

**SUBPART 217.74—UNDEFINITIZED CONTRACT ACTIONS**

*(Revised August 10, 2010)*

**217.7400 Scope.**

This subpart prescribes policies and procedures implementing 10 U.S.C. 2326.

**217.7401 Definitions.**

As used in this subpart—

(a) “Contract action” means an action which results in a contract.

(1) It includes contract modifications for additional supplies or services.

(2) It includes task orders and delivery orders.

(3) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, e.g., engineering change proposals, value engineering change proposals, and over and above work requests as described in Subpart 217.77. For policy relating to definitization of change orders, see 243.204-70.

(b) “Definitization” means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) “Qualifying proposal” means a proposal containing sufficient information for the DoD to do complete and meaningful analyses and audits of the—

(1) Information in the proposal; and

(2) Any other information that the contracting officer has determined DoD needs to review in connection with the contract.

(d) “Undefinitized contract action” means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun. For policy relating to definitization of change orders, see 243.204-70.

**217.7402 Exceptions.**

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart. However, the contracting officer shall apply the policy and procedures to them to the maximum extent practicable (also see paragraph (b) of this section)—

(1) UCAs for foreign military sales;

(2) Purchases at or below the simplified acquisition threshold;

(3) Special access programs;

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(4) Congressionally mandated long-lead procurement contracts.

(b) If the contracting officer determines that it is impracticable to adhere to the procedures of this subpart for a particular contract action that falls within one of the categories in paragraph (a)(1), (3), or (4) of this section, the contracting officer shall provide prior notice, through agency channels, to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), 3060 Defense Pentagon, Washington, DC 20301-3060.

#### **217.7403 Policy.**

DoD policy is that undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable under the particular circumstances.

#### **217.7404 Limitations.**

##### **217.7404-1 Authorization.**

The contracting officer shall obtain approval from the head of the contracting activity before—

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

(b) Including requirements for non-urgent spare parts and support equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the United States.

##### **217.7404-2 Price ceiling.**

UCAs shall include a not-to-exceed price.

##### **217.7404-3 Definitization schedule.**

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

**217.7404-4 Limitations on obligations.**

(a) The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

(b) In determining the appropriate amount to obligate, the contracting officer shall assess the contractor's proposal for the undefinitized period and shall obligate funds only in an amount consistent with the contractor's requirements for the undefinitized period.

**217.7404-5 Exceptions.**

(a) The limitations in 217.7404-2, 217.7404-3, and 217.7404-4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404-2, 217.7404-3, and 217.7404-4 for UCAs if the head of the agency determines that the waiver is necessary to support—

(1) A contingency operation; or

(2) A humanitarian or peacekeeping operation.

**217.7404-6 Allowable profit.**

When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the contracting activity shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price;

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract; and

(c) The requirements at 215.404-71-3(d)(2). The risk assessment shall be documented in the contract file.

**217.7405 Plans and reports.**

(a) To provide for enhanced management and oversight of UCAs, departments and agencies shall—

- (1) Prepare and maintain a Consolidated UCA Management Plan; and
  - (2) Prepare semi-annual Consolidated UCA Management Reports addressing each UCA with an estimated value exceeding \$5 million.
- (b) Consolidated UCA Management Reports and Consolidated UCA Management Plan updates shall be submitted to the Office of the Director, Defense Procurement and Acquisition Policy, by October 31 and April 30 of each year in accordance with the procedures at PGI 217.7405.
- (c) Consolidated UCA Management Reports shall include information about all change orders that are not forward priced (i.e., unpriced) and have an estimated value exceeding \$5 million.

**217.7406 Contract clauses.**

- (a) Use the clause at FAR 52.216-24, Limitation of Government Liability, in—
  - (1) All UCAs;
  - (2) Solicitations associated with UCAs;
  - (3) Basic ordering agreements;
  - (4) Indefinite delivery contracts;
  - (5) Any other type of contract providing for the use of UCAs; and
  - (6) Unpriced change orders with an estimated value exceeding \$5 million.
- (b)(1) Use the clause at 252.217-7027, Contract Definitization, in—
  - (i) All UCAs;
  - (ii) Solicitations associated with UCAs;
  - (iii) Basic ordering agreements;
  - (iv) Indefinite delivery contracts;
  - (v) Any other type of contract providing for the use of UCAs; and
  - (vi) Unpriced change orders with an estimated value exceeding \$5 million.
- (2) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.
- (3) If, at the time of entering into the UCA or unpriced change order, the contracting officer knows that the definitive contract action will meet the criteria of

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FAR 15.403-1, 15.403-2, or 15.403-3 for not requiring submission of cost or pricing data, the words “and cost or pricing data” may be deleted from paragraph (a) of the clause.