



# Preventing Unauthorized Commitments

October 2012



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# Definition

## Unauthorized Commitment

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- An unauthorized commitment is an agreement made by a Government representative who lacks the authority to obligate or commit appropriated funds on behalf of the Government, thus making the agreement non-binding ([Federal Acquisition Regulation \[FAR\] 1.602-3](#)).
- Any person lacking the proper authority who deliberately or unintentionally authorizes a supplier to provide goods or services to the Government creates an unauthorized commitment. The responsible individual may be held personally and financially liable for said commitment.

# Authority to Obligate Funds

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- **FAR 1.602-1 states:**
  - **Contracting Officers** are the only persons authorized to enter into, administer, or terminate contracts and make related determinations and findings.
  - **Contracting Officers** may bind the Government only to the extent of the authority delegated to them.
  - 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.

# Understanding Unauthorized Commitments

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Reasons why you should **understand unauthorized commitments**:

- To avoid placing yourself, knowingly or unknowingly, in an unauthorized commitment situation
- To identify an unauthorized commitment and take the necessary steps to inform the appropriate parties
- To be aware of the potential financial and disciplinary action that can be placed on an individual committing the unauthorized act
- To know who to contact within TRICARE Management Activity (TMA) with questions or concerns surrounding a prospective unauthorized commitment

# Scenarios

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## Scenario 1

- **Q:** A Federal employee with purchase card authority of up to \$3,000 enters into a contract with a hotel for a meeting space that costs \$4,300.

## Scenario 2

- **Q:** The program office has a contract for 20 working printers. One of the printers experiences jams frequently and a new printer has been delivered as a replacement. The contractor is told to leave the old printer in place, because it still works.

## Scenario 3

- **Q:** A supplier mistakes a request for information for an order and subsequently ships the item. The Government employee responsible for good receipt does not realize the mistake.

# Scenarios (Cont'd)

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## Scenario 1

- **A:** This is an unauthorized commitment because the total cost of the meeting space exceeds the cardholder's authority.

## Scenario 2

- **A:** This is an unauthorized commitment because the contractor provided more than he/she is under contract to provide. Since the contract only permits 20 printers, the old printer should be removed when the replacement is delivered.

## Scenario 3

- **A:** Whether or not this is an unauthorized commitment depends on what the Government employee does after receipt of the item. If the employee does not check to make sure the item is covered under the contract and accepts the item, this becomes an unauthorized commitment. If a contract does not exist, this is an unauthorized commitment.

# Avoiding Unauthorized Commitments

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## DO:

- Ensure a potential supplier knows the Contracting Officer is the only person allowed to authorize to commit the Government.
- Ensure the contractor knows the Contracting Officer is the only person allowed to authorize requests that result in changes to a contract.
- Make certain funding for recurring service contracts (equipment maintenance, annual subscriptions, etc.) are planned far enough in advance to prevent disruption in service.

# Avoiding Unauthorized Commitments

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## **DON'T:**

- Make any verbal or written commitments to suppliers or contractors
- Pay for any items out-of-pocket and expect reimbursement
- Request changes to the contract without full involvement of the contracting office
- Authorize the use of Government equipment without proper authority and documentation
- Misuse purchase cards or exceed thresholds (supplies and equipment, \$3,000; services, \$2,500; construction, \$2,000)

# Steps to Take when an Unauthorized Commitment Occurs

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If you find yourself in an unauthorized commitment situation, follow these simple steps:

- Ensure the unauthorized service by the supplier is stopped immediately
- Attempt to rectify the situation (i.e., by returning the products/goods if the vendor will allow it)
- Notify the Contracting Officer of the unauthorized commitment
- Begin the Ratification Process

# Ratification

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- “A ratification is the act of approving an unauthorized commitment by an official who has the authority to do so” (**FAR 1.602-3**).
- Ratification, by itself, does not relieve the individual from disciplinary action.
- Ratifications should not be viewed as an alternative to sound contracting procedures. They are the **exception, not the rule**.

## Authority to Ratify

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- The Head of the Contracting Activity (HCA) has authority to ratify unauthorized commitments regardless of dollar value.
- Within TMA, the Director/Chief of the Contracting Office has delegated authority to ratify unauthorized commitments **less than \$30,000**.
- The HCA or Director/Chief of the Contracting Office must provide rationale explaining his/her decision when an unauthorized commitment is not approved for ratification.

# Ratification Process

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- TMA has established policy for how to handle ratifications of unauthorized commitments in the form of a TRICARE Acquisition Directive (TAD).
- Further acquisition procedures, guidance, and information about the ratification of unauthorized commitments can be found in TMA Procedures, Guidance, and Information (PGI) 201.602-3.
- Both the TAD and PGI refer to the TMA Request for Approval, Evaluation, and Determination of an Unauthorized Commitment (TMA Ratification Template as Attachment 1)
  - The use of this template to process a ratification is mandatory.

# Ratification Process – Start

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- The **individual** who made or initiated the unauthorized commitment must complete and sign Part I, Section A of the TMA Ratification Template.
- **Part 1, Section A** requires the following information:
  - Details of the circumstances surrounding the unauthorized commitment
  - An explanation of why normal procedures were not followed
  - A description of the “bona fide” or authentic need for the supplies or service
  - An account of the benefit(s) received from supplies or services
  - Evidence that funds were available at the time of the unauthorized commitment

# Ratification Process – Supervisor

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- The **Supervisor** of the individual who made or initiated the unauthorized commitment must review Part I, Section A of the TMA template and then complete and sign Part I, Section B.
- **Part I, Section B** requires the following items:
  - Concurrence or non-concurrence that the commitment should be ratified
  - Explanation of attempts made to resolve the unauthorized commitment
  - Verification of the accuracy and completeness of documentation
  - Complete purchase description and funding for the ratification
  - Explanation of steps to be taken to prevent recurrence of unauthorized commitment
  - Description of disciplinary action taken or reason(s) why none was taken

# Ratification Process – Review

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- The **Director/Chief of the Contracting Office** assigns a Contracting Officer by completing and signing Part II, Section A.
- The **Contracting Officer** will review Part I of the TMA Ratification Template and then complete and sign Part II, Section B.
- **Part II, Sections A and B** of the Template requires:
  - Validation of all facts, records and documents submitted
  - Statement that the contract price was fair and reasonable
  - Statement that sufficient funds are available and the price is reasonable
  - Recommendation of whether the unauthorized commitment should be ratified
- TMA Office of General Counsel (OGC) must make a signed statement concurring or non-concurring with the **Contracting Officer's** recommendation by completing **Part II, Section C** of the TMA Ratification Template.

# Ratification Process – Approval Authority

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## **For unauthorized commitments less than \$30,000:**

- The Director/Chief of the Contracting Office must make a signed determination on ratification by completing Part III, Section A of the TMA Ratification Template.

## **For unauthorized commitments of \$30,000 or more:**

- The Director/Chief of the Contracting Office completes and signs Part III, Section B-1 of the TMA Ratification Template and forwards the Template and accompanying package to the HCA who will exercise ratification authority.
- The HCA must then make a signed determination on ratification by completing Part III, Section B-2 of the TMA Ratification Template.

# Ratification Process – Disposition

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- The **HCA or Director/Chief of the Contracting Office** must provide an explanation when a ratification is not approved, regardless of dollar amount.
- **Part III, Section A or B-2** will detail the ratification ruling by the Director/Chief of the Contracting Office or HCA, respectively, specifying **one of two outcomes**:
  - Concurrence of the ratification
  - Non-concurrence of the ratification for the following reasons:
    - Additional documentation of circumstances necessary
    - Supplier payment is the responsibility of the individual who committed the unauthorized commitment
    - Further explanation of corrective action(s) taken needed
    - Other (must be explained)
- The TMA Ratification Template and supporting documentation will be returned to the CO for further handling.

## Knowledge Check – Question 1

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**Q:** The Contracting Officer Representative (COR) suggested to the contractor that the product would be better if a different material were used. The contractor mistook the suggestion from the COR as direction and replaced the old material with a new material. Is this an unauthorized commitment?

## Knowledge Check – Answer 1

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**Q:** The COR suggested to the contractor that the product would be better if a different material were used. The contractor mistook the suggestion from the COR as direction and replaced the old material with a new material. Is this an unauthorized commitment?

**A:** . This is an unauthorized commitment because the contractor can claim he/she needed to modify performance based on a request by a representative of the Government. The COR should have made it clear to the contractor that he/she did not have authority to make any changes to the contract specifications.

## Knowledge Check – Question 2

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**Q:** The contract states the contractor is only allowed to perform services from Monday through Friday. In order to meet a deadline, a Government employee asks the contractor supporting his team to work on Saturday. Is this an unauthorized commitment?

## Knowledge Check – Answer 2

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**Q:** The contract states the contractor is only allowed to perform services from Monday through Friday. In order to meet a deadline, a Government employee asks the contractor supporting his team to work on Saturday. Is this an unauthorized commitment?

**A:** This is an unauthorized commitment because the Government employee directed the contractor personnel to perform services on a Saturday, which is outside the performance parameters specified in the contract.

Changing performance dates or increasing the level of effort makes the Government liable for an adjustment in the contract price. Only the Contracting Officer has the authority to make revisions resulting in additional changes to the contract.

# Summary

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- Only a Contracting Officer or other authorized individual can obligate the Government
- Plan your mission requirements with the Contracting Office to allow for proper and timely support
- Never accept goods or services from a supplier/contractor without documentation
- Ratifications should not be used to encourage commitment of unauthorized acts
- Documentation of the ratification is the responsibility of the individual who initiated the unauthorized commitment
- The ratification process is intended to be burdensome to discourage unauthorized commitments

Individuals may be liable and subject to disciplinary and civil action if found responsible for an unauthorized commitment

# Guidance and References

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- FAR 1.602-3  
([https://www.acquisition.gov/far/html/Subpart%201\\_6.html](https://www.acquisition.gov/far/html/Subpart%201_6.html))
- TMA Policy Memo, “Unauthorized Commitments,” June 23, 2011  
(<http://www.tricare.mil/tma/ams/acqpolicyproc.aspx>)
- TMA TAD 01-07 Ratification of Unauthorized Commitments  
(<http://www.tricare.mil/tma/ams/acqpolicyproc.aspx>)
- TMA PGI 201.602-3 Ratification of Unauthorized Commitments  
(<http://www.tricare.mil/tma/ams/acqpolicyproc.aspx>)
- TMA Ratification Template  
(<http://www.tricare.mil/tma/ams/acqpolicyproc.aspx>)

# Questions

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- For questions related to Unauthorized Commitments, please contact the TMA Acquisition Management & Support, Contract Policy/Competition Advocate Division:

By phone: (703) 681-8664

The seriousness of acting without proper authority cannot be overemphasized.  
Don't do it! Let the Contracting Officer help you!