



DEPARTMENT OF THE ARMY
409th CONTRACTING SUPPORT BRIGADE (EUROPE)
UNIT 23203
APO AE 09263

CCEC-EU

MEMORANDUM FOR ALL PERSONNEL

SUBJECT: Contracting Policies and Procedures (CPP) 11-001-FAR 1.602-3: Unauthorized Commitments and Ratification Process Guidance

1. Purpose. This memorandum provides guidance for the 409th Contracting Support Brigade (CSB) concerning the ratification process for unauthorized commitments (UCs).

2. References.

- a. FAR 1.602-3(a)
- b. AFARS 5101.602-3

3. Effective Date. The effective date of this CPP is 1 February 2011. All previous UC policies or procedures are hereby rescinded.

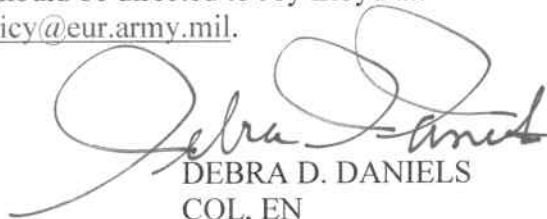
4. Policy.

- a. General. Contracting Officers or Government Purchase Card (GPC) holders, acting within their purchase authority limits, are the only personnel authorized to commit the Government. When an unauthorized individual enters into agreements for goods or services, a UC has occurred.
- b. 409th CSB Contracting Office. All UC actions will be forwarded to the supporting 409th CSB Contracting Office (either the Regional Contracting Office (RCO) or the 409th CSB Theater Contracting Center (TCC)) for processing.
- c. Flag Officer/Senior Executive Service (SES) Level Endorsement. Given the serious nature of UCs, the first Flag Officer or SES in the chain of command of the individual committing the UC must endorse the ratification request prior to submission to the Contracting Office. Flag Officer or SES involvement promotes awareness of the problems associated with UCs and ensures mechanisms are implemented that will prevent UCs from occurring in the future.
- d. Contingency Contracting Teams (CCTs). UC actions discovered by a CCT during their support to requiring activities will be processed by the CCTs through their supporting Contracting Office. The 903rd CCBN will be included in all correspondence with the supporting Contracting Office on UC issues.

- e. Ratification Authority Levels (AFARS 5101.602-3).
 - i. Actions **up to \$10,000** shall be ratified at the 409th CSB Contracting Office by either an RCO Chief or the TCC Director.
 - ii. Actions **exceeding \$10,000 and up to \$100,000** shall be ratified by the Principal Assistant Responsible for Contracting (PARC) for the 409th CSB.
 - iii. 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.
- f. Procedures. Contracting Officers processing UCs will follow the ratification procedures outlined in the Unauthorized Commitments and Ratification Process Guide provided in Enclosure 1.
- g. Format. All UCs will be processed using the UC Template provided in Enclosure 2.
- h. Tracking and Reporting. Each Contracting Office shall maintain a log and report completed UC actions to the PARC semi-annually. The submission shall be in accordance with the Unauthorized Commitments and Ratification Process Guide, utilizing the spreadsheets provided in Enclosures 3 and 4. The PARC will maintain a master log of submitted UC actions for reporting to higher headquarters and for identifying training needs.

5. Questions regarding this CPP should be directed to Joy Lloyd at:
DL-409CSB-HQ-CMD-PARCPolicy@eur.army.mil.

Encl: 4



DEBRA D. DANIELS
COL, EN
Commanding

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.

PART I – SECTION A – COMMITMENT CIRCUMSTANCES (Continued)

3. DESCRIBE BONA FIDE GOVERNMENT REQUIREMENT NECESSITATING THE COMMITMENT

4. DESCRIBE GOVERNMENT RECEIVED BENEFITS *(Give value of benefit and other pertinent facts)*

5. LIST AND ATTACH ALL RELEVANT DOCUMENTS *(Include orders, invoices and other evidence of the transaction)*

TYPED NAME, GRADE OR RANK AND TITLE OF
INDIVIDUAL MAKING UNAUTHORIZED COMMITMENT

SIGNATURE

DATE (MM/DD/YY)

6. DESCRIBE ATTEMPTS TO RESOLVE UNAUTHORIZED COMMITMENT PRIOR TO REQUESTING RATIFICATION *(Such as, returning merchandise, individual paying from personal funds, etc.)*

7. COMMENTS OF IMMEDIATE SUPERVISOR OF INDIVIDUAL MAKING UNAUTHORIZED COMMITMENT

TYPED NAME, GRADE OR RANK, TITLE AND ORGANIZATION OF SUPERVISOR	SIGNATURE	DATE (MM/DD/YY)
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PART 1 – SECTION B – CONTRACTUAL RATIFICATION
(Completed by Unit Commander, Director, or Activity Chief (first O6 or equivalent GS in chain of command). Complete items 1 through 4 and forward through chain of command to the Chief of the supporting 409th CSB Contracting Office/Director of the 409th CSB Theater Contracting Center respectively.

1. DESCRIBE SPECIAL REMEDIAL CORRECTIVE ACTION AND/OR DISCIPLINARY ACTION TAKEN *(Include a description of any administrative action to be taken under applicable personnel authority or furnish an explanation of why no disciplinary action was considered necessary.)*

2. DESCRIBE ACTION TAKEN TO PREVENT RECURRENCE OF UNAUTHORIZED ACT

3. I HAVE REVIEWED PART I, SECTION A, AND VERIFY THAT THE INFORMATION IS ACCURATE AND COMPLETE, THAT THE GOVERNMENT RECEIVED A BENEFIT AND ASSOCIATED VALUE FROM THE UNAUTHORIZED COMMITMENT AND I:

CONCUR WITH RATIFICATION of the Unauthorized Commitment
 DO NOT CONCUR with the ratification of the Unauthorized Commitment (Explain Non-concurrence)

4. COMPLETED PURCHASE DESCRIPTION AND FUNDING DA FORM 3953 IS EXECUTED AND ATTACHED (REQUIRED IF RATIFICATION IS RECOMMENDED)). DA FORM 3953 MUST SPECIFICALLY STATE THAT FUNDS WERE AVAILABLE AT THE TIME THE UNAUTHORIZED COMMITMENT WAS MADE AND ARE STILL AVAILABLE.

YES NO

TYPED NAME, GRADE OR RANK, TITLE AND ORGANIZATION OF UNIT COMMANDER	SIGNATURE	DATE(MM/DD/YY)
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PART II – CONCURRING OFFICIAL’S APPROVAL

(Completed by individual indicated by “X” as identified by the Commander 409th CSB. When completed, forward to the 409th CSB Contracting Office/Center supporting the unit responsible for the unauthorized commitment.)

- GARRISON COMMANDER *(Unauthorized action committed by individual in direct chain of command of Garrison Commander)*
- INSTALLATION COMMANDER *(Unauthorized action committed by individual in direct chain of command of Installation Commander)*
- FIRST GENERAL OFFICER OR SES *(Unauthorized action committed by individual in tenant activity outside direct chain of command or Supporting Installation) (Does not include reserve component)*
- COMMANDER OF DIRECT REPORTING UNITS (DRU)

1. APPROVAL OF CORRECTIVE ACTION AND/OR DISCIPLINARY ACTION TAKEN

YES NO *(Explain nonconcurrency)*

2. APPROVAL OF RECOMMENDED CORRECTIVE ACTION TO PRECLUDE RECURRENCE

YES NO *(Explain nonconcurrency)*

TYPED NAME, GRADE OR RANK, TITLE AND ORGANIZATION SIGNATURE

DATE(MM/DD/YY)

PART III - CONTRACTING OFFICER ASSIGNMENT

PROPOSED RATIFICATION ASSIGNED FOR PROCESSING TO *(Name of Contracting Officer)*

TYPED NAME OF 409th CONTRACTING OFFICE CHIEF/
DIRECTOR CONTRACTING CENTER

SIGNATURE

DATE(MM/DD/YY)

PART IV – CONTRACTING OFFICER’S REVIEW
FAR 1.602-3 AND AFARS 5101.602-3.90

THE CONTRACTING OFFICER ASSIGNED IN PART III SHALL REVIEW THE FILE AND PROCEED AS FOLLOWS:

1. Determine the adequacy of all facts, records, and documents furnished, and obtain any additional material required.
2. Prepare a summary of facts to include a recommendation as to whether or not the transaction should be ratified and reasons for the recommendation. A recommendation not to ratify must include a recommendation as to whether or not the matter should be processed under FAR Part 50 and DFARS Part 250 (Pub. L. 85-804) as a GAO claim or in some other appropriate way.
3. Obtain an opinion from legal counsel as to whether the acquisition is ratifiable under FAR and AFARS, whether the matter should be processed under FAR and DOD FAR Supplement Part 50 (Public Law 85-804), processed as a GAO claim, or otherwise handled. (Refer to Part V, Section A – Legal Review before proceeding with items 3 -10).
4. Determine whether supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment.
5. Ensure that the ratifying official has the authority to enter into a contractual commitment.
6. Determine whether the resulting contract would otherwise have been proper if made by an appropriate contracting officer.
7. State whether the price is considered fair and reasonable and indicate how that determination was made.
8. Indicate whether or not the contracting officer recommends payment and legal counsel concurs in the recommendation.
9. Determine that sufficient funds are available, and were available at the time the unauthorized commitment was made.
10. State whether the ratification is in accordance with any other limitations prescribed under agency procedures.

CONTRACTING OFFICER’S REVIEW:

If more space is required, KO’s statement may be attached; signature and date required below and on attachment).

TYPED NAME OF CONTRACTING OFFICER

SIGNATURE

DATE (MM/DD/YY)

PART V

SECTION A – LEGAL REVIEW
(Completed by Legal Counsel)

DETERMINE WHETHER THE ACQUISITION IS RATIFIABLE UNDER FAR 1.602-3 AND AFARS 5101.602-3 OR WHETHER THE MATTER SHOULD BE PROCESSED UNDER FAR AND DOD FAR SUPPLEMENT PART 50 (Public Law 85-804), AS A GAO CLAIM, OR RECOMMEND OTHER APPROPRIATE DISPOSITION. (Return to Chief of Contracting Office/Director of Contracting Center for consideration)

(If more space is required, legal opinion may be attached; signature and date required below and on attachment)

TYPED NAME OF LEGAL ADVISOR	SIGNATURE	DATE (MM/DD/YY)
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SECTION B
AFARS 5101.602-3
(Completed by supporting 409th CSB Contracting Office Chief/Director of Contracting Center respectively)

1. ACTIONS OF \$10,000 OR LESS

BASED ON THE FOREGOING DETERMINATION, REQUEST FOR UNAUTHORIZED COMMITMENT IS:

- Approved (Issue Purchase Order)
- Disapproved (Explain disapproval)

TYPED NAME OF CONTRACTING OFFICE CHIEF/ DIRECTOR CONTRACTING CENTER	SIGNATURE	DATE (MM/DD/YY)
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2. ACTIONS OVER \$10,000. (Written request shall be submitted to the appropriate PARC for approval/coordination with all appropriate documentation.)

- Approval is recommended

TYPED NAME OF CONTRACTING OFFICE CHIEF/ DIRECTOR CONTRACTING CENTER	SIGNATURE	DATE (MM/DD/YY)
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BASED ON THE FOREGOING DETERMINATION, REQUEST FOR UNAUTHORIZED COMMITMENT IS:

- Approved
- Disapproved (Explain disapproval)
- Recommended for Approval (if over \$100,000)

TYPED NAME OF PARC	SIGNATURE	DATE (MM/DD/YY)
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UC'S RECEIVED IN FY 12

CONTROL #	PURCHASE REQ #	Date PR Received	CONTRACT NUMBER	Unit of individual who committed UC	Description of Supplies/Services	AMOUNT \$	CONTRACTOR	LEGAL Review	Contract Specialist	KO	APPROVED	COMPLETED	STATUS--NOTES
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Semi-Annual UC Report to PARC
Reporting Period 1 Apr - 30 Sep; Suspense: 15 Nov

Name of Requiring Activity	Dollar Amount (\$)	Brief Description of the UC	Status
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