

UNAUTHORIZED COMMITMENTS AND RATIFICATION

- 1. REASON FOR ISSUE.** To issue Department of Veterans Affairs (VA) policy on the ratification of unauthorized commitments, to establish requirements and set forth policy and responsibilities for processing requests for ratification, and to establish policy and responsibilities for reporting all ratification actions and all denied requests for ratification to the VA Business Oversight Board (BOB).
- 2. SUMMARY OF CONTENTS.** VA Directive 7401.7 emphasizes the seriousness of making unauthorized commitments, establishes requirements and sets forth policy and responsibilities for processing requests for ratification, provides guidance on actions to be taken when ratification is not in the Government's best interest, and establishes policy and responsibility for reporting all ratification actions and all denied requests for ratification to the VA BOB.
- 3. RESPONSIBLE OFFICES.** Acquisition Resources Service (049A5), Office of Acquisition and Materiel Management.
- 4. RELATED HANDBOOK.** VA Handbook 7401.7, Unauthorized Commitments and Ratification.
- 5. RESCISSION.** None.

CERTIFIED BY:

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

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UNAUTHORIZED COMMITMENTS AND RATIFICATION

1. PURPOSE. Department of Veterans Affairs (VA) Directive 7401.7 supplements section 801.602-3 of the VA Acquisition Regulation (VAAR). It emphasizes the seriousness of making unauthorized commitments and establishes requirements and sets forth policy and responsibilities for processing requests for ratification and for reporting all ratification actions and all denied requests for ratification to the VA Business Oversight Board (BOB).

2. POLICY

a. As stated in section 1.601(a) of the Federal Acquisition Regulation, contracts may be entered into and signed on behalf of the Government only by contracting officers. Such actions include all types of commitments that obligate VA to expend funds for supplies or services. Executive Order 12731, Principles of Ethical Conduct for Government Officers and Employees, provides that "Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government."

b. Only appointed contracting officers, including purchase card holders, or other authorized officials, within their level of authority, may commit VA to pay for supplies or services. Other authorized officials derive their authority from specific statutes that allow certain individuals who are not appointed contracting officers or purchase card holders to enter into contracts or agreements to expend VA funds. An example of such authority is 38 United States Code (U.S.C.) 8111, whereby directors of medical centers and Veterans Integrated Service Networks (VISNs) may enter into agreements with directors of Department of Defense facilities to share resources.

c. Generally, the Government is not bound by unauthorized commitments made by Government employees. The Government is under no obligation to pay for the supplies or services ordered by individuals without authority unless an authorized official ratifies the action and a contracting officer or other official with appropriate authority sanctions that commitment. Examples of unauthorized commitments that would require ratification to be binding on the Government include split orders issued by a purchase card holder that, when totaled, exceed the cardholder's delegated level of authority; unauthorized commitments by a contracting officer's technical representative for extra work on an existing contract; orders for supplies or services by a VA employee who is not a contracting officer or purchase card holder; and purchase orders or contracts issued by an appointed contracting officer that exceed that contracting officer's level of authority. Vendors might seek legal action against employees for unauthorized commitments if payment cannot be obtained from the Government.

d. Ratification is the process whereby designated officials convert an unauthorized commitment to a legal contract. The action must be a proper use of appropriated funds (e.g., not a “personal use” expense) and must be for supplies or services for which VA has authority to contract and/or to expend appropriated funds (i.e., not in violation of public law).

e. All requests for ratification of unauthorized commitments in VA shall be processed in accordance with VAAR 801.602-3 and VA Directive and Handbook 7401.7. Finance officers must ensure that invoices are not processed for payment unless the commitment to pay for the supplies or services was made by, or ratified by, an appointed contracting officer within his or her level of authority or by another authorized official. Contracting officers and purchase card holders shall not process purchase orders, contracts, or purchase card payment authorizations after the fact to cover unauthorized commitments made by others without first obtaining the approval of the official authorized to approve ratifications, as provided in VAAR 801.602-3.

f. Any purchase card holder or contracting officer who makes a commitment, including a split order, that exceeds his or her delegated or appointed level of authority must submit a request for ratification and furnish the information required by VAAR 801.602-3(b)(1) to the chief of the contracting office that provides contracting support to the organization involved. Chiefs of contracting offices and contracting officers who are made aware of unauthorized commitments must ask the individual who made the commitment to furnish the required information and must report the unauthorized commitment through channels to the Ratification Official and the heads of contracting activities (HCA) for the organization involved if the information is not provided.

g. Upon discovery of or notification of unauthorized commitments (including split orders) that exceed a purchase card holder’s or contracting officer’s level of authority, HCAs should consider suspending the purchase card holder’s or contracting officer’s authority to make purchases until the required request for ratification and the associated documentation is submitted. HCAs should consider revoking a purchase card holder’s or contracting officer’s authority for repeated offenses (see VAAR 801.690-6).

h. The contracting officer responsible for processing the request for ratification, in cooperation with the facility purchase card coordinator, should consider submitting a request to Citibank to suspend, or return to VA, any payment made by a purchase card holder for an unauthorized commitment until the commitment has been ratified.

i. Ratification Officials may consider initiating disciplinary action against employees who egregiously or repeatedly violate the prohibitions against unauthorized commitments.

3. RESPONSIBILITIES

a. Officials authorized to approve or disapprove requests for ratification (Ratification Officials) are as provided in VAAR 801.602-3, Ratification of unauthorized commitments. Effective immediately with the issuance of this VA directive and handbook, each official authorized to approve or disapprove ratification actions in accordance with VAAR 801.602-3 is responsible for ensuring that a copy of each approved or denied request for ratification is submitted and reported in accordance with VA Handbook 7401.7.

b. Any VA employee who makes an unauthorized commitment is responsible for compliance with the requirements of VAAR 801.602-3(b)(1). If the individual is no longer employed by VA, the individual's supervisor is responsible for compliance with these requirements.

c. Contracting officers are responsible for reporting to their immediate supervisor any unauthorized commitments coming to their attention.

d. Chiefs of purchasing and contracting offices are responsible for reporting through channels to the Ratification Official and to the HCA for the organization involved any unauthorized commitments for which requests for ratification have not been received.

e. Purchase card approving officials and coordinators are responsible for reporting split orders that cumulatively exceed cardholders' authority to the chief of the supporting purchase and contract section.

f. HCAs are responsible for ensuring compliance with the requirements of VAAR 801.602-3 and VA Directive and Handbook 7401.7 within the organization over which they have jurisdiction. HCAs are also responsible for submitting all reports routed through them to VA Central Office. HCAs are responsible for initiating corrective action, including training, in the event of repeated unauthorized commitments originating in organizations under their jurisdiction and for counseling individuals who make unauthorized commitments.

g. The Director, Acquisition Resources Service, is responsible for consolidating all Reports of Ratification Actions, completing an analysis of the findings, and submitting a report to the VA BOB.

4. REFERENCES

a. Department of Veterans Affairs Acquisition Regulation 801.602-3, Ratification of unauthorized commitments.

b. Federal Acquisition Regulation 1.6, Career Development, Contracting Authority, and Responsibilities.

5. DEFINITIONS

a. **Ratification.** Ratification means the act of approval, by an authorized official, of an unauthorized commitment made by a Government employee who did not have the authority to make that commitment and the subsequent contractual award or authorization of that commitment by a contracting officer or other official with the required level of authority.

b. **Unauthorized commitment.** An unauthorized commitment is an agreement that is not binding on the Government solely because the Government official who made it lacked the authority to enter into a contract on behalf of the Government.