



1. PURPOSE

The purpose of this document is to provide the policy and guidance for ratification of unauthorized commitments within the SPAWAR Claimancy. This guidance conforms to the requirements as set forth in [NMCARS 5201.602-3](#) (Ratification of Unauthorized Commitments (UAC)).

An unauthorized commitment is an agreement made by a Government representative who is not authorized to do so. The agreement is not binding, but it can be ratified, or approved, by an authorized official when the limitations of [FAR 1.602-3\(c\)](#) are met.

For related guidance, see CMPG Section [5.3.1.7 Ratification of Unauthorized Commitments](#).

2. POLICY

2.1 Requirements for Entering Contracts

[FAR 1.602-1\(b\)](#) provides that 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. This includes the following:

- The ordering and acceptance of supplies and services without benefit of a legal contract constitute illegal acts and do not obligate the government for the items ordered, but may incur a personal liability and/or disciplinary action to the individual who made the commitment.
- Only duly appointed "Contracting Officers" are authorized to enter into contractual commitments, contracts or changes to contracts.

2.2 SPAWAR Commander

Subject to the limitations and procedures prescribed in [FAR 1.602-3\(c\)](#):

- The Commander, SPAWAR, as *Head of the Contracting Activity (HCA)*, has delegated authority to ratify actions initiated or approved by SPAWAR personnel who did not have authority to enter into contracts on behalf of the Government, and which resulted in supplies delivered or services rendered to the Government to the SPAWAR Director of Contracts, and further delegated to the Chief of the Contracting Office at SSC-Atlantic and SSC-Pacific. (see [Ratification Thresholds](#))

2.3 The Need for Ratification Actions

The regulatory requirements for ratification of unauthorized commitments are set forth in [FAR 1.602-3](#):

- This reference tasks agencies to take positive action to preclude, to the maximum extent possible, the need for ratification actions.
- Utilization of the procedures contained therein in a manner that encourages unauthorized commitments by Government personnel is specifically prohibited.

2.4 Notification Procedures

Notifications of unauthorized commitments are set forth in [NMCARS 5201.602-3](#).





2.5 Initial notification. Upon receipt of a contractor request for payment which is not covered by a current contract, task order, or delivery order, the SSCs shall notify HQ Policy Branch [2.3.1](#), within 10 calendar days of determining the need for a ratification. Procedures are found in paragraph [4.1.1](#) below.

Note: There is no dollar threshold to this reporting policy. All ratifications are to be reported.

2.6 UAC/Ratification Reporting. The activity executing the Ratification is responsible for reporting to DASN(AP) in accordance with paragraph [4.1.3](#) below.

2.7 Disputes and Appeals

Unauthorized commitments that cannot be ratified under [FAR 1.602-1\(b\)](#):

- That involve claims subject to resolution under the Contract Disputes Act of 1978, should be processed in accordance with [FAR Subpart 33.2](#), Disputes and Appeals.
- Cases that are not ratifiable may be subject to resolution as recommended by the Government Accountability Office under its claim procedure ([GAO Policy and Procedures Manual for Guidance of Federal Agencies](#), Title 4, Chapter 2) or as authorized by [FAR Part 50](#). Legal advice should be obtained in these cases.

3. RESPONSIBILITIES

3.1 All Personnel

All personnel are responsible for ensuring that their dealings with contractors are conducted in such a manner as to avoid the impression that they intend to obligate the government in any manner whatsoever. Specifically, regarding existing or prospective contractual matters, no person except a Contracting Officer may take any action concerning:

- Price, cost, or fee
- Quantity
- Quality
- Scope of contract
- Delivery schedule
- Labor category or key personnel qualifications

3.1.1 Advanced procurement information

All personnel are cautioned that they can collect information needed to understand the market, but cannot provide advanced procurement information specific to an upcoming requirement, or in any fashion appear to commit the government. All conversations should conclude with a statement that confirms the party does not have the authority to commit the government, and that nothing within the context of the conversation should be construed to indicate a promise, interest, or desire to do business.

3.2 Contracting Officer

May bind the Government only to the extent of the authority delegated to them. No person except a Contracting Officer may:

- Promise work to a contractor
- Modify terms or conditions of an existing contract
- Issue Stop Work Orders (except when facing impending danger or gross waste/abuse of government resources)
- Authorize government furnished property or contractor acquired property
- Authorize additional work



3.3 The Program Director/Program Manager/Department Head/ Program Manager Warfare (PMW)/Technical Code (or other appropriate official):

Has responsibility for ensuring that proactive measures are in place within their department or area of responsibility to preclude the occurrence of unauthorized commitments. Accordingly, Program Managers/technical codes should coordinate with the Contracting Officer prior to initiating discussions with contractors involving contractual matters.

3.4 Assigned Contracting Officer

The assigned Contracting Officer, within the applicable contracting office, is responsible for processing ratification actions and notifying the 2.3.1 Policy Branch via the HQ_CONTRACTS_POLICY@NAVY.MIL email within 10 days of determining an unauthorized commitment has happened, as evidenced by a Statement of Fact document. The Contracting Officer will coordinate with those involved in the unauthorized commitment, the Program Director/Program Manager/Department Head/ Program Manager Warfare (PMW)/Technical Code (or other appropriate official), Legal Counsel, the Ratifying Official, the claimant and others as required to ensure timely resolution. The Contracting Officer will prepare the package for the Ratifying Official's review. **Note:** The Contracting Officer and the Ratifying Official cannot be the same person.

3.5 The Ratifying Official

The Ratifying Official cannot be the assigned Contracting Officer. The Ratifying Official for HQ unauthorized commitments is SPAWAR 2.0/2.0A. The Ratifying Official shall review the package and if ratification is proper, approve the ratification by signature on the D&F and return the package to the Contracting Officer for execution and distribution.

3.6 HQ Policy Branch

The 2.3.1 HQ Policy Branch shall record all unauthorized commitments in the unauthorized commitment log set up on the Share Drive, and maintain a record of all unauthorized commitment ratification actions. The Policy Branch will report all UACs in accordance with [NMCARS 5201.602-3](#) and [Annex 15](#) and paragraph [4.2.9](#) below.

3.7 SSC Policy Offices

Within 10 calendar days of determining the need for a ratification of an unauthorized commitment, the activity where the ratifiable action occurred shall report the UAC to HQ Policy Branch via the HQ_CONTRACTS_POLICY@NAVY.MIL. SSC Policy Branch is responsible for recording, numbering and reporting all unauthorized commitments to HQ Policy Branch via the HQ_CONTRACTS_POLICY@NAVY.MIL. SSC Policy Offices shall ensure the procedures of this SCPPM are followed. SSC Policy offices shall report UACs/Ratifications directly to DASN(AP) and copy HQ Policy Branch. The quarterly report shall follow the procedures in [paragraph 4.1.3](#) below.

4. PROCEDURE

4.1 Reporting/Notification

4.1.1 **Initial notification.** Upon receipt of a contractor request for payment which is not covered by a current contract, task order, or delivery order, personnel(including SSC Policy offices) shall notify HQ Policy Branch within 10 calendar days of determining the need for a ratification via HQ_CONTRACTS_POLICY@NAVY.MIL with the subject "Contractor Request for Payment-####" The initial notification shall be numbered in accordance with



- [NMCARS 5201.602-3 \(S-90\)\(e\)\(2\)](#) and include the date reported by the contractor, a decision that event reported is or is not a unauthorized commitment, the contractor name and the dollar value of the action.
- 4.1.2 **HQ Policy branch** shall log the event in the Record Log located in the Policy folder on the Share Drive.
- 4.1.3 **Unauthorized Commitment/Ratification Reporting.** The activity executing the Ratification is responsible for reporting. Submit a report quarterly of all UACs/Ratifications occurring during the quarter in the format prescribed in NMCARS Annex 15, to DASN(AP) by e-mail at RDAPOLICY@NAVY.MIL and HQ Policy Branch at HQ_Contracts_Policy@navy.mil with the subject "[NMCARS 5201-602-3\(S90\(2\)\)](#)". Report is due by January 31, April 30, July 31 and October 31. Negative reports are required.
- 4.2 Ratification Process**
- 4.2.1. The individual identifying the unauthorized commitment notifies his/her respective contracting office via their respective chain of command. Provide a signed statement of facts and complete the Ratification of Unauthorized Commitment Checklist (located in Toolbox), describing the circumstances in detail and addressing the following issues:
- A signed statement describing the circumstances surrounding the unauthorized commitment;
 - Why normal procurement procedures were not followed;
 - What bona fide need of the Government necessitated the commitment;
 - Whether or not any benefit was received and its value;
 - How and when it was identified as an unauthorized commitment;
 - Attempts to resolve the unauthorized commitment prior to requesting authorization (such as returning merchandise);
 - All orders, invoices, or other documentary evidence of the transaction; and
 - Any other pertinent facts.
- 4.2.2. If the **Program Director/Program Manager/Department Head/Program Manager Warfare (PMW)/Technical Code (or other appropriate official)** concurs that the determination should be ratified, she/he forwards the statement of facts in a report to the Contracting Officer with an endorsement that:
- Verifies the accuracy and completeness of the documentation;
 - Determines if this is a repeat offender;
 - Describes administrative action taken and the measures taken to prevent a recurrence of unauthorized commitments; and
 - Provides a complete purchase description and funding for the ratifying contract.
- 4.2.3. Upon receipt of the ratification package, the assigned **Contracting Officer**:
- Reviews the documentation and endorsement provided;
 - Determines the adequacy of the facts and documentation, obtaining any additional material required;
 - Prepares a D&F (see  [Determination and Findings](#) SCPPM) addressing the limitations in [FAR 1.602-3\(c\)\(1\) through \(7\)](#) for signature by the Ratifying Official *and Legal Counsel*;
 - Determines a fair and reasonable price for the item or services;
 - Prepares a recommendation to the Ratifying Official;





- f. Prepares and completes the Ratification of Unauthorized Commitments Checklist (in toolbox)
 - g. Prepares appropriate contractual documents; and
 - h. Submits the contract and supporting documents to the Office of Counsel. Legal Counsel shall review the unauthorized commitment package for legal sufficiency. If Legal Counsel does not find the action legally sufficient for ratification, the assigned Contracting Officer will take action to deny the ratification or resolve the legal determination, as appropriate.
- 4.2.4. Comptroller review is recommended for all ratifications. It is required for ratifications in **excess of \$1,000,000** where the use of expired funds is anticipated.
- 4.2.5. The assigned **Contracting Officer** shall provide the ratification package, to include the appropriate contractual and funding documents to the Ratifying Official. Upon approval of the D&F, Contracting Officer shall sign the ratified contract.
- 4.2.6. The **Ratifying Official** shall review the file, and if ratification is proper, approve the ratification by signature on the D&F and return the package to the Contracting Officer for execution and distribution. For SSCs, the CCO is the Ratifying Official subject to the limitation stated below in [Approvals](#).
- 4.2.7. The assigned **Contracting Officer** and **Program Director/Program Manager/Department Head/Program Manager Warfare (PMW)/Technical Code (or other appropriate official)** develop the ratifying contract/order.
 - a. The ratified contract/order must be bi-lateral; and
 - b. It must contain a release of liability/claims statement.
- 4.2.8. A copy of the entire package, once approved by the Ratifying Official, shall be submitted to [HQ Policy Branch 2.3.1](#). Package must include:
 - a. Ratification of Unauthorized Commitment Checklist (located in Toolbox);
 - b. Statement from the individual committing the unauthorized commitment;
 - c. Contracting Officer's D&F approved by the ratifying official;
 - d. Copy of the contract mod, task order mod, or 1155 Purchase Order which ratified the action.
 - e. The Contracting Officer's determination of fair and reasonable pricing- may be included in the D&F document.
- 4.2.9. **SSC Policy offices** shall submit the UAC/Ratification report for which they are responsible to DASN(AP) using [Annex 15](#) of the NMCARS for report format, with a copy to **HQ Policy Branch**; **HQ Policy Branch** shall submit all other ratification reports which includes all the reporting for HQ.



5. APPROVALS



5.1 Ratification authority limitations (NMCARS 5201-602-3(b)(3)(i)).

5.1.1. When a HCA has recorded less than 15 UACs in a single fiscal year, the HCA (or designee) may delegate authority to ratify as follows:

- (A) Actions valued at \$50,000 or less - Not lower than the Activity CCO;
- (B) Actions valued between greater than \$50,000 and \$100,000 or less - Not lower than the SPAWAR Director of Contracts;
- (C) Action valued greater than \$100,000 – HCA without power of redelegation



5.1.2. When the number of UACs in a FY reaches 15 or more exceeding \$3500, the authority to ratify is automatically rescinded and reverts to the HCA without power of redelegation.

5.1.3. When the person committing the UAC is a repeat offender or the contractor performing the UAC has reported a UAC in the past, the HCA shall be the ratifying authority without power of redelegation.



5.1.4. *For counting purposes, use the date that the ratifiable action occurred, not the date of reporting.*

5.2 Ratification Thresholds

Contract Value (x)	Ratifying Official
$x > \$100K$	HCA
$\$50K < x \leq \$100K$	Director of Contracts, SPAWAR HQ (SPAWAR 2.0)
$x \leq \$50K$	SSC CCOs

6. TOOLBOX

1. [Determination and Findings](#)
2. [Sample Memos, Statement of Facts, and Determination & Findings](#)
3. [SPAWAR Ratification Checklist](#)
4. [GAO Policy and Procedures Manual for Guidance of Federal Agencies](#)
5. [Ratification Reporting Spreadsheet to DASN\(AP\)](#)

7. CHANGE HISTORY

Updated material is highlighted by *purple text* and an Alert/New icon.

Date	Description of Changes
June 2016	Added NMCARS language regarding actions which exceed \$3500 in a FY.
April 2016	Content formatted and reorganized; notification and reporting requirements added and links updated.
February 2012	Last version created in old format. No change notes available.