

## TOPIC 11

# UNDEFINITIZED CONTRACT ACTIONS (UCAS)

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### Objective

To determine whether the agency effectively managed and executed undefinitized contract actions (UCAs).

### Subobjectives

To determine whether the agency:

1. Properly used and authorized UCAs.
2. Timely definitized UCAs.
3. Properly priced and funded UCAs.
4. Negotiated fair and reasonable prices on the definitized contracts.

# UNDEFINITIZED CONTRACT ACTIONS (UCA)

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## INTRODUCTION

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This guide provides audit steps for determining whether an agency effectively managed and executed undefinitized contract actions (UCAs). The guide expands upon the researchable questions associated with UCAs (Topic 11) identified in the *Contract Audit Guide Framework* released in 2009 by the Contracting Committee of the Federal Audit Executive Council. The framework provides a construct of issues and researchable questions to consider when planning audits or reviews of contracts. It is the Contracting Committee's intention to issue audit guides for each issue identified in the framework. Audit teams are encouraged to modify the *Undefinitized Contract Actions Audit Guide* as appropriate, and to use the guide, in conjunction with other appropriate tools, to assess UCAs.

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## BACKGROUND

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When a requirement needs to be met quickly and there is insufficient time to use normal contracting vehicles, the Federal Acquisition Regulation (FAR) permits the use of an UCA. The FAR governs how and when contracting officers should use UCAs. UCAs can be quickly entered into, but at a later date, the Government and contractor must agree upon the contract's final price and other terms, which is referred to as definitizing the contract.

Contracting officers can issue UCAs using various contract vehicles. However, UCAs are only appropriate for requirements of an urgent and compelling nature. Therefore, the head of the contracting activity should approve the use of a UCA only after determining, in writing, that no other contract is suitable. The determination should fully document the rationale and circumstances that support the UCA decision.

The FAR establishes requirements as to how quickly UCAs must be definitized. Specifically, the regulation requires contracting officers definitize a UCA within 180 days after the award date or before 40 percent of the work is complete, whichever occurs first. However, the FAR allows for both waivers or extensions of the 180-day requirement under extreme circumstances or when the agency is supporting a contingency or peacekeeping operation.

UCA pricing is usually stated in terms of a "not-to-exceed" amount. The not-to-exceed price is the estimated amount necessary to cover the contractor's requirement for funds before definitization. However, the price shall not exceed 50 percent of the estimated cost of the definitized contract, unless authorized. (FAR 52.216-24) Accordingly, organizations should not obligate funds against the UCA in excess of the not-to-exceed price.

All UCAs are essentially cost-reimbursement contracts until definitized, as the Government reimburses the contractor all incurred costs that are reasonable, allocable, and allowable during the undefinitized period. This contract type places the greatest cost risk on the Government. When the UCA is definitized, the contracting officer and contractors negotiate the ultimate contract type and price including profit or fee. Typically, the profit rate or fee is derived at definitization and then applied across the entire period of performance, including the undefinitized period. When

calculating the negotiating position on profit or fee for a UCA, the FAR requires contracting officers assess the relative risk borne by the contractor versus the Government. The amount of profit or fee available to the contractor is usually determined via a structured calculation that is a function of several different factors, such as the complexity of the work, resources required to perform, independent efforts by the contractor to bring about improved performance, and contract type. Contracting officers should consider any reduced risk on the contract portion performed before definitization and any reduced risk on the remaining portion that will be performed after definitization. Contracting officers then document in the contracting files how the shift in risk associated with the undefinitized period was accounted for in determining the profit or fee calculated for negotiations.

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### APPLICABLE LAWS AND REGULATIONS

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The following laws and regulations prescribe the criteria applicable to UCAs:

- *United States Code Title 10, Section 2326, "Undefinitized Contractual Actions,"* provides a basic overview of UCA restrictions, such as limitations on the obligation of funds and scope modifications.
- *FAR 16.603, "Letter Contracts," and FAR 16.703, "Basic Order Agreements,"* prescribe procedures and criteria for undefinitized contracting actions using these two contract vehicles.
- *FAR 15.4, "Contracting Pricing"* provides guidance on pricing for UCAs.

Because the agency/department you are auditing may have FAR supplements or other implementing guidance in addition to the criteria identified above, you will also need to identify and become familiar with the requirements and criteria in those documents.

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### AUDIT STEPS

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NOTE: Identifying the universe of UCAs for sample selection can be a challenge. Some universe data can be identified from the Federal Procurement Data System-Next Generation (FPDS-NG), but you will most likely have to work closely with the audit client to obtain additional UCA universe data from locally generated reports or systems. It is suggested the audit sample include definitized UCAs as well as undefinitized UCAs.

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#### **SUBJECTIVE 1: DETERMINE WHETHER THE AGENCY PROPERLY USED AND AUTHORIZED UCAS.**

- A. Determine whether the contracting officer documented approval from the head of the contracting activity to use an UCA.
- B. Determine whether the request for approval fully explained and adequately justified the need to begin performance before definitization, including the adverse impact on the agency requirements that would result from delays in performance.
- C. Review requirement and/or deliverables specified in the UCA relative to the UCA justification to evaluate whether the UCA included any non-urgent or unnecessary items or services.

- D. For UCAs awarded as a modification or order against an existing contract, evaluate whether the work performed under the UCA modification/order was within the scope of the contract statement of work or performance work statement.
- E. Verify the contracting officer issued the UCA prior to the contractor beginning performance.
- F. Determine whether the activity had sufficient acquisition lead-time to use normal contracting procedures. (UCAs are often the result of poor acquisition planning or ineffective use of acquisition lead-time.)
  - 1. Identify when the requirement was first identified from contract file documentation such as the purchase request, funding document, correspondence with the contractor, etc.
  - 2. Identify the delivery or performance start date.
  - 3. Identify the normal or average contracting lead-time for the agency.
  - 4. Based on the normal/average agency lead-time, evaluate whether there was sufficient time between when the requirement was first identified and the delivery or performance start date to use normal contracting procedures.
- G. If the agency did not properly use and/or authorize the UCAs, discuss with the contracting officer and/or appropriate agency personnel the reasons for not doing so. Based on the results of those discussions, develop and apply additional audit procedures to validate and support the asserted causes.

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**SUBOBJECTIVE 2: DETERMINE WHETHER THE AGENCY TIMELY DEFINITIZED UCAS.**

- A. Determine whether the UCA was definitized within 180 days or prior to 40-percent completion of the worked to be performed, whichever was sooner.
  - 1. For UCAs that have already been definitized, verify the time period between the date on the UCA and the date on the definitized contract were within the 180-day time limit.
  - 2. For UCAs that are not yet definitized, verify:
    - a. The time period between the date on the UCA and the current date is within the 180-day limit.
    - b. The total amount paid to and invoiced by the contractor is less than 40 percent of the estimated cost of the definitized contract. (Assumption: Amount paid and billed against the UCA represents work completed.)

- B. For UCAs exceeding the 180-day time limit or the 40-percent definitization requirement, determine whether there is a properly approved waiver or extension.
  1. Verify that the head of the contracting activity approved the waiver or extension.
  2. Evaluate the adequacy of the justification for waiving or extending the definitization period. The justifications should clearly demonstrate that extreme circumstances or contingency/peacekeeping operations that were the basis for the waiver or extension.
  3. For approved UCA extensions:
    - a. Verify the extension was for 180 days or less.
    - b. For UCA extensions that have already been definitized, verify the date on the UCA extension and the date on the definitized contract was within the approved extension period.
    - c. For UCA extensions that have not been definitized, verify the start date for the extension and the current date fall within the approved extension period.
  4. Often, the cause for not timely definitizing a UCA is the failure of the contractor to submit a qualifying proposal. To determine whether this is the case, ascertain whether the contractor has submitted a proposal. If not, determine whether the contracting officer has taken timely, appropriate and adequate actions to facilitate obtaining a proposal from the contractor.
  5. Discuss other potential causes for untimely definitization with the contracting officer and/or appropriate agency personnel. Based on the results of those discussions, develop and apply additional audit procedures to validate and support the asserted causes.

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**SUBOBJECTIVE 3: DETERMINE WHETHER THE AGENCY PROPERLY PRICED AND FUNDED UCAS.**

**A. Pricing**

1. Verify the UCA specified a not-to-exceed price and maximum liability of the government amount.
2. Determine if the maximum liability of the government amount was based on the estimated amount to cover the contractor's costs prior to definitization. Specifically, assess whether there was a reasonable basis and adequate documentation supporting the estimated costs that the contractor is expected to incur under the UCA.
3. Assess whether there was a reasonable basis and adequate documentation supporting the estimated the cost of the definitized contract.
4. Verify that the maximum liability of the government amount does not exceed 50 percent of the estimated cost of the definitized contract.

5. If the maximum liability to the government amount exceeds 50 percent of the estimated cost of the definitized contract, verify the contracting officer obtained proper approval to exceed it.

B. Funding

1. Verify that the cumulative obligations and expenditures on the UCA are less than maximum liability to the government amount.
2. Discuss any UCA pricing or funding discrepancies with the contracting officer and/or appropriate agency personnel to identify the cause of the deficiencies. Based on the results of those discussions, develop and apply additional audit procedures to validate and support the asserted causes.

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**SUBOBJECTIVE 4: DETERMINE WHETHER THE AGENCY NEGOTIATED FAIR AND REASONABLE PRICES ON THE DEFINITIZED CONTRACTS.**

- A. Review relevant contract pricing documentation such as the price negotiation memorandum, business clearance memorandum, certificates of cost and pricing, technical evaluations, and/or audit reports to verify the contracting officer had sufficient information to develop a negotiation objective and evaluate the reasonableness of the price on the definitized contract.
- B. Verify that when determining the profit or fee, the contracting officer considered any reduced risk on the portion of the contract performed before definitization and any reduced risk on the remaining portion to be performed after definitization. The contract files should contain documentation explaining how the shift in risk associated with the undefinitized period was accounted for in determining the profit or fee calculated for negotiations.
- C. Discuss any definitized contract pricing weaknesses with the contracting officer and/or appropriate agency personnel to identify the cause of the deficiencies. Based on the results of those discussions, develop and apply additional audit procedures to validate and support the asserted causes.