



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MEDICAL RESEARCH AND DEVELOPMENT COMMAND
810 SCHREIDER STREET
FORT DETRICK, MARYLAND 21702-5000

FCMR-AAP-A

13 January 2020

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Procurement Advisory Notice (PAN) 20-04 Guidance for processing Unauthorized Commitments

1. REFERENCES.

- a. Federal Acquisition Regulation (FAR) 1.602-3, Ratification of Unauthorized Commitments
- b. Army Federal Acquisition Regulation Supplement (AFARS) 5101.602-3, Ratification of Unauthorized Commitments
- c. AFARS 5101.602-3-90, Ratification Procedures

2. PURPOSE. The purpose of this PAN is to provide guidance on processing unauthorized commitments.

3. APPLICABILITY: This guidance is applicable to all organizations, activities, and personnel receiving contracting support from the US Army Medical Research Acquisition Activity (USAMRAA).

4. BACKGROUND. An Unauthorized Commitment, as defined by FAR 1.602-3(a), is "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." Only warranted Contracting Officers (KO) and Purchase Cardholders acting within the limits of their delegated authority may bind the Government. Personnel involved in creating an unauthorized commitment may face severe consequences, including personal financial liability. In addition, contractors who act on unauthorized commitments do so at their own risk. They are not entitled to consideration unless and until the unauthorized commitment is ratified. Payment is therefore substantially delayed or may not be paid at all if the action is not ratified or costs are not recognized.

*This PAN supersedes PAN 17-12, 9 December 2017, Subject: Unauthorized Commitment Processing Procedures.

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5. DEFINITIONS.

a. **Unauthorized Commitment:** 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.

b. **Ratification:** The act of approving an unauthorized commitment by an official who has the authority to do so.

c. **Non-ratifiable Commitments:** Cases that are not ratifiable and may be subject to resolution through the claims process under FAR Part 33 or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

d. **Committing Activity (CA):** The customer activity supported by the USAMRAA, typically referred to as the requiring activity that committed the unauthorized commitment.

6. ACTIONS.

a. Effective immediately, the procedures described in PAN 17-12 are rescinded. CAs shall follow the procedures described in this PAN 20-04 for all unauthorized commitments processed by the USAMRAA.

b. All organizations and activities receiving support from the USAMRAA will review and follow the procedures described herein.

c. It is the responsibility of the Commander/Director of each requiring activity to reduce incidents of unauthorized commitments within their command. Furthermore, when they do occur, the Commander/Director must ensure the individuals involved follow the procedures described in this PAN 20-04.

d. USAMRAA KOs will ensure this policy is implemented and adhered to when supporting the CA with an unauthorized commitment. KOs shall ensure that once an unauthorized commitment is assigned to them for action by the appropriate USAMRAA Branch Chief (BC), the KO must work closely and expeditiously with the CA toward unauthorized commitment disposition in accordance with the timelines established herein.

7. PROCEDURES.

a. **Flash Report and Executive Summary (EXSUM).** Within 24 hours of unauthorized commitment discovery, the affected Commander/Director of the CA shall

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prepare a Flash Report (see Enclosure 1) and an EXSUM (see Enclosure 2). Prior to sending these documents to the USAMRAA, these documents shall be routed through the CA's Commander/Director for review. For US Army Medical Research and Development Command (USAMRDC) and its subordinate commands, CA's shall also provide the Flash Report and EXSUM to the USAMRDC Chief of Staff and Deputy Chief of Staff through the Executive Assistant's mailbox. Non-USAMRDC CAs are responsible for following their own command's reporting procedures as well.

b. After review by the CA Commander/Director, the Flash Report and the EXSUM shall be sent to the USAMRAA Contract Execution Oversight (CEO) mailbox to receive a tracking number and to be forwarded to the appropriate USAMRAA BC and Group Chief (GC) for KO and Contract Specialist (CS) assignment. The CEO branch will then forward the Flash Report and EXSUM, along with the assigned tracking number, to the Senior Contracting Official (SCO), Chief of Contracting Office (COCO), and if over \$100,000, the Head of the Contracting Activity (HCA). For unauthorized commitments received from USAMRDC or any of its subordinate commands, the CEO branch will also include the USAMRDC Executive Assistant mailbox in the email.

(1) Flash Report: A sample flash report is included in Enclosure 1.

(2) EXSUM: A sample EXSUM is included in Enclosure 2.

c. **Root Cause Analysis (RCA).** A Root Cause Analysis (see Enclosure 4) is required for all unauthorized commitment actions greater than \$10,000. The RCA shall detail the circumstances surrounding the unauthorized commitment and include a corrective action plan to ensure proper procurement procedures are followed in the future. The CA Commander/Director will conduct the RCA briefings and is responsible for coordinating the required video teleconference (VTC) or teleconference (TELECON).

(1) Draft RCA Pre-Briefing: A Root Cause Analysis Pre-Briefing with the USAMRAA COCO, GC, and KO is required prior to the official RCA briefing. The draft RCA slides are presented during the pre-briefing. The CA will incorporate any corrections or changes discussed during the pre-briefing into the final slides to be presented at the official RCA briefing.

(2) RCA Briefing: The CA Commanders/Directors will present the final RCA slides during this briefing, revised to incorporate corrections or changes that resulted from the pre-briefing, to the HCA, SCO, COCO, GC, KO, CS, the USAMRDC Commanding General (or designated representative), responsible party and their immediate supervisor.

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d. **Request for Approval of Unauthorized Commitment.** The CA will prepare Part 1, Section A, B and C, of the Request for Approval of Unauthorized Commitment form (see Enclosure 3) and submit it to the KO and CS. The CA should include, as attachments, any items listed in block 5 of this form, including invoices, orders, receiving report or other evidence of the transaction. These items, along with the official funds certification document, constitute the Unauthorized Commitment Package that will be taken for action by the USAMRAA.

e. Once the USAMRAA KO and CS receives the complete Unauthorized Commitment Package, the assigned KO will begin processing the unauthorized commitment by collecting facts, interviewing the involved individuals, and then drafting the KO's review for Part II of the Request for Approval of Unauthorized Commitment form.

(1) If a Pre and Final-RCA briefing is required, the KO will not finalize their recommendation in Part II until after the RCA briefing is conducted. Depending on the outcome of the RCA Briefing, the CA Commander/Director may be required to revise and resubmit the Request for Approval of Unauthorized Commitment form.

f. The KO will submit the completed Part II, along with the entire Unauthorized Commitment Package, to Legal Counsel for review. Upon completion of review, Legal Counsel completes Part III of the Request for Approval of Unauthorized Commitment form and then forwards as appropriate (see paragraph 9, Thresholds). In the event the KO does not recommend ratification, the KO's recommendation in Part II shall include an explanation as to whether or not to process the transaction under FAR Part 50 and Defense Federal Acquisition Regulation Supplement Part 250. The KO may recommend the transaction be handled as a claim through the disputes process set forth in FAR subpart 33.2.

g. Part IV of the form is completed by the ratification authority (see paragraph 9, Thresholds). Any levels below the identified ratification authority must either recommend for or against ratification in their respective Part IV section.

h. If the Request for Approval of Unauthorized Commitment form has been recommended for ratification and signed by the appropriate parties, the form is routed back to the KO who will then issue the ratification document (contract, order, or modification) within five (5) business days. The KO is responsible for notifying the SCO, COCO, GC, BC, and CEO once the document has been processed.

i. In the event that ratification is not recommended or approved by any authority listed in Part IV, a written explanation for disapproval or non-recommendation shall be

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included in Part IV and routed back to the KO who will notify the CA of the determination not to ratify. The KO will include CEO in the notification, and for USAMRDC and subordinate commands, the USAMRDC Executive Assistant will also be included in the notification. If pursuing resolution through FAR Part 50 is also not recommended, the KO will notify the contractor that ratification was not approved and direct them to FAR Part 33.2.

j. The KO/CS is responsible for creating an Unauthorized Commitment cabinet in Virtual Contracting Enterprise (VCE) – Paperless Contract File (PCF), completing as much information as is available, and uploading the entire Unauthorized Commitment Package into VCE-PCF in accordance with the procedures outlined in the PCF Contracting User Guide located under the Help>PCF User Documentation of VCE-PCF. The user guide provides procedures for documenting ratifications that are approved and not approved.

8. TIMELINE:

24 Hours	After Unauthorized Commitment Discovery, the Flash Report and EXSUM are due from the CA's Commanding Officer or Director.
30 Days	Final Unauthorized Commitment Package due (if no RCA required).
30 Days	RCA slides (if required) are due to USAMRAA KO for review.
45 Days	RCA briefing (if required) through VTC or TELECON is due.
50 Days	Final Unauthorized Commitment Package due (if RCA required).
85 Days	Unauthorized Commitment processed and ratification decision reached.
90 Days	Ratification document complete.

**Unauthorized Commitment should be completed within 90 days of notification.

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9. THRESHOLDS.

Dollar Value		Required Documents	Ratification Authority
<\$10,000		<ol style="list-style-type: none">1. Flash Report2. EXSUM3. Request for Approval of Unauthorized Commitment form4. Supporting documentation (see description in paragraph 7.c.)	COCO
>\$10,000 to <\$100,000		<ol style="list-style-type: none">1. Flash Report2. EXSUM3. Request for Approval of Unauthorized Commitment form4. Supporting documentation (see description in paragraph 7.c.)5. Pre-RCA briefing slides6. Final- RCA briefing slides	SCO (COCO review and signature still required in Part IV Section A of Request for Approval of Unauthorized Commitment form, prior to SCO review)

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Dollar Value		Required Documents	Ratification Authority
>\$100,000		<ol style="list-style-type: none">1. Flash Report2. EXSUM3. Request for Approval of Unauthorized Commitment form4. Supporting documentation (see description in paragraph 7.c.)5. Pre-RCA briefing slides6. Final- RCA briefing slides	HCA (COCO and SCO review and signature still required in Part IV Section A and B, respectively, of the Request for Approval of Unauthorized Commitment, prior to HCA review)

10. QUESTIONS. Submit all questions regarding this PAN to the CEO mailbox at usarmy.detrick.medcom-usamraa.mbx.policy@mail.mil.

- 4 Encls
1. Flash Report (Sample)
 2. Executive Summary (Sample)
 3. Request for Approval of Unauthorized Commitment
 4. Root Cause Analysis (Sample)

//ORIGINAL SIGNED//
Brian E. Martin
Senior Contracting Official

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Enclosure 1

FLASH REPORT (SAMPLE)

FLASH REPORT DATE: 13 July 2016 (FLASH REPORT should be submitted and dated within
24 Hours of Discovery Date)

CLASSIFICATION: Unclassified

CAVEATS: None

DISCOVERY DATE: 11 July 2016

DATE(S) OF UNAUTHORIZED COMMITMENT OCCURRENCE: 16 April 2015 & 7 May 2015

CONTRACT NUMBER: None

COMMITTER: Mr. John Smith

VENDOR: CTI – Johnson Technologies, Inc.

FUND YEAR: FY15

DOLLAR VALUE: \$1,144.00

BASIS FOR DETERMINATION OF UNAUTHORIZED COMMITMENT: A printer, thought to be under the USAMRDC service contract with Cartridge Technologies, Inc. (CTI), needed repairs and equipment in April 2015. The executive assistant (EA) believed the printer was covered by the USAMRDC service contract at the time the service call was placed and when the repairs were made. However, the service call and repair parts were not included in the USAMRDC service contract and were not covered by the warranty for the machine. When the invoice was received, the EA discovered that the service call and repair parts were not covered. Therefore, it was determined that the repair was an unauthorized commitment.

This should be sent by the committing activity commander, along with the EXSUM, within 24 hours of unauthorized commitment discovery.

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Enclosure 2

EXECUTIVE SUMMARY (EXSUM) (SAMPLE)

(UNCLASSIFIED)

26 Oct 2016

(U) (MRMC-RTJ) Unauthorized commitment of JPC-1 Printer Service: A printer malfunction resulted in a work stoppage for JPC-1 in April 2015. Dr. Susie Smith directed the EA to find a way to fix the printer as expeditiously as possible due to the immediate effect on office operations. The EA called (Activity Name) Logistics Division to start the process for repair service, as JPC-1's printers were thought to be under (Activity's Name) service contract with Cartridge Technologies, Inc. (CTI). The EA placed a service call to CTI, the only organization used for printer repair needs, and the service was performed on 16 April 2015 and 7 May 2015. The parts needed to repair the printer were not covered under the warranty, resulting in a bill for \$1,364.00, which \$220 in labor charges have been waived, for the final bill of \$1,144.00. When this call was placed, JPC-1 was unaware it would result in an unauthorized commitment.

Mike Smith/MRMC-RTJ/3-4066
(E-Mail Address)

APPROVED BY:
Seymour Smith
COL, MS
Commanding

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Enclosure 3

Request for Approval of Unauthorized Commitment

Document found on Mapping the Acquisition and Procurement Process Application
(MAPAPP):

<https://spcs3.kc.army.mil/asaalt/procurement/mapapp/Shared%20Documents/Approval-Unauthorized-Commitment.pdf>

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Enclosure 4

ROOT CAUSE ANALYSIS (SAMPLE)

USAXXX
Root Cause Analysis
Medical Research Lab Ft. Detrick

LTC Ian Smith
Chief, Logistics Division

Date

UNCLASSIFIED

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Enclosure 4

ROOT CAUSE ANALYSIS (SAMPLE)

Purpose and Outline

Purpose: To explain circumstances of the identified Unauthorized Commitment and corrective action plan.

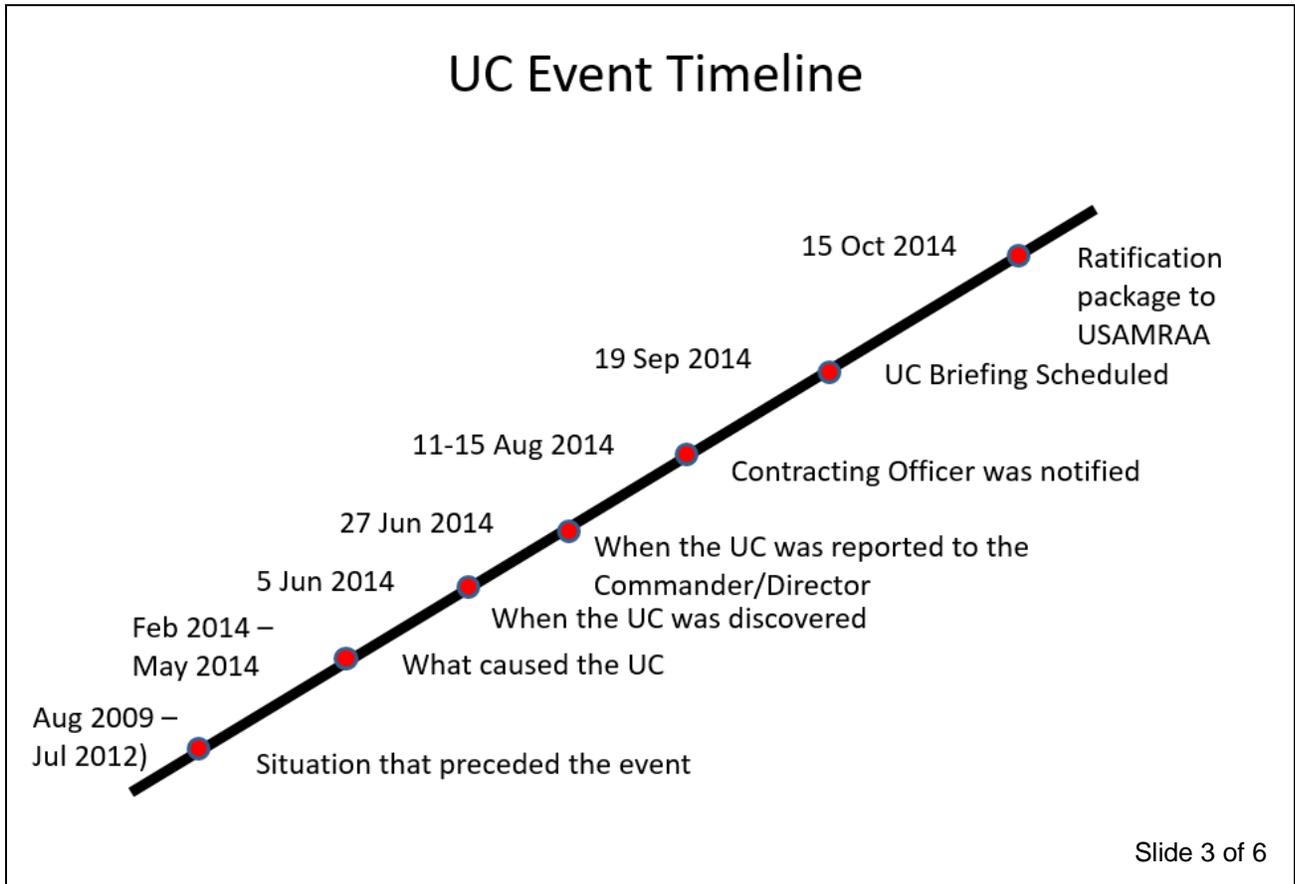
Outline:

1. Unauthorized Commitment Timeline
2. Unauthorized Commitment Problem and Analysis
3. Unauthorized Commitment Corrective Actions
4. Open Discussion / Closing Remarks

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Enclosure 4

ROOT CAUSE ANALYSIS (SAMPLE)



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Enclosure 4

ROOT CAUSE ANALYSIS (SAMPLE)

UC Problem and Analysis

- Identify the actions which led to the Unauthorized Commitment and reasons UC occurred
 - What happened –
 - Where did it happen –
 - When did it happen –
 - Who was involved -
 - Why did it happen -

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Enclosure 4

ROOT CAUSE ANALYSIS (SAMPLE)

UA Corrective Actions

- Identify the corrective action plan to prevent the UC from reoccurring

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Open Discussion / Closing Remarks

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