFO indicated that the draft report failed to address whether any negative actions were taken

against any SBA employee who made an unauthorized commitment.

OIG Response

We disagree with the assertion that the draft report failed to address whether negative actions were taken against any SBA employee who made an unauthorized commitment. Specifically, on page 9 of our draft report—also page 10 of our final report—we stated:

...However, our review indicates that the SBA has not taken action against any SBA employee who improperly committed the Government.

While the OIG draft report acknowledges that the SBA has taken some steps toward improving the acquisition process at the SBA, unauthorized commitments have continued to occur at the SBA. Due to the continuance of unauthorized commitments, the OIG believes that significant changes are still needed to improve the acquisition process and prevent future unauthorized commitments.



OIG RECOMMENDATION TO THE SBA ADMINISTRATOR

Recommendation 1 – Determine whether it is appropriate and feasible to take administrative and/or legal actions against SBA employee(s) making unauthorized commitments in instances where an unauthorized commitment cannot be ratified.

Management Comments

The SBA Administrator delegated responsibility of this recommendation to the Office of General Counsel. The Office of General Counsel stated that it agreed with our recommendation and will determine whether it is appropriate, feasible, and legal to take administrative and/or legal action against SBA employee(s) making unauthorized commitments in instance where an

unauthorized commitment cannot be ratified.

OIG Response

We consider management’s comments responsive to the recommendation.



OIG RECOMMENDATIONS TO THE CHIEF ACQUISITION OFFICER IN COORDINATION WITH THE SENIOR PROCUREMENT EXECUTIVE

Recommendation 1 – In the short-term, issue a Procedural Notice identifying what an unauthorized commitment is and that under no circumstances should an unauthorized commitment occur. This Procedural Notice should also state that administrative and/or legal action may be taken against those employees who commit the Government without the authority to do so.

Management Comments

The CFO stated that the Office of the Chief Financial Officer (OCFO) circulated an updated acquisition Standard Operating Procedures (SOP) for comment, and will include the expanded language in the final SOP. The CFO believes that the updated SOP negates the need for a Procedural Notice and is responsive to Recommendation 2.

OIG Response

We consider management’s comments non-responsive to the recommendation. The OIG supports the SBA’s efforts to update its current acquisition SOP, but as indicated in our report, the SBA has not updated its acquisition SOP in 28 years—since 1985. Additionally, the SBA initiated its effort to update the SOP in July 2007 and, more recently, on February 5, 2013, submitted the SOP for the internal clearance process for comment. This process could take a long time before the SOP is issued in final. Further,

unauthorized commitments have continued to occur since we completed our audit fieldwork. In our opinion, the Agency could have been proactive by issuing a Procedural Notice at any point in time after the Agency became aware of the significance of having 417 unauthorized commitments. During the course of this audit, the OIG notified the Agency of the magnitude and significance of this issue numerous occasions:

- (1) Our site visit to the Denver Finance Center in May 2012;
- (2) Our exit meeting with the Agency for our audit on the SBA's Ratification Process in August 2012;
- (3) The issuance of OIG Advisory Memorandum 12-22, *The SBA's Ratification Process Could Lead to Possible Anti-Deficiency Act Violations* in September 2012; and
- (4) Our exit meeting with the Agency on this audit of its unauthorized commitments in November 2012.

Unauthorized commitments continue to occur, and it is likely that the SOP will remain in draft for some time. Therefore, the Agency needs to take immediate action to signify that unauthorized commitments are improper and should not be occurring—regardless of the circumstances. Issuing a Procedural Notice in the interim is a simple and efficient way to raise awareness of the issue within the Agency until the draft SOP has been finalized. Therefore, we stand by our recommendation to issue a Procedural Notice in the interim.

Further, the duties of the Chief Acquisition Officer and SPE outlined in their designation letter provide them with responsibility for managing the direction of acquisition policy for the executive agency. This responsibility includes implementation of the unique acquisition policies, regulations, and standards of the executive agency. Within this authority, the OIG appropriately addressed the recommendation to develop a Procedural Notice for unauthorized commitments to the Chief Acquisition Officer and the SPE, and not the OCFO, as discussed in management's comments.

Recommendation 2 – Update and implement the Agency standard operating procedures for acquisition to include the information provided in the Procedural Notice on unauthorized commitments.

Management Comments

As discussed in its response to Recommendation 1 to the Chief Acquisition Officer and the SPE, the OCFO has circulated an updated acquisition SOP for comment. The OCFO plans to incorporate the expanded language into the final SOP, as discussed above in Management Comments to Recommendation 1 made to the Chief Acquisition Officer and the SPE.

OIG Response

We consider management's comments responsive to the recommendation, and the OIG encourages the SBA to finalize the draft acquisition SOP as soon as possible. Further, during the comment process, the SBA needs to ensure that the Chief Acquisition Officer and the SPE are the key drivers of the SOP update consistent with the requirements in their duties. The draft SOP indicates that the OCFO will issue and maintain the SOP and make any necessary revisions. However, as discussed above, the roles of the Chief Acquisition Officer and the SPE include responsibility for updating the acquisition SOP. Within this authority, the OIG appropriately addressed the recommendation to include information about unauthorized commitments in the updated SOP to the Chief Acquisition Officer and the SPE instead of the OCFO, as discussed in management's comments.

Recommendation 3 – Develop a separate acquisition process guide for SBA staff specific to unauthorized commitments and the ratification process.

Management Comments

The CFO disagreed that an unauthorized commitment-specific guidance document for distribution to SBA employees will result in achieving the needed improvements in outreach and communication. The CFO further stated that the OCFO will examine how it

can assist in an agency-wide approach to eliminate unauthorized commitments.

OIG Response

We consider management’s comments non-responsive to the recommendation. Management’s proposed alternative action does not contain sufficient detail to determine whether it meets the intent of our recommendation.

Given the magnitude of unauthorized commitments that occurred, and that are still occurring at the SBA, we believe that the SBA needs to emphasize the prevention of unauthorized commitments through an individual document. While the OIG appreciates the involvement of the OCFO, the comments do not provide any explanation about how the Chief Acquisition Officer and the SPE plan to implement our recommendations. Further, the duties of the Chief Acquisition Officer and the SPE provide them with the responsibility to implement agency-specific acquisition policies, regulations, and standards of the executive agency. Additionally, it requires the Chief Acquisition Officer and the SPE to develop strategies for training and professional development to rectify a deficiency in the acquisition process.

The development of unauthorized commitment-specific guidance draws attention to a specific deficiency in the acquisition process at the SBA. It also provides a quick reference for all SBA employees as to how to avoid making unauthorized commitments, instead of requiring employees to search for the information in a draft SOP that is currently 109 pages in length. Further, the OIG recognizes that other federal agencies have included guidance about unauthorized commitments in their acquisition manual. However, the SBA had over 400 unauthorized commitments and continues to incur unauthorized commitments, which constitutes a serious problem that the Agency needs to address as a priority. To put the number of occurrences in perspective, as listed in our report, similar sized agencies incurred far fewer unauthorized commitments than the SBA. Moreover, the U.S. Postal

Service—with a much larger contracting budget of \$12.3 billion in FY 2011—incurred 78 unauthorized commitments over a two-year period.

Recommendation 4 – Update the COR Acceptance Letter to include that SBA staff assigned as a COR will not make an unauthorized commitment, and will follow guidance related to unauthorized commitments.

Management Comments

The CFO stated that the COR Acceptance Letter addresses what a COR is allowed to do, and does not encompass all instances of what a COR cannot do or should not do. The CFO additionally stated that the COR Acceptance Letter is not the most appropriate place for this type of information. The CFO acknowledges that it will work with the OIG to address this concern.

OIG Response

We consider management’s comments non-responsive to the recommendation. According to their duties, the Chief Acquisition Officer, in coordination with the SPE, need to make acquisition decisions that establish clear lines of authority, accountability, and responsibility that are aligned with all applicable laws and regulations. Additionally, as indicated in our report, the SBA should make eliminating unauthorized commitments an Agency priority. Further, the Chief Acquisition Officer should assess the adequacy of requirements that facilitate the achievement of performance goals established for acquisition management within an executive agency.

Federal Acquisition Regulations Subpart 1.602-2(d)(6)⁶ outlines that within a COR Acceptance Letter, the agency should identify the limitations of the COR’s authority and state that the COR may be personally liable for unauthorized acts. While the CFO believes that the COR Acceptance Letter is not the appropriate place for the information outlined in our recommendation, the FAR shows that the letter should outline what a COR cannot do and that a COR can be held

⁶ FAR Subpart 1.602-2(d)(6) - Responsibilities.

liable for unauthorized acts. These unauthorized acts referenced in the FAR include unauthorized commitments. Moreover, because the SBA incurred over 400 unauthorized commitments, the Agency should specifically address unauthorized commitments in the COR Acceptance letter. In addition, the existing COR Acceptance Letter outlines 26 actions that a COR can do, and 14 actions that a COR cannot do. Six of those fourteen actions that a COR cannot do would result in an unauthorized commitment; however, these actions are not directly linked to unauthorized commitments as currently described in the Acceptance Letter.

Additionally, on page 46 of its draft acquisition SOP, the SBA outlines procedures for notifying a COR when (s)he has exceeded his/her authority. By specifically stating in the Acceptance Letter that a COR may not make an unauthorized commitment and must follow all agency guidance involving unauthorized commitments, the Agency can hold a COR responsible for violating his/her COR Acceptance Letter. Specifically, the draft SOP states that when a COR exceeds his/her authority:

The CO will prepare a letter to the COR pointing out the improper action and reminding the COR of the limitations of his/her authority under the COR appointment. It [the SBA] will specifically reserve the right of the Government to take further action against the individual for his/her improper acts. The letter will be forwarded to the COR through his/her department director and supervisor. Depending upon the nature of the abuse, the CO has the authority to revoke the COR appointment immediately. The CO may also take other actions required by law or regulation such as, when appropriate, referring the action to other investigative authorities.

When finalized, the acquisition SOP along with incorporation of the recommended language into the COR Acceptance Letter will help safeguard the SBA against any unauthorized or illegal actions taken by the COR that may have resulted in an unauthorized commitments. This also allows for appropriate action

to be taken when an unauthorized commitment cannot be ratified.

Recommendation 5 – Consider options for incorporating compliance with the COR Acceptance Letter and Federal Acquisition Regulations into the annual performance assessment for those SBA employees certified as CORs.

Management Comments

The CFO stated that while the performance management plans are outside of the scope of the Acquisition Division's authority, the Agency's new performance management system, the Talent Management Center, includes a performance element that ties COR responsibilities to an individual's annual performance plan. This new performance requirement went into effect at the beginning of fiscal year 2013.

OIG Response

We consider management's comments responsive to the recommendation; however, the OIG recommendation was directed to the Chief Acquisition Officer and the SPE, and not the Acquisition Division—as mentioned in Management Comments. The Chief Acquisition Officer and SPE are responsible for ensuring all performance requirements for the acquisition process at the Agency comply with applicable laws and regulations. Additionally, the Chief Acquisition Officer and SPE ensure that the Agency incorporates all policies and procedures released by the OMB involving the implementation of acquisition policy. The OMB's Office of Federal Procurement Policy (OFPP) issued a Revision to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) in September 2011 that recommends that agencies add COR responsibilities as a critical element in their performance plans. In moving forward with incorporating COR performance elements into an individual's annual performance plan, the OIG encourages the SBA to ensure all CORs assigned to an active contract within the performance period have the COR performance elements in their plan. Moreover, as directed by OFPP, the COR's performance management process

should allow for input by the Contracting Officer into the COR's performance appraisal. Further, OFPP recommends that agencies incorporate oversight of COR responsibilities as a performance standard for all COR supervisors. The Chief Acquisition Officer should also coordinate with the Chief Human Capital Officer and other appropriate officials to ensure the SBA integrates COR performance elements into the performance plans for all active CORs.

Recommendation 6 – Provide annual training to SBA employees involved in the acquisition process on properly planning for and managing contracts at the beginning of the fourth quarter to include addressing how unauthorized commitments occurred in the past and how to prevent them.

Management Comments

The CFO stated that the Agency will include the topics mentioned in Recommendation 6 in the ongoing training conducted at the SBA. Additionally, the OCFO believes that this training needs to encompass an agency-wide approach to addressing unauthorized commitments. The CFO also believes it would be more effective to have this training provided at an employee's on-boarding, or in a means similar to other required annual employee training (e.g. IT security or "CSAT"), which is provided to employees through a training module taken via computer.

OIG Response

We consider management's comments responsive to the recommendation. Based on OMB guidance, the Chief Acquisition Officer and the SPE should focus on building a well-trained acquisition workforce that can properly define requirements, build the right supplier base, select the best solutions for contract awards, and effectively manage these acquisitions. While the OIG recommended that those involved in the acquisition process receive the training, we fully support any effort to provide annual agency-wide training on contract authority that also addresses unauthorized commitments and how to prevent them. Additionally, to help support agency-wide training efforts, the Chief

Acquisition Officer should work with the Agency's Chief Human Capital Officer, the Chief Information Officer, and principle program managers in the development and implementation of the training.

Actions Required

Please provide your management decision for each recommendation on the attached SBA Form 1824s, *Recommendation Action Sheets*, within 30 days from the date of this report. Your decision should identify the specific action(s) taken or planned for each recommendation and the target date(s) for completion.

We appreciate the courtesies and cooperation of the Small Business Administration during this audit. If you have any questions concerning this report, please call me at (202) 205-7390 or Riccardo R. Buglisi, Director, Business Development Programs Group at (202) 205-7489.

Appendix I: Scope and Methodology

The OIG conducted this audit in response to a hotline complaint received regarding the large number of unauthorized commitments occurring at the SBA. Our audit objective was to determine the extent and reasons for unauthorized commitments incurred by the SBA as of May 2012. To meet our audit objectives, auditors conducted a site visit to the Denver Finance Center where we obtained documentation from procurement and ratification officials. During this site visit, we interviewed 13 contracting officers and contract specialists as well as Acquisition Division managers to learn about their background, agency acquisition planning, unauthorized commitments, and their coordination with program officials. The audit team also conducted interviews with the Office of the Chief Financial Officer, the Office of General Counsel, and the Office of Management and Administration. Additionally, the audit team reviewed applicable public laws and Federal Acquisition Regulations related to unauthorized commitments and ratification. We also reviewed internal agency policy and guidance including the SBA Standard Operating Procedures for Acquisition, guidance available on the SBA Acquisition intranet website, available trainings for acquisition staff, and standards of ethical conduct.

The audit team reviewed data from the Acquisition Division showing the SBA received invoices associated with at least 417 unauthorized commitments valuing at more than \$1.4 million. For our audit, we selected unauthorized commitments for further review based upon the total value of the invoices and total number of invoices associated with each vendor. Additionally, the audit team selected unauthorized commitments that were in various stages in the ratification process to help depict the process from start to finish. The sample universe of this audit included a total of eleven vendors with a total value of \$1,017,713.36 across 198 unauthorized commitments. More specifically the audit team reviewed 55 ratified invoices from three vendors valuing \$490,572.01 and assessed 143 unauthorized commitments valued at \$490,570.01 that had not been ratified. Additionally, the audit team included one example in our universe identified by the Acquisition Division where an unauthorized commitment almost occurred.

The audit team reviewed and assessed each unauthorized commitment and ratification package in our scope to determine the reasons why the unauthorized commitments occurred. Within the review of the contract, if applicable, and ratification documentation, we analyzed and compared the reasons stated by the employees, who acted as Contracting Officers Representatives, and the vendors on why the unauthorized commit occurred. Additionally, we reviewed the selected ratification packages to determine if the ratification met all federal regulations and agency policies. The audit team further reviewed policies and regulations applicable to all federal agencies and the SBA to identify best practices for contract management to evaluate the current contract management practices used by the SBA. To identify these best practices the audit team reviewed SBA Standard Operating Procedures, guidance developed by the SBA Acquisition Division, the Federal Acquisition Regulations, and guidance and policies issued by the Office of Federal Procurement Policy within the Office of Management and Budget.

We conducted our audit in accordance with generally accepted government auditing standards from December 2011 to November 2012. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Review of Internal Controls

Earlier in this audit, we identified a significant internal control weakness in the SBA's ratification process of unauthorized commitments. We reported this issue in [Advisory Memorandum 12-22, *The SBA's Ratification Process Could Lead to Possible Anti-Deficiency Act Violations*](#). We found that the process the SBA used did not comply with Federal Acquisition Regulations (FAR) ratification requirements. Following our notification, the Acquisition Division updated its process to ensure compliance with the FAR. The updated ratification process was not evaluated within the scope of this audit.

Additionally, we reviewed the available internal guidance related to unauthorized commitments. Each Contracting Officers Representative (COR) is required to sign an Acceptance Letter to acknowledge his or her role in monitoring each contract. However, the information in the letter related to unauthorized commitments was not sufficient to prevent violation of federal policies and procedures. More controls are needed to ensure that the COR does not violate standards agreed to with the signing of the Acceptance Letter.

Nature of Limited or Omitted Information

We did not omit information due to confidentiality or sensitivity, nor were there limitations to information on this audit.

Use of Computer Processed Data

We relied on the data prepared by the Denver Finance Center (DFC) Acquisition Division and computer processed data from the Federal Procurement Data System - Next Generation (FPDS-NG) to access general contract information for our review. The data obtained from the Acquisition Division was accurate and complete, and supported the objectives of this audit. Therefore, this data is sufficiently reliable for the purposes of our review. The FPDS-NG data was used to conduct background research and is not the sole support for the audit findings; therefore, it is also sufficiently reliable for the purposes of our review.

Prior Coverage

The Office of the Inspector General issued [Advisory Memorandum Number 12-22](#), *The SBA's Ratification Process Could Lead to Possible Anti-Deficiency Act Violations*, on September 28, 2012. We reported that the SBA had ratified unauthorized commitments associated with an expired postage meters contract without determining whether unobligated funds were available when the unauthorized commitment initially occurred. Without such a determination, the ratifications may put the SBA at risk for an Anti-Deficiency Act

violation. The OIG did not determine how widespread the deficiency was, but wanted to provide SBA management with early notification of the issue so the SBA could take corrective action, if needed.

Additionally, *Acquisition Management* was added as a challenge in the annual OIG Management Challenge report, *Report on the Most Serious Management and Performance Challenges Facing the Small Business Administration in Fiscal Year 2013*, [Report Number 13-02](#). The SBA Acquisition Program and its processes was added because remaining challenges include, (1) poorly defined requirements, (2) internal control deficiencies, (3) improper funding of contracts, (4) inadequate oversight, and (5) outdated and incomplete SOPs related to acquisition.

The U.S. Postal Service, Office of the Inspector General published [Report Number CA-AR-12-004](#), *Unauthorized Contractual Commitments* on August 6, 2012. This audit report found that during fiscal years (FYs) 2010 and 2011, the Postal Service had a total universe of 78 unauthorized commitments, valued at \$1.8 million. Of the selected unauthorized contractual commitments, the OIG founds that Postal Service personnel did not always ratify those unauthorized contractual commitments in accordance with internal policy. Additionally, unauthorized contractual commitments pose a risk to the Postal Service when personnel do not follow normal purchasing procedures, as these purchases do not include the terms and conditions necessary to protect the interests of the Postal Service. In addition, unauthorized contractual commitments may not be an appropriate or advantageous business arrangement for the Postal Service and warrant management attention.

Appendix II: Unauthorized Commitments— Frequently Asked Questions

An unauthorized commitment should not occur in a Federal Agency. Unauthorized commitments indicate a breakdown in contract management. The Federal Government and the SBA are placed at risk when unauthorized commitments occur. This risk occurs because the Contracting Officer (CO) has not made the same assurances that the necessary terms and conditions are in place to protect the interests of the SBA. Additionally, the CO has not assured that funds are available for the commitment.

Below are *Frequently Asked Questions* defining an unauthorized commitment, ways to avoid making an unauthorized commitment, and what to do if an unauthorized commitment occurs. This list of questions is not comprehensive and the following information will not guarantee the prevention of an unauthorized commitment. All SBA employees have a duty to comply with federal laws and safeguard the agency and its commitments appropriately.

What is an unauthorized commitment?

Federal Acquisition Regulations (FAR) Subpart 1.602-3—*Ratification of unauthorized commitments*, defines an unauthorized commitment as an agreement between a vendor and a government representative that is not binding solely because the Government representative who made the commitment lacked the authority to enter into that agreement. The only Government representative with the authority to bind the Government is a certified Contracting Officer, and only to the extent of his or her delegated authority. Furthermore, the FAR also states that no government contract should be made with a vendor unless the CO ensures that all laws, executive orders, regulations, and all other applicable procedures have been met.

Additionally, during the process of identifying unauthorized commitments and completing ratification, the SBA Acquisition Division staff defines an unauthorized commitment as:

- 1) Any invoice that is received where an unauthorized program official approved the purchase of a product or service;
- 2) Any invoice that is not associated with an active contract—usually an expired contract; or
- 3) Any invoice that is for a good and/or service outside of the scope of work for active contracts.

What does an unauthorized commitment look like?

The following examples are unauthorized commitments that occurred at the SBA. The examples are meant to provide possible indicators of what an unauthorized commitment looks like and how they can occur.

Example 1: Blackberry Services

Blackberry service is essential to the Agency's regular operations. However, the Agency almost lost Blackberry service three times in a nine month period. In this situation, the contracting officer's representative (COR) did not plan for and complete a new requisition or submit the needed funding in time to award a new contract before the original period of performance expired. The previous contract for Blackberry services expired at the end of September 2011 yet the SBA continued to receive the Blackberry services. By continuing to receive the Blackberry services without a valid contract in place between October 2011 and December 2011, the SBA incurred \$145,201.40 in services through unauthorized commitments. After unauthorized commitment occurring for

three months, the COR and Program Office still did not provide a new requisition and adequate funding to cover a 12-month contract for Blackberry services. Therefore, the SBA could only award a two-month bridge contract for Blackberry services from January 5, 2012 through March 4, 2012, to prevent more unauthorized commitments. When the bridge contract was on the verge of expiring, the COR and Program Office still had not provided the required requisition paperwork and funding. To prevent a disruption in services without incurring more unauthorized commitments, the SBA awarded a letter contract, which is used in limited circumstances because they do not provide the same protections to the Government or ensure the Government receives the best price available. Better planning for the required services in advance could have prevented the use of a letter contract and the potential disruption of essential Agency services.

Example 2: Copier Services

The use of copiers and printers is required for normal business operations, and if a valid contract is not awarded to continue the services once the previous contract expires, unauthorized commitments will occur or the essential service will be suspended. A large number of the unauthorized commitments occurring in the last two fiscal years were related to copier and scanner services. The Agency had 177 unauthorized commitments involving seven vendors for copiers with a total value of \$341,046.23. The unauthorized commitments for copier services occurred because the CORs did not monitor and manage their contracts, and allowed the period of performance to expire. Further, the Agency continued to receive services without a valid contract in place. Consequently, some vendors stopped providing copier services due to non-payment by the Agency, which then resulted in numerous broken copiers. Had the CORs properly planned for and managed the contract's period of performance for copier services, the vendors would have been bound by a new contract to provide these essential services.

Example 3: Postage Meters

Several Field Offices lost postage meter services due to recurring unauthorized commitments and non-payment by the SBA. These unauthorized commitments occurred because the COR did not plan for a new contract. The poor planning included not providing full funding to cover the required period of performance and not submitting a new requisition for the services because the full funding was not available. The SBA did not award a new, valid contract for postage meter services, but the Agency continued to receive those services. The previous contract for the postage meter services expired in September 2010, and services stopped in March 2012—resulting in \$22,711.50 in unauthorized commitments. Additionally, the Program Office responsible for the contract did not attempt to address the unauthorized commitments and award a new contract until the vendor stopped providing services. This stop in service directly impacted 14 SBA Field Offices that ran out of postage. If the COR had coordinated with his/her Program Office to receive funds for the next contract and planned for a new contract, the stop in services would have been prevented.

How can I prevent an unauthorized commitment?

Unauthorized commitments can be prevented by ensuring that all (1) contract actions are made by the CO, and (2) contracts for required products or services are planned for and fully funded. Only a warranted CO has the authority to execute or make changes to a contract. As an SBA employee, if the COR or a Program Office has any doubt, the following suggestions below can help prevent future unauthorized commitments:

- ◆ Know the definition of an unauthorized commitment. Remember an unauthorized commitment is an

agreement between a vendor and a government representative that is not binding because the agreement was not made between a CO and a vendor.

- ◆ Understand that as a COR, you act as the CO's authorized representative for contract administration functions and have no other authority in regards to the contract.
- ◆ Monitor any contract where you are the designated COR and monitor the period of performance. Do not make changes to the scope, price, schedule, or terms and conditions of any contract.
- ◆ Do not give any direction to a vendor that alters the terms of work of a valid contract.
- ◆ Do not authorize a vendor to begin work if the CO has not executed a contract.
- ◆ Plan acquisitions with enough lead time for a CO to award a new contract based upon the guidelines outlined by the Acquisition Division.
- ◆ Project future products or services required by your Program Office, and include this information in the SBA Annual Acquisition Plan.
- ◆ Provide full funding to cover the period of performance for the contract to the Acquisition Division when awarding a new contract or exercising an option year.

What should I do if an unauthorized commitment occurs?

If an SBA employee believes an unauthorized commitment has occurred, the applicable COR should immediately notify the CO of any violation of, or deviation from, the technical requirement of the contract. After an unauthorized commitment occurs, it needs to be ratified by the Head of the Contracting Activity so the commitment can become valid and the vendor can receive payment. Additionally, notifying the CO and the Acquisition Division will help to identify the correct contractual method to rectify the issue. Most importantly, having a valid contract in place for products or services prevents any possible stop in services.

What is ratification?

An unauthorized commitment must be ratified before the related invoice can be paid. According to the FAR Subpart 1.602-3—*Ratification of unauthorized commitments*, ratification is the act of approving an unauthorized commitment by an official who has the authority to do so. The FAR also clearly states that ratification should not be used in a manner that encourages such commitments to continue to be made by Government personnel without proper authority. The FAR also outlines a general ratification process to pay invoices resulting from unauthorized commitments. In addition, the SBA's internal procedures require that a ratification file include a legal review, funding review, vendor statements, employee statements, and a written Determination and Findings (D&F). The D&F should describe the events leading up to the need for the ratification, include an explanation of the situation surrounding the action, and a recommendation from the CO on whether or not to ratify. If the unauthorized commitment is ratified and the products or services are still required, a new contract must be awarded.

Example of the Ratification Process

The Agency received a large number of invoices from a vendor for a contract where the period of performance ended and the SBA continued to receive services. To identify the universe of invoices, the Acquisition Division had to determine which invoices were associated with active or new contracts, which invoices were duplicates, and which invoices included previous charges from other invoices. Next, the Acquisition Division

had to (1) determine why the unauthorized commitment occurred; (2) determine if funding was available at the time the unauthorized commitments occurred; (3) determine if funding is still available from the fiscal year unauthorized commitment occurred for ratification; (4) obtain statements from the vendor and the responsible employee; and (5) determine if the SBA received the products or services. After the Acquisition Division completed these steps, a ratification determination could be made.

Can I be held responsible for an unauthorized commitment?

In a situation where an unauthorized commitment cannot be ratified, the SBA can take administrative, financial, or legal action against the program official(s) who illegally bound the government without the authority to do so. Additionally, employees who purport to bind the government without the authority to do so violate the *Standards of Ethical Conduct for Employees of the Executive Branch*, and may be held personally liable, financially, for such commitments. If an unauthorized commitment cannot be ratified, the vendor then has the option take legal action against the employee to receive payment for the total value of the unauthorized commitment(s). Additionally, if an Anti-Deficiency Act violation occurred because of an improper ratification, the ratifying official can be charged and sentenced, if convicted, with up to two years imprisonment and/or up to a \$5,000.00 fine.

Sources

- ◆ [FAR Subpart 1.602-2](#), “Responsibilities”
- ◆ [FAR Subpart 1.602-3](#), “Ratification of unauthorized commitments”
- ◆ [SBA COR Appointment Letter](#), available on the SBA Acquisition Intranet Webpage
- ◆ SBA SOP 00 11 1, Small Purchases, Contracts, Grants, and Cooperative Agreements, February 1985

Appendix III: Contract Management Regulations and Effective Practices

This appendix provides information about effective practices and regulations for contract management including acquisition planning, contract funding, and contract closeout. The goal of this appendix is to provide SBA employees with more detailed information in areas we identified during our review where confusion occurred or more training and guidance could be used. This appendix does not provide all of the information necessary to properly plan for and manage contracts at the SBA, and SBA Program Office staff should work with the Acquisition Division on a regular basis. The sources provided at the end of this appendix should be used to supplement this guide in addition to the guidance and trainings available to SBA employees on the [Acquisition webpage](#) on the SBA intranet.

Contract Management

The Office of Federal Procurement Policy (OFPP) guidance states that good contract management is essential to improving contractor performance under federal contracts, and agency management needs to ensure that it places a good contract management program as an agency priority. The OFPP *Guide to Best Practices for Contract Administration* states that contract management involves those activities performed by government officials to determine how well the government monitors and the contractor performs to meet the requirements of the contract. Such management should encompass all dealings between the government and the contractor—from preparing the Acquisition Package and requesting proposals through contract closeout. The SBA's Standard Operating Procedure (SOP) 00 11 1 also provides guidelines that SBA employees should follow in order to have an effective acquisition process within the SBA. Further, FAR Subpart 7.1—*Acquisition Plans* and OFPP guidance for contract management also require that Program Office staff:

- (1) Begin acquisition planning as soon as the need is identified; preferably, well in advance of the fiscal year in which the contract award or order placement is required.
- (2) Monitor and provide oversight of their contract to ensure the desired outcome is achieved. One way to monitor and provide oversight processes to the contract includes clearly identifying the roles and responsibilities of those employees involved in the management process.
- (3) Ensure that the employees managing contracts have the right skills and training to ensure that contracts provide the needed goods and services to the government. One practice toward doing this is to establish a Contracting Officers Representative training program that prepares the representatives for successful contract management and administration.
- (4) Have the controls and evaluation tools in place to effectively monitor contract performance and employees making purchases for the agency.

Acquisition Planning

Guidance on the SBA's the internal [Acquisition webpage](#) discusses the acquisition process and the roles of the COs and CORs. Specifically, it provides information to SBA employees about awarding a new contract by first identifying program needs, developing an Acquisition Package, and submitting the Acquisition Package by the applicable deadlines. The website also provides guidance about awarding and monitoring a contract. In the situation where a Program Office needs to exercise a contract option year, the guidance shows that a COR only needs to notify the CO that the Program Office wants to use the option year, and that available funds exist for the required period of performance.

Additionally, the Acquisition Division developed guidance for the Program Office staff regarding the proper documentation and information required to submit an Acquisition Package to the Acquisition Division. The guidance also provides information on completing each of the documents required in the Acquisition Package. Further, guidance on the Acquisition webpage also provides the required dates by which the Acquisition Packages need to be submitted to the Acquisition Division in order for a new contract to be awarded before the Agency needs the products or services. See Figure 1 for the basic description of the acquisition process for a new contract.

Figure 1 Basic Acquisition Process for a New Contract



Source: SBA-OIG analysis of Agency documentation.

Contract Funding

Federal regulations state that every valid government contract should be fully funded because the government may not authorize or make a payment where such payment would be in excess of the amount “available” and obligated toward the contract. Additionally, an agency must prove that unobligated funds are available to fund the entire contract value for all non-severable services prior to the award. Moreover, during a continuing resolution, agencies only receive a fraction of their budget to fund day-to-day operations so the process of awarding and funding contracts is directly impacted. During a continuing resolution an agency cannot award a new contract for services or products past the date of the continuing resolution. Below are examples where agency funding policies were misunderstood and unauthorized commitments occurred.

Example 1

An unauthorized commitment occurred for three months after the original contract expired because full funding was not provided to the Acquisition Division to award a new contract. When the CO tried to award a new contract in FY 2012 during a continuing resolution and obtain full funding from the program office, the COR stated that (S)he “did not know why full funding was required for the contract because (s)he did not have to fully fund the contract that expired in September 2011.” The CO subsequently explained to the COR that the previous contract was incrementally funded, which is contrary to federal regulations and contract management best practices. Even though the Program Office did not have enough funds available during the continuing resolution for a 12– month period of performance, the Program Office could have provided funds for services that aligned with end date of the continuing resolution to ensure the SBA received essential services through a valid contract and not through unauthorized commitments.

Example 2

In another example, the COR stated that (s)he did not submit an Acquisition Package for a new contract on postage meters because the program office did not have full funding for the contract due to the continuing resolution. Instead of the COR working with his or her Program Office to obtain funding for the services required, numerous unauthorized commitments occurred because the SBA continued to receive these services. Alternatively, a contract could have been awarded for the period covered by the continuing resolution rather than attempting to fund it for a full year. As directed by federal regulations, Program Offices must be able to provide the full funding for contracts prior to the award. If this funding is not provided, an active contract cannot be awarded and unauthorized commitments can occur after the active contract expires if the Program Office still requires the products or services.

Contract Closeout

Another aspect of good contract planning includes the proper closeout of a contract. Contract closeout begins when all services have been performed and the products or services were delivered. Closeout is completed when all administrative actions have been completed, all disputes settled, and final payment has been made. In one instance, we found an example of an improper contract closeout that resulted in unauthorized commitments. In this instance, the COR did not properly plan for the closeout of the contract and the return of two leased vehicles to the vendor by the end of the period of performance. As a result, the Agency did not return the two vehicles to the vendor until 42 days after the end performance date. Contract documentation shows that the COR contacted the vendor after the contract expired in an attempt to return the vehicles. However, due to poor coordination between the Program Office and the vendor prior to the expiration of the contract, the Agency incurred two unauthorized commitments.

Sources

- ◆ [31 U.S.C. 1341\(a\)\(1\)\(A\) and \(a\)\(1\)\(B\)](#) - Limitations on expending and obligating amounts
- ◆ [31 U.S.C. 1512\(a\)](#) - Apportionment and Reserve
- ◆ [FAR Subpart 7.1](#) - Acquisition Plans
- ◆ [FAR Subpart 32.7](#) - Contract Funding
- ◆ [FAR Subpart 52.232-18](#) - Availability of Funds

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- ◆ 71 Comp. Gen. 428 (1992) and GAO Decision B-317139, [*Financial Crimes Enforcement Network—Obligations under a Cost-Reimbursement, Nonseverable Services Contract*](#)
 - ◆ Office of Management and Budget, Office of Federal Procurement Policy, [*A Guide to Best Practices for Contract Administration*](#), October 1994
 - ◆ Office of Management and Budget, Office of Federal Procurement Policy, [*Guidelines for Assessing the Acquisition Function*](#), May 2008
 - ◆ SBA Standard Operating Procedure 00 11 1, Small Purchases, Contracts, Grants, and Cooperative Agreements, February 1985
 - ◆ [SBA Acquisition intranet webpage](#)
 - ◆ [SBA COR Appointment Letter](#), available on the SBA Acquisition intranet webpage

Appendix IV: Contracting Officer's Representative Duties and Responsibilities

This appendix provides information about effective practices and regulations for Contracting Officer's Representative (COR). The goal of this appendix is to provide CORs with more detailed information in areas we identified during our review where confusion occurred or more training and guidance could be used. This appendix does not provide all of the information necessary for CORs to perform their duties and comply with all federal regulations in the management of their contracts, and CORs should work with the Acquisition Division on a regular basis. The sources at the end of this appendix should be used to supplement this guide in addition to the guidance and trainings available to SBA employees on the [Acquisition webpage](#) on the SBA intranet.

COR's Role in the Contract Management Process

Guidance from the Office of Federal Procurement Policy about best practices for contract administration states that the COR plays a critical role in ensuring successful contract outcomes and proper contract administration within the contract management process. A designated COR shall be a government employee who has been certified and maintains certification in accordance with the Office of Management and Budget memorandum on the Federal Acquisition Certification guidance. The COR assigned to monitor a contract works in the Program Office that requested the contract for the products or services. It is essential that those entrusted with COR duties be competent in the practices of contract administration. Further, they should be aware of, and faithful to, the contents and limits of their delegation of authority. As such, CORs must read and understand each contract closely with their contracting officer (CO). It is also imperative that the COR remain in close communication with the CO and relay any information that may affect the commitments and requirements of the contract.

According to the FAR, the COR and CO must sign an Acceptance Letter that outlines the roles and responsibilities of the COR in monitoring each contract. The letter provides the COR the authority to serve as the Agency's representative for the technical monitoring and administration of the contract, but with very specific limitations. Specifically, the COR cannot make changes to the scope, price, schedule, terms, and conditions of the contract. Through the Acceptance Letter the COR is prohibited from performing 14 actions, six of which alter the contract in a manner that would cause an unauthorized commitment to occur. These six actions, instead, must be performed by the CO who is the only person authorized to make changes to the contract. See Figure 1.

Figure 1 Six Actions CORs Shall Not Perform that Could Result in an Unauthorized Commitment, as Indicated in the Acceptance Letter

- ◆ Modify the stated terms and conditions of the contract.
- ◆ Direct a contract to begin work prior to a contract award date (or Notice to Proceed letter).
- ◆ Issue instructions (oral or written) to a contractor to start or stop work.
- ◆ Approve items of cost not specifically authorized in the contract.
- ◆ Direct changes (oral or written) or provide any guidance in the work to the contractor, which contradict the contract's scope and terms and conditions or which may be misinterpreted as properly changing the contractual terms and conditions, but actually jeopardize the rights of, or the benefits to the government, the contract, or both.
- ◆ Execute supplemental agreements to the contract.

Source: SBA Acquisition Division [COR Acceptance Letter Template](#)

Moreover, the COR must ensure that changes in the work or services, and resulting effects on delivery schedule, are made through a formal, written modification issued by the CO before the vendor proceeds with the changes. When a COR, and not the CO, makes commitments or changes to the contract, an unauthorized commitment will occur.

Sources

- ◆ [FAR Subpart 1.602-2](#), “Responsibilities”
- ◆ [SBA COR Appointment Letter](#)
- ◆ Office of Management and Budget, Office of Federal Procurement Policy, [A Guide to Best Practices for Contract Administration](#), October 1994

Appendix V: Unauthorized Commitments and Ratification Guidance from Other Federal Agencies

Through the completion of a general web-based search for “unauthorized commitment guides,” the audit team obtained guidance about unauthorized commitments and ratification from 10 different Federal agencies. The guidance varies from agency to agency, but can generally be found as a detailed section in the agency’s acquisition process manual or as a separate guidance supplement provided to agency personnel. Additionally, guidance from 9 of the 10 Federal agencies outlines the disciplinary action that can be taken against those government representatives that made an unauthorized commitment when the commitment cannot be ratified. One guide, in particular, states that individuals can be disciplined even when the unauthorized commitment is ratified depending upon the circumstances surrounding the unauthorized commitment. The following table provides a summary of the information presented in each of the guides about unauthorized commitments and ratification developed by 10 Federal agencies.

Table 1 Guidance on Unauthorized Commitments and Ratification for 10 Federal Agencies

Agency	Unauthorized Commitment and Ratification Guidance	Source
Air Force	The Air Force provides a 12-page guide outlining the key terms and definitions, provides examples of how an unauthorized commitment can happen, discusses steps for avoiding unauthorized commitments, conditions that must be met for a ratification, the ratification process, and the “DOs and DON’Ts” of contracting to help prevent government representatives from being involved in situations where an unauthorized commitment could occur.	82d Contracting Squadron: Unauthorized Commitments and Ratification Guide, April 2012
Department of Commerce (DoC)	The guidance developed by DoC discusses the federal regulations pertaining to unauthorized commitments and ratification. It also discusses examples of unauthorized commitments and applicable preventative measures as well as the multi-level review required for ratification. The guide further states that the information provided emphasis on the Department’s goals to minimize unauthorized commitments.	Commerce Acquisition Manual 1301.602: Department of Commerce, Ratification of Unauthorized Commitments, December 2009
Social Security Administration (SSA)	The SSA provides detailed information about unauthorized commitments on the website for the SSA Office of Acquisition and Grants Acquisition Information. The website outlines the applicable federal regulations and provides common examples of when unauthorized commitments can occur. It also advises vendors who have been directed to provide goods and/or services to the SSA without the authorization of the contracting officer to STOP. It further states that ratification can take several weeks to month, but that the SSA does not routinely ratify an unauthorized commitment.	Acquisition Information: Unauthorized Commitments – Avoid costly out-of-pocket costs
Army	The guide developed by the Army Contracting Agency provides its customers with a better understanding of why unauthorized commitments are of concern to the Army and how to avoid making an unauthorized commitment. The guide also explains the procedures that must be followed to take corrective action for unauthorized commitment and make payment to the contract. It addition, it provides the Army Contracting Agency contracting personnel information on how the ratification process must be completed.	Army Contracting Agency: Unauthorized Commitments and Ratification Process Guide, June 2004

Agency	Unauthorized Commitment and Ratification Guidance	Source
National Oceanic and Atmospheric Administration (NOAA)	The NOAA guide provides program officers with a better understanding of why unauthorized commitments are of concern to the NOAA and how to avoid making them. The guide also explains the procedures that must be followed to take corrective action for an unauthorized commitment and make payment to the Contractor. In addition, it provides NOAA customers, contracting personnel, and their chain of command with the information on how the ratification process must be completed.	Unauthorized Commitments and Ratification Process Guide for the Project Office, June 2008
U.S. Marine Corps	The U.S. Marine Corps guidance is a PowerPoint presentation outlining applicable laws and regulations, definition of unauthorized commitments and examples, what to do if an unauthorized commitment occurs, and ratification process and required documentation.	Ratification of Unauthorized Commitments
Department of Homeland Security (DHS)	The guidance explains unauthorized commitments and the ratification process by providing definitions; documentations required by the individual who made the unauthorized commitment—including proof that funds were available at the time of the unauthorized commitment occurred; examples of when unauthorized commitments cannot be ratified; and disciplinary action.	DHS Acquisition Manual, Subchapter 3001.602-3, Ratification of unauthorized commitments, October 2009
Food and Drug Administration (FDA)	The FDA provides the policy and procedures for ratifying unauthorized commitments. The guide states that it is the goal of the FDA to minimize the occurrence of unauthorized commitments, and only unauthorized commitments that meet FAR requirements and Department of Health and Human Services Acquisition Regulations will be ratified. Additionally, the guide dictates the documentation required to be submitted by the individual who made the unauthorized commitment when requesting ratification.	FDA Staff Manual Guides, Volume III – General Administration, Procurement and Supply Management, Procurement, Ratification of Unauthorized Procurement, September 2005
U.S. Central Command (CENTCOM)	CENTCOM guidance provides a structured ratification form outlining all documentation required for ratification. It further describes unauthorized commitments and applicable disciplinary action and requires the individual to describe all steps taken to resolve the unauthorized commitment prior to ratification, such as returning goods received.	Subchapter 5153.120-5011 – CJTSCC Ratification of Unauthorized Commitment Action Form
General Services Administration (GSA)	The GSA guidance provides detailed information about the ratification process, required documentation, legal ramifications, and examples of when an unauthorized commitment cannot be ratified. It also states that the individual who made the unauthorized commitment must initiate and document the request for ratification.	GSA Acquisition Manual, Subchapter 501.602-3, Ratification of unauthorized commitments, March 2005

Note: Summaries are not all inclusive of the information documented in the guides. Full text can be found through the hyperlinked sources above.

Appendix VI: Agency Comments—SBA General Counsel for the SBA Administrator



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

TO: John K. Needham
Assistant Inspector General for Auditing, Office of Inspector General

FROM: Sara D. Lipscomb /s/ originally signed
General Counsel

DATE: March 13, 2013

SUBJECT: Office of General Counsel Comments on OIG Draft Performance Audit Report for Project 12004: “The SBA’s 417 Unauthorized Commitments Impacted Mission-Related Services and Increased Costs”

The Agency appreciates the opportunity to review OIG’s draft report, and offers the following supplement to the Agency’s initial response dated March 4, 2013.

Recommendation to the SBA Administrator: Determine whether it is appropriate and feasible to take administrative and/or legal actions against SBA employees making unauthorized commitments in instances where an unauthorized commitment cannot be ratified.

Agency Response: The Agency agrees with this recommendation. Accordingly, SBA’s Administrator has delegated to the Office of General Counsel responsibility for determining whether it is appropriate, feasible, and, more importantly, legal to take administrative and/or legal action against SBA employees making unauthorized commitments in instances where an unauthorized commitment cannot be ratified.

Appendix VII: Agency Comments—Chief Acquisition Officer and Senior Procurement Executive



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

TO: John K. Needham
Assistant Inspector General for Auditing, Office of Inspector General

FROM: Jonathan Carver /s/ originally signed
Chief Financial Officer, Office of the Chief Financial Officer

DATE: March 4, 2013

SUBJECT: OCFO's Comments on OIG Draft Performance Audit Report for Project 12004:
"The SBA's 417 Unauthorized Commitments Impacted Mission-Related Services and Increased Costs"

General Comments:

OCFO appreciates the opportunity to comment on the OIG draft report regarding your review of SBA's unauthorized commitments. We share your concern regarding the seriousness of potential ramifications surrounding unauthorized commitments. We concur that the SBA should take steps to eliminate any instance of occurrence and that utilizing agency staff and other resources to ratify these unauthorized commitments detracted, at times, from the daily operations of the agency.

We appreciate that the OIG draft report acknowledges both the "numerous problems inherited" by the Acquisition Division (AD) and the improvements made since the transition of SBA's procurement function. We would like to highlight the following OCFO actions:

- Coordinated with the OIG on implementing an improved ratification process
- Closed out or ratified all of the unauthorized commitments referenced in this draft report
- Circulated a draft contracting SOP for comment, which in final form will promote the correct procedures of contract management and administration.

We also agree that sustaining needed improvements necessitates an Agency-wide culture trans-

formation. As the draft report states, this requires an “all-in” approach incorporating all offices at all levels of the Agency in order to drive accountability, improve communication, and enhance guidance – the very focal point of the OIG’s conclusions. As written, the draft report seems to conflict with its own conclusion by directing all responsibility to the CAO and SPE. We believe that the draft report suggests responsibilities extending beyond the scope of the AD, specifically in the areas of ethical conduct training for all employees and personnel actions resulting from unauthorized commitments. The AD is responsible for complying with the Federal Acquisition Regulation (FAR), which defines an unauthorized commitment and the processes for addressing the matter.

We are dedicated to continuing improvement in our procurement processes and actively promote the elimination of unauthorized commitments; however, the accountability mechanism should not be driven by the Acquisition Division, which cannot take direct action against any employee outside of the AD. As your draft report states, all unauthorized commitments were made by non-AD personnel; however, the draft report failed to address whether any negative actions were taken against employees who made the unauthorized commitments. Responsibility for the relevant policies and procedures regarding personnel actions lies outside the scope of the AD.

Please see our comments to the draft recommendations that follow.

Recommendation 1: In the short-term, issue a Procedural Notice identifying what an unauthorized commitment is and that under no circumstances should an unauthorized commitment occur. This Procedural Notice should also state that administrative and/or legal action may be taken against those employees who commit the Government without the authority to do so.

The OCFO has circulated an updated contracting SOP for comment. We will include the expanded language in the final version, which negates the need for a Procedural Notice and is responsive to Recommendation 2.

Recommendation 2: Update and implement the Agency standard operating procedures for acquisitions to include the information provided in the Procedural Notice on unauthorized commitments.

The OCFO has circulated an updated contracting SOP for comment. We will include the expanded language from Recommendation 1 into the final version.

Recommendation 3: Develop a separate acquisition process guide for SBA staff specific to unauthorized commitments and the ratification process.

We disagree that an unauthorized commitments-specific guidance document for distribution to SBA employees will result in achieving the needed improvements in outreach and communication. The OCFO will examine how it can take part in the “all in” agency-wide approach to eliminate unauthorized commitments, as stated in our general comments above.

Recommendation 4: Update the COR Acceptance Letter to include that SBA staff assigned as a COR will not make an unauthorized commitment, and will follow guidance related to unauthorized commitments.

The COR Acceptance Letter addresses what a COR is “allowed” to do, it does not address all instances of what a COR “cannot do nor shouldn’t do.” This is not the most appropriate place for this type of information, but we look forward to further discussion with the OIG to address this concern.

Recommendation 5: Consider options for incorporating compliance with the COR Acceptance Letter and Federal Acquisition Regulations into the annual performance assessment for those SBA employees certified as CORs.

While the personal performance plans for CORs are outside the scope of the AD’s authority, the Agency’s new performance management system, the Talent Management Center, includes a performance element that ties responsibilities for CORs to the annual performance plans for CORs at the SBA. This went into effect for FY 2013.

Recommendation 6: Provide annual training to SBA employees involved in the acquisition process on properly planning for and managing contracts at the beginning of the fourth quarter to include addressing how unauthorized commitments occurred in the past and how to prevent them.

We will include this in the ongoing training conducted at the agency. As well, we believe this to be a part of the “all in” agency-wide approach mentioned in our comments above. It could be more effective to have this training at an employee’s on-boarding, or in a means similar to other required annual employee training (e.g. IT security or “CSAT”), which is provided to employees through a training module taken via computer.