

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554  <b>FCC DIRECTIVE</b>	<b>TITLE</b>	
	<b>Ratification of Unauthorized Commitments</b>	
	<b>Directive Number:</b> <b>FCCINST 1073.4</b>	<b>Effective Date:</b> November, 2021

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. **CANCELLATION:** This instruction supersedes FCC INST 1073.3 (dated April 15, 2015).
3. **SCOPE:** Generally, the Government is not bound by commitments made by persons with no authority to bind the Government. When an unauthorized commitment has taken place, strict adherence to the guidelines described in this Directive are necessary for final disposition of the transaction. Unless ratification of an unauthorized commitment is determined to be warranted and proper, the FCC employee who made the commitment may be held personally liable for payment to the vendor.
4. **BACKGROUND.** As used in this directive, an “unauthorized commitment,”<sup>1</sup> sometimes also referred to as an “unauthorized procurement” or “unauthorized contract,” is defined 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.” FAR, 48 CFR § 1.602-3(a). As used in this directive, “ratification” is defined as in FAR, 48 CFR § 1.602-3(a) as “the act of approving an unauthorized commitment by an official who has the authority to do so.” Ratification authority is provided to the head of the contracting activity, unless a higher-level official is designated by the agency. FAR, 48 CFR § 1.602-3(b)(2). In the case of the FCC, in no case shall this ratification authority be delegated below the level of the chief of the Enterprise Acquisitions Center – the Senior Procurement Executive (SPE).

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<sup>1</sup> Examples of unauthorized commitments contemplated in this directive include, but are not limited to: (a) Government purchase cardholder making a purchase over their single purchase limit, or making multiple purchases from the same vendor on the same day whose combined total exceeds the single purchase limit when the total requirement was known at the time of the first purchase; (b) making a commitment for continuation of services or research, or delivery of supplies under an expired contract, purchase order, or delivery order; (c) making a commitment for performance of work or delivery of supplies prior to issuance of a contract, purchase order, or delivery order; (d) making a commitment which exceeds the call order limit on a blanket purchase agreement; (e) making a commitment under a blanket purchase agreement by a person who is not delegated authority; and (f) making a commitment which continues contract services over and above the original scope and dollar amount.

5. POLICY: The FCC's acquisition of goods and services, and the management and implementation of its procurement program, shall be conducted in accordance with the FAR. Accordingly:
- A. FCC will take positive action to preclude, to the maximum extent possible, the need for ratification actions in accordance with the FAR, 48 CFR § 1.602-3, *Ratification of unauthorized commitments*. This Directive must not be used in a manner that encourages unauthorized commitments by FCC employees.
  - B. FCC employees shall not knowingly make unauthorized commitments of any kind, including those that purport to bind the Government in contract. Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR § 2635.101(b)(6).
  - C. With very limited exceptions,<sup>2</sup> only a duly appointed Contracting Officer (CO) (with a warrant sufficient to cover the transaction at issue), or a CO designated by regulation, is authorized to commit the Commission contractually and to sign a contract, purchase order, task order, or delivery order or modify a contract on behalf of the Commission.
  - D. No unauthorized commitment of Commission funds shall be honored unless 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.***
  - E. The Ratifying Official, as defined in Section 6, below, may ratify an unauthorized commitment only when all of the following conditions exist:
    - (1) Supplies or services have been provided to and accepted by the FCC, or the 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 CO;
    - (3) The CO reviewing the unauthorized commitment determines the price to be fair and reasonable;
    - (4) The CO recommends payment;
    - (5) Funds are and were legally 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 at issue;

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<sup>2</sup> Authorized Government purchase card holders 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, 48 CFR § 13.301 and FCC Directive INST 1097.4, *Use of Federal Government Purchase Card*.

- (7) Ratification is in the Commission's interest; and
- (8) FCC's Office of General Counsel (OGC) recommends that the proposed ratification is justified under applicable legal standards.

F. In accordance with law, rule, regulation, and, if applicable, the Basic Negotiated Agreement (BNA), disciplinary or adverse actions may be taken against the individual making the unauthorized commitment, up to and including removal.

G. An individual who makes an unauthorized commitment may be subject to suspension or revocation of their delegation of authority to use a purchase card or contracting warrant.

H. When an unauthorized commitment is made by a CO in the Enterprise Acquisition Center (EAC), the SPE will designate another CO to prepare the ratification file.

6. RATIFICATION AUTHORITY: The Ratifying Official is the individual designated with authority to ratify an unauthorized commitment. Unless another official is delegated by the Commission or the Managing Director in accordance with FAR, 48 CFR § 1.602-3(b)(3), the Senior Procurement Executive (SPE) for the FCC is the Ratifying Official for the FCC.

7. RESPONSIBILITIES:

A. The Ratifying Official is responsible for:

- (1) Making the final decision to approve or disapprove all ratification cases;
- (2) Ensuring compliance with FAR, 48 CFR § 1.602-3 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:

(1) Forward copies of invoices for which no recorded obligation exists to the SPE except invoices for travel which shall be forwarded to the appropriate Bureau or Office chief; and (2) Perform or delegate the responsibility to a Manager to:

- (a) Prepare a statement for the ratification file regarding sufficiency of funds at the time of the unauthorized commitment; and
- (b) Submit proper funding documentation for any ratified commitment to the CO, if not previously submitted.

C. EAC shall:

- (1) Compile a ratification file as set forth in Section 8.B., below, coordinating with FCC staff or outside parties as necessary;
- (2) Prepare a memorandum for submission to the Ratifying Official with a recommendation whether to ratify an unauthorized commitment in full or in part based on consideration of the criteria in Section 5.E.;
- (3) Prepare necessary funding document(s) (e.g., purchase request, purchase order, contract) for ratified unauthorized commitments, if not already received in EAC; and
- (4) Issue formal notification to contractor, individual, and individual's supervisor, of the outcome of the ratification process.

D. OGC shall:

- (1) Review the ratification file supporting the unauthorized commitment; and
- (2) Make a recommendation to the Ratifying Official as to whether ratification of the unauthorized commitment is justified under applicable legal standards.

E. Bureau and Office Chiefs shall ensure that:

- (1) Employees under their supervision provide to EAC all pertinent data concerning the unauthorized commitment upon request;
- (2) Employees under their supervision comply with the FAR, 48 CFR § 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.

F. The Individual Making the Unauthorized Commitment shall:

- (1) Support all requests by EAC for information; and
- (2) Provide, within established timelines, a full statement explaining all pertinent facts and circumstances surrounding the act, along with relevant supporting related documents and records.

8. RATIFICATION PROCEDURE:

- A. After the discovery of a possible unauthorized commitment, EAC shall be informed of the suspected unauthorized commitment as soon as possible by any party with knowledge of the questioned activity, which may include the party committing the possible unauthorized commitment and his or her supervisor. At that point, EAC shall direct the contractor to stop performance

of the services and/or delivery of the supplies in question, and the unauthorized commitment/ratification process, as set forth below, begins.

- B. EAC will begin gathering all available information on the unauthorized commitment and shall assemble a ratification file, which must document the chain of events leading up to the unauthorized commitment. At a minimum, the file shall contain the following:
- (1) Description of the supplies or services provided and whether or how the Government benefited from the performance of the unauthorized act;
  - (2) Description of supplies or services which were unusable or for which no benefit was obtained, to include supporting explanation;
  - (3) Written, signed statement from the individual who committed the unauthorized act, which must include all pertinent facts and circumstances, as well as any supporting documentation;
  - (4) Invoice from the source requesting payment for the supplies or services;
  - (5) Funding document (e.g., purchase request, commitment document) if not already received in EAC;
  - (6) Signed statement from the Financial Operations office indicating whether sufficient funds were available at the time of the unauthorized act and whether they are now available to cover the cost of the proposed ratification;
  - (7) Recommendation, with justification, for/against ratification;
  - (8) All other relevant documents and records; and
  - (9) Evidence of administrative actions taken, if deemed necessary, to prevent a recurrence of unauthorized acts.

Additionally, the SPE shall prepare a memorandum to accompany the ratification file describing the circumstances necessitating the summary ratification, address each of the conditions and areas for recommendation or determination identified in Section 8.C. below, 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. EAC will review the contents of the ratification file and obtain additional information or documentation if necessary. Within ten business days of receipt or completion of the final package, the CO shall:
- (1) Prepare a Statement of Facts which shall include:
    - (a) Description of the unauthorized act;
    - (b) Analysis of the limitations set forth in FAR, 48 CFR §§ 1.602-3(c)(1)-(7);
    - (c) Analysis of the price(s) involved to support the determination that the price is fair and reasonable (for the total/partial ratifiable portion of the unauthorized act); and

(d) Description of action(s) taken, if reported, to prevent recurrence of the unauthorized act.

- (2) Prepare a Determination and Findings outlining the final CO recommendation, with justification, for total ratification, partial ratification, or denial;
- (3) Prepare a draft Purchase Order, Modification, or other contractual vehicle to rectify the unauthorized act; and
- (4) Prepare a Memorandum of Approval/Disapproval to be signed by the Ratifying Official.

D. OGC shall review the recommended action prior to forwarding the recommendation to the Ratifying Official and recommend whether the acquisition may be ratified under the provisions of the FAR. OGC may concur with the recommendation for payment or return it to the Chief, EAC with a rationale for non-concurrence.

E. 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. If the ratifying official decides not to ratify the unauthorized commitment, he or she shall determine, in consultation with OGC, the appropriate action to be taken to resolve the matter.

F. EAC shall keep a log of all unauthorized commitments within the fiscal year.

G. All documentation of unauthorized commitments shall be filed with the final order that is executed for payment and will be maintained in accordance with contract retention requirements contained in FAR, 48 CFR § 4.805.

9. RATIFICATION OF UNAUTHORIZED COMMITMENTS OUTSIDE OF FAR:

The FCC may enter agreements that are outside the governance of the FAR, including those with other Federal agencies or the Universal Service Administrative Company (USAC). Unauthorized commitments that arise in the context of such arrangements, including memoranda of understanding (MOUs) and inter-agency agreements (IAAs), shall be addressed in a manner structured similarly to that set forth in Section 8 of this directive, although without the involvement of EAC. In such instances, the ratification file as described in Section 8.B. will be prepared by the Financial Operations Group and forwarded to OGC for their review and recommendation. The FCC's Chief Financial Officer (CFO) or his or her designee shall make the decision whether to ratify the unauthorized commitment. In the event that the CFO decides not to ratify the unauthorized commitment, he or she shall determine, in consultation with OGC, the appropriate action to be taken to resolve the matter.

10. QUARTERLY REPORTING REQUIREMENTS:

- A. The Ratifying Official shall provide a report to the Managing Director for review at a regularly scheduled meeting, which shall occur no less frequently than once each year. Such report shall summarize the number of ratifications of unauthorized commitments processed during each prior quarter since the previous meeting. The report, at a minimum, shall contain the following:
- (1) The number of ratification actions processed, including the dollar amounts and the Bureaus and Offices 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, including a description of the risks to the Commission, if any, and other possible remedies for such items, along with any input from OGC.
- B. The Ratifying Official shall include a scorecard within the ratification report provided to the Managing Director at their regularly scheduled meetings, which shall occur no less frequently than once each year. 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.

11. EFFECTIVE DATE AND IMPLEMENTATION:

This directive is effective immediately and shall be implemented promptly upon distribution.

Mark Stephens  
Managing Director