

March 12, 1993

Acquisition Management

RATIFICATION OF UNAUTHORIZED COMMITMENTS



BY ORDER OF THE DIRECTOR

MICHAEL E. KOCH
Colonel, USA
Chief of Staff

ROSITA O. PARKES
Director, Information Resources Management

AUTHORITY: Procedure for processing ratification of unauthorized commitments is established in compliance with Federal Acquisition Regulation (FAR) 1.602-3 and Defense Commissary Agency Acquisition Regulation Supplement (DeCAARS) 1.602-3.

APPLICABILITY: This directive applies to the Defense Commissary Agency (DeCA) activities to include all HQ DeCA, all Directorates and Staff Offices, DeCA regions, districts, service centers and commissaries.

MANAGEMENT CONTROL SYSTEM: This directive contains Management Control provisions that are subject to evaluation and testing as required by DeCAD 70-2 and as scheduled in DeCAD 70-3. The Management Control Review Checklist to be used by assessable unit managers to conduct the evaluation and test management controls is under development and will be included in DeCAD 10-x (proposed).

HOW TO SUPPLEMENT: This directive will not be supplemented without prior authorization from HQ DeCA/AM.

HOW TO ORDER COPIES: If additional copies are needed, they can be obtained as follows: Commissaries will order from Regions on DeCA Form 30-21; Regions will consolidate Commissary and Region requirements and send to HQ DeCA/IMSP, Fort Lee VA 23801-6300.

SUMMARY: This directive establishes standard procedures for use by DeCA Regions and Service Centers for processing ratification of unauthorized commitments.

SUPERSEDES DeCAD 10-1, March 2, 1992, and Change 1, June 19, 1992

OFFICE OF PRIMARY RESPONSIBILITY (OPR): HQ DeCA/AM

COORDINATORS: DeCA/DF/DO/DP/PL/PA/RM/IG/GC/IM/PM, DeCA Regions and Service Centers

DISTRIBUTION: E

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1. **PURPOSE:** This directive establishes standard procedures for processing ratification of unauthorized commitments. It is applicable to HQ DeCA, and DeCA Regions, Service Centers and commissaries.

2. **REFERENCES:**

- a. Federal Acquisition Regulation (FAR) 1.602-3.
- b. DeCA Acquisition Regulation Supplement (DeCAARS) 1.602-3.
- c. DeCA Directive 80-2, Standards of Conduct.

3. **POLICY:** HQ DeCA Directors and Chiefs of Staff Offices, DeCA Regions, Districts, Service Centers and commissaries will take positive action to preclude, to the maximum extent possible, the need for ratification of unauthorized commitments (UC). These procedures shall not be used in a manner that encourages Government personnel to make unauthorized commitments. Individuals making unauthorized commitments may be held pecuniarily liable for their actions. Only contracting officers and their duly authorized representatives acting within their authority are authorized to commit the Government to the award of contracts. Unauthorized DeCA personnel are prohibited from making any commitment or promise relating to the award of a contract or from making any representation that reasonably can be construed as such a commitment. In the event a ratification is necessary, the procedures outlined in paragraph 5 will be followed.

4. **RESPONSIBILITIES:** Authority to ratify an unauthorized commitment is delegated as follows:

- a. Ratification of \$25,000 or more - Head of Contracting Activity (HCA), HQ DeCA.
- b. Ratification in excess of \$2,500 but less than \$25,000 - Director, Acquisition Management, HQ DeCA.
- c. Ratification of \$2,500 or less - Chief, of the Service Center or Regional Contracting Division.

5. **PROCEDURES:**

a. The activity responsible for the UC will submit Requests for Ratification of Unauthorized Commitments, DeCA Form 10-2, to the applicable DeCA contracting division for processing.

(1) If it is determined that the UC is for a requirement normally procured by a DeCA Region or Service Center, DeCA Form 10-2 at **Figure 1** will be used for approving ratification. DeCA Form 10-2 is available through the DeCA form supply system.

(2) If it is determined that the UC is for a requirement normally procured by a contracting office other than DeCA (i.e., post, camp, station), the responsible activity must consult with the other contracting office for their forms and procedures to process the UC.

b. When a contracting officer is notified that a UC was made, the contracting officer will forward the following letters, with a return suspense of 10 workdays, to:

(1) The contractor (Letter to Contractor at **Figure 2**). If the removal of rental equipment is involved in the unauthorized commitment, a statement will be added to the letter asking the contractor why the equipment was not removed at the end of the contract period.

(2) The activity responsible for the UC (Memorandum at **Figure 3**), including the DeCA Form 10-2 for completion of Part I.

c. The DeCA contracting division point of contact (POC) will assign each UC received a control number beginning with the office identification number from the procurement instrument identification number (PIIN) followed by fiscal year (FY) and sequential number. For example, 01-93-01 would be the first UC in FY 93 for the East Service Center at Fort Lee.

d. The individual responsible for the UC will complete DeCA Form 10-2, Part I, Section A, Items 1-4, and send it through their immediate supervisor to the Director/Commander having jurisdiction over the individual involved. If the responsible individual is unavailable, the form may be so documented and items 1-4 completed by an individual in that office having knowledge of the UC.

e. The immediate supervisor of the individual responsible for the UC will complete DeCA Form 10-2, Part I, Section B, Items 1-3, and forward all documentation to the Director/Commander of the DeCA Headquarters Staff Element, Region or Service Center.

f. The Director/Commander of the DeCA Headquarters Staff Element, Region or Service Center will review the statement and the file; obtain advice and guidance from the supporting DeCA contracting division; and complete Part I, Section C, Items 1-5, of DeCA Form 10-2.

(1) If the Director/Commander concurs with the ratification, provide the invoice and certified funding document (with a complete purchase description) with the statement and file to the applicable DeCA contracting division. The funds must have been available at the time the UC was committed and must be currently available.

(2) If the Director/Commander nonconcurs with the ratification, provide rationale; recommend further action to be taken; and forward the statement and file to the applicable DeCA contracting division.

g. The chief of the applicable DeCA contracting division will complete Part II and provide DeCA Form 10-2 and related documents to the assigned contracting officer for review. Either the chief of the contracting division or the contracting officer designated in Part II of DeCA Form 10-2 shall review the file and proceed with Part III.

(1) If the Director/Commander nonconcurred with the ratification in Part I, Section C, return the file to the individual identified in Part I, Section A, who may be held liable for vendor payment due to the unauthorized commitment. Provide a memorandum enclosing a copy of the file to the appropriate payment office indicating that payment of the invoice is not authorized.

(2) If the Director/Commander concurred with the ratification, provide the file and supporting documents to legal counsel for completion of Part IV, Section A, of DeCA Form 10-2.

h. Legal Counsel will review the file and complete Part IV, Section A of DeCA Form 10-2;

determine whether the acquisition is ratifiable under FAR and DeCAARS 1.602-3, or whether the matter should be processed under FAR and DFARS Part 50 (Public Law 85-804), as a GAO claim, or other appropriate disposition; and return the file to the applicable DeCA Chief, Contracting Division for final disposition.

i. After legal review, the chief of the applicable DeCA contracting division will take the following action:

(1) If the action is \$2,500 or less, approve/disapprove the UC by completing Part IV, Section B, Item 1, of DeCA Form 10-2 and, if approved, prepare the appropriate documentation for payment.

(2) If action is in excess of \$2,500, complete Part IV, Section B, of DeCA Form 10-2 and forward the original and one copy of all documentation to HQ DeCA, ATTN: AMM, for further processing.

(3) If the action is determined nonratifiable by legal counsel, the procedures in FAR 1.602-3 will be followed.

j. The ratifying authority will review the file and determine if ratification is proper; make appropriate findings and determinations; complete Part IV, Section C, of DeCA Form 10-2; and return the file to the applicable contracting officer for preparation of the ratification documentation.

k. Upon receipt of the approval for ratification authority, the contracting officer will prepare and execute a bilateral contractual instrument within 5 workdays. A statement will be included on the instrument stating the amount paid represents full and final settlement for the claim and the Government is released from any further liability resulting from the circumstances of the claim.

l. The applicable DeCA contracting division is responsible for maintaining suspense and follow-up systems to ensure timely receipt of documents. If a suspense is not met after the second notice, DeCA contracting division will send a letter to the organizational commander/director requesting assistance to obtain the documentation.

6. **DEFINITIONS:**

a. "Ratification" means the act of approving an unauthorized commitment by an official who has the authority to do so.

b. "Unauthorized commitment" means 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.

c. "Other contracting office" means any contracting office that is not assigned to DeCA.

d. "Activity" means any Government organization who processes requirements through a DeCA Region or DeCA Service Center Contracting Division for purchase.

e. "Ratification Authority" means the individual delegated the authority to officially approve a ratification of an unauthorized commitment.

f. "Applicable DeCA Contracting Division" means the DeCA region or service center

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contracting division that would have procured the requirement had the unauthorized commitment not occurred.

g. "Applicable Contracting Officer" means the contracting officer assigned to process the proposed ratification at the DeCA region or service center where the unauthorized commitment occurred.

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REQUEST FOR RATIFICATION OF UNAUTHORIZED COMMITMENT <i>(For use of this form, see DeCAD 10-1; OPR is AM.)</i>		
IN THE AMOUNT OF (\$)	TO (Company Name and Address)	CONTROL NUMBER
FOR (Equipment/Supplies/Services)		COMMITTED (Date)
COMMITTING ACTIVITY		
<p align="center">PART I - DESCRIPTION OF COMMITMENT AND DIRECTOR/COMMANDER'S REVIEW</p> <p align="center">AUTHORITY: FEDERAL ACQUISITION REGULATION 1.602-3</p> <p>The individual making the unauthorized commitment shall complete items 1 through 4 of Part I, Section A, provide the required documentation, sign, date, and forward the file to their supervisor for completion of Part I, Section B, who will forward to the applicable Director/Commander for completion of Part I, Section C. The complete file will be returned to the chief of the supporting contracting division. All items will be completed in detail.</p>		
<p align="center">SECTION A - COMMITMENT CIRCUMSTANCES <i>(Completed by individual making unauthorized commitment)</i></p>		
<p>1. STATEMENT BY INDIVIDUAL DESCRIBING CIRCUMSTANCES</p> <div style="text-align: center; font-size: 48px; opacity: 0.3; transform: rotate(-15deg);"> SAMPLE </div>		
<p>2. EXPLAIN WHY NORMAL PROCUREMENT PROCEDURES WERE NOT FOLLOWED</p>		

DeCA Form 10-2, Dec 92

Supersedes DeCAF 10-2, Jan 92
 Previous edition is obsolete.

PART I - SECTION A - COMMITMENT CIRCUMSTANCES <i>(Continued)</i>		
3. DESCRIBE BONA FIDE GOVERNMENT REQUIREMENT NECESSITATING THE COMMITMENT AND BENEFITS RECEIVED AS A RESULT.		
4. LIST AND ATTACH ALL RELEVANT DOCUMENTS <i>(Include orders, invoices and other evidence of the transaction)</i>		
TYPED NAME AND TITLE OF INDIVIDUAL MAKING UNAUTHORIZED COMMITMENT	SIGNATURE	DATE
PART I - SECTION B - SUPERVISOR REVIEW OF COMMITMENT CIRCUMSTANCES <i>(Completed by the Supervisor of the individual making the unauthorized commitment)</i>		
1. DESCRIBE ATTEMPTS TO RESOLVE UNAUTHORIZED COMMITMENT PRIOR TO REQUESTING RATIFICATION <i>(Such as returning merchandise, individual paying from personal funds, etc.)</i>		
2. DESCRIBE ANY DISCIPLINARY ACTION TAKEN <i>(Include a description of any administrative action (to be) taken under applicable authority for military members and civilian personnel or furnish an explanation of why no disciplinary action was considered necessary.)</i>		
3. DESCRIBE ACTION TAKEN TO PREVENT RECURRENCE OF UNAUTHORIZED ACT		
TYPED NAME AND TITLE OF SUPERVISOR	SIGNATURE	DATE

SAMPLE

PART I - SECTION C - DIRECTOR/COMMANDER REVIEW <i>(Completed by applicable Director/Commander)</i>		
	YES	NO
1. IS DOCUMENTATION ACCURATE AND COMPLETE?		
2. WERE PREVENTIVE MEASURES/DISCIPLINARY ACTION TAKEN BY SUPERVISOR?		
3. WAS FURTHER ACTION TAKEN AT THIS LEVEL? (If yes, indicate what further action was taken.)		
<p>4. I HAVE REVIEWED PART I, SECTIONS A AND B, AND VERIFY THAT THE INFORMATION IS ACCURATE AND COMPLETE; AND I</p> <p> <input type="checkbox"/> CONCUR WITH CONTRACTUAL RATIFICATION <input type="checkbox"/> DO NOT CONCUR (Provide Rationale and Further Action to be Taken) <i>(Complete Item 6)</i> </p>		
<p>5. PROVIDE A COMPLETE PURCHASE DESCRIPTION, CERTIFIED FUNDING FOR RATIFICATION AND ORIGINAL INVOICE (Execute and attach the funding document.) MUST BE ATTACHED TO PROCESS RATIFICATION ACTION.</p> <div style="text-align: center; font-size: 48px; opacity: 0.3; transform: rotate(-15deg); font-weight: bold;">SAMPLE</div>		
When completed, forward to Chief, DeCA Contracting Division		
TYPED NAME, GRADE, TITLE AND ORGANIZATION OF DeCA DIRECTOR/COMMANDER	SIGNATURE	DATE
PART II - ASSIGNMENT OF DeCA CONTRACTING OFFICER <i>(Completed by applicable Contracting Division)</i>		
1. PROPOSED RATIFICATION ASSIGNED FOR PROCESSING TO (Name of DeCA Contracting Officer)		
2. TYPED NAME AND GRADE OF DeCA CHIEF, CONTRACTING DIVISION	SIGNATURE	DATE

PART III - DeCA CONTRACTING OFFICER'S REVIEW <i>(Completed by Cognizant DeCA Contracting Division)</i>		
THE CHIEF OF THE DeCA CONTRACTING DIVISION OR THE DeCA CONTRACTING OFFICER DESIGNATED IN PART II SHALL REVIEW THE FILE AND PROCEED AS FOLLOWS:		
<ol style="list-style-type: none"> 1. Determine the adequacy of all facts, records, and documents furnished, and obtain any additional material required. 2. Obtain an opinion from legal counsel as to whether the acquisition is ratifiable under FAR 1.602-3, whether the matter should be processed under FAR and DFARS Part 50 (Public Law 85-804), processed as a GAO claim, or for otherwise handled. 3. State whether the price involved is considered fair and reasonable and indicate how that determination was made. 4. Determine that sufficient funds are available to pay for acquisition. 5. Prepare a summary statement of facts addressing the foregoing. The statement is to include a recommendation as to whether the transaction should be ratified stating the reasons therefore. Advice against the ratification should include a recommendation as to whether the matter should be processed under FAR and DFARS Part 50 (Public Law 85-804), as a GAO claim, or for other appropriate disposition. (If more space is required, attach plain bond paper.) 		
SAMPLE		
TYPED NAME AND GRADE OF DeCA CONTRACTING OFFICER	SIGNATURE	DATE

PART IV - LEGAL REVIEW AND FINAL DISPOSITION		
SECTION A <i>(Completed by Legal Counsel)</i>		
DETERMINE WHETHER THE ACQUISITION IS RATIFIABLE UNDER FAR and DeCAARS 1.602-3, OR WHETHER THE MATTER SHOULD BE PROCESSED UNDER FAR AND DFARS PART 50 (Public Law 85-804), AS A GAO CLAIM, OR OTHER APPROPRIATE DISPOSITION. (Return to applicable DeCA Chief, Contracting Division for final disposition.)		
TYPED NAME AND GRADE OF LEGAL ADVISOR	SIGNATURE	DATE
SECTION B <i>(Completed by cognizant DeCA Chief, Contracting Division)</i>		
BASED ON THE FOREGOING DETERMINATION, REQUEST FOR APPROVAL OF UNAUTHORIZED COMMITMENT IS:		
1. ACTIONS OF \$2,500 OR LESS <input type="checkbox"/> Approved <i>(Issue Contractual Instrument)</i> <input type="checkbox"/> Disapproved <i>(Provide disposition instructions in accordance with FAR 1.602-3)</i>		
2. ACTIONS IN EXCESS OF \$2,500 (Forward to HQ, DeCA, WTTA, and M) <input type="checkbox"/> Approval is recommended <input type="checkbox"/> Disapproval is recommended <i>(Provide Rationale)</i>		
3. TYPED NAME AND GRADE OF DeCA CHIEF, CONTRACTING DIVISION	SIGNATURE	DATE
SECTION C <i>(Completed by Ratification Authority)</i>		
1. ACTIONS IN EXCESS OF \$2,500 <input type="checkbox"/> Approved <i>(Notify DeCA Contracting Division to Issue Contractual Instrument)</i> <input type="checkbox"/> Disapproved This approval is given in accordance with FAR and DeCAARS 1.602-3.		
2. TYPED NAME AND GRADE OF RATIFICATION APPROVAL AUTHORITY	SIGNATURE	DATE

Office Name

SUBJECT: Claim for _____

Company
(full address)

Gentlemen:

The subject claim, your invoice number _____, has been received and is being handled by this office. As the commissary equipment, supplies or services were furnished without the benefit of a contract executed by a duly authorized contracting officer, the Government has no authority at this time to make payment on your invoice.

A review of the circumstances involved in your claim is being accomplished under the governing regulations. You can help with the required investigation by providing, in writing, a statement detailing all circumstances surrounding this alleged purchase and what caused you to believe that the Government would make payment of your invoice.

If it is determined your claim is valid, necessary arrangements will be made to pay you. You can expect the administrative action to complete the investigation will take approximately 60 days.

Problems of this kind must be avoided by providing commissary equipment, supplies or services only on receipt of a contract or order from an authorized contracting or ordering officer of the U.S. Government. Only a contracting officer can enter into binding agreements on behalf of the U.S. Government. If you furnish supplies or services without a contract/order executed by an authorized contracting officer, you may not be paid for your service.

Further inquiries may be addressed to _____, telephone _____.

Sincerely,

(Name)
Chief, Contracting Division
Region/Service Center

Figure 2

Office Symbol

MEMORANDUM FOR

SUBJECT: Unauthorized Commitment for _____ (contract #) _____

Evidence indicates that an individual within your organization (or name and activity) was responsible for an unauthorized commitment (UC) on behalf of the Government. This commitment violates U.S. statutes and the Federal Acquisition Regulation (FAR) that stipulates only duly authorized contracting officers may obligate Government funds.

Because the circumstances indicate a potential violation of the DOD Standards of Conduct, an investigation is necessary to ascertain what occurred. The investigation is also necessary to determine the possible extent of the Government's liability and the authority to ratify the UC.

You are requested to initiate an investigation to determine the circumstances and facts of the situation. Part I, Sections A, B and C of DeCA Form 10-2 (Request for Ratification of Unauthorized Commitment), must be completed by the responsible individual, the supervisor, and the director/commander, and promptly returned to this office.

The Defense Commissary Agency has established a goal of resolving UCs within 60 days after learning of their existence. This goal can be met with your cooperation. It is imperative that your response be submitted on the attached DeCA Form 10-2 within 10 days of receipt.

In addition to DeCA Form 10-2, a properly completed funding document committing sufficient funds, and the contractor's invoice, with certification that supplies or services were received and accepted, are required to process the UC for ratification.

You are advised that, unless and until the UC is approved for ratification, the responsible individual can be held pecuniarily liable for the cost of the goods or services.

POC for this action is _____, telephone _____.

(Name)
Chief, Contracting Division
DeCA Region/Service Center

Attached:
As Stated

Figure 3