

The background of the page is a close-up, slightly blurred image of several US dollar bills. The focus is on the corner of a bill, showing the large number '100' in a decorative frame. Below this, the word 'AMERICA' is partially visible in green ink. Further down, the serial number '824038 A' and the text 'WASHINGTON, D.C. 12' are visible. The bills are layered, with some appearing more prominent than others.

Chapter 3 Contingency Funding and Requirements Process

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Contingency Funding and Requirements Process

Key Points

- Appropriated funds are subject to three basic fiscal constraints:
 - Time. A current fiscal year's (FY) funds must be used for current needs.
 - Purpose. Funds must be expended for the purpose established by Congress.
 - Amount. The *Antideficiency Act (ADA)* prohibits obligating or spending money before it is appropriated.
- Contingency contracting officers (CCO) should consult with the finance office to ensure proper use of each type of funding under their control. The customer is responsible for requirements generation, from definition through approval.
- The commander, or his or her designee, is responsible for the validation and approval of requirements.
- A funded purchase request (PR) must have a complete description and the appropriate certified funds.

Introduction

Congress limits the authority of the Department of Defense (DoD) and other executive agencies to use appropriated funds. This chapter begins by discussing these limitations and types of contingency contracting funding. It further discusses procedures on how requirements are generated through the use of purchase requests and contracting related boards.

Fiscal Law Constraints



Appropriated funds are subject to three basic fiscal constraints: time, purpose, and amount. The following Web site will allow you to search

and review appropriate United States Codes (USC): <http://www.gpoaccess.gov/uscode/>.

Time

The time control includes two major elements. First, appropriations have a definite life span. Second, appropriations normally must be used for the needs that arise during their period of availability. The general rule is that current funds must be used for current needs.

Period of Availability. Most appropriations are available for obligation purposes for a finite period of time. Operation and maintenance funds are available for 1 year; procurement appropriations for 3 years; and construction funds have a 5-year period of availability. If funds are not obligated during their period of availability, they expire and are unavailable for new obligations (new contracts or changes outside the scope of an existing contract). Expired funds may be used to adjust existing obligations, such as pay for a price increase following an in-scope change to an existing contract. (*31 USC §1552*) However, OAR [Obligation Adjustment Reporting] approval is required before contracting action can be executed.

The Bona Fide Needs Rule.



The Bona Fide Needs Rule is an appropriations and fiscal law. (*31 USC §1502(a)*) It provides that a fiscal year's (FY) appropriations only be obligated to meet a genuine need (bona fide need) arising in (or sometimes before) the fiscal year for which the appropriation was made. It restricts the use of existing fiscal year's appropriated funds on the next fiscal year's requirements. For example, annual funds appropriated for FY09 are to be used to fund a legitimate FY09 need. The funds are not to be used to fund a need the customer would not genuinely have until FY10. However, the application of the rule may differ when it comes to supplies and services overlapping fiscal years. The bona fide needs rule also justifies the use of prior year funding when a contract has been terminated.

Supplies.    

The bona fide need for supplies normally exists when the government actually will be able to use the items. Thus, a command would use a currently available appropriation for computers needed and purchased in the current FY. Conversely, commands may not use current year funds for computers that are not needed until the next FY. Year-end spending for computers that will be delivered within a reasonable time after the new FY begins is proper; however, as long as a current need is documented. Note that there are lead time and stock level exceptions to the general rule governing purchases of supplies.

Services.      

How does the application of the Bona Fide Needs Rule differ when services cross FYs? The difference is based on whether the services are considered severable or nonseverable. Severable services are services that are continuing and recurring in nature such as lawn maintenance, janitorial services, or security services. The benefit of the service is realized at the time that services are provided, even if the contract has not been performed to completion. Most base operations support services provided by a contractor supporting a deployed unit would be considered severable. Services are considered severable if they can be separated into components that independently provide value to meet a customer's needs. 10 USC §2410a permits funding a contract (or other agreement) for severable services for up to 12 months using current appropriation when the contract is executed, even if some services will be performed in the subsequent fiscal year. Conversely, nonseverable services represent a single undertaking that cannot be feasibly subdivided. If the services produce a single or unified outcome, product, or report, the services are considered nonseverable. Some examples include studies culminating in the delivery of a final report, the overhaul of an engine, and painting a building. Note that lead time exception can apply to start date of service type contracts.

Construction.

Construction contracts obligated and awarded late in a FY (September) must have a performance start within 90 days of award. For example, if a contract was awarded on 15 September with that given FY funds, performance must commence and invoices must be submitted by 13 December of the new FY as derived from DoD fiscal law. Typically, commencement of work can be in the form of the contractor ordering materials and delivering them to the government and the government taking receipt (possession) of materials that will remain in the government's possession (contractors cannot store at their businesses), surveying land, breaking ground, and other such functions. The key in determining what is considered performance of work is to have the elements of work included on a progress schedule that will serve as means to allocate a percentage of work performed and invoiced.

Purpose

31 USC §1301(a), commonly referred to as the purpose statute, prohibits spending money on objects other than those for which appropriations were made. Funds must be expended for the purpose established by Congress. There is a three-pronged test known as the Necessary Expense Doctrine which states that expenditures must:

- Be Logically Related to the Appropriation. The expenditure must be for a particular statutory purpose, or necessary and incident to proper execution of the general purpose of the appropriation. A necessary expense will contribute materially to the effective accomplishment of an authorized function.
- Not be Prohibited by Law. The rationale that a certain expenditure is necessary to carry out the mission of the agency is insufficient to overcome a statutory prohibition. Also, agencies may presume that restrictions in an appropriations act are effective only for the FY covered unless the legislation clearly indicates its permanent character.

- Not be Otherwise Provided. Regardless of a logical relationship between the appropriation and the expense, if another specific appropriation exists for a given purpose, it must be used. For example, the Comptroller General ruled that the Navy could not use its shipbuilding appropriation to deepen a river channel allowing the submarines under construction to move to deeper water, because the Army Corps of Engineers is specifically funded for that function. Running out of money is not sufficient excuse to use another appropriation. If there are two appropriations reasonably equal for expenditures, then the agency may choose either appropriation. However, once the election is made, the agency must continue to use the selected appropriation to the exclusion of any other.

Amount

Of paramount concern is ensuring that the DoD complies with the ADA, *31 USC §1341(a)*, which prohibits obligating or spending money before it is appropriated or in amounts in excess of the amount appropriated. It is a criminal act to knowingly enter into or authorize government contracts in the absence of sufficient government funds to pay for such contracts. A knowing and willful violation of *31 USC §1341(a)* is punishable by a fine of up to \$5K, 2 years in prison, or both. In addition, if someone violates this law, the matter must be investigated and a written report must be filed with Congress. Common problems that have triggered ADA violations include:

- Without statutory authority, obligating (awarding a contract) current year funds for the bona fide needs of a subsequent FY. For example, this may occur when activities stockpile supply items in excess of those required to maintain normal inventory levels.
- Exceeding a statutory limit (funding a construction project in excess of established thresholds).

- Obligating funds for purposes prohibited by annual or permanent legislation.
- Obligating funds for a purpose for which Congress has not appropriated funds (for example, improper funding of personal expenses).

Purchase Requests



Requirements from Customers. There are two main questions involved with customer requirements during a contingency situation:

- How do customers submit requirements?
- What information is needed from customers in order to obtain goods and services for them?

Initially, the contracting office will be inundated with requests for goods and services from several different sources. Most requests will be legitimate and allowed to proceed to contracting without a prioritization status. However, at some point requirements will need to be prioritized. Your mechanism to prioritize may be a readiness center on a contingency support staff where senior base officials coordinate base recovery efforts. The readiness center or support staff is usually comprised of the combatant commander, comptroller, and appropriate customer commands. If left unaddressed, the prioritization process will be performed by the responsible contracting office.

What is considered an acceptable purchase request at the beginning of the contingency operation will, and should be, different once the contingency stabilizes. Initially, verbal requests can be accepted; however you should give the customer a suspense for receipt of backup paperwork. If you do receive verbal requests, make sure you get an adequate description of the requirement. Generic noun descriptions usually will not be adequate. At some point during the contingency, verbal requests

should be replaced by written requests with all the required documentation. If you allow verbal requests to continue too long, tracking requirements will become extremely difficult.

Purchase Request (PR) Documents. Without a properly prepared purchase request, it is almost impossible to make an authorized purchase. During the initial deployment, any format may be used for submission of a PR. However, the following requirements must be fulfilled even with a verbal request.

- Request has been approved by the deployed commander or his or her designee
- Funds have been certified through the appropriate budget office
- Purchase request has a fund cite
- Purchase request has sufficient funds to cover purchase

During sustainment an appropriate requisition document must be utilized to request supplies and services or construction. Further guidance and procedures will be provided to each organization once the deployed commander, in conjunction with the CCO, has established them.



PR documents can be submitted on many forms to include the following:

- Air Force (AF) Form 9   
- Department of the Army (DA) Form 3953 
- Navy Supplement Form (NAVSUP) Form 1250-2 
- Department of Defense (DD) Form 448 (*Military Interdepartmental Purchase Request* [MIPR]) and DD Form 448-2 (*Acceptance of MIPR*)
- Air Force Form 4009 
- DD Form 1348 
- DD Form 1149 

As mentioned earlier, all purchase requests (PR) must have a good description of required services or supplies and certification of funding. For a small dollar supply purchase, a good description might include a noun, part number, picture of the item if possible, or a sample of what is needed so the CCO can show it to potential vendors. Also required is the name and organization of the customer and a point of contact. For services and construction requirements, the contracting officer will need a complete statement of work (SOW), statement of objectives (SOO) or performance-based work statement (PWS), and the name of customer's contracting officer's representative (COR) who will be providing technical support. A good PWS or what is probably more familiar, a SOW, would include a detailed description of what is expected from the contractor. In other words, it should be as *performance oriented* as possible. This will make it easier for the contractor to understand and easier for the CCO to point out deficiencies when performance does not measure up to standards.

Lines of Approval. The first step in any requirement is to determine which activity is the office of primary responsibility (OPR) for the need and see if that office has a mechanism to support the requirement. For example, if the requirement is for a vehicle, contact the transportation OPR to see if they can fill the need. If not, prepare the appropriate documentation to lease or purchase the requirement locally. In most cases a senior official will be designated as the approving authority for all local PRs. This authority may be retained by the deployment commander or may be delegated to his staff. Where this authority rests depends primarily on the size of the deployed force. Either way, you will have to obtain approval from the designated approval authority for anything bought locally (see Department of Defense Federal Acquisition Regulation Supplement [DFARS] [225.70](#)).

Who May Submit Purchase Requests. The deployed commander and the contracting officer should establish the local lines of authority for requestors and approving officials. In most cases specific individuals from each functional area will be designated in writing by the deputy chief of staff to approve PRs for that area and to submit PRs to contracting.

Who Can Obligate the Government. When spending public funds, DoD must substantiate its requirements and strictly control its contracting function. Officially appointed individuals who have express written authority to bind the US government to a contractual agreement accomplish this control. The contracting officer is the only agent who represents the government in this capacity.

This unique personal responsibility means supervisors, commanders, and others having administrative control over contracting officers must avoid directing contracting officers to take action that might violate laws or contracting regulations. See also Chapter 5.

Purchase Descriptions and Statements of Work.



This is the most important area for the customer. Investing the time to provide contracting with an adequate purchase description can ensure that contracting fulfills the customer's needs in a timely manner.

Contracting activities and their customers will consider both technical needs and business strategies when defining and specifying requirements. CCOs must ensure specifications reflect only what is needed to meet the requirements of the mission and the SOW, SOO, or PWS will not unnecessarily restrict competition or innovation. Additionally, commercial item descriptions will be used as much as practicable and functional specifications will be used instead of detailed design specifications whenever reasonable.

Purchase Descriptions. Purchase descriptions serve two purposes: allows the buyer to determine what to buy and where; and allows the vendor to quote properly and deliver the correct item. Adequate item descriptions ensure that customers get what they need at the best value possible. Keep in mind, commonly accepted stateside standards and commercial practices are not the same as in contingency locations.

Item descriptions, specifications, and technical requirements should always be clear and concise. Describe the requirement in sufficient detail to leave no room for doubt. Ambiguous descriptions delay contracting action and may lead to the purchase of the wrong product or service.

Correcting discrepancies is expensive, and wastes the customer's valuable time as well as that of the CCO. Item descriptions set forth the essential physical and functional characteristics of the supplies or services required. The minimum requirements of the government should be expressed in the description. However, do not confuse minimum requirements with minimum descriptive data. Include as much information as possible to describe exactly what you need. The principal features of a purchase description may be determined by answering the following questions:

- What is it?
- What is it made of? (paper, wood, and so forth)
- What are its principal descriptive characteristics? (size, color, and shape)
- What does it do? (holds, drives, connects, and so forth)
- What is it used for? (indicate its purpose)
- How is it used? (by itself, with other equipment, and so forth)
- Where is it used? (component part or a complete assembly)

Preparing a Purchase Description. A generic purchase description is written in simple language, such as would be used in private purchases, with one exception. Brand names are prohibited without separate written justification. A generic description is the most desired, in that it clearly identifies what is required, yet provides for the maximum competition among available sources. The purchase description should clearly describe the essential physical and functional characteristics of the item required. It should include as many of the following characteristics as necessary to express the minimum requirements of the government:

- Kind of material
- Electrical data, if any
- Dimensions

- Principles of operation
- Restrictive or significant environmental conditions
- If part of an assembly, the location within the assembly
- Essential operating conditions
- Special features, if any
- Intended use
- Operation to be performed
- Equipment with which the item is to be used
- Other requirements, as appropriate

If the customer cannot write an adequate purchase description, a less desirable alternative exists by identifying a specific product followed by the words “brand name” or “equal.”

Overly Restrictive Characteristics. A description that is too strict can be just as undesirable as the opposite extreme. Whenever possible, a description should allow tolerance. For example, if an item is required to be painted, the color should allow for variances unless only one color is acceptable. Likewise, tolerances should be allowed with other characteristics such as weight, and size if possible.

Inadequate Specifications and Descriptions. Inadequate descriptions are normally returned to the originator for clarification. Specifically, the challenge is to determine the minimum needs of the government and then write an item description that contains only those salient physical, functional, and other characteristics that are essential to meet those needs. Restrictive descriptions can sometimes lead to protests on the part of the contractors and further complicate and delay the acquisition of the supplies or services. Poor descriptions contribute to misunderstanding between the government and the contractors, and may lead to inferior products, unnecessarily high prices, or both. One common problem is abbreviations. Keep abbreviations to a minimum and only use them when

they are universally understood and are not otherwise confusing. Careful screening of the purchase request item description by approving authorities will preclude delays in procurement action.

Performance-Based Requirements.

A performance-based work statement (PWS) defines the requirements in terms of results, rather than the method of performing the work. The PWS should be developed by a multifunctional team. References (such as publications, regulations, and instructions) should be cited by specific process or procedure (such as paragraph or chapter) rather than the entire publication.

- At a minimum a PWS should include:
 - Description of services and general information (definitions and so forth).
 - Government-furnished property and services, if applicable.
- For PWS training, see *Seven Steps to Performance-Based Service Acquisition Guide*, located at https://www.acquisition.gov/comp/seven_steps/home.html and see Defense Acquisition University (DAU) CLC013, “Performance-Based Services Acquisition,” located at <http://learn.dau.mil>.

The resulting performance-based contract will also include measurable performance standards (in terms of quality, timeliness, and quantity) and the method of assessing contractor performance against performance standards and performance incentives where appropriate. For example, consider including a quality assurance surveillance plan (QASP) and a service delivery summary (SDS).

A QASP will at a minimum include:  

- The objective of the service.
- The desired results (such as cost savings, efficiencies, or improved customer service).
- A methodology to assess contractor performance.

- A methodology to validate when and if the objectives are met. An SDS is a summary provided as a tool for identifying major requirements of a contract, where they can be found in the SOW, and the performance standard that must be attained.

The CCO will include Federal Acquisition Regulation (FAR) clauses 52.246-1 through 52.246-16 in performance-based contracts as appropriate.

Services, Contract Repair, and Construction Buying. Unlike the straightforward nature of cash-and-carry supply buying, purchasing is somewhat more complicated for services, contract repair, and construction. The ongoing nature of services and construction complicates the writing of a purchase description for these types of services.

- A SOW, SOO, or PWS must be prepared. In some cases, this will have to be done bilingually in order for the contractor to fully understand requirements.
- A COR or contracting officer's technical representative must be available from the requesting activity to answer questions from potential contractors.
- Some of these requirements will be more than the simplified acquisition threshold, which can limit the CCO's options.

Documentation That May Accompany Purchase Requests. The following documentation is submitted as required for:

- Construction Projects
 - Cost breakdown
 - Drawings and specifications (required to be submitted to the contracting officer for review prior to finalizing a contract)
 - Itemized cost breakdown supporting liquidated damages

- Schedule of material submittals
- Accurate quantities, conversions, and units of issue
- Government-furnished property schedule
- Government estimate of completion costs and bidding schedule
- Services Requests.
- The contracting officer will need a complete SOW, SOO, or PWS and contract information for the customer's COR who will be providing technical support. The SOW, SOO, or PWS should include a detailed, performance-oriented description of what is expected of the contractor to meet the government needs, not how it should be accomplished. Examples of SOWs, SOOs, and PWSs can be found at the AFCESA Web site: <https://www.my.af.mil/afknprod/ASPs/CoP/EntryCoP.asp?Filter=OO-EN-CE-A1> or <https://afkm.wpafb.af.mil/ASPs/CoP/EntryCoP.asp?Filter=OO-EN-CE-A1>.

It is important to note that, per Deputy Secretary of Defense (DEPSECDEF) memo dated 22 August 2008, “where practicable, the requiring activity shall provide the COR nomination package to the contracting office as part of the purchase request.” Additionally, CORs must be designated and trained prior to contract award.” See <http://www.acq.osd.mil/dpap/policy/policyvault/USA005569-09-DPAP.pdf> for additional information.

- Contract Repair Service Requirements. The following should either accompany or appear on the purchase request:
 - Whether a serviceable like item is available within the supply system.
 - Whether in-house repair capability is available.
 - Nature of the equipment malfunction that indicates a need for repair.

- Whether on-site repair is required. If so, state building number, room number, name, and telephone number of contact point at the equipment location.
- Brand name and sole source requirements.  
- If the item is less than \$25K, the using activity must furnish a detailed, written justification in official letter format, signed by the technical personnel and officer-in-charge of the activity for which the item is being requested. If the item is \$25K or greater, market research must be done by the requester.



- For all requirements, ensure the point of contact, organization, and delivery location is identified.

Finance and Contracting Relationship. The contracting and accounting and finance relationship is extremely important when it comes to obtaining documentation to support commitments or payments made by the paying agent. This relationship continues to be important when it comes time for the accounting and finance agent to scrub the funding document. Close coordination between the contracting officer and the funding agent is necessary to determine actual obligations so the funding document will be accurately reported to the supporting accounting and finance personnel.

Contracting Related Boards

At some point in time, requirements will require prioritization from the commanders in the field. Depending on the requirement and the source of funding, PRs will need to be approved and prioritized by the appropriate commander. If the requirement is a Joint controlled support item or service, or includes Joint funding; the originating Service component organization will hold a Service-unique requirements board to validate and prioritize the Service's requests. Once approved by the Service process, the requirement will be sent to the Joint Acquisition Review Board (JARB) as depicted in Figure 2.

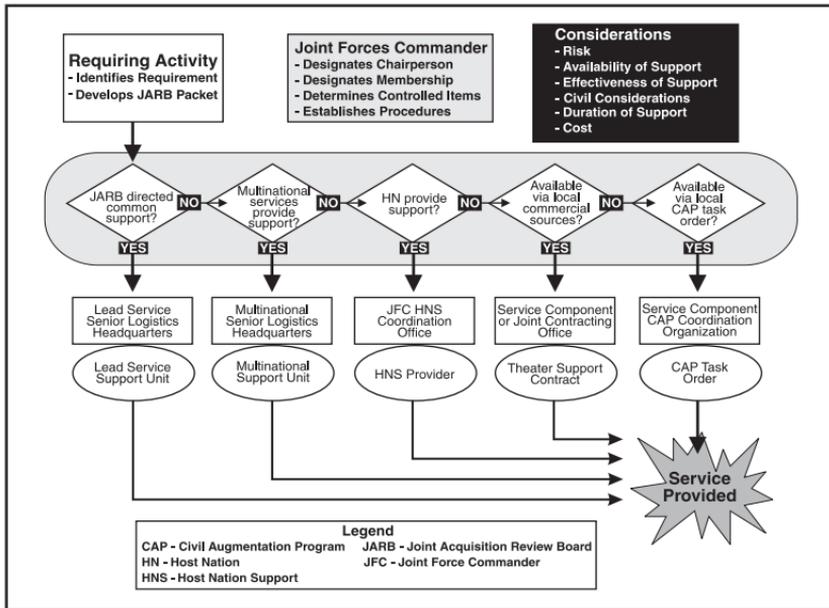


Figure 2. Joint Acquisition Review Board Process

Acquisition Process and Contracting Related Boards. It is very important that all common user logistics (CUL) support be properly coordinated by the supported geographic combatant commander (GCC) and subordinate Joint force commander (JFC) to include contracting; however, determining the appropriate source of CUL support and establishing priorities of this support are not contracting functions. The supported GCCs have directive authority for logistics, which includes the authority to issue directives to subordinate commanders, including peacetime measures necessary to ensure the following:

- Effective execution of approved operation plans
- Effectiveness and economy of operation

- Prevention or elimination of unnecessary duplication of facilities
- Overlapping of functions among the Service component commands

In order to provide the subordinate JFC the ability to enforce priorities and control CUL support efforts, the supported GCC should strongly consider directing the establishment of three critically important contracting related review boards:

- The Combatant Commander Logistic Procurement Support Board (CLPSB)
- The JARB
- The Joint Contracting Support Board (JCSB)

The establishment and membership of these boards will be dependent on the size and duration of the operation as well as other operational factors. In some instances, these boards may be combined.

Combatant Commander Logistics Procurement Support Board. The CLPSB is established to ensure that contracting and other related logistics efforts are properly coordinated across the entire area of responsibility (AOR). This board is normally chaired by a GCC J4 representative and includes representatives from each Service component command, combat support agency, as well as other military and United States government agencies or organizations concerned with contracting matters. The CLPSB functions are outlined in Table 1.

Joint Acquisition Review Board. The JARB is a review board, not a contracting board. The JARB is utilized to coordinate and control the requirements generation and prioritization of Joint CUL supplies and services that are needed in support of the operational mission and is normally chaired by the subordinate JFC (either subunified command or Joint task force level) deputy commander, or J4. The JARB's main role is to make specific approval and prioritization recommendations for all GCC directed, subordinate JFC controlled, high-value, high-visibility CUL

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requirements and to include recommendations on the proper source of support for these requirements. The normal priority of CUL source of support includes lead Service organic military sources, multinational support, host nation support (HNS), multinational military support, theater

CLPSB	JARB	JCSB
Focus on general policies and area of responsibility-wide issues related to contracting support (combatant commander level).	Focus on <i>what</i> are requirements priorities and source of support (subordinate Joint force commander level).	Focus on <i>how</i> contracting will procure support within the Joint operations area (subordinate Joint force commander level).
<ul style="list-style-type: none"> –Identify contracting and other related issues that may require Joint Staff Office of Primary Responsibility, J4, or Office of the Secretary of Defense action. –Establish area of responsibility-wide contracting and contractor management policies and procedures. –Determine theater support contracting organizational structure. –Coordinate with US embassies and host nations on contracting support issues and actions (host nation support, status of forces agreements, visa requirements, and others). 	<ul style="list-style-type: none"> –Determine what common user logistics support needs to be controlled. –Review requirements. –Recommend priority of support requests. –Recommend an acquisition methodology to be used to meet the requirements (such as organic military, host nation support, multinational support, or contracted support) 	<ul style="list-style-type: none"> –Eliminate duplication of effort by coordinating theater support and external support contracting actions. –Determine appropriate external or theater support contracting mechanism. –Provide an exchange of information among contracting activities covering such matters as sources of supply, prices, and contractor performance. –Provide guidance on consolidation of purchases.

Table 1. Contracting Related Boards, Part 1

CLPSB	JARB	JCSB
–Coordinate with DoD and military departments on potential loss of contract support and risk management of same in accordance with DoD Instruction 1100.22, <i>Manpower Mix Instruction</i> .		–Establish theater support contracting procedures. –Prescribe payment procedures consistent with currency control requirements and international agreement. –Establish contract visibility procedures and reports. –Coordinate the enforcement of contractor management policies for external support and theater support contracts.

Table 1. Contracting Related Boards, Part 2

support contracts along with external support contracts such as the military department, civil augmentation programs, and Defense Logistics Agency (DLA) prime vendor contracts. The JARB is normally made up of representatives of the Service component logistic staffs, special operations forces (SOF), component staff, DLA, Defense Contract Management Agency (DCMA), Joint force engineer, J6, Joint force comptroller, staff judge advocate, and other JFC staff members as directed. It also should include representatives from designated theater support and external support contracting organizations. The theater support and external support contracting members' main role in the JARB process is to inform the other JARB members which contracting mechanisms are readily available for their particular acquisition, to include limits of the local vendor base for each type of support. This would facilitate the decision

to use either external support contracts or theater support contracting assets. Specific JARB functions are outlined in Table 1.

Joint Contracting Support Board. The JCSB is established in order to coordinate and deconflict contracting actions within the Joint operations area (JOA). The JCSB reviews contract support requirements forwarded by the JARB and makes recommendations on which specific contracting organizations and contract venues are best suited to fulfill the requirements. The JCSB is normally chaired by the subordinate J4 acquisition officer or senior contracting official. It is made up of representatives from the Service theater and external support contracting organizations (to include engineering and contracting), DCMA, DLA (to include the Joint Contingency Acquisition Support Center when called into theater at the request of the combatant commander), and SOF component contracting representatives. This process requires adequate visibility of CUL related contracting capabilities within the operational area, which can be a significant challenge. It is through this JCSB that the J4 ensures a coordinated contracting support effort across the entire operational area. The goal of the JCSB is to maximize the contracting capabilities of the JOA while minimizing the competition for limited vendor capabilities. It also establishes specific theater and external support contracting procedures and reporting requirements. While the CLPSB and JCSB perform similar functions, the CLPSB coordinates general acquisition policy and addresses major contracting related issues across the AOR, while the JCSB is more focused on coordinating day-to-day contracting support within a specific JOA. See Joint Publication 4-10 Appendix G, “Requirements Development and Acquisition Review Processes,” for more details on the acquisition process. Specific JCSB functions are outlined in Table 1.

Funding Procedures



Bulk Funding. If the contracting office is issued a bulk funded PR, the contracting office is responsible for maintaining a record of obligations and the remaining balance of funds. The bulk funding concept is the system whereby the CCO receives authorization from the certifying officer to obligate funds on purchase documents against a specified lump sum reserved for that purpose over a specified period of time. Rather than obtaining individual obligation authority on each purchase document, funds are precommitted. Strict control of the bulk funds is necessary to preclude the misuse of funds.

Request and Authority to Cite Funds. When approved by the accounting and finance officer or official designee, the bulk funding document (*AF Form 616*, *DA Form 3953*, *DD Form 1348*, or *NAVSUP Form 1250-2*) certifies funds are available and records them as commitments in the accounting records. The amount approved is an estimate of the amount that may be obligated by the recipient. Funds are available for a specific period of time and for a designated purpose. Bulk funding documents may be issued to the contracting office to permit certain types of local requirements to be funded without having the budget officer or certifying officer certify funds are available for each requisition. If contracting is issued a bulk funding document, the CCO will be responsible for keeping a record of obligations and the remaining balance of funds (on the reverse of the form). Lastly, since the accounting classifications for supplies and services are different, separate bulk funding documents are required.

Other Funding Procedures. The CCO or the customer should contact the budget office for procedures to fund:

- Vehicle rentals for recreational activities (such as trips and tours) and recreational supplies (such as balls, bats, and so forth), which

will use morale, welfare, and recreation (MWR) or nonappropriated funds (NAF) (go to NAF fund manager, if available).

- Medical supplies and services (such as medicine, doctor services, and hospitalization).
- Food (such as fresh fruits, vegetables, and bread) which requires a subsistence fund cite.
- Legal claims payable to host government, foreign companies and citizens, and other US government agencies.
- Host government provided equipment, services, and facilities. Normally an HNS agreement contains the methods of payment. If an HNS is not in effect with the country in which the CCO is deployed, the disbursing office will still be the agency the CCO will contact to determine the method or procedures for payment.
- Goods and services needed to support requirements for aircraft accidents and related incidents not previously covered.

Funds Certification Officer. The funds certification officer certifies on the PR that funds are available prior to processing by the contracting office under peacetime conditions. The approved funds are an estimate of the amount that may be obligated by the requesting activity for a specific period of time and designated purpose. During contingencies, the issue of funding becomes more involved because of the urgency and source of the requirements. Funds certification is designated by comptroller personnel and cannot be further delegated. The total amount of funds certified and the final obligated amount must be designated in US dollars. Conversion rates at the time of funds certification should also be noted.

Fund Cites. Accounting classification codes, which are also referred to as fund cites, are required on all purchase requests. One important aspect of appropriations is understanding how to read a fund cite. The first seven digits of a fund cite are the most important for CCOs. The first two digits

reveal the federal agency or military department—57 represents Air Force. The third digit states the period of availability or FY. The next four digits state the type of appropriation. For example, a fund cite beginning with 5710 3400 would represent Air Force Operation and Maintenance funds for FY10. All funds citations should be validated and certified by the deployed finance office before a contract is awarded.

How to Read a Fund Cite:

57 10 3400 310 67A2 231010 01 59290 503300 ESP 8Z

Agency (57). 57 = Air Force, 17 = Navy and Marine Corps, 21 = Army, 97 = DoD

FY (10). 10= FY10 money, X = no year \$, two numbers, that is 3/8 = funds appropriated in FY03 and available until FY08

Type of Appropriation (3400). Active duty O&M: 3400 = Air Force, 3500=Air Force Military Personnel, 3700 =Air Force Reserve Military Personnel, 3740 = Air Force Reserve, 3840 = Air National Guard, 3850 = Air National Guard Military Personnel, 1804 = Navy, 1806 = Navy Reserve, 1106 = Marine Corps, 1107= Marine Corps Reserve, 2010 =Army Military Personnel, 2020 = Army, 2080=Army Reserve, 2065=National Guard, and 0100 = DoD, OSD, and DLA)

Element of Expense Identification Code (EEIC) (59290). Tells what you are buying. Some of the common EEICs you will see during a contingency are as follows: 409 – travel, 59290 – miscellaneous contractual services, 61950 – governmentwide commercial purchase card, 61990 – miscellaneous commercial supplies.

Emergency and Special Project (ESP) 8Z. Tracks expenses for specific contingency operations. The alpha numeric code is assigned by the DoD. All contingency expenses should include an ESP code.

See the DVD for more information on reading a fund cite.



Types of Funding



The following paragraphs contain general descriptions of the typical types of funding that are used during contingencies. In any contingency, CCOs should consult with the finance office to ensure proper use of each type of funding under their control. Certain rules apply to each type of funding to prevent misuse.

Military Construction (MILCON).

Congress appropriates *10 USC* funds for MILCON of permanent improvements separately in annual appropriation acts. The term *military construction* includes “any construction, development, conversion, or extension of any kind carried out with respect to a military installation whether to satisfy temporary or permanent requirements.” (*10 USC §2801(a)*) The definition of a military installation is very broad and includes foreign real estate under the operational control of the United States (US) military. Military construction includes all work necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility. (*10 USC §2801(b)*) Construction projects in excess of \$1.5M require specific approval by Congress (include each Service type of appropriation).

Operation and Maintenance (O&M). O&M funds are 10 USC funds used for the day-to-day expenses incurred during training exercises, deployments, and operating and maintaining installations. Commands may use O&M appropriations for all necessary and incidental operational expenses.

- **Maintenance and Repair.** Maintenance and repair is not MILCON. Maintenance is recurring work to prevent deterioration—work required to preserve or maintain a facility in such condition that it is usable for its designated purpose. Repair is restoration of a facility so it may be used for its designated purpose by overhauling, reprocessing, or replacing parts or materials that have deteriorated

by action of the elements or by wear and tear in use, and which have not been corrected through maintenance. Maintenance and repair work would be paid for via O&M funds, not MILCON. When construction and maintenance or repair are performed together as an integrated project, each type of work is funded separately, unless the work is so integrated that separation of construction from maintenance or repair is not possible. In the latter case, fund all work as construction.

Special Rules Applicable to Construction. There are several sources for funding military construction in a contingency:

- One source is contingency construction up to an amount appropriated for that purpose when authorized by the Secretary of Defense (SecDef) to carry out a military construction project that is not otherwise authorized by law. The SecDef may delegate the authority to the secretary of a military department to execute a project if SecDef determines that deferral of the project for inclusion in the next *Military Construction Authorization Act* would be inconsistent with national security or national interest. To do this, SecDef must submit a report in writing to the appropriate committees of Congress to include justification, current estimate of cost, and justification for using the contingency construction section. The project can begin only after the end of the fourteenth day from the time notification is received by Congress. (*10 USC §2804*)
- SecDef may carry out emergency construction projects not otherwise authorized by law in the *Military Construction Authorization Act* using unobligated funds. (Purpose: protection of health, safety, or environment; must notify Congress; 21-day waiting period.) (*10 USC §2803*)
- O&M funds may be used to carry out an unspecified minor military construction project costing \$750K or less. If the project is to

correct conditions that present a threat to life, health, or safety, then up to \$1.5M in O&M funds are available. These limitations do not apply if the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies. These are referred to as deployment and mobility funds, or mobility enhancement funds to enhance deployment and mobility up to \$1.5M. **Note:** O&M funds are not available for exercise-related unspecified minor construction projects. (*10 USC §2805*)

- In accordance with the *2008 National Defense Authorization Act*, Section 2801, the Department of Defense can fund temporary facilities in excess of \$750K during declared contingency operations under O&M funds by identifying a clear, affirmative legislative authority. The current authority is provided in the FY04 Emergency Supplemental Appropriation and provides SecDef with temporary authority to use O&M funds for combat or contingency construction projects outside the US, subject to certification of certain requirements and notification to Congress. The amount for this temporary O&M authority is \$200M for each project. The \$200M cap provided by the temporary O&M authority may be exceeded, if SecDef determines the project vital to national security. In FY05, Congress continued the temporary O&M authority at the same funding level, but made the use of O&M funds contingent on the submission of quarterly reports by the SecDef. To use the Temporary O&M Authority, the SecDef must certify the following:
 - The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under Section 201 of the *National Emergencies Act (50 USC §1621)*, or a contingency operation.

- The construction is not carried out at a military installation where the US is reasonably expected to have a long-term presence.
- The US has no intention of using the construction after the operational requirements have been satisfied.
- Facilities supporting MWR activities cannot use these O&M funds.

Nonappropriated Funds (NAF).

Because NAF purchase procedures and guidance differ based on Service, applicable Service procedures and guidance should be followed closely. Most Service procedures and guidance point out mandatory FAR clauses and outline other clauses that must be inserted in these purchases. The sale of goods and services by nonappropriated funds instrumentalities (NAFI) to appropriated fund government activities is outside the scope of NAFI functions. However, certain circumstances justify the purchase of supplies or services by appropriated fund activities from NAFIs. In these instances, a sole-source justification is required.

Funding Issues Using NAF. If NAFs are available, they can be used to purchase plaques, mementos, coins, organizational mugs, and t-shirts (items that may not generally be purchased with appropriated funds).

However, coins, mementos, and unauthorized personal gifts are a recurring challenge. If the coins are merely mementos to build goodwill with local officials, they cannot be purchased with O&M funds. Generally, an agency may not use appropriated funds to purchase *mementos* such as coins for distribution. Such mementos would be unauthorized personal gifts. Nevertheless, Congress has provided specific statutory authority for the SecDef to “award medals, trophies, badges, and similar items” for “excellence in accomplishments or competitions.” (*10 USC §1125*) These awards could be made in the form of a coin, trophy, plaque, or other similar device. The authority to purchase awards for excellence in competitions does not extend to the purchase of coins or other mementos merely to enhance esprit de corps, improve service members’ morale, or other unauthorized purposes. Commanders should seek to differentiate between tokens of appreciation and mementos (personal gifts), that cannot be

purchased with appropriated funds, and awards, that may be funded by appropriated funds. Additionally, coins purchased with appropriated funds must not contain a specific commander's name on them.

Bottom Line. Commanders may use O&M funds to purchase unit coins for the purpose of recognizing outstanding contributions and not for mementos or creating goodwill with the local community.

Mixed Funding. For construction and A&E [Architecture and Engineer] contracts that cite both appropriated and NAF funds, write these contracts as appropriated fund contracts with all appropriated fund requirements. More information on mixed funding can be found in Air Force Manual 64-302, paragraph 4.2.1 or OPNAVINST [Chief of Naval Operations Instruction] 11010.20G. The OPNAVINST document is available at <http://doni.daps.dla.mil/OPNAV.aspx>.

Official Representation Funds (ORF).

Another funding option is the commander's ORF, which has its legal basis in 10 USC §127, *Emergency and Extraordinary Expenses*. Commanders have some discretion to use these funds without the normal statutory controls, but there are strict regulatory controls on their use. (Department of Defense Directive 7250.13, *Official Representation Funds*; Air Force Instruction [AFI] 65-603, *Official Representation Funds: Guidance and Procedures*; Army Regulation 37-47, *Representation Funds of the Secretary of the Army*; and Secretary of the Navy 7042.7, *Guidelines for Use of Official Representation Funds*) Basically, they may only be used for providing official courtesies to authorized guests, which may include foreign dignitaries. The courtesies may include gifts, mementos, or tokens. Therefore, this use of ORF for unit coins for foreign dignitaries is permissible. However, the strict prohibition against placing an individual's name on the coin also applies to using ORF to purchase the coin. In addition, ORF may not be used to provide gifts, mementos, or tokens to DoD personnel, so these coins could not be presented to *outstanding contributors* in the command. (Navy Support Instruction

[NAVSUPINST] 4200.85D, accessed within the Naval Logistics Library at <https://nll1.ahf.nmci.navy.mil/nll/getdata.cfm>.)

Combatant Commander Initiative Fund (CCIF). These funds are controlled by the Chairman of the Joint Chiefs of Staff, who is authorized to provide funds to the combatant commanders from O&M appropriations for emergencies and extraordinary expenses. CCIF funds are used to enhance warfighting capability, readiness, and sustainability of the forces.

Emergency and Extraordinary Expenses (E&EE). These funds may be used by Service secretaries for unanticipated emergencies or extraordinary expenses. They can be spent for unanticipated, short-notice construction, but typically are not. The amount appropriated for E&EE is fairly small, and if the cost exceeds \$500K the SecDef must notify appropriate committees of Congress.

Procurement Appropriation.



These funds are used for new obligations only for the 3 fiscal years designated in the appropriation act and identified in the Treasury Department's official symbols and titles for federal accounts. For example, the appropriation is available for obligation from 1 October 2008 through 30 September 2011, after which it expires for new obligations. When the appropriation expires, use it only to liquidate obligations and make authorized obligation adjustments for 5 more years under its original Treasury symbol. If you cannot obligate specific programs within the period for which funds were justified and approved, you must budget any additional funding required to complete them in future years as new requirements. See DoD Financial Management Regulation 7000.14-R, located at <http://www.defenselink.mil/comptroller/fmr/>).

Note: the rules on use of procurement funds are complicated, especially with regard to purchasing any kind of system. Whenever an item of equipment or a system has a unit cost of more than \$250K, legal counsel should be consulted to determine whether procurement funds may be used.

Overseas Humanitarian, Disaster, and Civic Aid (OHDACA). 

OHDACA funding is used to provide humanitarian, disaster, and civic aid to foreign countries. The use of OHDACA funds requires DoD to provide 15 days prior notice to Congress before transferring any defense articles or services to another nation or an international organization for use in United Nations peace-related operations or any other international peacekeeping, peace enforcement, or humanitarian assistance operation. For further guidance see: <http://www.dsca.osd.mil/programs/HA/OVERSEAS%20HUMANITARIAN%20DISASTER%20AND%20CIVIC%20AID.pdf>.

Humanitarian and Civic Assistance. Humanitarian and civic assistance is the Defense Department's term for relief and development activities that take place in the context of an overseas military exercise, training, or operation. Under the Humanitarian and Civic Assistance program, US military personnel participating in overseas deployments carry out humanitarian activities such as road and school construction, vaccination of children and animals, and well digging. Humanitarian and civic assistance programs are often executed with the involvement of host-country civilian and military personnel. US National Guard or reserve units are involved in many humanitarian and civic assistance activities. For additional information on humanitarian and civic assistance funds see: <http://www.ciponline.org/facts/hca.htm>.

Foreign Disaster Assistance. 

In an effort to prevent loss of life, the President may direct SecDef to provide disaster assistance (including transportation, supplies, services, and equipment) outside the US in response to man-made or natural disasters.

Commanders' Emergency Response Program (CERP).  

The CERP is designed to enable local commanders in Iraq and Afghanistan to respond to urgent humanitarian relief and reconstruction requirements

within their areas of responsibility by carrying out programs that will immediately assist the indigenous population. The CERP must be used to assist the Iraqi and Afghan people without direct or indirect benefit to US, coalition, or other supporting military personnel. (*DoD Financial Management Regulation, Volume 12, Chapter 27*). Table 2 illustrates where CERP may not be used.

For examples of authorized uses of CERP consult the DVD. 

CERP funds are typically used for projects that are small-scale, low-dollar, short-term, employment-oriented, emergency, and high visibility for the benefits of the Iraqi and Afghan people. CERP funds shall not be commingled with nonappropriated funds, and shall be separately executed, managed, recorded, and reported. The Army shall separately notify Office of the Under Secretary of Defense (Comptroller) and United States Central Command (USCENTCOM) J8 of all individual CERP projects of \$500K or greater during the normal monthly reporting process. Notification of these projects shall include a description of the project, an estimated length of completion, and justification of how the project supports the purpose of the CERP.

For more information on the CERP process consult the DVD. 

CERP projects are inherently high risk for corruption. Be vigilant!

Common contracting fraud schemes in a deployed environment:

Product substitution	Price fixing
Defective pricing	Cost mischarging
Fabrication of records	Bribes, gratuities and kickbacks
Government employee collusion	Individual fraud

Table 2. Where CERP May Not be Used

Chapter Acronyms

ADA – Antideficiency Act
A&E – Architecture and Engineer
AFI – Air Force Instruction
AOR – Area of Responsibility
CCIF – Combatant Commander Initiative Fund
CCO – Contingency Contracting Officer
CERP – Commanders’ Emergency Response Program
CLPSB – Combatant Commander Logistic Procurement Support Board
COR – Contracting Officer’s Representative
CUL – Common User Logistics
DA – Department of the Army
DAU – Defense Acquisition University
DCMA – Defense Contract Management Agency
DD – Department of Defense Form
DFARS – Defense Federal Acquisition Regulation Supplement
DLA – Defense Logistics Agency
DoD – Department of Defense
E&EE – Emergency and Extraordinary Expenses
EEIC – Element of Expense Identification Code
ESP – Emergency and Special Project
FAR – Federal Acquisition Regulation
FY – Fiscal Year
GCC – Geographic Combatant Commander
HNS – Host Nation Support
JARB – Joint Acquisition Review Board
JCSB – Joint Contracting Support Board
JFC – Joint Force Commander
JOA – Joint Operations Area
MILCON – Military Construction

MIPR – Military Interdepartmental Purchase Request
MWR – Morale, Welfare, and Recreation
NAF – Nonappropriated Funds
NAFI – Nonappropriated Funds Instrumentalities
NAVINST – Navy Support Instruction
OAR – Obligation Adjustment Reporting
O&M – Operations and Maintenance
OHDACA – Overseas Humanitarian, Disaster, and Civic Assistance
OPNAVINST – Chief of Naval Operations Instruction
OPR – Office of Primary Responsibility
ORF – Official Representation Funds
PR – Purchase Request
PWS – Performance Work Statement/Performance-based Work Statement
QASP—Quality Assurance Surveillance Plan
SecDef – Secretary of Defense
SDS – Service Delivery Summary
SOF – Special Operations Forces
SOO – Statement of Objectives
SOW – Statement of Work/Scope of Work
US – United States
USC – United States Code
USCENTCOM – United States Central Command

Chapter 3 Notes
Contingency Funding and Requirements Process

