

409th CSB Contracting Policies and Procedures (CPP) 11-001-FAR 1.602-3

Unauthorized Commitments and Ratification Process Guide

1. Purpose: This guide establishes the Command's ratification process and details the procedures that must be followed in the event that an unauthorized commitment (UC) occurs. This guide also explains why UCs are a concern and provides examples of recurring UCs to help avoid future occurrences.
2. References:
 - a. FAR 1.602-3(a)
 - b. AFARS 5101.602-3
 - c. 409th Contracting Policies and Procedures (CPP) 11-001: Unauthorized Commitments and Ratification Process Guidance
3. General:
 - a. Definitions:
 - i. An "unauthorized commitment" is defined in the Federal Acquisition Regulation (FAR), Part 1.602-3(a) 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."
 - ii. "Ratification" as defined in FAR 1.602-3(a) "means the act of approving an unauthorized commitment by an official who has the authority to do so." FAR Part 1.602-1, establishes sole ratification contract authority to an appointed Contracting Officer within their delegated authority.
 - b. Contracting Officers or Government Purchase Card (GPC) Holders, acting within their purchase authority limits, are the only personnel authorized to commit the Government, i.e., enter into agreements for goods or services.
 - c. Unauthorized personnel must not enter into agreements or make statements that could be interpreted as a commitment by the government to pay for goods or services. All individuals who deal with commercial enterprises must be educated about the policies regarding interactions with commercial entities. All personnel regardless of rank or position, whether civilian or military, must abide by the rules.
 - d. When an unauthorized individual enters into an agreement for goods or services, a UC has occurred. When a UC is identified, the ratification process must begin.

The ratification process begins by documenting the circumstances that caused the UC to occur, and later, identifies a recommended solution.

- e. The ratification process is time-consuming, requires considerable documentation, and often damages the Government's ability to conduct future business with the firms involved. UCs represent an unwarranted expense to the Government because:
 - The administrative effort required to process the ratification usually far exceeds the administrative effort required to purchase the item or service using appropriate procedures.
 - Many items and services could have been purchased at a better price if proper acquisition procedures were followed.
 - UCs downplay the importance of the rules and regulations that govern government acquisition and the government may lose face with its suppliers.

4. Common causes of unauthorized commitments include (not an all inclusive list):

- a. An individual contacts a hotel for an upcoming conference for information on availability of rooms and prices. Instead of using that information for market research purposes and sending that information in a purchase request to either the GPC Holder or Contracting Office, the individual makes the reservation and signs a contract with the hotel to ensure the needed rooms are reserved.
- b. An unauthorized individual contacts a vendor directly to place an order without knowing or by disregarding the acquisition process. The unauthorized individual may be in a hurry to accomplish the mission or believes that "asking for forgiveness" is easier or faster than following proper procedures.
- c. A Contracting Officer or GPC Holder places an order that exceeds their authority.
- d. A vendor mistakes a request for information from an authorized or unauthorized individual as an order and ships the item(s). The receiver accepts the item(s) rather than rejecting and returning them.
- e. An unauthorized individual approves work outside the scope of a contract or work that exceeds the contract dollar value.
- f. An unauthorized individual orders or allows the contractor to continue to perform a service contract or provide leased/rented equipment after the expiration date of the contract. This frequently occurs on yearly services/maintenance/lease-type contracts for which there is a continuing need and the services are integral to organizational operations (for example, copier equipment).

5. Typical questions asked about unauthorized commitments include:

What is my role as the individual responsible for initiating procurements at my activity?

The requiring activity plays a key role in the acquisition process. One of the requiring activity's responsibilities is to conduct market research to locate sources (potential vendors). The market research information obtained is then included with the requisition documents submitted to the GPC Holder or the contracting office. The GPC Holder or the Contracting Officer assigned to the procurement will follow their organization's internal procedures to obtain the supplies or services through an appropriate acquisition method. These procedures will most likely include conducting a competition, evaluating proposals and prices, and issuing an order or contract.

How do I know if I've made an unauthorized commitment?

If you've requested that a vendor deliver a service or product without having an order or contract signed by a Contracting Officer or GPC Holder, you have committed a UC.

UCs are normally the result of discussions with vendors where: a delivery date has been agreed upon; payment terms or price negotiation has taken place; and/or the vendor delivers products or services with the understanding that their offer has been accepted, and then they submit an invoice for delivery. Payment cannot be made unless a Contracting Officer has awarded a contract or an authorized GPC Holder, acting within their delegation of authority, has ordered the item(s) or services. Remember, your role in contacting any vendor is to conduct market research only.

How are unauthorized commitments resolved?

UCs are frequently rectified through a process known as "ratification." "Ratification" as defined in FAR 1.602-3(a), "means the act of approving an unauthorized commitment by an official who has the authority to do so." Ratification procedures provided in AFARS 5101.602-3-90 and included in this guide will be used to process all UCs.

What is considered when determining if a UC can be ratified?

The following is considered when evaluating whether a UC can be ratified:

1. Has the government obtained or will the government obtain a benefit as a result of delivery or performance?
2. Does the ratifying official have the authority to enter into a contractual commitment?
3. Would the resultant commitment otherwise be proper if made by an authorized individual?
4. Can authorized personnel make a fair and reasonable price determination?
5. Can the authorized individual and legal counsel find no objections with processing the ratification?

6. Is funding available and was funding available at the time the UC was committed?
7. Can the ratification be accomplished in accordance with agency specific regulations?

Are all unauthorized commitments ratified?

No! If the ratification is denied, the government employee who committed the UC may be held **personally** liable for payment to the vendor. This situation generally occurs when the individual takes an illegal or improper action.

What types of actions cannot be ratified?

The government cannot ratify actions for illegal expenses, when the government receives no benefit from the monetary outlay, and in situations where the costs are not permissible.

Examples include:

- A government sponsored event where alcohol is served. It is prohibited to purchase alcohol with government funds.
- A government held conference where entertainment is provided. Entertainment costs are a prohibited cost.
- A situation where items were delivered and subsequently returned to attempt to prevent a UC, and the company bills for a re-stocking fee. Because there was no benefit received by the government, the re-stocking fee cannot be paid.
- A situation where meal costs were incurred and personnel to whom the charges were attributed were not entitled to the meals (e.g. personnel not on TDY status, industry personnel).

What can I do to decrease the chances of making an unauthorized commitment?

Make sure the vendor knows that you are not authorized to place orders. We recommend a standard disclaimer (such as: “This is a request for price information and availability only, and does not constitute a binding agreement between the parties.”) when corresponding with vendors verbally or in writing. Such a disclaimer makes clear that you are requesting estimated prices and availability of products/services for planning purposes only. It is highly recommended that supporting Contracting Office personnel or GPC Holders be contacted if there is uncertainty about the parameters of interactions with vendors, and that they be coordinated with early in the acquisition planning process.

What happens during the ratification process?

After the Contracting Office has been notified of a possible UC, they will instruct the requiring activity to begin gathering information to complete required documentation. At this point, cooperation within the chain of command is essential for resolution. The

activity must document the chain of events leading to the UC. The individual committing the UC must document how it occurred; the supervisor, along with the first Flag Officer or SES in the chain of command, must endorse the narrative and provide evidence of corrective action taken or to be taken. The action will then be reviewed within the contracting chain to determine whether it can and should be ratified. Step by step procedures are outlined below.

6. Ratification Procedures:

a. The basic ratification procedure outlined in FAR Part 1.602-3 and AFARS 5101.602-3 and 5101.602-3-90 **shall** be followed. The “Request for Approval of Unauthorized Commitment – 409th CSB” Template (Enclosure 2) provides a uniform UC submission document and follows the requirements in the FAR and AFARS. The template provides for a uniform and succinct package:

- describing the circumstances that led to the UC;
- the senior staff officer’s investigation of and action on the UC;
- the contracting officer’s review of the UC;
- legal review (fiscal lawyer and contract attorney) and recommended disposition of the UC, and
- ratification approval.

b. A decision to ratify the unauthorized commitment will be rendered at the appropriate level, corresponding to the dollar value of the UC. Currently, ratification approval levels are set as follows IAW AFARS 5101.602-3:

- Actions **up to \$ 10,000** shall be ratified at the 409th CSB Contracting Office by either a Regional Contracting Office (RCO) Chief or the Theater Contracting Center (TCC) Director.
- Actions **exceeding \$10,000 up to \$100,000** shall be ratified by the Principal Assistant Responsible for Contracting (PARC) for the 409th CSB.
- Actions **exceeding \$100,000** shall be submitted through the PARC’s office for approval by the Head of the Contracting Activity (HCA) for Expeditionary Contracting Command.

7. Other requirements of the process:

a. Payment. After ratification, the GPC may be used to satisfy the commitment if the amount of the payment is within the cardholder’s authority, if the payment is made in the same fiscal year as the commitment and if the commitment itself is properly chargeable to the current fiscal year. If the amount exceeds the GPC limitations or if prior fiscal year funds are required to satisfy the commitment, a purchase order or other formal contractual instrument will be required and used to make payment.

- b. Tracking. Each contracting office shall keep a log of all UCs committed during each fiscal year using the spreadsheet at Enclosure 3. This log shall be kept in an accessible office file in the PD2 library. All documentation of UCs shall be filed with the final order that is executed for payment and will be maintained for a minimum of 3 years after payment. See contract retention requirements under FAR Part 4.805.

- c. Reporting. Contracting Offices shall provide a semi-annual update of in-process and completed UCs to the PARC. The report for the first six months of each fiscal year (1 Oct – 31 Mar) is due 15 May and a cumulative report for the entire FY is due 15 November. The report format is provided at Enclosure 4. The report shall, at a minimum, provide the name of the requiring activity, the dollar amount, a brief description of the events that lead to commitment of the UC, and the current status of the UC. The PARC will maintain a master log of submitted UC actions for reporting to higher headquarters and for identifying training needs. Identified trends in UCs, or excessive UCs made by any one requiring activity, may be subject to a PARC notice letter requesting a remedy plan.