

INDIAN AFFAIRS MANUAL

1.1 Purpose. This chapter establishes the policy and procedures for ratifying an unauthorized commitment made by any individual within Indian Affairs (IA).

1.2 Scope. This policy applies to all IA headquarters, field, and program staff under the authority of the Assistant Secretary - Indian Affairs (AS-IA), including offices reporting to the AS-IA, the Bureau of Indian Affairs (BIA), and the Bureau of Indian Education (BIE).

1.3 Policy. IA program offices will adhere to procurement procedures designed to prevent unauthorized commitments. If an unauthorized commitment is detected, IA personnel are required to follow the ratification procedures outlined herein.

1.4 Authority.

A. Statutes and Regulations.

- 1) Federal Acquisition Regulation (FAR) 1.602-3, Ratification of unauthorized commitments
- 2) FAR 50.1, Extraordinary Contractual Actions
- 3) Department of the Interior (DOI) Acquisition Regulations (DIAR) 1401.602-3, Ratification of unauthorized commitments

B. Guidance.

- 1) DOI Acquisition, Arts, and Asset Policy (DOI-AAAP-0075), Legal Review of Acquisition Actions

1.5 Responsibilities.

A. Office Directors ensure appropriate organizational resources and personnel are available to assist acquisition staff with contract management. Office Directors will immediately notify acquisition staff when unauthorized commitments are identified and will assist acquisition staff with documentation to process the ratification, develop a corrective action plan to prevent further unauthorized commitments, and ensure the corrective action plan is fully implemented and adhered to.

B. Chief Financial Officer (CFO) oversees the acquisition management program for IA, and ensures the program is in compliance with all applicable laws, regulations, policies, and procedures. The CFO is the Bureau Procurement Executive (BPE).

INDIAN AFFAIRS MANUAL

- C. **Head of the Contracting Activity (HCA)** is responsible for the overall management of IA's contracting activity. This includes establishing acquisition policy, guidance, and oversight through the Division of Acquisition Management. The HCA is the ratification authority in accordance with FAR 1.602-3(b)(2).
- D. **Chief of the Contracting Office (CCO)** is responsible for providing oversight to all IA (including regional) Contract Specialists and Contracting Officers to ensure that IA policies are adhered to.
- E. **Contracting Officer (CO)** is the individual with the authority to enter into, administer, or terminate contracts. The CO is responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, safeguarding the interests of the United States in its contractual relationships, and ensuring adherence and application of this policy.
- F. **Contract Specialist (CS)** monitors and administers contracts, supports contracting leadership, and is responsible for adherence and application of this policy.

1.6 Definitions. Additional definitions can be found in FAR 2.101.

- A. **Corrective Action Plan** is a written statement prepared by the supervisor of the individual or program office which made the unauthorized commitment. The corrective action plan must contain enough information to assure the CO that the likelihood of the same individual or program executing future unauthorized commitments is minimal.
- B. **Determination & Findings (D&F)**, as defined in FAR 1.701, means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions. The "determination" is a conclusion or decision supported by the "findings." The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation. The "findings" section of the D&F for the ratification of an unauthorized commitment must include all prerequisites stated in FAR 1.602-3(c). The D&F is prepared by the CO, with final signature/approval completed by the HCA
- C. **Ratification**, as defined in FAR 1.602-3, means the act of approving an unauthorized commitment by an official who has the authority to do so. Until the unauthorized commitment is ratified, the vendor will not be paid by the Government and the person who made the unauthorized commitment can be personally liable for the action.
- D. **Statement of Facts** is a written statement prepared by the person who made the unauthorized commitment which details the reasons why proper acquisition procedures were not followed. This statement includes the description of the work performed or the

INDIAN AFFAIRS MANUAL

goods received, why the contractor was selected, other sources considered, the estimated or agreed upon price, the funding citation, the status of the contract performance, and any other information applicable to the ratification approval.

- E. Unauthorized commitment**, as defined in FAR 1.602-3, is an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. It includes, but is not limited to, any action by a person other than the CO that results in (i) continued performance by a contractor beyond the expiration date or the price established by the procurement instrument or (ii) the commencement of performance of work in advance of issuance of a formal procurement instrument properly issued by a duly authorized CO.

1.7 Procedures.

A. Ratification Process

- 1) The CO must obtain a control number for each action over \$2,500.00 being considered for ratification. The control number is obtained from the [IA Unauthorized Commitment Control Number Log](#) (note: you must be connected to the Virtual Private Network (VPN) in order to access the Log in SharePoint). All fields within the log will be completed using the sheet designated for the fiscal year in which the unauthorized commitment will be ratified. The CO must include the control number in the email subject line when transmitting the ratification package for review and approval.
- 2) The CO, in close coordination with the individual or program office that made the unauthorized commitment, must compile a complete ratification package. A complete ratification package consists of the following:
 - a. Unauthorized Commitment Letter to the supervisor: This letter is prepared by the CO and issued to the supervisor of the individual or program office that made the unauthorized commitment. The purpose of the letter to the supervisor is to inform the supervisor of the unauthorized commitment and to request the applicable documentation from the supervisor and the individual that made the unauthorized commitment.
 - b. Unauthorized Commitment Letter to the vendor: This letter is prepared by the CO and issued to the vendor detailing the unauthorized commitment and explaining that an internal IA process must be followed in accordance with FAR 1.602-3 before the vendor can receive payment for the supplies or services rendered.

INDIAN AFFAIRS MANUAL

- c. Statement of Facts: As detailed in the Definitions section of this policy (1.6).
 - d. Invoices: All invoices for the unauthorized commitment provided by the customer program office or the vendor.
 - e. Corrective Action Plan: As detailed in the Definitions section of this policy (1.6).
 - f. Purchase Request (PR): The PR must be an approved PR with certified funds to cover the unauthorized commitment and fully approved in the Financial and Business Management System (FBMS).
 - g. D&F for ratification of an unauthorized commitment: As detailed in the Definitions section of this policy (1.6). The D&F is prepared by the CO with final signature/approval completed by the HCA.
 - h. Legal Review Form reflecting legal sufficiency: The CO compiles all documentation as described in (a) through (g) in this section of the policy. Additionally, if the unauthorized commitment is over the micro-purchase threshold, the CO will forward the entire package to the servicing Solicitor for legal sufficiency review and signature on the Acquisition and Assistance Legal Review Form prescribed by DOI-AAAP-0075, Legal Review of Acquisition Actions. If the unauthorized commitment is below the micro-purchase threshold, then legal sufficiency review by the Solicitor's office is not required as part of the ratification package.
- 3) After the complete ratification package is compiled by the CO, the CO must forward the entire package to the ratification authority for review and obtain his/her approval signature on the D&F for the ratification.
 - 4) After the ratification authority signs the D&F, one of the following two methods may be used to complete the ratification of the unauthorized commitment:
 - a. For unauthorized commitments of \$2,500.00 or greater, the CO may issue and distribute a purchase order.
 - b. For unauthorized commitments less than \$2,500.00, the unauthorized commitment may be paid using a Government Purchase Card (GPC). If the vendor does not accept GPC as a form of payment, the CO should issue and distribute a purchase order.

INDIAN AFFAIRS MANUAL

- 5) Once the purchase order is distributed, a copy of the entire ratification package, including the purchase order and evidence of distribution of the purchase order, must be documented in the official contract file.

2) Nonratifiable Unauthorized Commitments

- 1) All nonratifiable unauthorized commitments must be coordinated with the Solicitor's Office.
- 2) Unauthorized commitments that are not ratifiable under FAR 1.602-3 may be subject to resolution as recommended by the Government Accountability Office (GAO) under its claim procedures, or as authorized by FAR subpart 50.1.
- 3) If an unauthorized commitment is disapproved for ratification, the CO must promptly notify the vendor and the individual who made the unauthorized commitment, in writing, and state the reason(s) for disapproval.
- 4) The CO should also advise the individual that made the unauthorized commitment that the nonratifiable commitment will not be paid in accordance with prescribed contracting methods of payment, and the individual employee who made the unauthorized commitment may be held personally liable for the payment of the supplies or services. Actions by an employee that result in an unauthorized commitment may also be subject to disciplinary action.
- 5) If the unauthorized commitment involves a GPC, or payment has already been made, the responsible individual may be billed, or other reimbursement action taken.

Approva¹

JASON FREIHAGE

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Jason Freihage
Deputy Assistant Secretary – Management (DAS-M)

Date