

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC DIRECTIVE	TITLE	
	Ratification of Unauthorized Commitments	
	Directive Number: FCCINST 1073.3	Effective Date: April 15, 2015

1. Purpose. The purpose of this directive is to establish policy, procedures, and responsibilities of the Federal Communications Commission (FCC or Commission) for ratifying unauthorized commitments.
2. Reinstatement. This directive replaces FCC INST 1073.2 (dated September 15, 2011).
3. Scope. All unauthorized commitments are covered by this directive, but the specific circumstances of any particular unauthorized commitment may preclude ratification.
4. Definition. An “unauthorized commitment” is an agreement for goods or services that is not binding solely because the Government representative who made it lacked the authority to enter into the agreement on behalf of the Government. It is sometimes also loosely referred to as an “unauthorized procurement” or “unauthorized contract.”
5. Policy. The Federal Acquisition Regulation (FAR) (48 C.F.R. ch.1) and Standards of Ethical Conduct (5 C.F.R. Part 2635) shall be followed in the conduct of the FCC’s acquisitions and in the management and implementation of its procurement program. Accordingly:
 - a. FCC employees shall not knowingly make unauthorized commitments of any kind, including those that purport to bind the Government in contract. Although the procedures provided in this Directive are for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures must not be used in a manner that facilitates such commitments by FCC employees. Under the FAR, FCC must take positive action to preclude, to the maximum extent possible, the need for ratification actions.
 - b. Only a duly appointed Contracting Officer (with a warrant sufficient to cover the transaction at issue), or a Contracting Officer designated by regulation, is authorized to commit the Commission contractually and sign a contract, purchase order, task order, or delivery order or modify a contract on behalf of the Commission. An exception exists for authorized Government purchase card holders other than Contracting Officers who may use a purchase card to acquire appropriate goods or

services if the FCC's total commitment (including all automatic recurring commitments) is below the micro-purchase threshold. Purchase card transactions are governed by FAR 13.301 and FCC INST 1097.2. Otherwise, employees within the Enterprise Acquisition Center (EAC) are chiefly responsible for day-to-day implementation of the Commission's procurement program. Authorized officials and employees in that function are responsible for the negotiation, execution, administration, and maintenance of the agency's contracts and orders, assisted by representatives from other functions where and to the extent delegated.

- c. No unauthorized commitment of Commission funds shall be honored unless it is ratified in accordance with the procedures set forth in this directive. Any employee that makes an unauthorized commitment that is not subsequently ratified under this Directive or otherwise approved for payment by the Managing Director ***shall be personally responsible for any enforceable obligation to pay the vendor or provider of the goods or services.*** In unusual cases, the Managing Director, after receiving written advice of the Office of General Counsel (OGC), may be able to authorize payment of unauthorized commitments (or what appear to be unauthorized commitments) in full or in part on other, very narrow, legal grounds.
 - d. The ratifying official may ratify an unauthorized commitment only when the following conditions exist:
 - (1) Supplies or services have been provided to and accepted by FCC, or FCC otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;
 - (2) The resulting contract would otherwise have been proper if made by an appropriate Contracting Officer;
 - (3) The Contracting Officer reviewing the unauthorized commitment determines the price to be fair and reasonable;
 - (4) The Contracting Officer recommends payment;
 - (5) Funds are available *and* were available for the goods or services at the time the unauthorized commitment was made;
 - (6) The ratification is in accordance with any limitations prescribed by the FCC under agency procedures applicable to the transaction in issue; and
 - (7) Ratification is in the Commission's interest.
6. Ratification Authority. The Senior Procurement Executive (SPE) for EAC is designated as the ratifying official for the Commission.

7. Responsibilities.

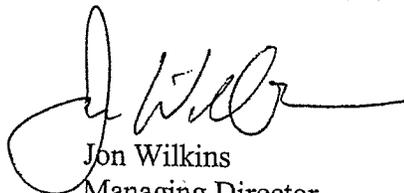
- a. The ratifying official is responsible for:
 - (1) The final decision in all ratification cases;
 - (2) Ensuring compliance with 48 CFR § 1.601-3 and this directive;
 - (3) Developing, implementing, and administering policies and procedures pertaining to unauthorized commitments; and
 - (4) Developing additional procedures based on periodic reviews to preclude future unauthorized commitments.
- b. The Chief Financial Officer shall forward copies of invoices for which no recorded obligation exists to the Chief, EAC, except invoices for travel which shall be forwarded to the appropriate bureau or office chief (see paragraph nine).
- c. The Chief, EAC shall:
 - (1) Be responsible for assembly of the ratification file as set forth in paragraph eight; and
 - (2) Recommend to the ratifying official whether to ratify an unauthorized commitment based on consideration of the criteria in paragraph 5.d.
- d. Bureau and Office Chiefs shall ensure that:
 - (1) Employees under their supervision provide to the Contracting Officer upon request all pertinent data concerning the unauthorized commitment;
 - (2) Employees under their supervision comply with the FAR 48 C.F.R. § 1.601-3 and this directive;
 - (3) Precautionary measures to reduce and prevent unauthorized commitments, as prescribed by the Managing Director or designee, are taken within their respective bureaus and offices; and
 - (4) Supervisory staff advise employees of the Commission's policies regarding unauthorized commitments.

8. Ratification Procedure.

- a. The EAC shall assemble the ratification file. For cases involving more than \$500, the file, at a minimum, shall contain the following:
 - (1) A statement from the Commission employee who made the unauthorized commitment explaining the facts and circumstances of the matter;
 - (2) A summary statement of the facts of the unauthorized commitment from the Chief, EAC to the ratifying official, along with a recommendation on action to be taken addressing each of the conditions and areas for recommendation or determination identified in paragraph 5.d. above; and
 - (3) A statement whether the official or employee responsible for the unauthorized commitment has previously made unauthorized commitments, including their number, value, and nature.
- b. In cases involving \$500 or less, a summary ratification procedure may be used. Under the summary procedure, the file shall take the form of a memorandum sent by the Chief, EAC to ratifying official. The memorandum shall describe the circumstances necessitating the summary ratification, address each of the conditions and areas for recommendation or determination identified in paragraph 5.d. above, recommend an action, and provide an approval/disapproval line for the ratifying official's signature. This signed memorandum shall be the authorizing document for the payment of the obligation.
- c. Prior to forwarding the recommendation on a case involving more than \$500 to the ratifying official, OGC shall review the recommended action. OGC may concur with the recommendation for payment or return it to the Chief, EAC with a rationale for non-concurrence. The ratifying official may act favorably upon a recommendation for payment without the concurrence of legal counsel in any case involving \$500 or less, or, in the ratifying official's sole discretion, for exigent or compelling circumstances with respect to cases involving more than \$500.
- d. After reviewing the file, the ratifying official shall decide whether to ratify the unauthorized commitment, sign the appropriate documents, and return the file to the EAC for disposition. The ratifying official may recommend disciplinary action for resolution by the appropriate supervisor or office chief, if any, and if the determination is not to ratify the unauthorized commitment, shall determine, in consultation with OGC, the appropriate action to be taken to resolve the matter.

9. Quarterly Reporting Requirements.

- a. The ratifying official shall provide a report to the MD and SMC for review at their quarterly meetings summarizing the number of ratifications processed for the prior quarter. The report, at a minimum, shall contain the following:
- (1) The number of ratification actions processed, including the dollar amounts and the office responsible for each unauthorized commitment;
 - (2) A listing of outstanding ratifications and any actions needed to complete the process;
 - (3) A listing of any unauthorized commitments that were not approved for ratification, and a description of those actions to include a description of the risks to the Commission, if any, and other possible remedies for such items to include input from OGC.
- b. The ratifying official shall include a scorecard within the ratification report provided to the MD and the SMC for review at their quarterly meetings. The scorecard shall contain the following measures:
- (1) Low Risk - Actions Completed. For completed ratifications, with no outstanding issues, the scorecard shall include the number of actions by quarter and for the current and most recent fiscal year.
 - (2) Medium Risk - Actions Under Process. For unauthorized commitments under process, without significant completion issues, the scorecard shall include the number of actions by quarter and for the most recent fiscal year.
 - (3) High Risk – Actions Not Approved. For unauthorized commitments not approved, or at risk of disapproval, the scorecard shall include the number of actions by quarter and for the most recent fiscal year, plus detailed notes that include input from OGC, that address the specific risks to the commission, and all other relevant issues.



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