



DEPARTMENT OF THE NAVY
NAVAL AIR SYSTEMS COMMAND
NAVAL AIR SYSTEMS COMMAND HEADQUARTERS
47123 BUSE ROAD, UNIT # Moffett
PATUXENT RIVER, MD 20670-1547

IN REPLY REFER TO

NAVAIRINST 4200.33C
AIR-2.1.1

14 APR 2000

NAVAIR INSTRUCTION 4200.33C

From: Commander, Naval Air Systems Command

Subj: UNDEFINITIZED CONTRACT ACTIONS

Ref: (a) DFARS Subpart 217.74, Undefinitized Contract Actions
(b) FAR 16.603

Encl: (1) AAC and UCA Contract Action Type Codes
(2) Certificate of Urgency (COU)/UCA Approval

1. Purpose

a. To establish policy and provide procedures for the:

(1) Program/Project Manager (PM) or Acquisition Manager (AM) to obtain a Certification of Urgency (COU), approving the urgency of the requirement;

(2) Procuring Contracting Officer (PCO) to:

(a) obtain approval for use of an Undefinitized Contract Action (UCA) as the contractual vehicle; and

(b) definitize UCAs following references (a) or (b).

b. To establish policy following Defense Federal Acquisition Regulation Supplement (DFARS) 217.7402, applicable to those UCAs not subject to reference (a).

2. Cancellation. This instruction supersedes NAVAIR Instruction 4200.33B of 1 December 1995, and Change 1 of 12 November 1996. Since this is a major revision, changes are not indicated.

3. Scope. This instruction covers all UCAs, including letter contracts, ceiling priced modifications (including exercise of ceiling-priced options), ceiling priced orders (Basic Ordering Agreement ((BOA)) orders, provisioned item orders and delivery/task orders), and ceiling priced Engineering Change Proposals (ECPs), procured by personnel within Contracts (AIR-2.0). This instruction also addresses reporting of congressionally mandated long-lead procurement contracts (Advance Acquisition Contracts (AACs)). This instruction applies to all Naval Aviation Systems Team (TEAM) solicitations and contracts, and to those activities receiving Naval Air Systems Command (NAVAIR) support under operating agreements, such as the Naval Aviation Program Executive Officers (PEOs).

14 Apr 00

4. Background. Reference (a) excludes congressionally mandated long-lead procurement contracts Advance Acquisition Contracts (AACs), Engineering Change Proposals (ECPs), Value Engineering Change Proposals (VECPs), Foreign Military Sales (FMS), special access programs, initial spares, modifications within scope, purchases at or below the simplified acquisition threshold, and over-and-above work requests from most or all UCA requirements. Nevertheless, they are included (except for over-and-above work requests) under this instruction because DFARS 217.7402 states the PCO should apply UCA policy to these actions to the maximum extent practicable (see paragraph 8 below for exemptions from the specific requirements). These actions are included for reporting purposes, because they are continuously scrutinized by the Department of Defense (DoD) Inspector General and the Assistant Secretary of the Navy (Research, Development and Acquisition).

5. Policy

a. Requirements should be fully priced at the time of award, without jeopardizing operations or adversely affecting user needs. A detailed statement of work delineating the program requirement, quantities, item description, delivery schedule, and identifying approved funding will be provided to the PCO or Administrative Contracting Officer (ACO) in sufficient detail to allow the timely issuance of a solicitation or execution of the contractual document.

b. Use of UCAs will be kept to an absolute minimum, and will not be used for requirements that are not clearly defined.

c. Any requirement letter, Procurement Initiation Document (PID), Military Interdepartmental Purchase Request (MIPR), etc. greater than \$100,000 will require a COU (enclosure (2)) prior to processing, if a UCA is envisioned. See paragraph 8 below for any exemptions.

d. Any requirement letter, PID, etc., to be executed in AIR-2.0, regardless of dollar value, will require a "UCA Approval" (enclosure (2)) for such requirement to be placed as a UCA, unless otherwise exempted at paragraph 8 below. Ceiling priced purchase orders issued pursuant to simplified acquisition procedures are exempt from the provisions of this instruction.

e. A fully supportable, qualifying price proposal as defined in reference (a) will be required from the contractor prior to placing the UCA, unless the urgency of the requirement, as indicated on the COU, precludes delaying award for receipt of a contractor's qualifying proposal.

f. Reference (a) requires definitization within 180 days after issuance of the UCA. This can be extended to 180 days after the date a contractor's qualifying proposal is received.

g. For all UCAs, except as noted in paragraph 8 of this instruction, the following applies: when a UCA is issued, the government shall not obligate, and in no case provide for expenditures to be, more than 50 percent of the ceiling price until the UCA is definitized. However, if a contractor submits a qualifying proposal before 50 percent of the ceiling price is

NAVAIRINST 4200.33C

14 Apr 00

obligated (or expended, for those exceptions listed in paragraph 8), this limitation may be increased to 75 percent (DFARS 217.7404-4). If a qualifying proposal was submitted before or at the time of execution of the UCA, 75 percent can be obligated at that time.

h. The estimated ceiling price should be sufficient to cover the contractor's initial proposal for the action. In the event that the estimated amount of the ceiling priced action, as reflected on the COU, is significantly understated, an amendment to the COU will be required prior to execution or modification of the UCA. If there is additional or new work, a new PID/purchase request, justification, synopsis COU, and CCO approval are required.

6. Definitions

a. Contract Action Type Code. Is a three/four digit code used at Naval Air Systems Command Headquarters (NAVAIRHQ) and Naval Air Warfare Center Aircraft Division (NAVAIRWARCENACDIV), Patuxent River, Maryland to designate the different types of contract actions tracked by the Procurement Contract Monitoring Automated System (PROCMAS). A description of the different UCA codes is provided in enclosure (1).

b. Advance Acquisition Contract (AAC). Is a congressionally mandated long-lead time procurement contract referred to at DFARS 217.7402(d).

c. Undefinitized Contract Action (UCA). For purposes of this instruction, UCA applies to contract actions for which the final contract terms, specifications or price have not been agreed upon before the contract is awarded/executed. This includes Not-To-Exceed (NTE) contractual actions. All requirements that will be executed as a ceiling priced UCA are designated in the NAVAIR PROCMAS by a contract action type code ending in "U". The required follow-up action to definitize the UCA is designated in the PROCMAS by a contract action type code ending in "D". These distinctions are important for tracking and reporting purposes.

7. Responsibilities

a. Program/Project Manager (PM) or Acquisition Manager (AM) will:

(1) provide a detailed statement of work delineating the program requirement, quantities, item description, delivery schedule, and approved funding to the PCO or ACO in sufficient detail to request a qualifying proposal from the contractor;

(2) discuss and agree with the PCO or ACO to procurement lead times, commensurate with the complexity of the procurement, that allow the contract action to be fully priced; and

(3) if there is not time to fully price the contract action before award, a COU (enclosure (2)) shall be generated which, on its face, documents the rationale for the UCA, following DFARS 217.7404-1, as follows:

14 Apr 00

(a) fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance;

(b) if including a requirement for non-urgent spare parts and support equipment in a UCA, show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the government; and

(c) if modifying the scope of a UCA when performance has already begun, show that the modification is consistent with good business practices and in the best interest of the government.

(4) the COU should include a brief statement which describes any actions that could be taken which would avoid the need for a UCA in the future, or reduce delay in the pricing effort for the same or similar requirement arising under similar circumstances.

b. Cognizant PEO, Deputy or Assistant Commander, Flag/Senior Executive Service (SES) (0-6/GS-15 within a Naval Air Warfare Center (NAVAIRWARCEN) requiring code). The COU portion of enclosure (2) will be approved by either the cognizant PEO, Deputy Commander for Acquisition and Operations (AIR-1.0), Assistant Commander for Logistics Management (AIR-3.0), Assistant Commander for Research and Engineering (AIR-4.0), or designee. If the urgent requirement originates at a NAVAIRWARCEN site, the COU portion of enclosure (2) will be approved by an SES/Flag a level above the cognizant PM or AM (or by an 0-6/General Schedule (GS)-15 if site does not have an SES/Flag available in the PM or AM's competency), as applicable. The cognizant approving official must sign the COU portion of enclosure (2) to certify the urgency of the requirement.

c. Head of Contracting Activity (HCA). Reference (a) requires HCA approval prior to entering into a UCA (including requirements for non-urgent spares and support equipment), and/or modifying the scope of a UCA when performance has already begun. That approval authority is delegated to the cognizant contracts competency department head (Major Weapons Systems, Tactical Aircraft and Missiles Contracts (AIR-2.2), Major Weapons Systems, Air ASW, Assault and Special Mission Programs Contract (AIR-2.3), Major Weapons Systems, Unmanned Aerial Vehicles, Aviation Support and Commercial Derivatives Contracts (AIR-2.4) and Major Weapons Systems Aircraft Support Contracts (AIR-2.5). The cognizant AIR-2.0 department heads or their deputies shall review the COU portion of enclosure (2) for compliance of documentation with DFARS 217.7404-1 requirements and to determine if a UCA is required to meet the required delivery date. Approval to use a UCA to meet the required delivery date shall be documented on the bottom of enclosure (2) and represents the final approval to begin processing a UCA as a contractual vehicle.

d. PCO/ACO. The PCO/ACO will perform the following functions:

(1) To implement DFARS 217.7404-1, the PCO shall coordinate UCA approval on enclosure (2) from the cognizant contracts competency department head.

14 Apr 00

(2) Every effort should be made to obtain a qualifying proposal, adequate for negotiations, prior to execution of the UCA in order to meet the 180-day definitization requirement.

(3) Any contractual provision or language restricting a contractor's billing of progress/periodic payments, in order to comply with the 50/75 percent limitations should be specifically pointed out to the ACO at time of contract award.

(4) Following DFARS 217.7404-3(b), the PCO, in coordination with the ACO, will consider the suspension or reduction of progress/periodic payments if the contractor has not submitted a timely qualifying proposal by the date delineated in the contractual action. Reduction of progress payments should also be considered if the contractor fails to support negotiations to achieve closure in a timely fashion. The suspension or reduction will be carried out by the ACO following Federal Acquisition Regulation (FAR) 32.503-6, and under the Section H contractual clause 5252.217-9500, "Ordering - Provisioned Items (Fixed-Price)" or 5252.217-9502, "Ordering - Provisioned Items (Cost-Reimbursement)," and the required FAR clause 52.232-16, "Progress Payments." Approval must be obtained from the cognizant AIR-2.0 department head prior to coordinating with the ACO to suspend or reduce progress payments for failure to submit a timely qualifying proposal. The definitization business clearance should reflect such approvals and subsequent reductions.

(5) A contract modification is required to revise (extend) definitization schedules. If no change in scope is involved with this extension, the approval requirements of DFARS 217.7404-1 do not apply.

(6) Per reference (b), when a negotiation impasse for definitization has been reached, the Contracting Officer (after all efforts have been exhausted) may, with the approval of the CCO or AIR-2.0 department head, make a unilateral determination of a reasonable price or fee.

(7) If performance is substantially complete, the profit rate negotiated shall reflect the reduced cost risk of the contractor, following DFARS 217.7404-6 and DFARS 215.404-4.

(8) When definitizing modifications to contracts, the impact on each feature of the contract (such as government property, warranty, support, manuals, and any unique clause to that contract) must be considered and included in the definitized modification, if applicable. These impacts must also be documented in the business clearance.

(9) If the action is to be issued or definitized by the ACO, a copy of the approved COU, justification, and synopsis will be transmitted by letter from the PCO to the ACO with the PID, procurement request, requirement letter, or MIPR.

e. Policy and Process Management (AIR-2.1). Prepare and submit to AIR-2.0 status reports (including age) of all AACs and UCAs in the process of conversion or definitization by AIR-2.0 competency personnel. Trends, and a summary of total actions and dollars, will be updated monthly.

14 Apr 00

f. Reporting by sites not connected to PROCMAAS. If the site's UCAs are not tracked on an automated system electronically connected to the AIR-2.0 PROCMAAS, then that site must submit the information to Policy Management (AIR-2.1.1) on a monthly basis, by the first working day of the month.

8. Exceptions. Actions exempted from UCA restrictions are as follows:

EXCEPTIONS:

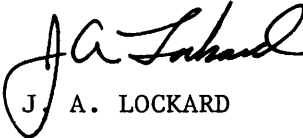
| | | |
|--|---|---|
| No COU/UCA Approval (enclosure (1)) | NO REPORTING | No limit on Obligation* DFARS 217.7402&7404-5 |
| VECP AAC FMS <\$100,000 | Special Access Programs Actions not defined by the TEAM | AAC* ECP* FMS* <\$100,000 VECP* Initial Spares* Modifications within scope* |

Notes:

*Although no restriction on fully obligating, restrictions on expenditures (see paragraphs 5g and 7d(3)) should be included and made clear to the ACO.

9. Reports. The internal monthly reporting requirement contained in this instruction is exempt from reports control by SECNAV Instruction 5214.2B.

10. Review. AIR-2.1.1 shall review annually the contents herein and provide recommendations for changes and deletions to the TEAM Commander.



J. A. LOCKARD

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NAVAIRINST 4200.33C

14 Apr 00

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AAC & UCA
CONTRACT ACTION TYPE CODES

| CODE | DESCRIPTION | MILESTONES |
|-------|-------------------------------------|--------------|
| APA | ISSUE ADVANCE PROCUREMENT ACTION | 3,5,7,8,10 |
| APC | ADVANCE PROCUREMENT CONVERSION | 5 THRU 10 |
| COU | CHANGE ORDER, CEILING PRICED | 4, 5, 7, 10 |
| *COUD | CHANGE ORDER, UNPRICED | 2, 5, 7-10 |
| *COV | CHANGE ORDER, VECP CEILING PRICED | 4 5, 7, 10 |
| COVD | CHANGE ORDER, VECP DEFINITIZATION | 2, 5, 7-10 |
| LCU | ISSUE LETTER CONTRACT | 5 THRU 10 |
| LCUD | LETTER CONTRACT DEFINITIZATION | 5 THRU 10 |
| NPMU | NEW PROCUREMENT MOD, CEILING PRICED | 3, 5, 7, 10 |
| NPMD | NEW PROCUREMENT MOD DEFINIZATION | 3, 5 THRU 10 |
| OEU | OPTION EXERCISE, UNPRICED | 3, 5 THRU 10 |
| OED | OPTION EXERCISE DEFINITIZATION | 2, 5 THRU 10 |
| OMU | OTHER MODIFICATION UNPRICED | 2, 5, 7, 10 |
| OMD | OTHER MODIFICATION DEFINIZATION | 2, 5, 7-10 |
| ORDU | ORDER, UNPRICED (BOA, PIO) | 3, 5, 7, 10 |
| ORDD | ORDER DEFINITIZATION (BOA, PIO) | 3, 5, 7-10 |

* ECP only

14 Apr 00

CERTIFICATE OF URGENCY (CUO)/UCA APPROVAL

CONTRACTOR: _____ PID#: _____

PCO/ACO Name and Code: _____

ESTIMATED CEILING PRICE: _____

BRIEF SUMMARY OF SUPPLY/SERVICE:

REQUIREMENTS DEFINITION

DATE RQMT IDENTIFIED: _____
ONGOING (FOLLOW-ON BUY) _____ or NEW, BUT WELL DEFINED _____

MILESTONE SCHEDULE

DATE DELVIERY REQUIRED _____
PROD/DELV LEAD TIME (MONTHS) _____
DATE AWARD REQUIRED _____

URGENCY RATIONALE (DFARS 217.7404-1) (address applicable item):

- (a) ADVERSE IMPACT OF DELAYING PERFORMANCE statement:
- (b) Non-urgent items (spares) inclusion statement:
- (c) Modification of existing UCA justification:

ACTIONS TAKEN TO REMOVE NEED FOR UCAS IN FUTURE:

COU APPROVED: _____
SIGNATURE AND CODE DATE

UCA APPROVAL

DATE PROPOSAL RECEIVED/DUE: _____

IF RCVD, ADEQUATE FOR NEGOTIATION? YES _____ NO _____

UCA APPROVED: _____
SIGNATURE AND CODE DATE