



## 1. PURPOSE

The purpose of this document is to provide policy and guidance for the preparation of undefinitized contract actions (UCAs) for the SPAWAR Claimancy.

A **UCA** is a contract action or order that begins performance without agreed upon contract terms, specifications, or price. A **Letter Contract** is the contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. The Business Clearance Memorandum (BCM) authorizes the award of a Letter Contract.

For related guidance, see CMPG section [Undefinitized Contract Actions](#).

## 2. POLICY

Subject to the exceptions described in [DFARS 217.7402](#) and the limitations set forth in [DFARS 217.7404](#), DoD policy is that UCAs shall be used only when:

- a. The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and
- b. The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately. The Letter Contract shall be as complete and definite as practicable.

Note: When an agreement has been reached with the contractor and there is a short period of time allotted to award (i.e., production or performance must begin before scheduled award), a pre-contract cost letter may be issued IAW the  [Pre-contract \(Anticipatory Costs\) SCPPM](#).

The use of a Letter Contract as a form of UCA is emphasized. A Letter Contract pursuant to [FAR 16.603](#) may be used only after the HCA or a designee determines in writing that no other contract is suitable. Letter Contracts shall not:

- a. Exceed funds available at Letter Contract execution;
- b. Circumvent required competition described in [FAR Part 6](#);
- c. Be amended to satisfy a new requirement unless that requirement is inseparable from the existing Letter Contract. Any such amendment is subject to the same requirements and limitations as a new Letter Contract.
- d. Obligate more than 50% of the not-to-exceed (NTE) price before terms are definitized (i.e., the undetermined is determined). However, if the contractor submits a qualifying proposal, limitation on obligations before definitization may be increased to no more than 75% ([DFARS 217.7404-4](#)).

In accordance with [DFARS 217.7404-3](#), the Letter Contract shall contain a definitization schedule. The Definitization Schedule is accomplished by inclusion of the clause at [DFARS 252.217-7027](#).

- Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If that proposal is untimely, the contracting officer may suspend or reduce progress payments or take other appropriate action.
- If the contractor submits a qualifying proposal before 50% of the NTE has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75%.

The Contract Review Board approves UCA documentation prior to the issuance of a Letter Contract IAW [FAR 16.603-3](#). The issuance of a Letter Contract does not excuse the requirement for a BCM following the  [Business Clearance Memorandum](#) SCPPM. The Business Clearance should be as detailed as possible; it includes the same information as a definitized contract award, with the exception of Section V Pre-Negotiation Cost Analysis. If there is a Justification & Approval (J&A) involved,



concurrency of Letter Contract is based on approval or condition of approval of the J&A by the approving official.

The DD Form 1547 and risk assessment rationale shall be documented in the contract file.

UCAs and Un-priced Change Orders (within scope modifications) with an estimated value above \$5 million shall be reported to SPAWAR 2.3A, and will be submitted semi-annually ([DFARS 217.7405](#) and [DFARS Subpart 243.2](#)).

### 3. RESPONSIBILITIES

#### 3.1 Program Manager (PM)/Requiring Organization

Defines requirements for performance or production; documents the need for award prior to settlement of terms in a Statement of Urgency.

#### 3.2 Contracting Officer/Negotiator

Recommends UCA as the appropriate contract type; develops the Letter Contract; develops the BCM.

#### 3.3 Head of the Contracting Activity (HCA)

Approves all UCAs, and any mid-performance changes to the scope of a UCA; determines in writing that no other contract type is suitable.

#### 3.4 Contract Review Board (CRB)

Reviews UCA documentation prior to the issuance of a Letter Contract.

#### 3.5 SPAWAR 2.3A

Collects reports for UCAs and un-priced change orders over \$5M.

### 4. PROCEDURE

#### 4.1 Awarding a UCA/Letter Contract

1. **Requiring Organization** develops the Statement of Urgency supporting the need to establish a Letter Contract/UCA.
2. **Contracting Officer** determines a Letter Contract is appropriate for the UCA.
3. **Contracting Officer** requests HCA approval before entering into an 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 ([DFARS 217.7404-1](#); [DFARS PGI 217.7404-1](#)).
4. **HCA** determines in writing that no other contract type is suitable.
5. **Contracting Officer** develops the Letter Contract, which includes:
  - a. Definitization Schedule that plans BCM approval before definitization and provides for definitization before:
    - i. 180 days after issuance of the action (this date may be extended up to 180 days after the contractor submits a qualifying proposal); or
    - ii. The date when obligated funds equal more than 50% of the NTE price.
  - b. Contract Clauses Include clauses for the type of definitive contract contemplated and any additional clauses known to be appropriate for it. Your letter contract must include the following:
    - i. [FAR 52.216-23](#), Execution and Commencement of Work (may be omitted from letter contracts awarded on SF26),
    - ii. [FAR 52.216-24](#), Limitation of Government Liability (with dollar amounts reflecting the estimated amount necessary to cover the contractor's requirements for funds before definitization),



- iii. [FAR 52.216-26](#), Payments of Allowable Costs Before Definitization (if a cost-reimbursement definitive contract is contemplated – not applicable to conversion, alteration, or repair of ships), and
- iv. [DFARS 252.217-7027](#), Contract Definitization (in lieu of [FAR 52.216-25](#))
  - c. Assigned Priority Rating if appropriate under [FAR 11.604](#).
- 6. **HCA** reviews Letter Contract
- 7. **Contracting Officer** develops the BCM for Letter Contract award authorization requesting approval to issue a Letter Contract to Company XYZ, stating the NTE dollar amount. , to include:
  - I. BCM Cover Page;
  - II. Urgency Impact Statement – why a Letter Contract is required;
  - III. How the contractor/firm was selected for award (e.g., competitive bids or proposals, or approved Justification and Approval);
  - IV. Responsibility Determination IAW [FAR Subpart 9.1](#) for the proposed awardee;
  - V. The basis for established NTE dollar amount(s) in the Letter Contract (address the contractor's cost proposal); and
  - VI. Definitization Schedule, including how it was established (i.e., the relationship between dollars and schedule).
- 8. **CRB** reviews the following UCA documentation prior to issuance of the Letter Contract:
  - a. HCA written determination that no other contract type is suitable;
  - b. Statement of Urgency from the requiring organization;
  - c. Funding Document; and
  - d. BCM for Letter Contract Award Authorization.

### Special Situations

- A. Funds are not available: the **Negotiator** informs the contractor and requiring organization that no work is to be done until funds are available.
- B. Failure to reach agreement on price or fee ([DFARS 252.217-7027](#)):
  - a. Contractor proceeds with work; and
  - b. Contracting Officer may, with the approval of the HCA, determine a reasonable price and fee in accordance with [FAR Subpart 15.4](#) and [FAR Part 31](#), subject to appeal as provided in the Disputes clause.



- 9. Profit/Fee. Follow the procedures at [PGI 215.404-70](#) for the use of [DD Form 1547](#) *via the Navy Profit Weighted Guidelines Application* as a required approach to profit analysis.
  - a. For cost reimbursement contracts, apply the low-end contract risk factor (Block 24 of DD Form 1547) to the actual cost of performance prior to definitization.
  - b. If a substantial portion of the costs have been incurred prior to definitization, the Contracting Officer may assign that value as low as 0%, regardless of contract type.

### 4.2 Modifications

- 1. **Contracting Officer** requests HCA approval before modifying the scope of a UCA when performance has already begun. The request should show that modification is consistent with good business practices and in the best interests of the Government ([DFARS 217.7404-1](#); [DFARS PGI 217.7404-1](#)).



4.3 Reporting

1. **Contracting Officer** reports UCAs and Un-priced Change Orders with an estimated value above \$5 million semi-annually to SPAWAR 2.3.1 via [HQ\\_Contracts\\_Policy@navy.mil](mailto:HQ_Contracts_Policy@navy.mil). The report includes the following information:
  - a. Contract Number (with Task/Delivery Order number as appropriate);
  - b. Date UCA awarded and reason;
  - c. Amount Obligated (% of NTE);
  - d. Date of Scheduled Definitization;
  - e. Number of Days Past Definitization Date;
  - f. Date of Definitization Modification;
  - g. Date Qualifying Proposal Received; and
  - h. Comments (if applicable).
2. **SPAWAR 2.3.1 consolidates inputs and submits information to be part of DON's Consolidated UCA Management Report due to DPAP biannually by Oct 31 and Apr 30.**



5. APPROVALS

See [Head of the Contracting Activity \(HCA\)](#) section under Responsibilities.

6. TOOLBOX

1. [Sample Letter for Letter Contracts](#)
2. [Sample Determination Memo](#)
3. [DD Form 1547](#)
4. [Pre-contract \(Anticipatory Costs\)](#)
5. [Business Clearance Memorandum](#)

7. CHANGE HISTORY

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

Date	Description of Changes
June 2016	Content formatted and reorganized; links updated; added BCM SCPPM link, SPAWAR 2.3A Reporting information, and Weighted Guidelines Application link.
June 2012	Last version created in old format. Recent updates were not noted.