

UNAUTHORIZED COMMITMENTS AND RATIFICATION

- 1. REASON FOR ISSUE.** This Department of Veterans Affairs (VA) Handbook 1701.7 establishes procedures for ratifying unauthorized commitments, for denying requests for ratification, and for reporting all ratification actions and all denied requests for ratification to the VA Business Oversight Board (BOB).
- 2. SUMMARY OF CONTENTS.** VA Handbook 7401.7 establishes procedures for ratifying unauthorized commitments, for denying requests for ratification, and for reporting all ratification actions and all denied requests for ratification to the VA BOB.
- 3. RESPONSIBLE OFFICE.** Acquisition Resources Service (049A5), Office of Acquisition and Materiel Management.
- 4. RELATED DIRECTIVE.** VA Directive 7401.7, Unauthorized Commitments and Ratification.
- 5. RESCISSION.** None.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/S/

/S/

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UNAUTHORIZED COMMITMENTS AND RATIFICATION

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UNAUTHORIZED COMMITMENTS AND RATIFICATION

1. PURPOSE. Department of Veterans Affairs (VA) Handbook 7401.7 supplements section 801.602-3 of the VA Acquisition Regulation (VAAR). It establishes additional requirements and sets forth procedures for ratifying unauthorized commitments and for reporting all ratification actions and all denied requests for ratification to the VA Business Oversight Board (BOB). The required reports shall be titled "Report on Ratification Actions," and Reports Control Number (RCN) 04-0917 has been assigned to this report. Negative reports are not required, but a lack of reports may be followed up. All ratification actions must be reported; there is no dollar limit on this reporting requirement.

2. PROCEDURES FOR PROCESSING REQUESTS

a. Whenever the senior contracting officer of a supporting contracting activity or chief of the purchase and contract section learns of an unauthorized commitment, the official should advise the person furnishing the unauthorized supplies or services that the supplies or services are being provided at the person's own risk and should advise the person to stop work. If payment had been authorized by purchase card, the VA official should take action, in cooperation with the purchase card coordinator for the facility, to suspend or recover the payment through Citibank. The official should inform the VA employee who made the unauthorized commitment of the seriousness of the act and the possible consequences and require compliance with VAAR 801.602-3(b)(1). VA employees who make unauthorized commitments may be subject to disciplinary action and revocation of purchase card authority or contracting officer warrant privileges. VA employees who make unauthorized commitments and who subsequently fail to comply with the requirements of VAAR 801.602-3 and VA Directive and Handbook 7401.7 may be subject to disciplinary action.

b. Upon receipt of a request for ratification from a VA employee who made an unauthorized commitment, or from the employee's supervisor, the contracting officer shall ensure that all information required by VAAR 801.602-3 (b)(1) has been provided. If so, the contracting officer shall evaluate the request and prepare a memorandum to the official authorized by VAAR 801.602-3 to approve ratifications (the Ratification Official), addressing each of the limitations contained in Federal Acquisition Regulation 1.602-3(c), Limitations, and recommending approval or disapproval of the request. Unauthorized commitments may be ratified only when the conditions cited in FAR 1.602-3(c) exist.

c. The Ratification Official authorized by VAAR 801.602-3 to approve ratifications shall review the material submitted and either approve or disapprove the request and return the package to the contracting officer. The

Official may prepare and send a memorandum to the VA employee who made the unauthorized commitment, emphasizing the seriousness of the action (see appendix D). The Ratification Official must ensure that a copy of each approved or denied request for ratification is submitted and reported as provided in paragraph 4, Reporting Procedures.

d. Contracting officers shall assign each approved request for ratification a purchase order or contract number, which may be a no-cost document if payment has already been made via purchase card, and shall maintain copies of approved requests in the purchase order or contract file. The purchase order or contract document must clearly indicate that it is a ratification of an unauthorized commitment.

e. Chiefs of purchase and contract sections must maintain a separate file of all approved and disapproved requests for ratification for their respective locations for a period of 6 years and 3 months. If copies of approved ratifications are already in the purchase order or contract file, reference to those documents by purchase order or contract number, rather than duplicate copies of the complete files, may be maintained in the ratification file. Ratification actions will be reviewed for compliance with applicable regulations during management reviews.

f. Heads of contracting activities shall ensure that individuals who make unauthorized commitments are counseled on the seriousness of the action and shall provide such individuals with a copy of VA Directive and Handbook 7401.7.

3. DENIAL OF REQUESTS FOR RATIFICATION

a. The Ratification Official may deny a request for ratification if ratification would not be in the best interest of the Government. Ratification Officials must deny requests for ratification for expenditures that were in violation of public law or for expenditures that were for purposes for which appropriated funds may not be expended.

b. If the Ratification Official denies a request for ratification, the contracting officer involved should furnish an explanation of the decision not to ratify to the vendor who provided the unauthorized supplies or services (if the vendor has not yet been paid) and the VA employee who made the unauthorized commitment. In those cases where ratification is denied and where the purchase card had been used to pay for the unauthorized commitment or the invoice has already otherwise been paid, the Ratification Official should ensure that the individual who made the unauthorized commitment is issued a bill for collection to recover the funds expended if the funds cannot otherwise be recovered through Citibank or from the vendor. If Citibank or the vendor is requested to return the funds, the vendor

should be provided with an explanation and advised of its rights to pursue collection from the individual who made the unauthorized commitment. Disapproved requests may also be subject to resolution under the claim procedures of the Government Accountability Office (see FAR 1.602-3(d)).

4. REPORTING PROCEDURES

a. VA field facility Ratification Officials authorized to approve ratification actions in VAAR 601.602-3 shall ensure that each ratification action and each denied request for ratification is reported within 10 workdays of approval or denial as follows:

(1) Veterans Health Administration (VHA) field facility Ratification Officials shall report approved and denied requests for ratification to the Veterans Integrated Service Network (VISN) Chief Logistics Officer (CLO) for the geographical area within which the field facility is located.

(2) Veterans Benefits Administration (VBA) field facility Ratification Officials shall report approved and denied requests for ratification to the Chief, Acquisition and Reengineering Division, Office of Resource Management (241C), VA Central Office.

(3) National Cemetery Administration (NCA) and other non-VHA, non-VBA field facility Ratification Officials shall report approved and denied requests for ratification directly to VA Central Office as provided in paragraph 4.g.

b. Each VHA CLO shall consolidate all reports received and submit one quarterly consolidated report within 15 workdays following the close of each quarter to the VHA Clinical Logistics Office (10F).

c. The VHA Clinical Logistics Office (10F) shall consolidate all network reports received and forward a consolidated report within 25 workdays following the close of each quarter to the Director, Acquisition Resources Service (049A5A), in accordance with paragraph 4.g.

d. The Chief, Acquisition and Reengineering Division (241C), shall consolidate all reports received and forward a consolidated report within 25 workdays following the close of each quarter to the Director, Acquisition Resources Service (049A5), as provided in paragraph 4.g.

e. VA Central Office officials authorized to approve ratification actions in VAAR 801.602-3 shall ensure that each ratification action and each denied request for ratification is reported within 10 workdays of approval or denial to the Director, Acquisition Resources Service (049A5), VA Central Office, as provided in paragraph 4.g.

f. Each report shall consist of a cover memorandum giving the facility name, number, and location, and shall identify the memorandum as a Report on Ratification Actions, RCN 04-0917 (see appendix C). The memorandum shall include as attachments the following documents for each ratification action:

(1) The information/memorandum submitted by the individual who made the unauthorized commitment (or his or her supervisor), as required by VAAR 801.602-3(b)(1), along with any attachments (see appendix A); and

(2) The information/memorandum submitted by the contracting officer, as required by FAR 1.602-3(c), along with the approval or disapproval of the Ratification Official (see appendix B).

g. The reports required in paragraphs 4.a.(3), 4.c., 4.d., and 4.e. may be sent via mail or fax, or electronically by e-mail to the Director, Acquisition Resources Service. Fax to (202) 273-9302; e-mail to vacoratification@mail.va.gov (shown as "VACO Ratification" in Outlook). Attachments to e-mail reports may be in the form of Word, pdf, or tif documents. Mailed reports should be sent to:

Director, Acquisition Resources Service (049A5)
Department of Veterans Affairs
VA Central Office
810 Vermont Avenue, NW
Washington, DC 20420

h. Acquisition Resources Service staff shall consolidate all reports received, complete an analysis of the findings, and submit the data annually, within 30 workdays of the close of the fiscal year, to the Executive Secretary for the BOB (004), with copies to the Under Secretaries for Health, Benefits, and Memorial Affairs and the Director of the Office of Business Oversight.

REQUEST FOR RATIFICATION

Appendix A provides guidance on the information that should or must be provided in a memorandum from the individual who made an unauthorized commitment (or that person's supervisor if the individual is no longer employed by VA) to the chief of the contracting office that provides contracting support for the facility. Included is the information required by VAAR 801.602-3(b)(1) that must be addressed/answered by the individual submitting the request for ratification.

1. The introductory paragraph of the memorandum should request ratification of a commitment in accordance with Department of Veterans Affairs Acquisition Regulation (VAAR) 801.602-3(b)(1), should state who made the unauthorized commitment, and should include a short statement of what the commitment was for. The memorandum should request that payment be made (or, if payment has already been made by purchase card or otherwise, that payment previously made not be revoked) and should describe any attached documents that support or relate to the unauthorized commitment. The memorandum should provide the following information:

a. The name, address, and phone number of the vendor to whom the unauthorized commitment was made or to whom the purchase card authorization(s) was issued.

b. A complete description of the supplies or services ordered or received, when the supplies or services were received, how they were or will be used (if applicable), and the agreed to or estimated price thereof. If payment has been authorized by purchase card, explain the circumstances relating to the use of the card (e.g., the date of the authorization, whether the vendor has billed VISA and the payment has been reconciled, and whether the payment can be stopped and/or the funds recovered through the filing of a Cardholder Dispute Form with Citibank).

c. A statement explaining the bona fide Government requirement that necessitated the commitment, the benefits the Government received as a result of the commitment, and why the unauthorized commitment should be ratified rather than requiring that the individual who made the commitment to be personally liable for payment of the vendor's invoice or repayment of purchase card payments.

d. A statement as to why the procurement office was not used for this action and an explanation of the circumstances that lead to the unauthorized commitment. Explain any extenuating circumstances that might mitigate the seriousness of the unauthorized commitment, such as a delay in awarding a contract by the supporting contracting office through no fault of the requesting office.

e. An explanation as to how and why the particular vendor was selected as well as a list of other sources, if any, that were considered and the prices offered. Explain how the vendor's price was determined to be fair and reasonable. If no other vendor was considered and the price exceeded \$2,500, provide a justification for sole source

procurement. (Note: If the dollar value exceeded \$100,000, attach a completed Justification in accordance with Federal Acquisition Regulation 6.303-2.)

f. The appropriation and funds citation to be used, a statement as to whether funds were available at the time the commitment was made to cover the transaction, and a statement as to the continued availability of such funds. (Note: A separate statement from the fund control official is required if the individual submitting this memorandum is not also the fund control official for the cited funds.)

g. Include a statement of whether the vendor has commenced performance, the status of that performance, and whether the supplies or services provided to date are acceptable.

h. Include an explanation as to how unauthorized commitments will be avoided in the future.

2. The memorandum should be signed by the individual who made the unauthorized commitment and approved by the individual's supervisor. If the individual who made the unauthorized commitment is no longer employed by VA, it should be signed by the official who was the individual's supervisor.

RECOMMENDATION FOR RATIFICATION

Appendix B provides guidance for use by chiefs of contracting offices who process requests for ratification. Upon receipt of a request for ratification, the chief of the contracting office that provides contracting support to the requesting office should prepare a memorandum to the ratification official, as provided in VAAR 801.602-3, addressing the following information. Paragraphs 1.a., b., c., and d. address the limitations in FAR 1.602-3(c) that must be considered before a request for ratification can be approved.

1. The memorandum should request ratification, provide a short description of the unauthorized commitment, include all attachments relating to the unauthorized commitment, and provide information on the contracting officer's investigation and evaluation of the action. If the limitations in paragraphs 1.a., b., c., and d. cannot be answered positively, the contracting officer should recommend that the ratification not be approved. In that case, paragraphs a., b., c., and d. should address why the limitations contained therein preclude ratification.

a. Provide information on whether the supplies or services have been received and accepted by VA, or VA otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment. Provide a short explanation of the benefit to VA and, if delivery has already been made, how receipt was verified.

b. Provide a statement as to whether the resulting contract would otherwise have been proper if made by an appropriate contracting officer and that there are no other limitations in Department regulations or law that would preclude this action. Provide a short explanation of why that is the case in this circumstance.

c. Provide a statement as to whether or not the price is considered fair and reasonable. Explain or attach a copy of all price or cost analyses done to support this determination. If the price is not fair and reasonable, the action may be ratified for less than the full amount. In that event, the individual who made the unauthorized commitment may be held responsible for the cost difference.

d. Provide information on whether the fiscal officer responsible for obligation of funds for the organization involved has verified that funds were available at the time the unauthorized commitment was made and that funds are still available to pay for this unauthorized commitment. The contracting officer should obtain a separate statement from the fiscal officer or have the fiscal officer counter-sign the memorandum.

e. Provide a statement as to whether there appears to be a conflict of interest or violation of law, whether the vendor is debarred or otherwise ineligible for award, and whether a Justification for Other Than Full and Open Competition is required and, if so, has or has not been provided.

f. Provide a brief statement of the actions that will be taken to preclude future incidents of unauthorized commitments.

2. The chief of the contracting office should recommend whether the request for ratification should be approved and, if so, that payment be authorized for the unauthorized commitment *[revise as necessary if payment has already been made via purchase card or invoice]*.

3. The memorandum should include a signature line for the ratification official to approve or disapprove the ratification and payment, and indicate the amount that may be paid, if less than the full amount of the unauthorized commitment.

REPORTING RATIFICATION ACTIONS

This is a sample memorandum that may be used by the Ratification Official to report ratification actions to the CLO or other appropriate official. A similar memorandum may be used by VISN CLOs, VBA, NCA, and other field and VA Central Office Ratification Officials to forward or to report ratification actions to the Director, Acquisition Resources Service (049A5). This sample may be revised as necessary.

**Department of
Veterans Affairs**

Memorandum

Date: July 22, 2006
From: Director, VA Medical Center (834), Anywhere, Any State
Subj: Report on Ratification Actions, RCN 04-0917
To: VISN 44 Chief Logistics Officer (revise as necessary for reports from Ratification Officials to the Director, Acquisition Resources Service (see paragraph 4.g.))

1. In accordance with VA Handbook 7401.7, Unauthorized Commitments and Ratification, forwarded herewith is a copy of an approved/disapproved ratification action.
2. Attached are copies of the memorandum (and any attachments) from the individual who made the unauthorized commitment [*or the individual's supervisor*] requesting ratification and the memorandum from the contracting officer evaluating the request, recommending action, and showing the Ratification Official's approval.
3. Please direct any questions regarding this action to John Doe, phone (333) 222-3333.

/S/

John Doe

SAMPLE MEMORANDUM, COUNSELING

This is a sample memorandum that may be used by Ratification Officials to counsel individuals who made unauthorized commitments. Use is optional and this sample memorandum may be revised as necessary.

**Department of
Veterans Affairs**

Memorandum

Date: July 22, 2006
From: Director, VA Medical Center (8340)
Subj: Request for Ratification
To: Jane Doe

1. I have reviewed the information you have submitted requesting ratification of an unauthorized commitment to purchase supplies/services from John Smith Contractors, Inc. I have ratified the unauthorized commitment based on the fact that the vendor provided the supplies/services in good faith, and VA received a benefit.
2. Your unauthorized act was a violation of regulations, including the following:
 - a. Federal Acquisition Regulation (FAR) 1.601 – “Contracts may be entered into and signed on behalf of the Government only by contracting officers.”
 - b. FAR 1.602-1(b) – “No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.”
3. While I have ratified this act, you are advised that future procurement and/or contractual actions in which you become involved that exceed any delegation of authority you may have (if any) must be submitted to the procurement office for execution. I consider the unauthorized commitment a serious violation of administrative regulations that may subject you to further disciplinary measures.

/S/

John Doe