

Acquisition Conflict Resolution Guideline - 5.8.G (09/30/04)

[Last Update: \(09/30/04\) RShibata:kma - 5.8.G.0](#)

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

Background - 5.8.G.1

Special Note: For clarification purposes, use of the word “supplier” in this document will refer to both the overall supplier community and to Sandia Contractors. A “supplier is called a “supplier” until they are awarded a contract. Whereupon, they are then called a “Contractor.”

Sandia encourages open and honest communication between the supplier and the Sandia Contracting Representative (SCR) in resolving a concern. It is always best to resolve issues in an open atmosphere between the SCR and the supplier without escalating the problem.

It is the intent of Sandia National Laboratories to resolve concerns through a Conflict Resolution Process, which is:

- timely;
- includes several options;
- is easy to use; and
- provides satisfactory results to both the supplier and Sandia.

There are three distinct processes that make up the conflict resolution process. These processes must be followed in sequence and each one represents an escalation of the issue. At any time during the process, the SCR and/or the supplier can ask for assistance from the Sandia Ombudsman Organization in an effort to resolve issues quickly and at the lowest possible level.

The supplier can also choose to discontinue any process at any time.

Sandia has no interest in unilaterally disclosing to third parties any of the proceedings involved in this Acquisition Conflict Resolution (ACR) process, and will agree to a suitable nondisclosure agreement with the supplier at any stage of that process. In the absence of such nondisclosure agreement, either party will be free to discuss the facts, positions, and outcomes with third parties.

Ombudsman Office Facilitation - 5.8.G.1.a

The Sandia Ombudsman Organization may be used at any time in the conflict resolution process, prior to external resolution. Ombuds assistance may take the form of providing access to Sandia resources including the:

- SCR,
- cognizant Procurement Department Manager,
- Supplier Information and Relations (SIR) Department,
- Legal,
- Ethics,
- Procurement Policies and Procedures Team,
- Auditing,
- Requester,
- and others as needed.

The Ombudsman may facilitate discussions; help parties understand all information; or mediate parties to respectful and timely resolution. The Ombudsman does not report to the Procurement Organization and does not make decisions regarding outcomes. The Ombudsman is not an advocate for either Sandia or the supplier. The Ombudsman is committed to a fair process that maximizes the chance for resolution. At any time prior to external resolution, the supplier/Contractor may request the Ombudsman assistance in resolving the concern and in developing and pursuing possible options for next steps. The Ombudsman facilitation does not initiate the Sandia ACR process.

Internal Resolution Process - 5.8.G.2

Procurement Management Process - 5.8.G.2.a

A supplier concern is taken to the SCR and/or the cognizant Procurement Department Manager in this initial step in the process. Attempts will be made to reach resolution at this point of the process in order to save time and money for all parties. This is an informal process, but must be utilized prior to proceeding to the Senior Review Process.

Conflict resolution begins with interaction between the supplier and the SCR and the cognizant Procurement Department Manager. The cognizant Procurement Department Manager has responsibility and accountability to resolve the problem at the lowest level possible, and it is anticipated that most issues can be resolved at this stage. If an issue cannot be resolved, the supplier should notify the SCR and cognizant Procurement Department Manager of their intent to proceed further with the ACR process. The SCR and cognizant Procurement Department Manager will then inform the supplier/Contractor of the next steps that are available to them, specifically the Senior Review Process.

The supplier must provide a written document listing specific concerns to the SCR. Supplier concerns based on alleged apparent improprieties in a solicitation must be filed before the closing date for receipt of proposals. For concerns regarding the award of a contract, a supplier concern is considered timely, if the supplier concern is submitted within ten (10) calendar days after contract award, or within five (5) calendar days after a debriefing date offered to the supplier filing the concern. For any other concern on a contract, the supplier concern is considered timely if filed within ten (10) days after the situation that caused the concern occurred.

Note: The supplier concern is considered timely if filed within these stated time periods. However, at the discretion of the SCR and the cognizant Procurement Department Manager, this process may be used beyond the ten (10) day period. It is important to note that the passage of time may greatly limit potential remedies if the supplier concern is found to have merit.

The SCR shall immediately notify the cognizant Procurement Department Manager when a

supplier concern involving Procurement is received. The cognizant Procurement Department Manager shall immediately review the supplier concern to determine its validity and whether any corrective action should be taken and advises the SCR. Together, the SCR and the cognizant Procurement Department Manager shall endeavor to resolve the supplier concern using internal resources (e.g., Procurement Management, Procurement Policies and Procedures Team, or the SIR Department). Informal discussions with the supplier shall be conducted and completed whenever practical within one business week of receipt of a supplier concern.

The SCR or the supplier may utilize the services of the Sandia Ombudsman Organization to aid in resolution of the problem.

Note: The SCR and the cognizant Procurement Department Manager or the supplier or any other party representing these individuals shall not discuss the supplier concern with any individual who is a member of the Senior Review Group (SRG), outside of the Senior Review Process discussed below.

If successful in resolving the supplier concern, the SCR shall prepare a written Memorandum to Record documenting the resolution which will be filed in the Procurement contract file. A copy should be sent to the supplier and the Supplier Information and Relations Department.

If a supplier decides to withdraw their concern, the SCR shall obtain written withdrawal of the concern from the supplier.

If unsuccessful in resolving the supplier concern, either the SCR or the supplier may proceed to the Senior Review Process in Section 5.8.G.2.b if that concern remains relevant.

Senior Review Process - 5.8.G.2.b

The Senior Review Process is the second step in the ACR process and has two aspects. The first is a Special Assistant (SA), who is an individual(s) appointed by the Executive Staff Director who works with the supplier to help them obtain information they need in order to be able to advocate for themselves. The second is the Senior Review Group (SRG), a body that ultimately makes the decision regarding the concern presented to them. This is a formal process. The SA is independent of the SRG, and the SRG is independent of the SA.

The SA is the formal entry point if a supplier chooses to continue pursuing resolution of the conflict. The SA is independent of the Procurement organization and seeks to maximize the opportunity for suppliers to advocate for their own interests to the SRG in a timely and effective way. The SA can facilitate interaction between the supplier and Sandia organizations such as Legal, Ethics, Procurement Policies and Procedures Team, Auditing, the Sandia line Requester, and others as needed for the purpose of obtaining information that may be useful to resolving the concern. This individual is available to all parties and the Ombudsman. The SA records and tracks activity in a supplier concern. The SA is responsible for communicating decisions made by the SRG to the supplier, and to the SCR.

Note: The SA does not have the authority to make decisions on supplier concerns.

In this step, the SCR is responsible for preparation of a supplier concern record with appropriate exhibits. The record shall include a summary of the procurement, a discussion of the pertinent issues, and a response to all of the concerns. The SCR shall send a copy of the supplier concern record to the SA by the close of business on the third working day from the commencement of the Senior Review Process.

The SRG consists of the Sandia Procurement Director, a Sandia line organization Director who has no direct interest in the procurement in question, and the Sandia Chief Financial Officer (CFO). This group makes decisions on supplier concerns brought through the Senior Review Process. It is not necessary that all members of the group are personally involved in the decision if a members authority is delegated to other members; however, no member of this group will reverse a decision made by other members once delegation of authority has occurred.

The supplier may unilaterally initiate this process if a resolution was not achieved in Step 1. To do so, the supplier must send a letter to the SA within five (5) calendar days after the supplier advises the SCR that the supplier concern was not resolved in the Procurement Management process. The SA can be contacted by sending a letter to Sandia National Laboratories, Office of the Sandia Special Assistant for Procurement Matters, MS 0103, Albuquerque, NM 87185-0103.

The SA contacts the supplier, within five (5) calendar days of receiving the SCR Memorandum of Record, or the supplier letter to work with the supplier to help them advocate for themselves and to address their concerns. The SA will then investigate the issues causing the concern, outline the facts involved and provide that information to the SRG. The supplier will be given the opportunity to review the information to be given to the SRG prior to submission to the SRG. Copies of any documents supplied to the SRG will be provided to the supplier after third party or Sandia proprietary information has been removed.

The SRG will review the facts surrounding the supplier concern, determine the validity of the suppliers underlying complaint, and determine whether subsequent corrective action should be taken.

The SRG will provide the SA with a written, document which articulates the decision and provides the rationale for that decision.

If the supplier concern is resolved, the SA:

- Prepares a written Memorandum of Record documenting the resolution, which will be filed in the Procurement contract file. Copies should be sent to the SCR and the SIR Department

or

- Obtains written withdrawal from supplier that the concern has been resolved.

If unsuccessful in resolving the supplier concern, the supplier proceeds to Step 3 if it meets any of the seven conditions noted in 5.8.G.3, and the supplier wishes to proceed further. In either case, the SA will advise the SCR about the results of the decision within fifteen (15) working days of the decision.

Standard of Review - Internal Resolution Process - 5.8.G.2.c

Contract Award Controversies - 5.8.G.2.c.1

The standards of review for contract award controversies shall be "arbitrary, capricious, an abuse of discretion or no rational basis for award of the contract" or "clear violation of statute, regulation, Sandia Standards of Conduct or Sandia Procurement Policy where that violation had a material effect on the award of the contract."

Controversies Not Related to a Contract Award - 5.8.G.2.c.2

The standards of review for contract controversies other than the award of contracts shall be that Sandia's conduct was "arbitrary, capricious, an abuse of discretion, had no rational basis, or otherwise not in accordance with law, Sandia Standards of Conduct or Sandia Policies."

Supplier Concern and Corrective Action - 5.8.G.2.d

Supplier Concern with Merit - 5.8.G.2.d.1

In the event it is determined that a supplier concern has merit or that the procurement in question is flawed for any reason, it is in Sandia's interest to take appropriate corrective action. The specific actions to be taken voluntarily by Sandia will vary depending upon the particular circumstances and issues raised by the supplier concern and should be taken only with advice of Procurement Management.

Supplier Concern Withdrawal - 5.8.G.2.d.2

Corrective action, if appropriate, should be taken in conjunction with efforts to informally resolve the concern. If at all possible, a commitment to withdraw the concern should be obtained from the supplier as a condition to taking the corrective action. If a written withdrawal cannot be obtained, a documented verbal withdrawal should be acquired. In the event the supplier refuses to withdraw the concern or is not satisfied with the corrective action taken by Sandia, the Procurement file should document all efforts made to obtain withdrawal of the proposed supplier concern and the supplier's response to these efforts.

External Resolution - 5.8.G.3

If a resolution is not obtained in the Senior Review Process, the supplier and/or the SA will contact Sandia Legal, which is responsible for Step 3, the External Resolution processes discussed below.

External resolution may be used after the supplier has utilized the Senior Review Process if the supplier concern conflict involves any of the following:

- A claim by the supplier for lost profit and costs incurred on the basis that a contract terminated for default by Sandia was not properly terminated in accordance with the Terms and Conditions (Ts&Cs) of the contract and applicable law;
- A claim by the supplier to recover costs incurred for work performed under the contract, or incurred by the supplier as a result of Sandia's nonperformance of the contract, for which Sandia is contractually responsible under the Ts&Cs of the contract and applicable law;
- A claim by Sandia to recover revenues paid to the supplier under the contract to which the supplier was not entitled under the terms of the contract and applicable law;
- A claim by Sandia for reprocurement or other costs incurred by it as a result of the supplier's nonperformance of the contract for which the supplier is contractually responsible under the Ts&Cs of the contract and applicable law;
- A claim by a prospective supplier that a contract awarded to another supplier should instead have been awarded to it under the Ts&Cs of Sandia's solicitation and any accompanying information or instructions supplied by Sandia and that the supplier is entitled to bid and proposal costs or other just compensation;
- A request by Sandia for an adjustment in the contract price of a contract awarded to supplier as a result of defective cost and pricing data furnished to Sandia by the supplier; and
- A claim that Sandia should not have terminated a contract with the supplier for convenience and that the supplier whose contract was so terminated is justly entitled to additional compensation as a result of that action.

Mediation - 5.8.G.3.a

Mediation is expected to be resorted to in every dispute which is not resolved using any of the other mechanisms discussed above. Mediation involves a neutral mediator selected by the parties to assist them in reaching a mutually agreeable resolution. The mediator does not render a judgment or make decisions for the parties. If the parties can reach an agreement, they will sign a binding settlement agreement.

Costs for use of a mediator will be shared between the supplier and Sandia on a sliding scale. Businesses classified as "Small Business" by Small Business Administration (SBA) standards will pay one-third of the cost of the neutral and Sandia will pay the remaining two-thirds of the cost. Businesses not classified as "Small Business" by SBA standards will pay one-half of the cost of the neutral and Sandia will pay the remaining half of the cost. Regardless of the option selected, suppliers will be expected to pay all of their own costs of participating in the mediation, including the costs of their legal counsel, experts, witness fees, etc.

Arbitration - 5.8.G.3.b

If mediation is unsuccessful, (i.e., if it does not result in a resolution of the concern), both the supplier and Sandia may then agree to proceed with arbitration.

Binding arbitration involves the use of a neutral arbitrator (selected by the parties) in a more formalized proceeding where evidence and arguments for each side is presented to the neutral, to reach a final determination imposed on the parties. Nonbinding arbitration involves the use of a neutral arbitrator (also selected by the parties) in a formalized proceeding where evidence and arguments for each side is presented to the neutral, to reach a nonfinal, nonbinding recommendation to the parties to help them come to a resolution.

Arbitration will be preceded by a formal agreement signed by Sandia and the supplier spelling out the selection of the neutral and the governing procedures and limiting principles (such as whether the arbitration will be binding or nonbinding; how proceeding costs will be shared or allocated; available relief which could be awarded by the arbitrator (including any award caps); a timetable and schedule for the proceedings; rules of decision; discovery; evidence; etc.).

References - 5.8.G.4

- SC 850 ACR - Acquisition Conflict Resolution Process
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Send feedback on ideas and information on this page to the Process Expert, Randolph Shibata.



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