

Undefinitized Terms Contracts/Revisions Guideline - 3.7.G (09/08/04)

[Last Update: \(09/08/04\) RShibata:kma - 3.7.G.0](#)

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**Last Update: (09/08/04) Shibata:kma -
3.7.G.0**

This guideline was extensively revised to address administrative changes throughout the document.

Usage of Undefined Terms Contracts (UTC) - 3.7.G.1

UTCs and revisions are methods of having a Contractor commence performance on a procurement while the contracting process is in progress. UTCs and revisions should be used only when it is imperative that performance commence or continue. They are not to be used for reasons of preference or convenience. UTCs and revisions only allow a Contractor to begin or continue performance and are never a substitute for a UTC or revision. UTCs and revisions can authorize only partial funding for a specified period of time and never funded for the full value of the overall project. When determining the necessity for an UTC or revision, the Sandia Contracting Representative (SCR) should take into account the following potential problems that may exist on the usage of such contracts:

- UTCs and revisions can reduce Sandia's negotiating position;
- if allowed to continue for an excessive period of time, they become a Cost-Plus Percentage of Cost contract, which is an illegal contract type; and
- some Contractor's will not accept a UTC or revision.

UTCs and revisions may be issued:

- prior to submission of Contractor proposal,
- prior to completion of price cost analysis, and
- in a noncompetitive situation, a UTC can be issued concurrently with the solicitation. In this case, the UTC and solicitation would be reviewed and approved concurrently. All approvals, security classifications, and basic agreement on Terms and Conditions (Ts&Cs) must be obtained prior to placing the UTC.

UTC Format - 3.7.G.2

The following table provides information, which the SCR must consider when preparing the UTC utilizing the Oracle template.

Paragraph	SCR Action
1	Create a Standard Purchase Order (SPO) (to obtain contract number).

- 2
- Prepare a UTC using the approved format in the “UTC” Oracle template. Fill in required information such as:
 - solicitation number,
 - date of solicitation, and
 - Period of Performance (POP) (normally not to exceed 120 days).
 - Select appropriate priority or indicate none.
 - Select appropriate pricing arrangement.
 - Define the specific portion of contract work, which is authorized.
 - Select and incorporate the appropriate Section II Ts&Cs.

Note: Any exceptions taken to Sandia's Ts&Cs by a Contractor must be approved by Sandia Legal prior to incorporation into the UTC (see Section 3.7.G.2), unless they are preapproved.

- 3
- Specify a time limit (normally two to three weeks prior to the expiration date shown in Paragraph 1 of the UTC template) within which agreement must be reached between Sandia and the Contractor on the final forms contract.
 - Allow enough time to get the required approvals.
 - Delete certificate requirement if not applicable.

Note: The SCR should make every effort to obtain a formal proposal prior to placing a UTC.

- 4
- Specify maximum amount of funds Contractor is authorized to spend or obligate under the UTC (total dollar amount in the Oracle SPO must be the same).
- 5
- Select pricing arrangement for final form contract and insert appropriate paragraph, either 7(a) or 7(b).
 - If the SCR wishes to allow monthly billings then 7(b) and 7(c) should be used simultaneously.

7(a) - Use for other than Time and Materials (T&M) or Labor-Hour (LH) contracts. This provision will be invoked only when the UTC is terminated:

- a. Due to failure of Sandia and the Contractor to agree to the terms

of a final form contract, or

- b. If it is Sandia's best interest to terminate. In such cases, settlement will be made in accordance with Section II Termination for Convenience Clause, except that no profit or fee will be negotiated. Exceptions may be granted under extraordinary conditions and must be approved by the Director of the Procurement and Logistics.

Caution: In both scenarios above, the settlement may not exceed the monetary limit specified in Paragraph 5 of the UTC.

Note: Paragraph 7(a) overrides the provision in the Termination Clause of Section II that, under most situations, allows for profit or fee. Since profit or fee is not normally allowed on a UTC for other than T&M or LH, the Contractor's position is very similar should the UTC be terminated for either convenience or default.

7(b) - Applies to T&M or LH contracts and provides for:

- a. Termination for default,
- b. Termination for convenience, and
- c. Termination due to failure of Sandia and the Contractor to agree to the terms of a definitive contract.

Note: Paragraph 7(b) does not invoke, but instead supersedes the Termination Clause in Section II, since the latter provides for a settlement which is based largely on an agreed-upon hourly rates; whereas, in the case of a UTC, the hourly rate has not yet been established.

Note: SCR should note that an acceptance signature is required for all UTCs.

Exceptions to Terms and Conditions - 3.7.G.3

The Ts&Cs of the UTC shall conform to the extent possible, to those of the prospective final form contract.

Exceptions, if any, to the Ts&Cs, if agreed to by the SCR and the Contractor, and approved by Sandia Legal, must appear in the UTC.

The final form contract will include all final Ts&Cs, including any exceptions, which have been agreed to by the SCR and the Contractor and approved by Sandia Legal.

Unfinalized Contract Revision (UCR) - 3.7.G.4

In some instances urgent changes to definitive contracts are required. This may be accomplished by issuing an UCR using the UCR Oracle template and following these steps.

Paragraph	SCR Action
1	Fill in: <ul style="list-style-type: none">- UCR number (contract number plus sequential revision number),- effective date of UCR, and- existing contract number.
2	If applicable, define the specific portion of contract work that is being changed or authorized.
3	Fill in Period of Performance (POP) for UCR. Note: Increases in POP should normally not exceed sixty (60) days.
4	The UCR should specify: <ul style="list-style-type: none">- additional amount of funds authorized under UCR,- amount of funds currently authorized under contract, and- cumulative maximum amount of funds Contractor is authorized to spend or obligate.
5	Select appropriate pricing arrangement/termination paragraph by incorporating, either 5(a) or 5(b) into UCR. 5(a) - Use this paragraph for other than T&M or LH contracts. 5(b) - Use this paragraph for T&M or LH contracts.

UTC and UCR Approvals - 3.7.G.5

UTCs and UCRs require the same levels of approval as will be required for the resulting final form contract or definitive contract revision. Including, if required, TEAM review, Auditing, Legal, etc. However, for UTCs and UCRs greater than the TEAM review threshold, but less than \$25 million, the following applies:

- If the SCR knows that a UTC or UCR will need to be issued concurrently with issuance of a solicitation, the UTC or UCR should be submitted with the solicitation for TEAM review. The definitized contract will be submitted for TEAM review.
- If it is later determined that a UTC or UCR is required, than the cognizant Procurement Department Manager will approve the UTC or UCR without TEAM review using best professional discretion and judgment. The definitized contract will be submitted for TEAM review.

The amount of funds obligated under an UTC must be commensurate with the amount of work to be performed and shall not exceed fifty (50) percent of the estimated cost of the final form contract unless approved in advance by the cognizant Procurement Department Manager.

All Department of Energy/National Nuclear Security Administration (DOE/NNSA) approvals and reviews needed for the final form contract must be obtained prior to issuance of the UTC (e.g., Foreign Ownership Conflict or Interest (FOCI), Organizational Conflict of Interest (OCI), foreign procurement, Lockheed Martin Corporate procurements, and contracts where the anticipated value of the final form contract will exceed \$10 million).

Note: SCR should note that an acceptance signature from the Contractor is required for all undefinitized transactions (i.e., UTCs and UCRs).

Security Considerations - 3.7.G.5.1

Security Considerations for UTCs - 3.7.G.5.1.a

If access to classified information is required for performance of the work authorized in the UTC or if unescorted access is required, the Contract Security Classification Specification (CSCS) must be approved by the Sandia Facility Survey and Approval Coordinator prior to placement of the contract as described in Guideline 5.4 – Security. The UTC shall incorporate SC 602-CLR - Classified Matter Requirements in the UTC if access to classified information is required.

Security Considerations for UCRs - 3.7.G.5.1.b

If a UCR changes the security classification of the work or changes the POP of the contract, a new CSCS may be required as indicated in the security guideline in Sections 5.4.G.a and 5.4.G.b. The SCR must incorporate the appropriate security clauses into the UCR as necessary.

UTC and UCR Documentation - 3.7.G.6

The following documents shall accompany the UTCs or UCRs throughout all approval channels:

- Memorandum of Justification which shall be prepared by the SCR and shall cover the following points:
 - estimated value of resulting final form contract or revision;
 - justification for issuance of an UTC or UCR;
 - justification for type of contract (pricing arrangement);
 - explanation on how the level of funding of the UTC or UCR is commensurate with the work to be performed;
 - explanation of the need for the product or service, taking into consideration the overall program procurement requirements;
 - basis for Contractor selection; and
 - credit approval, if applicable.

Note: The SCR will contact Sandia Auditing to ensure that the Contractor's accounting system will support a cost-type contract prior to the placement of a UTC.

- Memorandum of Justification attachments, if applicable:
 - Sole-Source Justification, and
 - Technical Evaluation Report.
- Department of Labor (DOL) Equal Employment Opportunity (EEO) release or statement from DOE/NNSA that clearance has been granted (nonconstruction contracts \$10 million or more),
- copy of the solicitation and any revisions thereto,
- copy of the Purchase Requisition (PR) which includes the required date, and
- Requester's justification for urgency.

If available, a copy of the preaward audit report should accompany the UTCs or UCRs.

UTC and UCR Distribution - 3.7.G.7

The SCR shall make the following distribution of UTCs or UCRs :

- Auditing for any cost-type contract (e.g., Cost-No-Fee (CNF), Cost-Plus-Fixed-Fee (CPFF), Time and Material (TM)),
- Procurement contract file, and
- requesting line organization.

Note: Package must include a copy of the SPO, cover sheet, and UTC.

Definitizing a UTC - 3.7.G.8

Normally a UTC should not exceed 120 days. However, definitization must occur within 180 days after the date of the UTC, or before completion of forty (40) percent of the work to be performed under the definitized contract. Exceptions may be authorized by the cognizant Procurement Department Manager.

Upon reaching an agreement to terms on an UTC, the SCR will issue a revision to finalize the contract. The revision shall specify all agreed to Ts&Cs and include the final form contract clause, which states that the revision finalizes the contract in its final form. If the value of the final form contract exceeds \$25 million, DOE/NNSA approval must be obtained prior to issuance of the final form contract.

Procurement Action Summary (PAS) - 3.7.G.8.a

The PAS for the resulting definitive contract shall include or summarize:

- the value of the UTC, and
 - the Memorandum of Justification.
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UTC/UCR Kit - 3.7.G.9

To aid the SCR in the preparation of an UTC, UCR, and approval documents, a UTC/UCR kit containing templates for the required documents and directions for the completion of the documents has been posted on the Procurement Internal Home Page. The kit contains the following Word documents:

- Undefined Terms Contracts and Revisions Kit – Directions

- Memorandum of Justification for an Undefinitized Terms Contract (UTC) or an Undefinitized Terms Revision

Contract and Contract Revision Templates of which the SCR is to select one for use.

- Undefinitized Terms Contract - Cost Reimbursement
- Undefinitized Terms Contract – Fixed-Price
- Undefinitized Terms Contract – T&M or LH
- Undefinitized Contract Revision T&M/LH
- Undefinitized Contract Revision – Fixed-Price Contract
- Undefinitized Contract Revision - Cost Reimbursement Contract

References - 3.7.G.10

- Guideline 1.4 - Contract Type Selection
- Guideline 4.7 - Termination/Cancellation
- Guideline 5.4 - Security
- Guideline 5.5 - Construction Contracting
- Guideline 10.4 - Procurement Action Summaries

Applicable Clauses - 3.7.G.11

- SC 602-CLR - Classified Matter Requirements

Send feedback on ideas and information on this page to the Process Expert, Randy Shibata.



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