



Sandia Acquisition Conflict Resolution Process



- **Use of the Sandia Ombuds Office is encouraged at any time in the Conflict Resolution Process, prior to Mediation and Arbitration.**
- **Ombuds Office assistance may take the form of providing access to Sandia resources including the SCR, the Buying Manager, the Supplier Relations & Supply Chain Management Department, Legal, Ethics, Policies, Auditing, the Requester, and others as needed.**



- **The Ombuds Office may facilitate discussions, help parties understand all information, or mediate parties to respectful and timely resolution.**
- **At any time the Supplier may request Ombuds Office assistance in resolving the situation and in developing and pursuing possible options for next steps.**
- **Use of Ombuds Office Facilitation does not initiate the Sandia Acquisition Conflict Resolution Process**



Features

- The process
 - Covers Award Controversies and Contract Disputes
 - Defines the time period that contractors may raise concerns
 - Defines the Standard of Review



Sandia Acquisition Conflict Resolution Process

Process features:

- **Internal and External Processes processes**
 - Sandia Ombuds office involvement at any time
 - Use of a Special Assistant
 - Senior Review Group, consisting of the Procurement Director, Chief Financial Officer and a Line Director will consider the situation if it is not resolved at the SCR-Manager level.
- **Use of Third Party Mediation and Arbitration Process in the External Process**



Process Summary

Internal Resolution

- *Problem presented to SCR and his/her Manager*
- *If not resolved, problem is taken to the Senior Review Process*

- **External Resolution**

- **If not resolved, Third Party Mediation and/or Arbitration is used**

**Supplier
Concern**

At the option of the Supplier, a concern may be brought to the Ombuds Office, or may be taken to the Internal Conflict Resolution Process

Use of the Ombuds Office does not initiate the Conflict Resolution Process



Internal Conflict Resolution Process

**Procurement
Management
Process**

Senior Review Process

**Special
Assistant**

**Senior
Review
Group**

External Resolution Process



Disclosure of Proceedings

Sandia has no interest in unilaterally disclosing to third parties any of the proceedings involved in this 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.



Internal Resolution Process

**Procurement Management
Process**

Senior Review Process



Timeliness

- For Supplier Concerns regarding contract awards a concern is considered timely if filed within the 10-day period, however, at the SCR discretion this process may be used beyond the 10-day period.
- For any other concern, the Supplier Concern is considered timely if filed within a 10-day period, however, at the SCR discretion this process may be used beyond the 10-day period.



The Internal Resolution Process

The first step :

- *Internal Resolution, Procurement Management Process:*
 - The SCR and his/her manager work to resolve the issue at their level.
 - *The goal is that most issues will be resolved at this stage.*



The Internal Resolution Process

- Second step: *Internal Resolution, Senior Review Process.*
 - If the problem cannot be resolved, the situation is taken to the **Sandia Special Assistant for Procurement Matters (Carol Yarnall, Org 12100)**
 - Office of the Sandia Special Assistant for Procurement Matters, MS 0103, Albuquerque, NM 87185.



Senior Review Process

- The **Special Assistant** will work with the Contractor to bring in the resources necessary for resolution of the situation and maximize the opportunity for the supplier to advocate for themselves in a timely and effective manner
- ***The Special Assistant will not make a decision***
- Among the options available is to have the concern brought to the **Senior Review Group** for review and a decision
- 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 SNL proprietary information has been removed.



Special Assistant

- **The Special Assistant (SA)**, 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 **SA** is the formal entry point if a Supplier chooses to appeal a decision to the **SRG**.
- 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** is independent of the **SRG** and the **SRG** is independent of the **SA**



Special Assistant

- The **SA** can provide the **Supplier** access to Sandia resources including Legal, Ethics, Policies, Auditing, the Requester, and others as needed and is available to all parties (including the **Ombuds**).
- The **SA** records and tracks activity in a Supplier appeal and is empowered to review all aspects of an appeal, document findings, and make recommendations to the **SRG**.
- The **SA** is responsible for communicating decisions made by the **SRG** to the supplier.



Integrity of the Senior Review Group

- The members of the **Senior Review Group** would be:
 - Chief Financial Officer (Frank Figueroa)
 - Director of Procurement and Logistics (Dave Palmer)
 - a Line Director with no direct interest to the procurement in question
- *No SCR ,Manager, contractor or other party may bring the case to any of these individuals outside of the formal process*
- They will be referred back to the Special Assistant



Standard of Review

- **Contract award controversies**

- 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**

- The standards of review for contract controversies not related to the award of contracts are that Sandia shall consider corrective actions on findings and conclusions that are found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, Sandia Standards of Conduct or Sandia Policies”.



External Resolution

Third Party Mediation and
Arbitration



External Resolution

- If the issue is still unresolved, the supplier may want to take this to the External Resolution Process (Step 3)
 - Involves Mediation and /or Arbitration
 - **Process owner is the Sandia Legal Organization**



Situations where External Resolution can be Used

- 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 of the contract and applicable law;
- A claim by the Supplier to recover costs incurred or 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 terms and conditions 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 re-procurement 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 terms and conditions 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 terms and conditions of Sandia's Request for Quotation ("RFQ") 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

- 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 judgement or make decisions for the parties.
- If the parties can reach an agreement, they will sign a binding settlement agreement.



Arbitration

- **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 non-final, nonbinding recommendation to the parties to help them come to a resolution.**



Arbitration (cont.)

- 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 non-binding, 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, and evidence, etc.



If you need more information, please contact

- Sandia Ombuds Office: 844-9763 (New Mexico)
 - Don Noack, (505) 844-2145
 - Cara Murray, (505) 844-3611
 - Ombuds Office, Sandia National Laboratories, California (925) 294-3655
- Sandia Procurement Policy and Guideline 5.8
<http://www.sandia.gov/policy/58g.pdf>
- Sandia Supplier Relations & Supply Chain Management
(505) 845-8883
- Sandia Procurement Policies and Procedures, Randolph Shibata, (505) 844-6768