REQUEST FOR RATIFICATION OF AN UNAUTHORIZED COMMITMENT

TO: Leonard Grant, Acting Director
Office of Acquisitions and Grants Services

THROUGH Glenda Barfell, Director, ORA, Office of Managment

FROM: Elon Malkin, Radiation Safety Officer, ORS, WEAC

SUBJECT: Request for Ratification of an Unauthorized Commitment for Nuclear Regulatory Commission Technical Fees for review of WEAC's Decommissioning Plan

The purpose of this memorandum is to request ratification of an unauthorized commitment. The background information and supporting documentation is provided below:

1. Contractor information:
United States Nuclear Regulatory Commission (NRC)

2. Description of products or services provided by the contractor listed above:
Technical Review of WEAC's Decommissioing Plan, remediation activities, and Final Status Survey for release of grounds previously contaminated by the Atomic Energy Commission. WEAC has remediated these grounds and remediation data and confirmatory surveys must be preformed by a third party, federal entity prior to WEAC's new building construction. An offical clearance letter must be provided by this third government party prior to issuing the new building contract. Hourly Rate $263/hr. Total hours 353.50. We anticipate and additional 200 hours.

3. Tabulation of total cost of products or services:
Total Invoiced so far: $92,970.50
Total Future Expected Invoices: $52,600
Total Expected for Project: $145,570.5

4. Evaluation of the contractor's price for products or services received:
The NRC labor rates are subject to federal regulations published in 10 CFR 170.20 Average cost per professional staff-hour.

5. Description of the bona fide FDA requirement that was met with the products and/or services provided:

An offical clearance letter must be provided by this third government party prior to issuing the new building contract to ensure the safety of FDA employees and the members of the general public.

6. Reason normal procurement procedures were not followed:

WEAC was notified via NRC through email dated 1/18/17 (attached) that these items would not be subject to fee.

7. Extent of competition:
There is no other competition. Remediation data and confirmatory surveys must be reviewed and conducted by a federal entity

8. Rationale for selection of contractor:
WEAC reached out to NRC about findings of buried material early 2017 and has followed NRC instructions to compile and submit a decommissioning plan to remediate the buried material. NRC notified WEAC that technical fees would not apply.

9. Explain whether or not the contractor has/has not begun or completed performance:

Yes, the Nuclear Regulatory has begun the technical review process. According to the most recent email received on July 26, 2018; NRC suspects very little technical work remains. A conservative estmaite of 200 additional hours is included

10. Any other pertinent facts or details surrounding the unauthorized procurement action that the Ratification Official should consider when reviewing the ratification request:
See Items 9 and 12

11. Procurement request number to authorize this procurement: 1204747. The funds included in this purchase request were available at the time the unauthorized procurement occurred. (See the Budget Officer's statement below).

12. The Government is not obligated to pay for goods or services that are not obtained through proper channels. This can result in contractors not being paid, which can damage their businesses and diminish the credibility of the Government. Unauthorized commitments can lead to legal actions. The FDA is committed to avoiding unauthorized commitments and their consequences.

I understand the severity of what occurred, and I will take the following steps to ensure that similar situations will not occur in the future.

None. There was never any commitment to pay the NRC. The employee was following Nuclear Regulatory Commission instructions (See Attached email). The contaminated material orginates from Atmoic Energy Operations Uranium processing in the 1950's, prior to FDA ownership.

These materials should have been removed by the Department of Energy's (DOE) Formerly Utilized Sites Remedial Action Program (FUSRAP). However, when DOE reviewed the site for includsion in the FUSRAP in 1985, the survyes conducted by DOE were not adequate to find the 900 tons of buried radioactive material.

None of this radioactive material was ever covered on WEAC's Nuclear Regulatory Commission License. And, therefore, these invoices could be contested, since NRC hourly fees apply only to licensed material.

Because of this Juristrictional issue between the NRC and the DOE, WEAC is choosing not contest the fees and will pay NRC the technical review to approve the remediation efforts WEAC has conducted to ultimately prevent costly delays of new laboratory construction.

I certify that the above statements are accurate and complete to the best of my knowledge.

Individual Who Made the Unauthorized Commitment: Elon Malkin, RSO, ORS/WEAC
(Typed Name and Title)

Elon Malkin
Digitally signed by Elon M. Malkin -S
DN: c=US, o=U.S. Government, ou=HHS, ou=FDA, ou=People, cn=Elon M. Malkin -S, 0.9.2342.19200300.100.1.1=2000820951
Date: 2018.08.02 08:27:26 -04'00'

(Signature and Date)

Contact Information (office/component, address, e-mail, and phone number):

Elon Malkin
ORA/ORS/WEAC
109 Holton Street, Winchester, MA 01890
Elon.malkin@fda.hhs.gov / 781-756-9814

Immediate Supervisor of the Individual Who Made the Unauthorized Commitment

I recommend that the following corrective action be taken, or confirm that the following corrective action already has taken place, to preclude the situation from recurring:

Kenneth Crombie, Program Manager
(Typed Name and Title)

Kenneth M. Crombie -S
Digitally signed by Kenneth M. Crombie -S
DN: c=US, o=U.S. Government, ou=HHS, ou=CDC, ou=People, 0.9.2342.19200300.100.1.1=1000715295, cn=Kenneth M. Crombie -S
Date: 2018.08.09 13:29:24 -04'00'
(Signature and Date)

Budget Officer Statement

Fiscal year 2018 funds are available and were available at the time the unauthorized commitment was made.

Fiscal year ____ funds were available at the time the unauthorized commitment was made, but are no longer available. Current, fiscal year _____ funds are available.

John D. Messana, Chief, DFA/RSSB
(Typed Name and Title)

John D. Messana -S
Digitally signed by John D. Messana -S
DN: c=US, o=U.S. Government, ou=HHS, ou=FDA, ou=People, 0.9.2342.19200300.100.1.1=2000656309, cn=John D. Messana -S
Date: 2018.07.31 14:35:30 -04'00'
(Signature and Date)

Center/Office Executive Officer

☐ I concur with the facts above and concur that this unauthorized commitment should be ratified. Furthermore, I concur with the first-line supervisor's corrective action plan.

☐ I do not concur with the facts above and do not recommend that the unauthorized commitment be ratified.

☐ I concur with the facts above and concur that this unauthorized commitment should be ratified. However, I do not concur with the first-line supervisor's corrective action plan and instead propose the following:

_____
(Typed Name and Title)

_____
(Signature and Date)