

RATIFICATION OF UNAUTHORIZED ACQUISITION ACTS

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RATIFICATION OF UNAUTHORIZED ACQUISITION ACTS
General

1. GENERAL

1.1 Introduction. In general terms, Federal law and regulations (and Bureau policies) have designated the role, authorities and responsibilities of Contracting Officers; the rationale and process whereby signatory authority for acquisitions is vested in the designated individual by the Warrant System rather than in the organizational position; the internal procedures to be followed in dealing with offerors and current contractors; the conduct and behavior expected from Bureau staff in the preaward and administration phases of an acquisition; and, the principles governing the acquisition of management and consulting services in meeting Bureau needs.

These directives may be regarded as a professional code for acquisition management in the Bureau. Repeatedly, Bureau employees overstep the boundaries of this code, intrude upon the professional and technical areas of Contracting Officers, jeopardize the validity of Bureau acquisitions, violate Federal law and regulation and, in so doing, become subject to prosecution and penalties.

1.2 Background. Unauthorized acquisition acts are those authorized or performed on behalf of the Bureau by a Bureau employee who does not have the express authority to do so. It is a principle of the law of agency that only warranted Contracting Officers have the legal authority and power to commit the Government in dealings with offerors or contractors during the various stages of an acquisition (purchase order or contract). After the award of a contract and during its administrative phase, the Contracting Officer may assign some of this authority to a designee who is formally appointed as a Contracting Officer Representative (COR). This COR provides technical oversight of the contractor's efforts, based on a Memorandum of Designation (See 19 BIAM, Supp. 5) stating what authorities can be exercised to ensure appropriate performance by the contractor. Conversely, the Memorandum also provides protocols that cannot be exercised by the COR, but remain vested with the Contracting Officer.

A. Often, inappropriate contacts and imprudent relationships are entered into (albeit innocently) by Bureau non-procurement employees with offerors and current contractors. These unauthorized acts may take the form of conversation to discuss a potential acquisition; seeking information on contractor capabilities in a particular area of interest; encouraging the submission of an "unsolicited" proposal; conducting substantive discussions on a future Bureau acquisition; sharing confidential data or information with extra-agency resources, thereby providing a singular advantage in competitive procedures for an acquisition; and so forth.

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B. Other examples of unacceptable acts by Bureau employees that ~~do not~~ require ratification but are subject to the disciplinary action contained in Section 3 of this Supplement include:

(1) Ordering equipment, weapons and ammunition, printing, office supplies, or other services and then submitting an acquisition requisition after the fact.

(2) Predetermining that a certain contractor or vendor is a sole supply source and perhaps causing the contractor to incur costs for which the Bureau is not liable. Only a Contracting Officer has the authority to certify noncompetitive selections.

(3) Giving direction to a contractor that involves a change in the scope of work or in the contract price. Interior Acquisition Regulations (1401.670-3) do not allow the Contracting Officer to assign this responsibility, even to the COR.

(4) A non-procurement official directing a comparable or lower-grade Contracting Officer to execute a procurement contrary to Federal regulation or sound business judgment.

(5) A warranted Contracting Officer that "splits" orders to avoid warrant limitations.

C. The Contracting Officer is the pivotal person to assist Bureau managers in acquiring supplies and services by means of an acquisition. Very often, the involvement of the Contracting Officer takes place after the fact, rather than in the planning and development stages of the proposed acquisition. The role and responsibility of the Bureau Contracting Officer is to serve as the agent between the Bureau (principal) and the potential contractor (third party) in all phases of the acquisition process. The interjection of the non-acquisition Bureau employee in that schema is contrary to law, weakens procurement management, and has deleterious effects on Federal-private sector relationships.

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General

1.3 Policy. The authority to ratify unauthorized acquisition acts is vested in the Deputy Assistant Secretary - Indian Affairs who will exercise this authority only under unusual circumstances.

A. The authority to ratify these acts is further limited since ratification shall occur only if the Deputy Assistant Secretary - Indian Affairs could have authorized the acquisition act initially and still retains the power to do so.

B. The Deputy Assistant Secretary - Indian Affairs may ratify such acquisitions, provided the following conditions have been met:

(1) The employee that committed the unauthorized act shall furnish all pertinent facts, records, and documentation covering the transaction; and

(2) Reasonable prices and fair market value were obtained; and

(3) The act was otherwise legal, based upon a substantive review by the Contracting and Grants Administration Staff (Central Office).

C. This directive applies to all acquisitions (purchase orders and contracts), regardless of dollar amount or award authority. However, Bureau employees may be required to secure goods and services in emergency situations without prior approval of a warranted Contracting Officer. Employees requesting ratification of an unauthorized acquisition act shall also include the circumstances deemed to be an "emergency situation."

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Procedure

2. PROCEDURE

2.1 General. The employee in question shall request ratification of the unauthorized act through supervisory channels. The written request shall be prepared by the cognizant Area or Central Office Director and addressed to the Deputy Assistant Secretary - Indian Affairs (Operations). The request shall include a Determination and Findings statement from the cognizant Contracting Officer; the request shall be signed by the Area or Central Office Director and shall include a concurrence/non-concurrence space for the Deputy Assistant Secretary - Indian Affairs (Operations) as final reviewer; and, the transmission of the material shall be to the Deputy Assistant Secretary - Indian Affairs (Operations) through the Contracting and Grants Administration Staff and the Director, Office of Administration for initial Central Office reviews. The request package shall contain the items/information listed in paragraph 1.3B, and the letter of reprimand prepared by the employee's immediate supervisor (see paragraph 3.2A).

A. The request package shall be reviewed by the Contracting and Grants Administration Staff (Central Office) to ensure that the documentation furnished by the employee and immediate supervisor is complete and that the unauthorized act is ratifiable or should be referred to the Claims Division of the General Accounting Office (GAO).

B. Unauthorized acquisition acts not ratified by the Bureau or not approved for payment by the Claims Division of GAO — for whatever reasons — are not a Government responsibility and no liability will be assumed by the Bureau.

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Applicability

3. APPLICABILITY

3.1 General. Unauthorized acquisition acts by employees who are not warranted with contracting authority shall be considered personal acts exercised by the employee. The employee who acts independently in violation of Federal law and regulation is responsible for those actions and does not obligate the Bureau. The issue of the unauthorized acquisition act is a matter that remains between the employee and contractor for private settlement. The employee may be held accountable by the contractor through any available and appropriate civil collection proceedings if the unauthorized act is not ratified by the Deputy Assistant Secretary - Indian Affairs (Operations).

3.2 Administrative. Insofar as Bureau personnel management considerations are concerned, the eventual ratification or non-ratification of an unauthorized acquisition act by the Deputy Assistant Secretary - Indian Affairs or approval of the claim by the General Accounting Office are moot points. In all instances, disciplinary action shall be enforced for a Bureau employee who violates the intent and principles outlined herein, or who directs a warranted Contracting Officer to do so.

A. A letter of reprimand shall be placed in the Official Personnel File of that employee who commits an unauthorized acquisition act (purchase order and contract). The letter shall be prepared and signed by the employee's immediate supervisor for the cognizant Area/Central Office Director's and Deputy Assistant Secretary - Indian Affairs review and sent through appropriate organizational levels, regardless of the ultimate ratification of the unauthorized act. A signed copy of the letter shall accompany the request for ratification.

B. In situations where a warranted employee has been directed to execute an award contrary to Federal regulation or sound business judgment, a similar letter of reprimand shall also be prepared and forwarded. Appropriate disciplinary penalties — as outlined in 370 DM 752, 3 — shall be used in cases of employee misconduct involving unauthorized acquisition acts.

3.3 Reference. A repetition of an unauthorized acquisition act shall subject the employee involved to more adverse disciplinary actions, as stated in 44 BIAM 735 Release 88.