

# INDIAN AFFAIRS MANUAL

**1.1 Purpose.** This chapter establishes the policy and procedures to ratify unauthorized commitments.

An unauthorized commitment occurs when a government representative enters into an agreement and lacks the authority to do so; the agreement is therefore not binding. Ratification is the act of approving an unauthorized commitment by an official (Ratifying Official) who has the authority to do so.

If the unauthorized commitment cannot be ratified, the vendor will not be paid by the Government 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.

**1.2 Scope.** This policy applies to all programs and offices 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.** Indian Affairs (IA) program offices will adhere to procurement procedures designed to prevent unauthorized commitments. If an unauthorized commitment is detected, IA acquisition 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 Acquisition Regulations (DIAR) 1401.602-3, Ratification of unauthorized commitments

**1.5 Responsibilities.**

- A. Deputy Assistant Secretary – Indian Affairs (Management) (DAS-M)** provides oversight and ensures the acquisition management program is implemented in compliance with all applicable laws, regulations, policies, and procedures. DAS-M ensures that acquisition management has the applicable resources, procedures, and tools necessary to fulfill the duties assigned.

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- B. Director, BIA and Director, BIE** ensure appropriate organizational resources and personnel are available to assist in implementation and administration as delegated and assigned, including designation of field liaison personnel to assist the DAS-M staff with acquisition management, as needed.
- C. IA Chief Financial Officer (CFO)** is responsible for the management, administration, and oversight of IA acquisition policies and procedures. The CFO serves as the head of the contracting activity (HCA) who is the senior IA acquisition official.
- D. Head of the Contracting Activity (HCA)** has overall responsibility for managing contracting. The authority of the HCA may be redelegated to the Bureau Procurement Chief (BPC) unless otherwise specified.
- E. BPC** is the senior GS-1102 official in a bureau or office. His/her ratification authority may be delegated, unless specified otherwise, to the Chief of the Contracting Office (CCO) (FAR 1.602-3(b)(3)). If the BPC is also the Contracting Officer (CO) for an action requiring approval of the BPC, then approval will be at the HCA level.
- F. CCO/Supervisory Contracting Officer** is the senior GS-1102 within a contracting office unless otherwise specified by bureau/office regulation. If the CCO is also the CO for an action requiring approval of the CCO, then approval will be at the BPC level.
- G. Contracting Officer** is responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.
- H. IA Contract Specialists** are responsible for determining if an unauthorized commitment is ratifiable.

**1.6 Definitions.** Additional definitions are defined in the FAR, Subpart 2.1.

- A. Unauthorized Commitment** is defined in the FAR as 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.
- B. Ratification** is the act of approving an unauthorized commitment by an official who has the authority to do so. The ratification of an unauthorized commitment is a time consuming process. Until the unauthorized commitment is ratified, the vendor will

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not be paid by the Government and the person who made the unauthorized commitment can be personally liable for the action.

- C. Statement of Facts** is a written statement delineating the reasons for not utilizing the services of the Acquisition Office. This statement includes the description of the work performed or the goods received, the estimated or agreed upon price, and the funding citation.

## 1.7 Procedures.

### A. Determination and Findings

To determine whether an unauthorized commitment is ratifiable, the unauthorized commitment must include all of the seven prerequisites stated in FAR 1.602-3(c):

1. Supplies or services have been provided to, and accepted by, the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;
2. The ratifying official has the authority to enter into a contractual commitment;
3. The resulting contract would otherwise have been proper if made by an appropriate contracting officer;
4. The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;
5. The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;
6. Funds are available and were available at the time the unauthorized commitment was made; and
7. The ratification is in accordance with any other limitations prescribed under agency procedures.

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### **B. Ratification Process**

If the unauthorized commitment is ratifiable, the following process must be followed:

1. The ratifying official obtains a Statement of Facts from the program office that committed the unauthorized commitment, and collects all records and documents concerning the commitment.
2. The ratifying official obtains invoices from the program office.
3. The ratifying official obtains an approved Purchase Requisition (PR) from the program office via the Financial and Business Management System (FBMS).
4. The ratifying official prepares the Determinations and Findings.
5. The ratifying official prepares an unauthorized commitment letter to the Supervisor of the individual that entered into the unauthorized commitment, preferably as a PDF file submitted via e-mail. The letter should be included as part of the ratification package.
6. The Supervisor of the individual or the Program Office who made the unauthorized commitment must prepare a corrective action plan to prevent further unauthorized commitments (e.g., ethics training, purchase card or administrative procedures training, or other appropriate action to include disciplinary action, if appropriate).

The Program Office/Supervisor must report to the ratifying official in writing when the corrective action has been determined (before initiation) for approval. Once the corrective action has been fully implemented and completed, the ratifying official should verify that the corrective actions are in place to preclude this action from occurring again. The IA Office of Human Capital Management must be consulted as part of this process.

7. For ratifications that exceed the micro-purchase threshold, the ratifying official reviews the entire ratification package for completeness, and forwards the entire package to the servicing Solicitor for legal sufficiency review and signature (preferably as a PDF file via e-mail).

After signature is obtained from the Office of the Solicitor, the Supervisory CO/CCO will review and approve the ratification package as long as the HCA has

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delegated the ratification authority to the CCO. If the CCO is also the CO for the action requiring approval of the CCO, then approval must be at the BPC level.

8. If the ratification does not exceed the micro-purchase threshold, then legal sufficiency review by the Solicitor's Office is not required. The Supervisory CO may sign the ratification.
9. Once all signatures have been obtained, a purchase order (PO) may be issued, distributed, and payment processed.
10. Once a PO has been issued, a copy of the entire package, including the PO, should be submitted to the Division of Acquisition Management, Central Office.

## C. Not Ratifiable

Cases that are not ratifiable under FAR 1.602-3(c) may be subject to resolution as recommended by the Government Accountability Office (GAO) under its claim procedures (*see* GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2) or as authorized by FAR subpart 50.1. Nonratifiable commitments must be coordinated with the Solicitor's Office.

If the action cannot be ratified, the Contract Specialist assigned to the case file must notify the vendor/contractor and the Program Office in writing stating why the action is not ratifiable.

## 1.8. Quarterly Reports

Supervisory COs/CCOs will account for all ratifications and are required to send a report to the BPC on a Fiscal Year quarterly basis. The reports are due on the 15th day after the end of each Quarter, and must contain the following information:

1. Name of the individual who is responsible for the Unauthorized Commitment;
2. Description of the supplies and/or services;
3. Dollar amount;

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4. Contractor name; and
5. Purchase requisition number if applicable.

## Approval



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Acting Deputy Assistant Secretary- Indian Affairs (Management)

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Date