



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

INSTRUCTION

Ratification of Unauthorized Commitment

Contracts Directorate
OPR: DCMA-AQ

DCMA-INST 122
May 20, 2014

1. PURPOSE. This Instruction:

- a. Reissues DCMA Instruction (DCMA-INST 122), "Ratification of Unauthorized Commitments" (Reference (a)).
- b. Supplements the Federal Acquisition Regulation 1.602-3 (Reference (b)) procedure for processing DCMA requests for the approval of unauthorized commitments or ratification actions.
- c. Is established in accordance with the authority in DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)" (Reference (c)).

2. APPLICABILITY. This Instruction provides standard procedures to be followed at field activity and operational levels respectively.

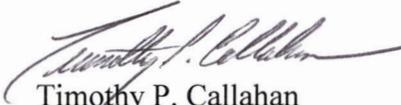
3. MANAGERS' INTERNAL CONTROL PROGRAM. In accordance with the DCMA-INST 710, "Managers' Internal Control Program" (Reference (d)), this Instruction is subject to evaluation and testing. The process flowchart is located on the policy resource page of this Instruction.

4. RELEASABILITY – UNLIMITED. This Instruction is approved for public release.

5. PLAS CODE. E211, Procure Supplies and Services

6. POLICY RESOURCE WEB PAGE. <https://home.dcma.mil/policy/122r>

7. EFFECTIVE DATE. By order of the Director, DCMA, this Instruction is effective May 20, 2014, and all applicable activities must be fully compliant within 60 days from this date.


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SUMMARY OF CHANGES

This Instruction has been rewritten and should be read in its entirety. The purpose of this Instruction is to provide a clear understanding of the roles and responsibilities of those what are involved in unauthorized commitments. It also provides new procedures that are to be followed when ratifying an unauthorized commitment. Some important changes and updated content in this publication that differ from the previous version are:

- Addition of the fact finder role
- Additional duties of the Director of Component Head
- Entirely revised list of procedures
- Updated flowcharts

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REFERENCES

- (a) DCMA INST 122, "Ratification of Unauthorized Commitment," February 26, 2013 (hereby canceled)
- (b) Federal Acquisition Regulation 1.602-3, "Ratification of unauthorized commitments"
- (c) DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)," January 10, 2013
- (d) DCMA-INST 710, "Managers' Internal Control Program," April 21, 2014

CHAPTER 1

POLICY

1.1. POLICY. It is DCMA policy that:

1.1.1. Only a duly appointed DCMA Contracting Officer (KO) or Government Purchase Card (GPC) cardholder acting within his or her authority may legally procure and obligate DCMA or the Government to pay for supplies and services. An unauthorized commitment occurs when a Government official makes an agreement that is not binding on the Government solely because the Government official lacked the appropriate authority to make the agreement. The procurement of goods and services on behalf of the Agency or through the use of the GPC without following proper procedures may result in an unauthorized commitment.

1.1.1.1. The process commonly starts when an unauthorized Government official engages the services of a contractor or acquires a quantity of supplies.

1.1.1.2. The problem heightens when the contractor submits an invoice for payment and the Government is unable to disburse a payment as no contract with the Government exists. The individual causing the unauthorized commitment may be liable to the contractor in accordance with the terms of his or her agreement, unless the action is ratified.

1.1.1.3. If and when the appropriate contracting official ratifies the unauthorized commitment, he or she obligates appropriated funds and the contractor may be paid the amount obligated.

1.1.1.4. In the event the unauthorized commitment is not ratified, the individual causing the unauthorized commitment may be liable to the contractor for the amount owed.

1.1.1.5. Although procedures are available to determine whether to ratify an unauthorized commitment, these procedures will not be used in a manner that encourages such commitments being made by any individual.

CHAPTER 2

ROLES AND RESPONSIBILITIES

2.1. DIRECTORS AND COMPONENT HEADS. Directors and Component Heads must:

2.1.1. Take positive action to preclude future unauthorized commitments requiring ratification. Ensure that these procedures may not be used in a manner that encourages further unauthorized commitments made by Government personnel.

2.1.2. Appoint a fact finder to investigate the facts and complete the statement of facts (SOF), describing the facts and circumstances surrounding the unauthorized commitment. The fact finder must be an impartial person that resides in the same chain of command under the Component Head of the individual that caused the unauthorized commitment.

2.1.3. Ensure a SOF explaining the events leading to and reasons for the unauthorized commitment is completed within five business days from discovery of the unauthorized commitment.

2.1.4. Complete and sign the SOF.

2.1.5. Ensure appropriate administrative disciplinary action is taken as warranted by the SOF.

2.2. INDIVIDUAL WHO MADE THE UNAUTHORIZED COMMITMENT. The individual who made the unauthorized commitment must:

2.2.1. Immediately notify their Directors or organization heads and the Procurement Center.

2.2.2. Prepare a statement outlining the pertinent facts and circumstances surrounding the unauthorized commitment. This statement will be made a part of the SOF.

2.3. FACT FINDER. The fact finder must:

2.3.1. Investigate facts from all parties involved.

2.3.2. Prepare and sign the SOF as the preparer.

2.3.3. Contact the Procurement Center for assistance, or if information from a contracting perspective is needed.

2.4. CONTRACTING OFFICER (KO). The KO must:

2.4.1. Make a determination as to the price being fair and reasonable.

2.4.2. Review the SOF and all supporting documentation.

2.4.3. Complete and sign Determination and Findings (D&F) Memorandum.

2.4.4. Provide a recommendation to the Head of the Contracting Activity concerning ratification of the unauthorized commitment.

2.5. HEAD OF CONTRACTING ACTIVITY (HCA).

2.5.1. The HCA has the regulatory authority to ratify an unauthorized commitment and is the ratification authority.

2.5.2. As ratification authority, the HCA will make the final decision on ratification of the unauthorized commitment.

2.6. FUNDS CONTROL OFFICER (FCO). The FCO must certify that funds are available and were available at the time of the unauthorized commitment.

2.7. FINANCIAL LIAISON CENTER (FLC). The FLC will record the commitment, obligation, and/or expense into the Defense Business Management System (DBMS).

2.8. OFFICE OF GENERAL COUNSEL (GC). GC must review the ratification package, make a recommendation on payment, and sign the D&F.

CHAPTER 3

PROCEDURES

3.1. RATIFICATION PACKAGE.

3.1.1. The individual who committed the unauthorized act must immediately notify their Director or organization head as appropriate, as soon as the unauthorized commitment is discovered. They must also notify the Procurement Center. The individual will prepare a statement describing the facts and circumstances surrounding the unauthorized commitment to be included in the SOF. The fact finder will collect the facts from all parties involved. The SOF (see resource page of this Instruction for an example) must outline the pertinent facts and circumstances surrounding the unauthorized commitment. The fact finder may use the ratification checklist (see resource page of this Instruction) to help organize their facts. This SOF will be forwarded to the appropriate Component Head for review, completion and signature prior to forwarding the ratification package to the Procurement Center.

3.1.2. The SOF must, at a minimum, include:

3.1.2.1. Description of the pertinent facts and circumstances surrounding the unauthorized act with supporting documents and records.

3.1.2.2. The reasons that proper acquisition procedures were not followed.

3.1.2.3. Description of the bona fide Government need that caused the commitment.

3.1.2.4. Discussion of any value or benefit received by the Government.

3.1.2.5. Any other relevant documents (correspondence, receipts, invoices, purchase requests, etc).

3.1.3. The appropriate Component Head will review the SOF and complete the SOF and forward the ratification package to the Procurement Center. Information to be added by the Component Head includes:

3.1.3.1. Measures taken to prevent a recurrence of unauthorized commitments within their organization.

3.1.3.2. Statement that appropriate corrective and/or disciplinary action was taken with the individual who made the unauthorized commitment.

3.1.3.3. Recommendation on whether to fully ratify, partially ratify, or to hold the individual responsible for the unauthorized commitment.

3.1.4. The appropriate Component Head must also complete a Payment Package.

3.1.4.1. Complete payment package for the requirement that is to be ratified must include one of the following methods of payment: GPC, purchase request, or Standard Form (SF) 1034 “Public Voucher for Purchases and Services Other Than Personal.”

3.1.4.2. Complete payment package must certify that funds are available and were available at the time the unauthorized commitment occurred and verification that funds are from the appropriate fiscal year (FY), if applicable.

3.2. SUBMISSION OF THE RATIFICATION PACKAGE TO THE PROCUREMENT CENTER.

3.2.1. The Procurement Center will review the ratification package for completeness and assign the action to a KO.

3.2.2. Upon receipt of the ratification package, the KO will conduct an investigation of the facts surrounding the unauthorized commitment. The KO may request additional information from the Component Head. If deficiencies or irregularities are found, the KO will notify the appropriate Component Head of corrections or additional information that might be required. The Component Head must take appropriate steps to rectify deficiencies and will promptly correct and resubmit the corrected package to the Procurement Center KO for further review. A suspense date of 5 business days will be established for the resubmission of the package to the KO.

3.2.3. The KO may make a recommendation of total or partial approval or denial of the ratification. If the KO plans to recommend that the approving official not ratify the unauthorized commitment, the appropriate Component Head will be notified and given an opportunity to submit via separate memorandum, any additional facts that would support a ratification decision.

3.2.4. The KO will include this memorandum with the D&F.

3.3. RATIFICATION FILE.

3.3.1. The KO prepares a ratification file which includes a D&F memo for the ratifying official’s review. The D&F (see resource page for an example) will include the following:

3.3.1.1. Price analysis and determination of price reasonableness.

3.3.1.2. Summary of the unauthorized commitment (information from the SOF).

3.3.1.3. KO’s recommendation as to whether the unauthorized commitment should be approved in total, partial, or denied.

3.3.2. The KO must include the Component Head memorandum of non-concurrence or additional facts (if applicable) in the ratification file.

3.3.3. A signed recommendation from the GC must also be included in the file.

3.3.4 The KO must prepare an executive summary and forward the ratification file along with their recommendation to the Director, Procurement Division for final comment and submission to the ratifying official (HCA).

3.4. RATIFICATION OFFICIAL'S FINAL DECISION.

3.4.1. Upon receipt of the ratification file, the ratification official will review all documentation and issue a final decision. If the ratification authority approves the proposed ratification, he or she will sign the KO's D&F and return to the Procurement Center KO for processing.

3.4.2. The KO will review the ratification official's final decision and method of payment:

3.4.2.1. Execute a contract modification or purchase order (whichever is applicable).

3.4.2.2. Coordinate with the GPC Program Manager if payment will be made via GPC.

3.4.2.3. Forward the funding document and contract action to the FCO for payment via SF1034.

3.4.3. FCO validate that the amount and type of funds stated in the SOF were available in the applicable FY in which the funds would have been committed.

3.4.4. DCMA-FLC will record the commitment, obligation and/or expense into the DBMS.

3.5. RATIFICATION DISTRIBUTION. The KO will update the ratification log and save documents on the P drive (P:\DCMAHQ\Centers\DCMAC-W\Ratifications). Once a location on DCMA 360 has been established, the KO will save the documents there in lieu of the P drive. The following documents must be retained:

3.5.1. Copy of final approved D&F signed by the HCA.

3.5.2. Copy of the statement of facts signed by the individual who committed the unauthorized commitment and the individual's Component Head.

3.5.3. Copy of the Executive Summary.

3.5.4. Copy of the signed ratified contract or other funding document.

3.5.5. Any relevant supporting documentation.

GLOSSARY

ACRONYMS

D&F	Determination and Findings
DBMS	Defense Business Management System
DCMA-INST	DCMA Instruction
FCO	Funds Control Officer
FLC	Financial Liaison Center
FY	fiscal year
GC	Office of General Counsel
GPC	Government Purchase Card
HCA	Head of the Contracting Activity
KO	Contracting Officer
PLAS	Performance Labor Accounting System
SF	Standard Form
SOF	Statement of Facts