



DEPARTMENT OF THE NAVY
NAVAL AIR SYSTEMS COMMAND
RADM WILLIAM A. MOFFETT BUILDING
47123 BUSE ROAD, BLDG 2272
PATUXENT RIVER, MARYLAND 20670-1547

IN REPLY REFER TO

NAVAIRINST 4200.33E

AIR-2.0

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NAVAIR INSTRUCTION 4200.33E

From: Commander, Naval Air Systems Command

Subj: UNDEFINITIZED CONTRACT ACTIONS

Ref: (a) DFARS Subpart 217.74, Undefinitized Contract Actions
(b) DFARS Subpart 243.2, Change Orders
(c) DFARS 252.217-7027, Contract Definitization
(d) 10 U.S.C. § 2326
(e) Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing memo of 29 Aug 08, Management Oversight of Undefinitized Contractual Actions

1. Purpose

a. To update policy and procedures for the:

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

(2) Procuring Contracting Officer (PCO):

(a) To obtain approval for use of an Undefinitized Contract Action (UCA) as the contractual vehicle as required by reference (a); and,

(b) To definitize UCAs or unpriced change orders following references (a), (b) or (c), as applicable.

b. To establish procedures following Defense Federal Acquisition Regulation Supplement (DFARS) 217.7402 or DFARS 243.204-70-1(b) which apply to those UCAs/Change Orders otherwise excepted from references (a) or (b).

2. Cancellation. This instruction cancels NAVAIRINST 4200.33D. This is a major revision and should be reviewed in its entirety.

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3. Scope and Applicability

a. This instruction applies to all Naval Air Systems Command (NAVAIR) solicitations and contracts, and to those activities receiving NAVAIR support under operating agreements, such as the Naval Aviation Program Executive Officers (PEOs).

b. This instruction covers all UCAs, including letter contracts; ceiling priced modifications (including exercise of ceiling-priced options); ceiling priced orders; Basic Ordering Agreement orders; provisioned item orders; delivery/task orders; unpriced and ceiling priced Engineering Change Proposals; and all other unpriced change orders with an estimated value exceeding \$5 million (see DFARS 243.204-70), procured by personnel within the NAVAIR Contracts Competency.

c. Per DFARS 217.7402 or DFARS 243.204-70-1(b), the following are not subject to references (a) or (b):

(1) Congressionally mandated long-lead procurement contracts (i.e., Advance Acquisition Contracts (AACs));

(2) Foreign Military Sales (FMS);

(3) Special access programs;

(4) Unpriced change orders for FMS and special access programs; and,

(5) Purchases at or below the simplified acquisition threshold (SAT).

d. However, the policy and procedures outlined in this instruction shall be applied to (1) through (4) above, unless the contracting officer determines that it is impracticable to apply them for a particular contract action. The Procuring Contracting Officer shall submit the basis of such determination through the NAVAIR Contracts Competency department head (i.e., Major Weapons Systems, Tactical Aircraft and Missiles Contracts, Major Weapons Systems, Air ASW, Assault and Special Mission Programs Contracts, Major Weapons Systems, Strike Weapons and Unmanned Aviation Programs and AIR-1.0 Contracts, Major Weapons Systems, Aircraft Support Contracts and Major Weapons Systems, Joint Strike Fighter Contracts) to the Assistant Commander for Contracts (AIR-2.0)/Deputy Assistant Commander(s) for Contracts (AIR-2.0A/AIR-

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2.0B) for submission of the required prior notification to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting) via the Deputy Assistant Secretary of the Navy (Acquisition and Procurement) (DASN(AP)).

4. Policy

a. Department of Defense (DoD) policy implements reference (d) and requires that UCAs shall be used only when the negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements, and the Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately. Due to poor adherence to these criteria, the National Defense Authorization Act for Fiscal Year 2008 required DoD to issue detailed instructions to ensure enforcement of UCA requirements. Reference (e) implemented this direction. The DoD Inspector General issued a series of audit reports in 2010 through 2011 on UCA usage by DoD activities, including NAVAIR. These reports identified several actions to improve the use of UCAs. This instruction provides procedures to improve UCA use and execution.

b. While requirements should be fully priced at the time of award, when the use of a UCA is warranted, a statement of work delineating the program requirement, quantities, item description, delivery schedule, and approved funding will be provided to the PCO or Administrative Contracting Officer (ACO) in sufficient detail to support the issuance of the UCA. Lack of planning and/or potential loss of funds is not a reason for doing a UCA.

c. Any changes in requirements after UCA award shall be identified as soon as possible and shall be fully justified in the contract file. However, see 6d(5) to validate whether changed requirements represent new scope and require new COU.

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

e. Any requirement document (e.g., Procurement Initiation Document (PID), Military Interdepartmental Purchase Request (MIPR), etc.) for a UCA greater than the SAT shall have an approved NAVAIR 4200/1, (REV 9/2011), Certificate of Urgency (COU)/Undefinitized Contract Action (UCA) Approval prior to processing if a UCA is envisioned.

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f. Any requirement, to be executed in NAVAIR Contracts Competency as an undefinitized action, regardless of dollar value, will require a "UCA Approval" using NAVAIR 4200/1 unless otherwise exempted at paragraph 3c.

g. The contractor shall submit a fully supportable, qualifying price proposal, as defined in reference (a), prior to UCA execution, unless the urgency of the requirement precludes delaying award until receipt of a contractor's qualifying proposal. The PM/AM shall address the need to award without a qualifying proposal in the COU.

h. Reference (a) requires definitization within 180 days after issuance of the UCA. This can be extended, but may not extend beyond 180 days after the date a contractor's qualifying proposal is received.

i. Except as noted in paragraph 3c and 4k, the following applies with regard to obligation limitations. Per DFARS 217.7404-4, when a UCA is issued, the Government shall not obligate more than 50 percent of the not-to-exceed price (i.e., overall contract ceiling price) until the UCA is definitized. However, if a contractor submits a qualifying proposal before 50 percent of the ceiling price is obligated, this limitation may be increased to 75 percent. If a qualifying proposal was submitted before or at the time of execution of the UCA, 75 percent may be obligated at that time. However, irrespective of the foregoing permissible obligation limits, in accordance with references (a) and (e), contracting personnel should avoid obligating funds to the maximum amount allowable, so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding. Obligations should clearly align with the contractor's needs prior to definitization, as documented in the contract file (e.g., contractor's spend plan, see 6d(3)).

j. The estimated ceiling price should be sufficient to cover the scope of work required. 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 may be required prior to execution or modification of the UCA.

k. Per DFARS 217.7404-5, the Secretary of the Navy may waive the limitations in 217.7404-2 (price ceiling), 217.7404-3 (definitization schedule) and 217.7404-4 (limitation on obligations) if he determines that the waiver is necessary to support a contingency operation or a

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humanitarian or peacekeeping operation. Any requests for waivers of the limitations on UCAs as set forth in DFARS 217.7404-2, 217.7404-3, and 217.4704-4 will be submitted by AIR-2.0 to DASN(AP) for processing following Navy Marine Corps Acquisition Regulation Supplement 5217.7404-5.

1. Per references (a) and (b), when the final price of a UCA is negotiated after a substantial portion of the performance has been completed, the profit analysis in the price negotiation memorandum (i.e., business clearance) and the weighted guidelines must document reduced cost risk in the assignment of allowable profit factors in establishing negotiation objectives for the final price.

5. Definitions

a. Advance Acquisition Contract (AAC). A Congressionally mandated long-lead procurement contract (see DFARS 217.7402(a)(4)).

b. Undefinitized Contract Action (UCA). For purposes of this instruction, a contract action 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 contractual actions.

6. Responsibilities

a. The PM/AM shall:

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

(3) Generate a COU using NAVAIR 4200/1, which, on its face, documents the rationale for the UCA, following DFARS 217.7404-1 if there is not time to fully price the contract action before award.

(4) The COU shall:

(a) Fully explain the need to begin performance before

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definitization, including the adverse impact on agency requirements resulting from delays in beginning performance;

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

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

(5) The COU should include a brief statement that 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. The cognizant PEO/AIR-1.0, or NAVAIR competency Level I manager will approve the COU portion of NAVAIR 4200/1. If the urgent requirement originates at a Naval Air Warfare Center (NAVAIRWARCEN) site, the COU portion of NAVAIR 4200/1 will be approved by a Senior Executive Service (SES)/Flag one level above the cognizant PM/AM (or by an O-6/General Schedule (GS)-15/Science and Technology Reinvention Laboratory payband equivalent if the site does not have a SES/Flag available in the PM/AM's competency), as applicable. If the urgent requirement originates at a Fleet Readiness Center (FRC) site or within Commander, Fleet Readiness Centers (COMFRC) Headquarters, the approving official of the COU portion of NAVAIR 4200/1 will be the COMFRC Senior Executive Service (SES) or Flag Officer. The cognizant approving official must sign the COU portion of NAVAIR 4200/1 to attest to the urgency of the requirement.

c. Head of Contracting Activity (HCA)

(1) References (a) and (d) require HCA approval before:

(a) Entering into a UCA;

(b) Including requirements for non-urgent spares and support equipment in a UCA; and/or,

(c) Modifying the scope of a UCA when performance has already begun.

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(2) That HCA approval authority is hereby delegated to AIR-2.0, AIR-2.0A and AIR-2.0B. The COU portion of NAVAIR 4200/1 will be reviewed for compliance with documentation requirements of DFARS 217.7404-1 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 NAVAIR 4200/1 and represents the final approval to begin processing a UCA as the contractual vehicle.

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

(1) Once the COU portion of enclosure (1) is completed, the PCO will coordinate UCA approval per paragraph 6c using NAVAIR 4200/1;

(2) Ensure documentation of any subsequent changes to contract requirements contains a full description of circumstances necessitating the change and is included within the contract file;

(3) 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. In accordance with reference (e), prior to issuance of a UCA the PCO shall require the contractor to provide a projected spend plan. The spend plan should be utilized in accordance with reference (e);

(4) Following DFARS 217.7404-3(b), for fixed price UCAs, the PCO, in coordination with the ACO, will consider the suspension or reduction of progress/performance-based payments if the contractor has not submitted a timely qualifying proposal by the date delineated in the UCA. Approval must be obtained from the cognizant NAVAIR Contracts Competency department head prior to coordinating with the ACO to suspend or reduce progress/performance-based 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 (c), when a negotiation impasse for definitization has been reached, the Contracting Officer (after all

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efforts have been exhausted) may, with the approval of AIR-2.0/2.0A/2.0B, make a unilateral determination of a reasonable price or fee;

(7) Per references 217.7404-6 and 215.404-71-3(d)(2), when the final price of the UCA is negotiated after a substantial portion of the required performance has been completed, the contract file shall address any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price and the contractor's reduced cost for costs incurred during performance of the remainder of the contract;

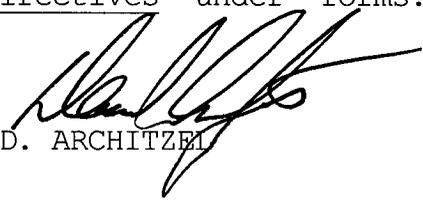
(8) When definitizing modifications to contracts, the PCO must consider the impact on each feature of the contract (such as Government property, warranty, support, manuals, and any unique clause to that contract) and include such considerations in the definitization modification, if applicable. The PCO must document these impacts in the business clearance; and,

(9) If the ACO is to definitize the UCA, the PCO will transmit a copy of the approved COU, justification, and synopsis to the ACO with the PID/ procurement request, requirement document, or MIPR.

7. Reports. The Contracts Competency Policy and Process Management Division (AIR-2.1.1) will prepare consolidated UCA reports, which AIR-2.0 will submit semiannually, as required by DFARS 217.7405 and relate PGI. In addition, each NAVAIR Contracts department shall submit monthly status reports (including age) of all UCAs to AIR-2.1.1.

8. Review. AIR-2.1.1 shall review this instruction annually and provide recommendations or cancellation to the Commander.

9. Forms. An electronic version of NAVAIR 4200/1 (REV. 9/2011), Certificate of Urgency (COU)/Undefinitized Contract Action (UCA) Approval, can be downloaded from the NAVAIR Directives Web site at <https://homepages.navair.navy.mil/directives> under "forms."


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