

# Defense Contingency Contracting Handbook

Essential Tools and Information to Meet Contingency  
Contracting Needs for the 21st Century

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**Ms. Claire M. Grady**  
**Director**  
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## **Foreword**

During a deployment, contingency operation, or response to natural disasters, conditions can change in a hurry. One day you might be operating in a sustained operational environment, and the next you could be deployed to a bare base or supporting disaster relief operations in the field. The challenges you face might be very familiar or totally unprecedented. You might have little or no time to prepare, and you could have nothing but your own wits to guide you. The success of your mission might depend in part or completely on your ability to solve problems and think quickly.

Your job as a contingency contracting officer (CCO) is acquiring the items needed to support the mission. While doing this job, you should be aware that many foreign business cultures expect kickbacks, finder's fees, exchanges of gifts, or other gratuities that are illegal for U.S. personnel to provide or accept. You should always ensure that ethics regulations are closely observed. As a CCO, you must be vigilant in advising U.S. commanders, requirements personnel, and CCO-appointed representatives about practices that might violate standards of conduct. We have produced this *Defense Contingency Contracting Handbook* to help you successfully operate in a variety of mission environments. This handbook and the supplemental materials provide the essential information, tools, and training for you to meet the challenges you will face, regardless of the mission or environment.

## **Purpose**

This handbook was produced electronically for ease of access and periodic updates. The information herein, as well as the supplemental materials and links on the handbook website at [www.acq.osd.mil/dpap/ccap/cc/jcchb](http://www.acq.osd.mil/dpap/ccap/cc/jcchb), are crucial to your success and that of the overall mission. No one can remember verbatim all of the relevant training, and this handbook is designed to fill in the gaps. However, it is by no means a standalone document and must be read together with

the [Federal Acquisition Regulation \(FAR\)](#), [Defense Federal Acquisition Regulation Supplement \(DFARS\)](#), and [Joint Publication 4-10, Operational Contract Support](#). This handbook shall be used for training at home station, as a reference, and for training during deployment, to enable the CCO to be effective in any contracting environment.

### **Authority**

I have authorized the *Defense Contingency Contracting Handbook*. DPAP prepared this handbook with the assistance of the Defense Acquisition University and representatives from the United States Army, Navy, Air Force, and Defense Agencies. These organizations will help produce future updates.

Ms. Claire M. Grady  
Director  
Defense Procurement and Acquisition Policy

# Chapter 1

## Ethics, Standards of Conduct, and Fraud, Waste, and Abuse

### Key Points

- Ethics are vitally important when conducting business on behalf of the U.S. Government, particularly in contingency environments, which often involve high operations tempos and cultural differences.
- Always remember that your duty is to the government, Department of Defense (DoD), your customer, and the mission.
- One of your most important duties as a contracting officer is to educate the deployed force that you are the only person authorized to obligate the government.
- Work with the Office of Special Investigations (OSI), Criminal Investigation Division (CID), or legal counsel to inform the deployed force of the pitfalls of improper actions with contractors, risks of working in a contingency environment, and foreign business practices.
- Lack of acquisition reviews and pressure to get the mission accomplished at the start of contingency operations can lead to poor ethical decisions.
- You must strictly avoid any conflict of interest—or even the appearance of a conflict of interest. Immediately report any improper activities to legal counsel.
- In some countries, “paying it back” to a contingency contracting officer (CCO) is a common practice. Although giving gifts—cash, jewelry, or other expensive items—may be common there, accepting kickbacks is a serious violation that can result in a prison sentence.
- You may not accept any gift because of your official position, and you may not accept any gift from a contractor, potential contractor, or partnering contractor.
- Exceptions to the gift prohibition are very limited. You must document unavoidable violations and report them to legal counsel immediately. If you are ever in doubt, contact your legal advisor and notify your chain of command.
- DoD does not tolerate any form of human trafficking or forced labor by any of its contractors or contractor personnel.
- Fraud, waste, and abuse are serious matters that carry serious consequences. They hinder mission accomplishment and must be avoided. Maintain your integrity and do what’s right!

### Introduction

Maintaining high ethical standards and procurement integrity is vital for DoD contracting officers, and its importance cannot be understated. [Federal Acquisition Regulation \(FAR\) 3.101](#) reminds CCOs and other acquisition support personnel that “government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none.” Meeting this requirement can be challenging in a deployed environment, where varying cultural, political, and economic

conditions influence the expectations and business habits of local suppliers. In addition, the increased pressure to meet mission requirements expeditiously in contingency environments can lead to poor ethical decisions. CCOs need to remember that contingencies engender contracting challenges not often seen in normal domestic business operations. Recent operations involved contracting officers, contracting officer's representatives (CORs), contractors, and others who made unethical decisions that resulted in hefty fines and lengthy prison sentence. As a protector of government interests, you must always remember that your duty is to the government, DoD, and American taxpayer—and, ultimately, to the mission.

## **Competing Interests**

In some respects, government interests may be directly opposed to those of the contractor. Most suppliers in the contingency environment, particularly in locations where U.S. forces have an established presence, understand the ethical responsibilities and integrity-related restrictions placed on DoD contracting officers. However, this is not always the case. Some contractors want so badly to secure government contracts that they will offer CCOs gifts and kickbacks in an effort to obtain contract awards or preferential treatment. It may be commonplace in the respective host nation to offer these gratuities. CCOs must adhere to the following general principles of government service,<sup>1</sup> especially when conducting business in contingency environments:

### **General Principles of Government Service**

- You must place loyalty to the Constitution, the laws, and ethical principles above your private gain.
- You must not hold financial interests that conflict with your official duties.
- You must not engage in financial transactions using nonpublic information or permit the release of such information for any improper use.
- You must not solicit or accept any gift from any person or entity seeking official action from, or doing business with, DoD or its elements.
- You must put forth honest efforts in the performance of your duties.
- You must not knowingly make unauthorized commitments or promises that bind the government without authority.
- You must not use public office for private gain.
- You must act impartially, not giving preferential treatment to any person or entity.
- You must protect and conserve government property, using it only for authorized purposes.
- You must not seek outside employment or engage in outside activities that conflict with official duties.

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<sup>1</sup> [Executive Order 12731](#) establishes 14 general principles of government service, codified in [5 Code of Federal Regulations \(CFR\) 2635.101](#).

- You must disclose fraud, waste, abuse, and corruption to appropriate authorities.
- You must act in good faith in satisfying the obligations of citizenship, including paying just financial obligations and taxes.
- You must adhere to all laws that provide equal opportunity for interested parties regardless of race, color, religion, sex, national origin, age, or disability.
- You must endeavor to avoid any actions that create the appearance of unethical conduct from the perspective of a reasonable person.

**Real-World Example:** A group of contractors bid on a solicitation for services that had a \$250,000 independent government estimate (IGE). All offers were well over the IGE, on or around \$825,000, and within 10 percent of one another. While competition was adequate, the Air Force Office of Special Investigations and the contracting officer determined that the contractors were colluding, which is prohibited in federal acquisition.

**The Bottom Line:** As a CCO, you should always be aware of competing interests at play. Look out for corrupt sources of supply working only to enrich their company through deceptive means. Follow the reporting procedures in [FAR 3.303](#) if you suspect collusion or other antitrust violations.

## Conflict of Interest

One of the most basic ethical and legal principles is that CCOs may not take official action on a matter that could affect their personal interests, as noted in [18 United States Code \(U.S.C.\) 208](#). CCOs must remember that “the general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in government-contractor relationships” ([FAR 3.101-1](#)). This rule prohibits an employee from participating personally and substantially in an official capacity in any matter in which that employee—or any person whose interests are imputed (connected) to that employee—has a financial interest if that matter will directly and predictably affect that interest. In other words, the ethics rule requires the following:

- If you are officially involved in a matter that could affect your own financial interests, or those of someone with whom you are related or associated, you must not act on that matter in your official capacity.
- If your official involvement creates even the appearance of a conflict of interest to a reasonable person, you should remove yourself from considering that matter—or at a minimum, seek legal advice.
- Conflicts of interest represent one of the very few areas of the law where you do not have to be guilty to find yourself in trouble—even the appearance of guilt can create problems, so appearances count.
- When conflicts of interest arise, the conventional ways of handling them, with advice from an ethics counselor, include (1) disqualification or recusal (stepping aside from decisions that could affect your financial interests); (2) waivers of disqualification (continuing your involvement, but only with full disclosure to, and permission from, agency officials); and (3) divestiture (removing the financial interest that creates the conflict, which often involves selling the financial interest at issue).

- Annually, CCOs must complete [Office of Government Ethics \(OGE\) Form 450, Confidential Financial Disclosure Report](#) to report their financial interests and other interests outside the government. This helps identify conflicts of interest or potential conflicts. Upon arrival to the deployed location, CCOs should check local policy and procedures to determine whether resubmitting [OGE Form 450](#) is required.
- CCOs should familiarize themselves with [18 U.S.C. 207](#), which includes a provision that prevents a government employee from “switching sides” and representing another person or entity before the United States on the same matters on which they worked as a government employee.

### **Gift Prohibition**

Federal employees are prohibited from soliciting or accepting gifts from a prohibited source or because of the employee’s official position. A gift or gratuity may be anything of monetary value, including things such as discounts, favors, entertainment, hospitality, and loans ([5 CFR 2635.203\(b\)](#) and [FAR 3.101-2](#)). A prohibited source can be a company doing business or seeking to do business with the federal government, including contractors, partnering contractors, prospective contractors, employees, agents, and representatives ([5 CFR 2635.203\(d\)](#)). The rules prohibiting the acceptance of gifts have several exceptions. Those most applicable to CCOs are as follows:

- You may accept gifts from a prohibited source up to a total face value of \$50 per calendar year, but any gifts on a single occasion must not exceed \$20 in value. (See [5 CFR 2635.204\(a\)](#) for details and hypothetical scenarios.) Deployed commanders may implement additional restrictions.
- When in a foreign area, you “may accept food, refreshments, or entertainment in the course of a breakfast, luncheon, dinner, or other meeting or event” if all of the following conditions are met ([5 CFR 2635.204\(i\)\(1\)-\(4\)](#)):
  - The market value, converted to U.S. dollars, does not exceed the per diem rate for the foreign area, as specified in the [Department of State maximum per diem allowances for foreign areas](#).
  - Non–U.S. citizens or representatives of foreign governments or other foreign entities participate in the meeting or event.
  - Attendance at the meeting or event is part of the employee’s official duties.
  - The gift of meals, refreshments, or entertainment is from a person other than a foreign government.

### **Statutes**

The Anti-Kickback Act of 1986 “prohibits actual or attempted kickback payments or offers to provide kickbacks, which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind, to include obtaining or rewarding favorable treatment,” as specified in [41 U.S.C. Section 87](#). Moreover, the U.S.C., Uniform Code of Military Justice (UCMJ), and U.S. Department of Justice all specify, “Any person who

knowingly and willfully engages in conduct prohibited [by the Anti-Kickback Act] shall be imprisoned for not more than 10 years or shall be subject to a fine ... or both” ([41 U.S.C. 87](#), UCMJ Articles [92](#) and [134](#), and [U.S. Department of Justice Criminal Resource Manual](#)).

CCOs must never solicit gifts of any type, regardless of their nature or dollar value. They must understand that a bribe occurs when someone “directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official.” Giving or accepting a bribe is a crime punishable by a fine, imprisonment, or both ([18 U.S.C. Section 201](#) and UCMJ Articles [92](#) and [134](#)).

### **Reporting of Gifts**

If a gratuity is delivered to you (left on your desk or in your car, for example), you must make every attempt to return it. If a contractor insists on giving a gratuity, you must do one of the following:

- Attempt to persuade the contractor to take back the gratuity. Explain to the contractor that you cannot accept gratuities as a U.S. procurement official, and note the repercussions you could face for accepting the gratuity.
- Pay the fair market value of the item.
- As a last resort, if the contractor appears to be offended, accept the gratuity, contact legal counsel immediately, and take the following actions: (1) once it is accepted, safeguard the gratuity and, if necessary, notify the finance officer to put it in a safe and ask for a receipt; (2) turn the gratuity over to legal counsel; and (3) write a memorandum for the record (MFR) that includes the circumstances and approximate value of the item. In addition, mention in the MFR that legal advice was obtained.
- If the gratuity is perishable (such as food or flowers), give the gift to a charity or share it within the office.

If ever in doubt about what you should or should not accept, consult your organization’s legal office or ethics advisor and your chain of command.

### **Treatment of Violations**

CCOs have the option and authority to take action against a contractor for ethics violations. [FAR 3.204](#) grants the CCO the following options:

- Terminate the contractor’s right to proceed.
- Initiate debarment or suspension measures ([FAR subpart 9.4](#)).
- Assess exemplary damages, if the contract uses money appropriated to DoD.

### **Combating Trafficking in Persons**

Trafficking in persons (TIP) is a worldwide problem posing a transnational threat involving violations of basic human rights. CCOs might encounter situations in which

contractors engage in these types of behaviors. TIP is a leading source of profits for organized crime, together with drugs and weapons, generating billions of dollars. TIP affects virtually every country in the world. DoD has a zero tolerance policy toward TIP.

TIP is the use of force, fraud, or coercion to compel a person to provide labor or services or commercial sex. TIP involves exploitation of all types. It can include elements of recruiting, harboring, transportation, providing, or obtaining a person for the purpose of exploitation. The three most common forms of trafficking are labor trafficking, sex trafficking, and child soldiering.

Recent studies show the majority of human trafficking in the world takes the form of forced labor. Also known as involuntary servitude, forced labor may result when unscrupulous employers exploit workers made more vulnerable by high rates of unemployment, poverty, crime, discrimination, corruption, political conflict, or cultural acceptance of the practice.

TIP has specific implications for CCOs. [FAR subpart 22.17](#), [Defense Federal Acquisition Regulation Supplement \(DFARS\) subpart 222.17](#), and [DFARS Procedures, Guidance, and Information \(PGI\) 222.17](#) provide policy and guidance that apply to all contracts. If faced with a situation involving human trafficking, you should immediately inform the relevant chain of command and legal counsel. You should take immediate action to impose suitable remedies, including contract termination, on contractors that support or promote trafficking or that fail to monitor the conduct of their employees and subcontractors with regard to TIP.

The contractor is responsible for knowing its employees' activities and for complying with U.S. policy on combating trafficking in persons (CTIP). FAR 52.222-50, "[Combating Trafficking in Persons](#)," is a required provision in all solicitations and contracts. Also, pursuant to [DFARS PGI 222.1703](#), quality assurance surveillance plans (QASPs) should describe how the COR will monitor the contractor's performance regarding TIP such that noncompliance with [FAR 52.222-50](#) is brought to the immediate attention of the contracting officer. Violations can be reported on the DoD Hotline: <http://www.dodig.mil/hotline/> or 800-424-9098. Additional resources are available at the [DoD CTIP Program Office](#).

## Fraud

Fraud is the misrepresentation of a material fact with the intent to deceive. Fraud can be a single act or a combination of circumstances, can be the suppression of truth or the suggestion of what is false, or can occur by direct falsehood or through innuendo, speech, silence, word of mouth, or look or gesture.

Fraud includes the following:

- Deliberate omission of material facts
- False or misleading representations.

Fraud is a criminal offense. CCOs, contractors, and others have faced prison sentences, fines, restitution, and criminal and civil settlement agreements due to fraudulent actions supporting contingency contracting operations. CCOs must never succumb to fraud and are responsible for identifying and preventing it.

## **Identification of Fraud Indicators<sup>2</sup>**

Contracting officers play a vital role in the identification, prevention, and reporting of fraud. As noted, CCOs have an obligation to report any suspected violation or wrongdoing. They should train CORs, quality assurance evaluators (QAEs), field ordering officers (FOOs), and government-wide commercial purchase card holders on basic fraud awareness, identification, prevention, and reporting during their initial and refresher training classes. Training representatives on the frontlines enhances the government's ability to detect and prevent fraud.

### **Common Fraud Offenses**

Common fraud offenses include the following:

- Bribery, kickbacks, and gratuities
- Making or use of a false statement
- Falsifying a document or creating a false document
- Making or presenting a false claim
- Companies conducting business under several names
- Collusive bidding (bid rigging)
- Conflicts of interest
- Conspiracy to defraud
- Disclosure of proprietary data or source-selection-sensitive information
- Insufficient delivery of contracted items
- Intentional failure to meet specifications (for example, contractor use of one coat of paint instead of two, watered loads of concrete, inferior memory chips in computers, or inferior automobile replacement parts). Recognizing that not all failures to meet contract specifications constitute crimes, a CCO should seek legal counsel on any suspected contract fraud.

### **Common Fraud Schemes**

Common fraud schemes include the following:

- Rigged specifications, such as when the requesting organization tailors specifications to meet the qualifications of one company, supplier, or product
- Unvarying patterns in small purchases, such as when a buyer (1) awards contracts to favored vendors without soliciting competitive offers from additional firms or (2) enters fictitious competitive quotations and consistently awards to a favored vendor at inflated prices

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<sup>2</sup> Sources: Fraud Integrated Process Team and "DoD Fraud, Waste, and Abuse Hotline" trifold brochure.

- Splitting of large requirements, such as when contracting or requiring activity personnel divide requirements into small purchase orders to avoid the scrutiny required for contracts with a larger dollar value
- Duplicate payment, such as when a vendor submits the original voucher for payment while the purchaser, acting alone or in collusion with the vendor, collects for the same item from the cash fund
- Overstatement of shipment weights, such as when carriers defraud the government by artificially inflating the weight of a shipment by using methods such as (1) fuel bumping, or getting the tare weight with less than a full tank of gas, but the gross weight with a full tank; (2) double billing on small shipments (500 to 3,000 pounds), or getting two tare-weight tickets for the truck, picking up the two small shipments, getting two gross-weight tickets for the combined weight of both shipments, and then submitting both tickets for payment; and (3) false weights, either paying the weight master to provide a false weight ticket or maintaining a supply of blank tickets (usually with a handwritten rather than printed weight) or a stock of false weight tickets
- Counterfeit parts rather than genuine parts (a wide variety of counterfeit parts have been known to infiltrate the DoD supply chain, from tools to electronics)
- Emotional bribery, such as when a CCO and a vendor representative become friends and the vendor uses this friendship to unduly influence the CCO.

**Real-World Example:** A DoD contracting officer was sentenced to 60 months in prison for accepting money and items of value in return for being influenced in the award of DoD contracts. He also had to serve 3 years of supervised release following the prison term and pay a \$15,000 fine. In addition, he was ordered to forfeit Rolex watches, real estate, and other property purchased with the proceeds of the bribery scheme. He was deployed overseas in Afghanistan, Iraq, and Kuwait as a procuring contracting officer in 2004–07. His duties included reviewing bids submitted by contractors for Army contracts, recommending the award of Army contracts to specific contractors, and ultimately awarding those contracts. The contracting officer admitted that while deployed, he accepted illicit and secret bribe payments from foreign companies seeking to secure DoD contracts.<sup>3</sup>

**The Bottom Line:** CCOs should become familiar with the fraud indicators described in this handbook and identify areas around them that may be susceptible to public corruption. Be observant, make ethical choices, and maintain procurement integrity at all times. Federal investigators are ever-present in contingency environments. Work with local investigators to help mitigate fraud, waste, and abuse in the area of operations. Contact them about unethical behavior. A good practice is to invite federal investigators to provide ethics briefings to the contracting unit.

## Situations That Enable Fraud

Acts of fraud are enabled by many situations, such as the following:

- Failure to properly monitor contract performance

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<sup>3</sup> Federal Bureau of Investigation, “[Army Contracting Officer Sentenced to 60 Months in Prison for Bribery](#),” January 19, 2001.

- Lack of acquisition checks and balances, such as personnel who control both the ordering and receiving functions and can arrange for diversion of supplies or services for their own benefit
- Poorly defined specifications
- Poor physical security
- Receipt of items that cannot be traced to a valid requisition and thus could have been ordered for personal use or resale, with the resulting paperwork destroyed.

### **Common Fraud Indicators**

Common indicators of fraud include the following:

- Frequent complaints by users of supplies or services
- Government estimates and contract award prices that are consistently very close
- Contractor complaints of late payment by the agency
- An abnormal increase in consumption of fuel or supply items
- Failure to deobligate cancelled purchase orders
- An excessive number of photocopies of invoices in file, such as (1) approved invoices altered with correction fluid (which might indicate the invoice had been copied and the original destroyed in an attempt to manipulate the audit trail or commit fraud via the alteration), which require follow-up to secure external and internal copies for comparison; or (2) duplicate copies of supplier invoices, which could indicate the possibility of multiple payments of the same invoice and possibly diverted checks
- The sale or transfer of assets for apparently less than adequate consideration, which might indicate a sham transaction not based in economic reality that should be questioned (because businesses exist to make a profit).

Lead investigators and contacts for reporting fraud include the Air Force Office of Special Investigations (AFOSI), Naval Criminal Investigation Service (NCIS), U.S. Army Criminal Investigation Command (CID), Major Procurement Fraud Unit (MPFU), Defense Contract Audit Agency (DCAA), Defense Contract Management Agency (DCMA), Defense Criminal Investigative Service (DCIS), and U.S. Army Audit Agency (USAAA). You can contact these agencies at the following:

- AFOSI: <http://www.osi.andrews.af.mil/units/>
- NCIS: <http://www.ncis.navy.mil/locations.asp>
- CID: <http://www.cid.army.mil/>
- DCAA: <http://www.dcaa.mil/>
- DCMA: <http://www.dcma.mil/>
- DCIS: <http://www.dodig.mil>

- [USAAA: http://www.hqda.army.mil/aaaweb.pdf](http://www.hqda.army.mil/aaaweb.pdf)
- DoD Fraud, Waste, and Abuse Hotline
  - Telephone: 800-424-9098
  - E-mail: [hotline@dodig.mil](mailto:hotline@dodig.mil)
  - <http://www.dodig.mil/HOTLINE>.

CCOs must work closely with these investigative agencies to mitigate fraud, waste, and abuse. CCOs should ensure processes are in place for reporting concerns about unusual or inappropriate business actions.

### **Waste and Abuse**

CCOs have the responsibility to identify, and ultimately avoid, waste and abuse of resources and taxpayer dollars when conducting business on behalf of the U.S. Government. In 2011, a Commission on Wartime Contracting (COWC) report to Congress defined waste as follows:

- “Requirements that were excessive when established and/or not adjusted in a timely fashion;
- Poor performance by contractors that required costly rework;
- Ill-conceived projects that did not fit the cultural, political, and economic mores of the society they were meant to serve;
- Security and other costs that were not anticipated due to lack of proper planning;
- Questionable and unsupported payments to contractors that take years to reconcile; ineffective government oversight; and
- Losses through lack of competition.”<sup>4</sup>

According to the COWC, \$31 to \$60 billion in taxpayer dollars has been lost due to contract waste and fraud in the recent contingency operations in Iraq and Afghanistan. Although the report focused on these nations, waste and abuse can happen in any environment, especially contingency environments. Waste and abuse can be subjective and often more difficult to define than contract fraud, but CCOs should make every effort to assist in the prevention of, and ultimately the avoidance of, waste and abuse of federal funds and resources.

Common practices that result in waste and abuse include the following:

- Duplicative efforts to satisfy the same objective (in other words, contracting for something without proper planning to make sure a contract is not already in place for similar work)
- Lack of interagency coordination in the pre-award stage to determine whether external agencies have contracts in place that could be leveraged

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<sup>4</sup> COWC, “[How did the Commission derive its \\$31 billion to \\$60 billion estimate of waste?](#)” Information Sheet, September 2011.

- CORs not trained adequately for the contingency environment
- Unsustainable projects or programs
- Poor contract oversight and surveillance
- Lack of financial and requirements review boards.

Deployed commanders, CCOs, and acquisition support personnel should take every possible step to ensure waste and abuse are prevented in contingency environments. Waste and abuse, like fraud, undercut mission performance.

The following are some ways CCOs, deployed commanders, and acquisition support personnel can minimize waste and abuse:

- Establish joint requirements review boards (JRRBs) and other acquisition planning and oversight processes.
- Designate and assign properly trained CORs. Contracting officers should provide CCO-led training to clearly relay COR responsibilities.<sup>5</sup>
- Utilize competitive procedures to the maximum extent practicable.
- Make use of other methods of obtaining supplies and services outside the contingency contracting process where practicable, such as host nation support or in-house U.S. Government personnel.
- Establish interagency coordination procedures to avoid duplicative requirements.
- Ensure contract oversight is accomplished and projects are sustainable post-contract.
- Follow local vendor-vetting procedures to ensure responsible contractors receive contracts.

**Real-World Example:** In 2009, a DoD Inspector General report revealed that a contracting officer approved invoices for underutilized contractor personnel responsible for tactical-vehicle field maintenance at a joint base in Iraq. From September 2008 through August 2009, the actual utilization rate was only 10 to 15 percent of the requirement. The contractor alerted only low-level government officials that the actual labor utilization was far below that of the contractor personnel being paid. The government did not act on this information, and the COWC estimated that for a particular category of labor services, almost \$400 million paid to the contractor was wasted through underutilization.<sup>6</sup>

**The Bottom Line:** You, as a CCO, can make a difference in the prevention of waste. Act on fraud, waste, and abuse information expeditiously and elevate any concerns and findings up your chain of command. Also, ensure all contractors know who the CCO is for their contracts, so they can notify that individual (rather than low-level government officials) of any issues.

<sup>5</sup> CCOs should also direct CORs to the [Defense Contingency COR Handbook](#).

<sup>6</sup> CWOC, [Transforming Wartime Contracting: Controlling costs, reducing risks](#), Final Report to Congress, August 2011.

## Interactions with Contractor Employees

A personal services contract is characterized by the employer-employee relationship it creates between the government and contractor personnel. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by U.S. civil service laws. Obtaining personal services by contract (rather than by direct hire) circumvents those laws unless Congress has specifically authorized acquisition of such services by contract.

CCOs or CORs who interact daily with contractor employees must keep in mind that they are not government employees. The terms and conditions of the contract define the obligations of each party and the contractor's performance requirements. Understand that federal and DoD standards of conduct do not apply to contractor employees, so CCOs must not do the following:

- Interfere in contractor-employee relations.
- Allow work outside the scope of the performance work statement.
- Permit work before the obligation of funding.
- Establish specific hours of duty and grant or deny leave requests.

In addition, CCOs may *not* mandate any contractor personnel actions without specific contractual authority to do so, including the following:

- Telling contractors whom to hire or promote
- Reassigning contractor employees
- Disciplining contractor employees.

However, [DFARS 237.104](#) (referencing [10 U.S.C. 129b](#)) provides limited authority to acquire the personal services of expert consultants if the following conditions are met and documented in a determination and finding document:

- The duties are of a temporary or intermittent nature.
- Acquisition of the services is advantageous to the national defense.
- DoD personnel with necessary skills are not available.
- Excepted appointment cannot be obtained.
- A nonpersonal services contract is not practicable.
- Statutory authority, [5 U.S.C. 3109](#), and other legislation apply.
- Any other determination required by statute has been made.

Professional friendships between government and contractor employees are not prohibited; however, you must act impartially and show no favoritism or preferential treatment. Although professional and personal friendships are not prohibited, they may result in the *appearance* of a conflict of interest. Government employees cannot personally make recommendations or provide references for contractors except when furnishing past performance information to other agencies.

[Chapter 6](#) addresses other ethical considerations relevant to contract administration.

## Checks and Balances

The CCO needs a system to ensure checks and balances are part of the daily routine to fulfill obligations and prevent opportunities for fraudulent activity. As part of the checks and balances, CCOs should not perform the following duties unless no other option is available:

- **Order and receipt of goods.** It is common practice for the person who orders goods to also receive the goods. This is not the ideal scenario, but it is common in deployed locations. You should take steps to ensure that documentation (including customer signatures and contact information) is obtained once you turn over possession of received goods, and you should immediately add this documentation to the contract file.
- **Paying agent duties.** [DoD Financial Management Regulation \(FMR\) Volume 5, Chapter 33](#), restricts paying agents from acting as purchasing officers, in an effort to minimize conflicts of interest or the perception of conflicts of interest.
- **QAE and COR oversight.** The CCO oversees many QAE and COR actions. A reporting system is needed to ensure fair and proper evaluation and that the contract representative provides direction.

**Real-World Example:** The International Security Assistance Force commander's counterinsurgency contracting guidance (September 2010) and similar contracting guidance issued by the Department of State and the U.S. Agency for International Development (November 2010) confirmed the importance of contracting to the U.S. mission in Afghanistan. In particular, the guidance emphasizes the importance of contracting with Afghan contractors and purchasing Afghan goods—a policy collectively known as Afghan First—as a key element of the U.S. counterinsurgency strategy. However, in light of cases like that involving the host nation trucking contract, in which funds paid by contractors for the safe passage of U.S. military goods are widely believed to have been funneled to insurgents, the U.S. Government has launched a variety of efforts to prevent contracting abuse and decrease the likelihood of funds being diverted to terrorist or insurgent groups.<sup>7</sup>

**The Bottom Line:** Contracting officers should establish vendor-vetting procedures and be diligent in overseeing contracts and documenting contractor performance, both of which are critical in preventing abuse of federal funds and in ensuring funding does not reach the enemy. Contracting with the enemy is forbidden. It is your job as a CCO to ensure taxpayer dollars are protected and legally expended.

Many other checks and balances could be discussed, but the preceding examples illustrate common-sense scenarios. You have an obligation to protect the taxpayer, the warfighters, and yourself. You protect the taxpayer by using sound judgment when spending taxpayer dollars. You protect the warfighters by providing goods, services, and awards that meet their needs. You protect yourself by preserving the documentation necessary to back up your sound judgment and acquisitions.

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<sup>7</sup> Special Inspector General for Afghanistan Reconstruction, [Contracting with the Enemy: DoD Has Limited Assurance that Contractors with Links to Enemy Groups Are Identified and their Contracts Terminated](#), Audit 13-6, April 2013.

## Additional References

The following references were not mentioned in this chapter but offer additional information related to ethics; standards of conduct; and fraud, waste, and abuse:

- [DoD Instruction 1015.15](#), Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources
- 5 U.S.C. 7342, [Receipt and Disposition of Foreign Gifts and Decorations](#)
- 5 U.S.C. App 101, [Persons Required to File](#) (Financial Disclosure Requirements of Federal Personnel, Ethics in Government Act of 1978)
- 41 U.S.C. 2102, [Prohibitions on Disclosing and Obtaining Procurement Information](#).

# Chapter 2

## Authorities and Structure

### Key Points

- Contracting officers, pursuant to [Federal Acquisition Regulation \(FAR\) 1.602](#), are the only personnel authorized to enter into, administer, or terminate contracts and to make related determinations and findings.
- Contracting officers may bind the government only to the extent of the authority delegated to them. The appointing authority must give the contracting officer clear instructions in writing regarding the limits of their authority.
- Contracting officers must understand the difference between the command line of authority and the contracting line of authority.
- Contracting officials should work with the operational commander to establish a structure and system for requirements generation and approval as soon as possible when supporting contingency and humanitarian or peacekeeping operations.
- Contingency contracting officers (CCOs) should work to obtain and maintain deployed commander support through all phases of the contingency.
- Joint Publication (JP) 4-10, [Operational Contract Support](#), contains valuable information and guidance on joint contracting authorities, roles and responsibilities, and structure.
- Contingency contracting is a subset of operational contract support (OCS) as defined in JP 4-10. CCOs must be familiar with OCS and how contingency contracting fits into the OCS process.

### Introduction

Contingency contracting is the process of obtaining supplies, services, and construction via contracting means in support of contingency operations. It is a force multiplier and a significant component in achieving OCS in support of mission objectives. OCS is the overarching process that plans for and obtains supplies, services, and construction in support of combatant commander (CCDR)–directed operations through the related contract support integration, contracting support, and contractor management functions.

Contingency contracting is conducted by contracting officers with the legal authority to enter into, administer, modify, or terminate contracts under authorities granted to the Services, combat support agencies (CSAs), and functional combatant commands (CCMDs) under Title 10 of the United States Code (U.S.C.) in accordance with rules established in the FAR, Defense Federal Acquisition Regulation Supplement (DFARS), Service FAR supplements (48 Code of Federal Regulations (CFR)), and applicable contingency contracting acquisition instructions (AIs).

CCOs must know and understand their contracting authority and the organizational construct in which they are working. This chapter discusses CCO legal authorities and

distinguishes between command authority and contracting authority. It also offers an overview of the in-theater contracting structure, joint staff, organizational support options, a typical structure and staffing of a joint theater support contracting command (JTSCC), and other contracting roles and responsibilities.

### **Contracting Officers' Authority and Command Authority**

Contracting officers have the legal authority to enter into and make binding contracts, obligate funds, and make other commitments on behalf of the U.S. Government. Pursuant to [FAR 1.602](#), contracting officers are the only personnel authorized to enter into, administer, or terminate contracts. They may bind the government only to the extent of the authority delegated to them. Also, they are the only personnel with the authority to designate ordering officers and field ordering officers (FOOs). As a CCO, you are responsible for ensuring that FOOs understand their authority and limitations as delegated. (See the [Defense Contingency COR Handbook](#) for additional information about working with FOOs.)

In contrast to contracting officers' authority, command authority includes the authority and responsibility for effectively using available resources and for planning the employment, organization, direction, coordination, and control of military forces for the accomplishment of assigned missions. Combatant command (command authority) does not include the authority to make binding contracts or modify existing contracts for the government. Also, geographic combatant commands (GCCs) do not have their own contracting authority. However, command authority includes command direction on how contracting will be integrated in the planning stages of contingency and humanitarian or peacekeeping operations and how contracting will support the warfighter and mission as a force multiplier.

In accordance with [10 U.S.C. section 167](#), U.S. Special Operations Command (SOCOM) has its own budget and acquisition authority. While this authority is far reaching, SOCOM is not staffed to support contingency operations globally and instead relies on the Services for full OCS that includes contracting assistance for administrative and common logistical requirements. The CCO should be aware that some activities that support special operations involve unique considerations that may not be reflected within this handbook. For more information on special operations requirements, see JP 4-10, Operational Contract Support, and the Defense Acquisition University's [CON 334](#) course, Advanced Contingency Contracting. Additionally, contact the Theater Special Operations Command (TSOC) and/or Coalition Joint Operations Task Force (CJOTF) contracting activity for further information.

**Figure 2-1** shows the command and contracting lines of authority.



Figure 2-1. Lines of Authority

Commanders and other contracting support personnel at all levels must avoid improper command influence—or even the appearance of improper command influence—on the CCO and the acquisition process. Through proper channels, CCOs should relay the dangers of undue influence and how the commander can help prevent coercion or improper pressures on the CCO. The CCO must be able to independently exercise sound, unbiased business judgment and contract oversight in accomplishing the contracting mission.

**Real-World Example:** A COR on a new construction project was a high-ranking commander. The COR developed the requirements package and delivered it to the CCO. The COR then told the CCO to award the contract to the incumbent contractor in order to commence work sooner. When the CCO explained the contracting process, the COR tried to “pull rank” and told the CCO to follow orders. The COR obviously did not understand contracting authority and was trying to use rank to influence the contracting process. The CCO courteously removed himself from the situation and immediately contacted his supervisor. The chief of the contracting office (COCO) and CCO explained the difference between contracting authority and command authority to the COR.

**The Bottom Line:** You can expect to be unduly pressured at times. Be diplomatic and professional when dealing with undue influence, and elevate such issues up your chain of command to avoid delays in acquisition.

### Contracting Appointment Authority

Contracting appointment authority includes selecting, appointing, and terminating contracting officer warrants.<sup>8</sup> The senior contracting official (SCO) must appoint as contracting officers only personnel who are assigned to, attached to, or operating under the head of the contracting activity (HCA). The complexity and dollar value of the acquisitions are main

<sup>8</sup> [FAR 1.603](#) addresses these topics.

considerations in selecting and appointing a contracting officer. Other factors include the candidate's experience, training, education, business acumen, judgment, character, and reputation. Local AIs may provide more specific information on the selection, appointment and termination of appointments of contracting officers.

**Contracting officers.** The appointing authority must give contracting officers clear, written instructions on the limits of their authority. This information should be available to the public and agency personnel, displayed and identified on the face of appointment language.

**Contracting authority.** Contracting authority in the operational area flows from Congress to the President and then successively to the Secretary of Defense, Service or agency head, HCA, and SCO. This contracting authority is explicitly documented in the certificate of appointment, [Standard Form \(SF\) 1402](#).

**Selection and appointment of contracting officers.** The HCA appoints SCOs, by name and in writing, and delegates certain authorities to them, including the appointment of CCOs under their control. If the HCA allows further redelegation, SCOs also may delegate certain authorities to regional contracting centers (RCCs), including appointment of CCOs under the control of the RCC chief.<sup>9</sup>

**Contingency contracting.** CCOs support Continental United States (CONUS) and outside CONUS (OCONUS) contingencies, including major accidents, natural disasters, enemy attacks, and use of weapons of mass destruction. When CCOs are deployed to declared contingencies, the flow of contracting authority may change on the basis of the maturity of the location, theater of operation, and established command and control (C2).

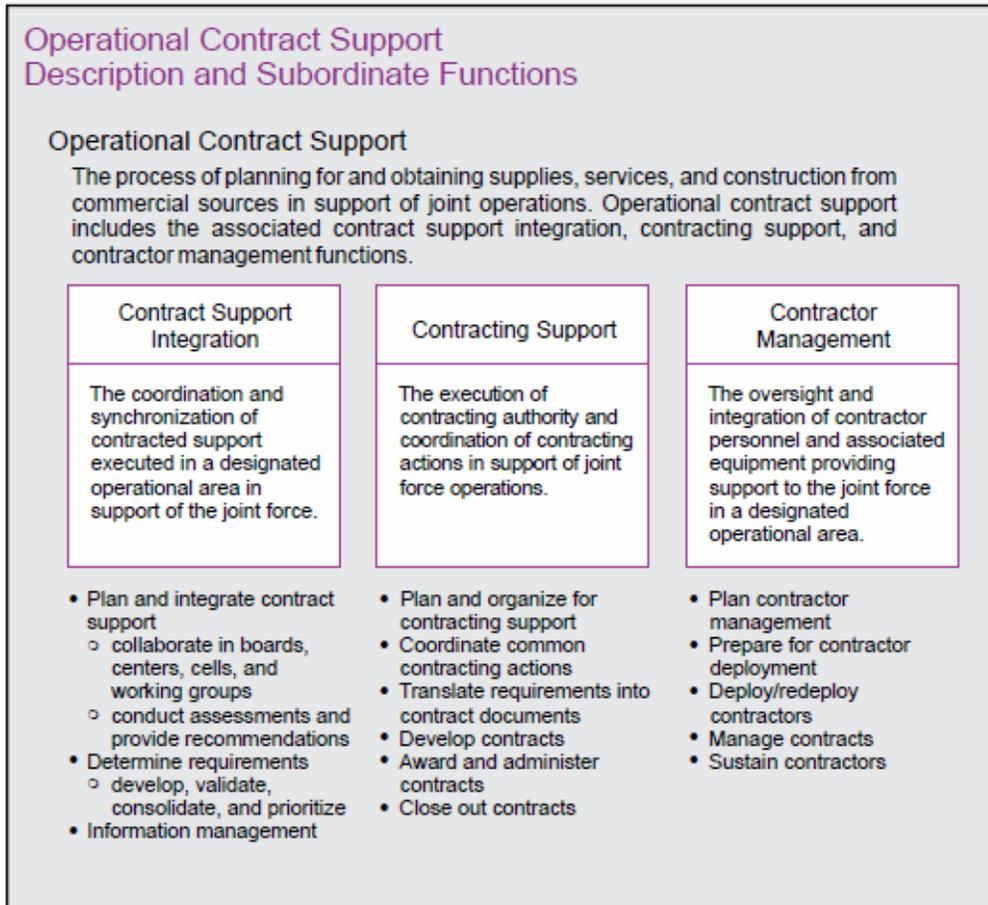
### **Contingency Contracting in Relation to OCS**

Contingency contracting is a subset of OCS. **Figure 2-2** shows the three tenets that make up OCS: contract support integration, contracting support, and contractor management. Contingency contracting primarily falls into the contracting support category, but other contracting functions, such as “manage contractors,” can fall into the remaining two categories.<sup>10</sup>

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<sup>9</sup> [FAR subpart 1.6](#) outlines warrant authority requirements.

<sup>10</sup> [JP 4-10](#), July 16, 2014.



*Figure 2-2. OCS Description and Subordinate Functions*

As shown in Figure 2-2, OCS includes a multitude of planning, integration, contract execution, and contractor management activities. Accordingly, commanders, contracting officers, contracting officer's representatives (CORs), OCS planners, finance officers, logistics personnel, and others are involved. Understanding their roles and responsibilities is important to all commands and staffs that may be involved with planning and managing OCS actions in support of joint operations.

Proper OCS synchronization among the collective joint staff enables the commander to leverage contracted support to create desired OCS-related effects and achieve operational and strategic objectives. Refer to [JP4-10 Figure III-3](#) which shows key OCS-related staff functions and responsibilities.<sup>11</sup>

### **Contingency Contracting Structure<sup>12</sup>**

The GCC, in coordination with the subordinate joint force commander (JFC) and considering the Service component's mission requirements and operational factors, determines the best contracting organizational structure to support joint operations, on the basis of the size,

<sup>11</sup> See Note 3.

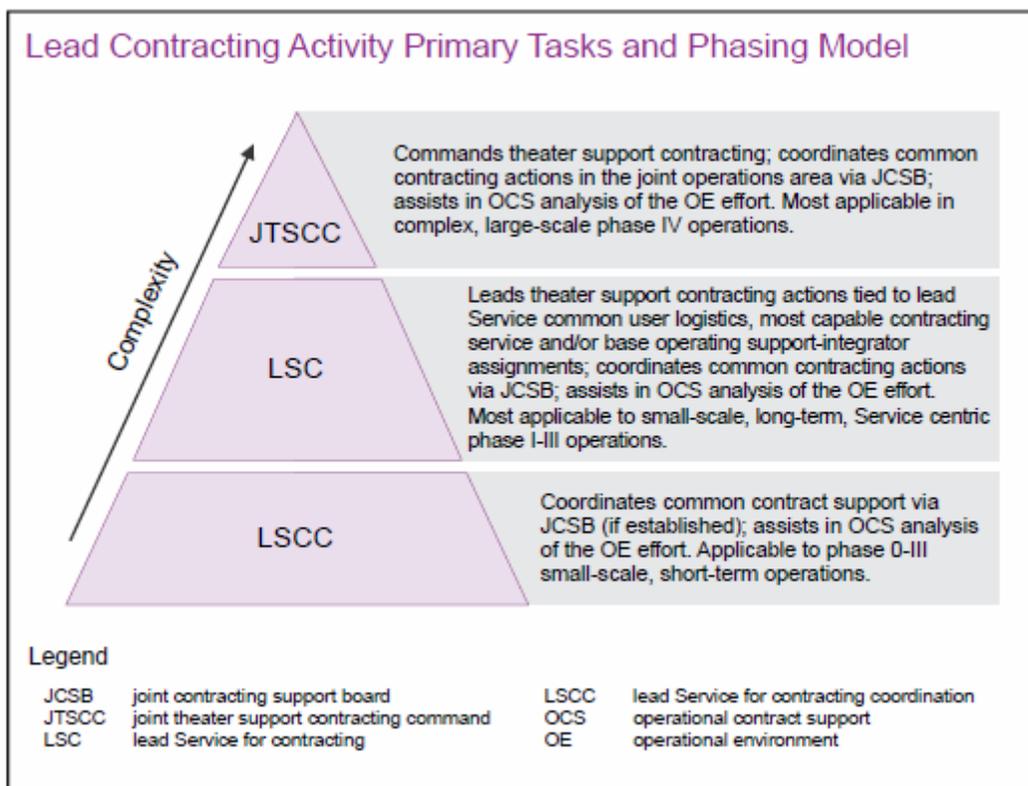
<sup>12</sup> See Note 3.

duration, and complexity of the contingency or humanitarian or peacekeeping operation. The GCC normally designates a lead Service for contracting (LSC), a lead Service for contracting coordination (LSCC), or a Joint Theater Support Contracting Command (JTSCC). In small-scale, single-Service operations, Service component commanders retain control of their own theater support contracting authority and organization.

CCOs should familiarize themselves with local AIs, standard operating procedures (SOPs), and other localized guidance for their area of responsibility (AOR). The Defense Procurement and Acquisition Policy (DPAP) Contingency Contracting website’s [International Operations page](#) lists GCC OCS websites, which may include additional OCS information for the numerous theaters of operation. CCOs need to understand the organizational contracting structures in which they will operate, given the current and future joint operational environment.

### Contracting In-Theater Organizational Structures

**Figure 2-3** shows the three primary contracting-related organizational options. The GCC normally designates an LSC, LSCC, or JTSCC, as described below, to integrate, execute, and manage OCS actions in support of joint operations (not necessary for minor, single-Service operations). (See JP 4-10 for specific information on these constructs, including their primary advantages.)



Source: [JP 4-10](#), July 16, 2014.

Figure 2-3. Lead Contracting Activity Primary Tasks and Phasing Model

**LSCC.** The GCC may designate a specific Service component as the LSCC. The LSCC coordinates common contract support and other common external support contract actions for a particular joint operations area (JOA) via the joint contracting support board (JCSB), if established, and assists in OCS analysis of the operational environment effort. The LSCC has only coordination authority (JCSB lead function). Under this organizational option, the Services retain C2 and contracting authority over their deployed theater support contracting organizations, but a designated lead Service coordinates common contracting actions through a JCSB or JCSB-like process. This entity best applies to small-scale, short-term operations. Under this construct, CCOs deployed from other than the lead Service are likely to receive their warrant from their own Service or agency component.

**LSC.** The GCC may designate a specific Service component as the LSC. In this organizational construct, the designated Service component contracting activity provides theater support contracting for specified common commodities and services for a particular geographical region, normally a JOA or major expeditionary base. The LSC has contracting authority over attached Service or CSA contracting augmentation personnel. Under this construct, CCOs deployed from other than the lead Service are likely to apply for and receive their warrant from the lead Service.

**JTSCC.** The JTSCC is a functionally focused joint task force (JTF) with C2, normally tactical control, and contracting authority over contracting personnel assigned or organizations attached within a designated operational area, normally a JOA. The JTSCC commands theater support contracting, coordinates common contracting actions in the joint operations area via the JCSB, and assists in OCS analysis of the operational environment effort. The JTSCC best applies to complex, large-scale operations and may require more oversight than the LSC option. Under this construct, the JTSCC is the warranting authority for all assigned CCOs. Operational conditions that drive the JTSCC option can include the following:

- An extremely complex operation that requires direct control of theater support contracting by the JFC
- A long-term mission
- A mission beyond the capability of a single Service
- A mission that requires significant coordination of contracting and civil-military aspects of the JFC campaign plan
- Significant numbers of different Service forces operating in the same area (or joint bases served by the same local vendor base).

Because GCCs do not have their own contracting authority, JTSCC authority flows from one of the Service components (normally the LSC or lead Service component responsible for common-user logistics) to the operational area.

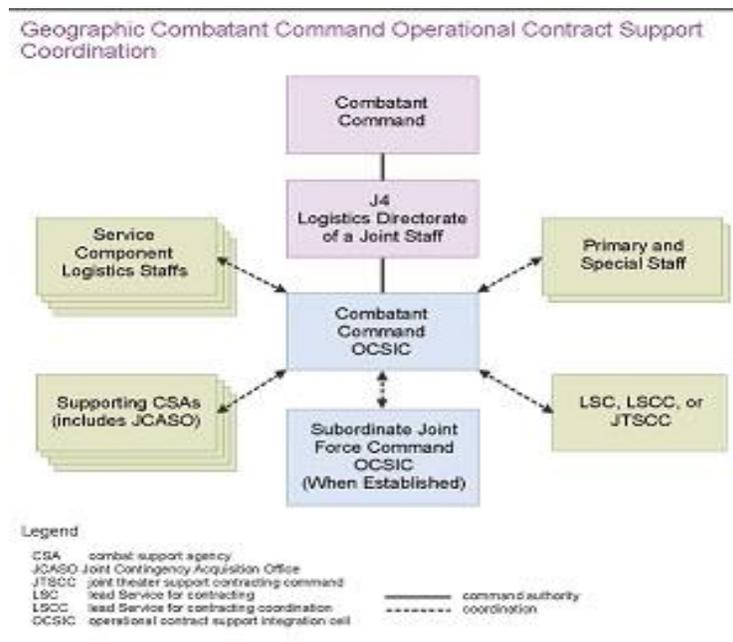
The JTSCC has no formally approved, set model. In general, a JTSCC is stood up only for major sustained operations. As seen in recent operations, such sustained operations can include mission requirements for major reconstruction and the transition to civil authority (in addition to the standard joint forces support mission requirements). Such major, long-term

stability operations may call for standing up a JTSCC with separate SCOs responsible for supporting joint forces, host nation forces or transition operations, and reconstruction work.

It is imperative for CCOs to become familiar with the different organizational structures above and the advantages of each in order to operate effectively and efficiently in theater. Refer to [JP 4-10, Appendix E, “Theater Support Contracting Organizational Options”](#) for additional information and graphical representations of a LSCC, LSC and JTSCC.

### Contracting Organizational Elements

**Operational Contract Support Integration Cell (OCSIC).** The OCSIC is a key organizational element in effective, efficient OCS planning and integration. Its primary task at the GCC and subordinate JFC levels is overseeing OCS planning and execution across the joint force. This includes OCS analysis of the phase 0/steady-state operational environment and the resulting planning and coordination of OCS actions. The OCSIC ensures relevant OCS common operating picture (COP) information flow between the subordinate JFCs’ primary and special staff members, the designated lead contracting activity, and other key supporting contracting activities, such as the Defense Logistics Agency (DLA), designated military construction agent (the U.S. Army Corps of Engineers, for example), and Service Civil Augmentation Program (CAP) offices. The OCSIC also ensures the contract support drawdown progresses according to plan. Figure 2-4 is an example of a GCC OCSIC placed in the J-4.



Source: [JP 4-10](#), July 16, 2014.

Figure 2-4. Geographic Combatant Command OCS Coordination

**RCCs.** The makeup of RCCs depends on the mission support requirement; a typical RCC consists of 10 to 25 warranted contracting officers, noncommissioned officers (NCOs), and Department of Defense (DoD) civilians. These RCCs are commonly aligned with a major land force (such as a division, corps, or Marine expeditionary force), headquarters, or air expeditionary wing or group. Command structure is vital to effective operation of the contracting office, while contracting expertise is vital to mission fulfillment. The two coexist and are not independent of each other but should be balanced with the skills of the assigned personnel.

**Regional contracting offices (RCOs).** RCOs are joint-staffed contracting organizations under the C2 of an RCC. RCOs normally are led by a contracting officer and composed of two to eight warranted contracting officers, NCOs, DoD civilians, and possibly even contractors. RCOs normally provide area support to specific forward operating bases and designated areas in the joint operations area.

### **Organizational Roles and Responsibilities**

**HCA.** The HCA (or SCO if authority is delegated) is the official designated by the agency head to have overall responsibility for managing the contracting activity. The HCA oversees contracting to ensure it complies with applicable statutes, regulations, and sound business practices.

**SCO.** The SCO is the official designated by a Service HCA to execute theater support contracting authority for a specific command or operational area. This includes establishing policies and procedures for developing, reviewing, and managing the contingency contracting process in theater. SCO responsibilities include the following:

- Managing administrative plans to control documents, maintain records, and conduct audit trails of procurement actions
- Overseeing and assessing the effectiveness of contracting programs
- Issuing warrants and determining delegated warrant authorities
- Participating in the joint requirements review board (JRRB)—primarily the SCO for forces support
- Chairing the JCSB as directed
- Managing and executing procurement management reviews
- Developing and providing oversight management control programs
- Conducting special reviews as required
- Managing the contract audit follow-up program
- Overseeing contract closeout
- Coordinating Defense Contract Audit Agency (DCAA) audit and financial advisory support
- Managing suspension and debarment actions

- Coordinating inter-command agreements that detail contracting support relationships among U.S. military Services
- Coordinating operational plans or requirements originating with the joint staff and providing host nation support, status of forces agreements, assistance-in-kind agreements, or any treaties for CCO review.

**RCC chief.** The RCC chief or COCO plans, directs, and supervises purchasing, contracting, administration, and closeout for supplies, services, and construction for assigned customers. The RCC chief also acts as the business advisor to the deployed commander. The RCC chief typically approves actions that exceed the CCO's authority and reviews internal and external contractual actions to ensure statutory, regulatory, and procedural compliance. The RCC chief develops and executes programs to ensure maximum competition.

Additional key responsibilities of the RCC chief include the following:

- Maintaining the highest degree of integrity and setting the tone for the rest of the office
- Knowing the mission (RCC mission brief) and linking contract effects to the mission
- Engaging with the customer
- Setting priorities for requirements (per internal and external customers)
- Educating the customer
- Serving as business advisor
- Developing the vendor base
- Encouraging contracting innovation while using sound business judgment
- Managing continuity of office
- Advising the deployed commander and units on business.

**CCO.**<sup>13</sup> The CCO acquires supplies and services needed by the warfighter to support essential missions in response to a crisis, contingency, or declaration of war.

The CCO has the following duties and responsibilities:

- Ensure that contract files are documented, prepared, maintained, and closed out.
- Oversee, regularly record, and report on contractor performance.
- Train and monitor the performance of CCO-appointed representatives, including FOOs and CORs.

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<sup>13</sup> For consistency, and given that a joint term does not exist, this handbook refers to a CCO as a contracting officer who supports contingency, humanitarian, or peacekeeping operations (as defined in [FAR 2.101](#)) and other emergency operations, including domestic emergencies, as described in [Chapter 9](#). However, CCMDs and Services may have their own titles for a contracting officer who supports these operations.

- Ensure that contingency contracting is accomplished in accordance with AOR policies and procedures.
- Develop an accountability plan, with the commander and appropriate supply office for contracted property (leased and purchased) brought into the theater via contract, in accordance with [DoD Instruction 5000.64](#).
- Ensure that contracts are competed among and—when appropriate and in compliance with local policy—awarded to local bidders to the fullest extent possible to support the development of the local economy while ensuring fair and reasonable prices.
- Establish contact with local or reachback representatives of the applicable contracting activity for contract administration support.
- Engage DCAA auditors to provide audit support in awarding contracts to responsible bidders that have acceptable business systems to deliver goods or services and hold sufficient capital to carry out contractual obligations.
- Abide by host nation, inter-Service, status of forces, or other authoritative agreements that apply within the appropriate theater of operation.
- Ensure that efforts are synchronized with commander and contingency mission guidance.

**COR.** CORs are appointed in writing and trained by a contracting officer (normally before contract award) in pre-award and post-award responsibilities, including requirements generation, preparation of acquisition documents to support contract actions, monitoring contract performance, and performing other duties specified by their appointment letter. The appointment letter, issued by the CCO before contract award, defines COR duties and emphasizes their responsibilities and the limitations of their authority. With their specialized knowledge about the needed supplies, services, or construction being procured, CORs are the eyes and ears of the CCO and are instrumental in ensuring that products and services provided to the end user comply with contractual requirements. A COR must be an employee—military or civilian—of the U.S. Government, a foreign government, or North Atlantic Treaty Association/Coalition partners. Contractor personnel cannot serve as CORs.<sup>14</sup> The unit commander is responsible for identifying and nominating CORs and must do so using the [Contracting Officer’s Representative Tracking \(CORT\) Tool](#).

### Additional References

The following references were not mentioned in this chapter but offer additional information related to authorities and structure:

- JP 3-10, [Joint Security Operations in Theater](#)
- DoDI 3020.41, [Operational Contract Support \(OCS\)](#)

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<sup>14</sup> See [DFARS 201.602-2](#) for more information on COR designation, assignment, and responsibilities.

- DoDI 1100.22, [Policy and Procedures for Determining Workforce Mix](#).

# Chapter 3

## Contingency Funding and Requirements Process

### Key Points

- Appropriated funds are subject to three basic fiscal constraints:
  - **Time.** Current fiscal year (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, obligating or expending funds in excess of a specific appropriation, accepting voluntary services, and employing personal services in excess of authorized amounts.
- CCOs should consult with their finance office to understand the available types of funding for the respective contingency and to validate that the proper funding is used for the purpose.
- CCOs must understand the different types of funding—for example, military construction (MILCON), operations and maintenance (O&M), and research, development, test, and evaluation (RDT&E)—and the fiscal constraints of each.
- The customer is responsible for requirements generation, from definition through approval; however, CCOs should expect to advise and assist in the development of requirements (for example, by drafting outcome-based requirements).
- The commander, or a designee, is responsible for the validation and approval of requirements.
- Joint requirements review boards (JRRBs) can greatly help in the validation and approval of requirements and ensuring contract actions meet the commander’s needs and the mission.
- A funded commitment document, such as a purchase request (PR), must include a complete description and the appropriate certified funds. A complete line of accounting (LOA) is critical in ensuring funds are certified and available for obligation.
- A CCO must understand the concept of “money as a weapon system” (MAAWS).

### Introduction

Securing adequate and proper funding to meet agency needs when supporting contingency and humanitarian or peacekeeping operations is vital to the mission. CCOs must understand the different funding types available for the operation, procedures to obtain certified funding, and constraints and limitations. They should quickly build a strong professional relationship with their finance office, ideally in the planning stage or at the onset of the operation, and should work to understand the specific program control procedures developed to accommodate the unique circumstances of the contingency. This effort is key in expeditious and efficient contracting support to the requiring activity.

This chapter discusses funding in contingency environments, including the different types of funding that the CCO may face and the constraints, limitations, and rules that the CCO must

understand and comply with. It also summarizes the PR and requirements development processes.

## **Fiscal Law Constraints**

Congress limits the authority of DoD and other executive agencies to use appropriated funds. Appropriated funds are subject to three basic fiscal constraints: time, purpose, and amount (detailed in the subsections that follow). Also, see the Financial Management Regulation (FMR) Volume 14, Chapter 2, “[Violations of the Antideficiency Act](#),” for more information on funding constraints.

### **Time**

The time constraint includes two major elements:

1. Appropriations have a specified period of availability.
2. Appropriations normally must be used for the needs that arise during the 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. O&M funds are available for 1 year, procurement funds for 3 years, and MILCON funds for 5 years. If funds are not obligated during their period of availability, they expire and are unavailable for new obligations (such as new contracts or changes outside the scope of an existing contract). Expired funds may be used to adjust existing obligations, such as paying for a price increase after an in-scope change to an existing contract, as noted in [1552 United States Code \(U.S.C.\)](#), but obligation adjustment reporting (OAR) approval is required before executing such contracting action.

**Bona fide needs rule.** This rule ([31 U.S.C. 1502\(a\)](#)) is an appropriations and fiscal law. It provides that the appropriations for one FY will be obligated only to meet a genuine need (a bona fide need) arising in (or sometimes before) the FY for that appropriation. This rule restricts the use of existing FY appropriated funds on requirements for the next FY. For example, annual funds appropriated for FY16 must be used to finance a legitimate FY16 need; the appropriation must not be used to fund a need that the customer will not genuinely have until FY17. The bona fide needs rule also justifies the use of previous-year funding when a contract has been terminated.

**Contracts crossing FYs.** The application of the bona fide needs rule may differ for supplies and services that cross FYs. [Defense Federal Acquisition Regulation Supplement \(DFARS\) 232.703-3](#) states that the CCO may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one FY and ends in the next, if the period of the contract awarded, option exercised, or order placed does not exceed one year ([10 U.S.C. 2410a](#)). Also, Federal Acquisition Regulation (FAR) [32.703-3](#) allows for a contract for nonseverable services to cross FYs when it calls for an end product that cannot feasibly be subdivided for separate performance in each FY (consultant services, for example).

**Services.** As briefly mentioned, the application of the bona fide needs rule differs when services cross FYs. The difference is based on whether the services are considered severable or non-severable and whether annual, multiple-year, or no-year funding is being used.

*Severable services* are continuing and recurring in nature, such as lawn maintenance, janitorial services, or security services. The benefits are realized when the services are provided, even if the contract is not performed to completion. Most base operations support services provided by a contractor supporting a deployed unit are considered severable. Services are considered severable if they can be separated into components that independently provide value to meet customer needs. According to [10 U.S.C. 2410a](#), funding is permitted for a contract (or other agreement) for severable services using an annual appropriation for a period of as much as 12 months when the contract is awarded, even if the period of performance begins in one FY and continues into a subsequent one. (See [DFARS 232.703-1](#).)

*Nonseverable services* represent a single undertaking that cannot feasibly be subdivided. If the services produce a single or unified outcome, product, or report, they are considered nonseverable. In most cases, contracts or orders for nonseverable services must be funded in full at the time of award with a then-current appropriation. Examples include studies culminating in the delivery of a final report, an engine overhaul, and the painting of a building. The lead-time exception can apply to the start date of service-type contracts.

**Supplies.** The bona fide need for supplies normally arises when the government actually uses the items. Thus, a command can use a currently available appropriation to procure computers needed and purchased in the current FY. Conversely, commands may not use current-year funds for computers not needed until the next FY. Year-end spending for computers that will be delivered within a reasonable time after the start of the new FY is proper so long as a current need is documented. There are lead-time and stock-level exceptions to the general rule governing the purchase of supplies.

**Real-World Example:** A commander wanted to buy a dozen computers for an anticipated morale, welfare, and recreation (MWR) facility. Work on the facility would not start until the following FY. The commander pressed the CCO to use current FY funds and begin the contracting process to obligate the funding by the September 30 FY obligation deadline. The commander told the CCO, "We could have Skype MWR facilities set up for next year, which will boost morale during the contingency operation. We have money for the computers now, so let's use it!"

**The Bottom Line:** This is a common violation by well-meaning personnel at the end of any given FY. This example does not meet the bona fide need rule because the computers would be purchased in one FY for a need that arises much later in the following FY.

**Construction.** Construction contracts obligated and awarded late in an FY (in September, for example) must have a performance commencement date within 90 days of award. (See [DoD FMR 7000.14-R, Volume 11A, Paragraph 020510](#).) For example, if a contract was awarded on September 15 with funds from that FY, performance must commence and invoices must be submitted by December 14 of the new FY. Typically, commencement of work can take the form of the contractor's ordering materials and delivering them to the government and the government's receiving/taking possession of materials that will remain in its possession rather

than being stored by contractors at their business locations, land surveys, groundbreaking activities, and other such functions. The key to defining and identifying performance of work is to include the elements of work on a progress schedule that will serve as the means of allocating a percentage of work performed and invoiced. The Defense Acquisition University (DAU) [CON 244](#) construction contracting course is a good source of additional details.

## Purpose

In [31 U.S.C. 1301\(a\)](#), commonly referred to as the Purpose Statute, the expenditure of funds on objects other than those specified in the appropriations is prohibited. Funds must be expended for the purpose established by Congress. A three-pronged test, known as the “Necessary Expense Doctrine,” states that expenditures must have the following characteristics:

- ***A logical relation to the appropriation.*** The expenditure must be for a particular statutory purpose or must be 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. For example, you may not fund a vehicle lease contract with MILCON funds.
- ***No prohibition by law.*** A rationale for the necessity of a certain expenditure to carry out the mission of the agency is not enough to overcome a statutory prohibition. In addition, agencies may presume that restrictions in an appropriations act are effective only for the FY covered unless the legislation clearly indicates that the restriction is permanent. For example, [Section 2842\(b\) of the FY14 National Defense Authorization Act](#) prohibits the use of appropriated funds to design, procure, prepare, install, or maintain an authorized Navy diver’s memorial.
- ***No provision otherwise.*** Regardless of a logical relationship between the appropriation and the expense, if another specific appropriation applies to the given purpose of the expense, 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 submarines under construction to move to deeper water, because the U.S. Army Corps of Engineers (USACE) is specifically funded and responsible for that function per 33 U.S.C. [401](#), [403](#), and [407](#). In addition, running out of money is not an excuse for using another appropriation. If two appropriations are reasonably valid for a specific expenditure, the agency may choose either appropriation. However, once that selection is made, the agency must continue using the chosen appropriation, to the exclusion of any other.

## Amount

Of paramount concern is ensuring that DoD complies with the [ADA](#), which prohibits obligating or expending federal funds before an appropriation (or in amounts that exceed the appropriation). It is a criminal act to knowingly enter into or authorize government contracts in the absence of sufficient government funds to pay for them. In addition, [31 U.S.C. 1342](#) prohibits accepting voluntary services and employing personal services that exceed authorized amounts. A knowing and willful violation of [31 U.S.C. 1341\(a\)](#) or [31 U.S.C. 1342](#) is punishable by a fine of up to \$5,000, 2 years in prison, or both. In addition, if someone violates this law, the matter must be investigated and a written report filed with Congress.

Common problems that trigger ADA violations include the following:

- Without statutory authority, obligating current-year funds (awarding a contract) for the bona fide need of a subsequent FY (such as when activities stockpile supply items in excess of those required to maintain normal inventory levels)
- Exceeding a statutory limit (such as 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 (such as improper funding of personal expenses).

**Real-World Example:** During Haiti relief operations, U.S. Army South (ARSOUTH) received humanitarian assistance funds to reimburse the O&M accounts of military units performing humanitarian relief activities. The Army reported that an ADA violation occurred when, on the basis of unsupported credit obligations, ARSOUTH exceeded its real allocation.

**The Bottom Line:** Even when supporting contingency, humanitarian, peacekeeping, or other emergency acquisitions, CCOs and supporting acquisition personnel must understand the importance of appropriation law. While CCOs must remain flexible and often must find creative ways to meet mission objectives, they must always do so legally. Sometimes the best intentions are still not legal. "Battlefield constraints" in a contingency environment are no excuse for sidestepping legal requirements. CCOs must use critical thinking skills to find legal ways to accomplish their mission.<sup>15</sup>

### **Purchase Requests and Requirements Development**

In contingency environments, the importance of establishing procedures for generating PRs and developing requirements cannot be overstated. Contracting personnel need to receive clearly written, comprehensive requirements documents, detailed enough to guarantee the right goods and services are obtained. This ensures that what is contracted for meets the commander's needs. Once a need is identified, securing adequate funding and generating contract requirements come next in the contingency contracting process. They can be accomplished simultaneously, or one at a time, but one thing is sure: both need to occur before contract award. The CCO should ensure the procedures are adequate and communicated to supporting personnel.

**Requirements from customers.** Two main questions arise in regard to customer requirements while supporting contingency and humanitarian/peacekeeping operations:

- How do customers submit requirements?
- What information is needed from customers to initiate the contracting process to obtain needed goods and services, such as a statement of work (SOW), a funding document, justification, and approval?

CCOs should ensure procedures and tools such as DAU's Acquisition Requirements Roadmap Tool (ARRT) Suite and the Contingency Acquisition Support Model (cASM), are in

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<sup>15</sup> Government Accountability Office, "Antideficiency Act Reports—Fiscal Year 2012," Number 12-12.

place to assist the requiring activity in submitting well-defined requirements in a timely fashion. Streamlined procedures may need to be developed at the onset of a contingency.

**Prioritization of requirements.** During the initial stages of a contingency, the CCO needs to know the deployed commander's priorities. CCOs may find themselves in the undesirable position of being the requestor, approving official, certifying officer, and filling other duties necessary to ensure rapid delivery of goods and services. (The CCO should maximize separation of duties to the maximum extent practicable to mitigate any perception of impropriety.) The CCO's first priority is normally to respond to basic life-support requirements (including water, security, food, and interpreter). The contracting office will be inundated with requests for goods and services from many different sources, and while most requests will be legitimate, they may not be a priority for the deployed commander. Knowing the deployed commander's priorities helps in prioritizing requirements. The mechanism for this prioritization may be a readiness center, a contingency support staff, or a requirements board in larger operations where senior base officials coordinate base recovery efforts. If not addressed, the prioritization process is performed by the responsible contracting office. CCOs and units should be prepared to have a prioritization system before the deployment.

**Defense Priorities and Allocation System.** Pursuant to [FAR 18.109](#), *Priorities and Allocations*, the Defense Priorities and Allocations System (DPAS) supports approved national defense, emergency preparedness, and energy programs and was established to facilitate rapid industrial mobilization in case of a national emergency. CCOs should be familiar with the DPAS requirements in [FAR 11.602](#) and [FAR 11.603](#). DPAS is a means to ensure timely availability of industrial resources to meet national defense requirements and a way to provide a framework for rapidly expanding industrial resources in a national emergency. The Department of Commerce (DOC) DPAS regulation embodied in [15 CFR 700](#) contains a Special Priorities Assistance process for resolving disputes between the government and industry and provides a mechanism for optimizing delivery of urgently needed material during wartime or contingency operations.<sup>16</sup>

**Purchase requests.** PRs are initiated by the requiring activity. They are used to initiate a specific contract action and briefly explain what is to be procured by the CCO. PRs also give the CCO the required authorizations that confirm certified funding is available for the respective contract action. They can be verbal requests at the initial stages of a contingency, but once operations stabilize they should take the form of a formal document from the requiring activity. For verbal requests, the CCO should get an adequate description of the requirement from the COR and give the customer a suspense date to provide backup paperwork that can be filed with the contract. Regardless of the type of PR instrument, generic descriptions should be avoided because they can cause confusion and slow down the contract process.

**PR documents.** PR documents, also known as "requisition documents," are critical to the contracting process. Without a properly prepared PR, an authorized purchase can be extremely difficult to make. Also, PRs provide visibility into the pre-award phase, so CCOs should ensure they are filed properly. During initial deployment, any format may be used for submission of a PR. However, the following requirements must be fulfilled, even with a verbal request:

- Approval of the request by the deployed commander or a designee

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<sup>16</sup> DoD, "[Title I: Defense Priorities and Allocations System](#)," *Manufacturing and Industrial Base Policy*.

- Certification of funds through the appropriate function and a fund cite in the PR.
- Enough funds in the PR to cover the purchase.

During sustainment operations, an appropriate requisition document must be used to request supplies, services, or construction. Each organization receives additional guidance and procedures after the deployed commander, in conjunction with the CCO, establishes them.

PR funding documents can be submitted on many forms, including the following:

- Air Force (AF) Form 9, “[Request for Purchase](#)”
- Department of the Army (DA) Form 3953, “[Purchase Request and Commitment](#)”
- Navy (NAVSUP) Form 1250-2, “Non-NSN Requisition”
- Defense Department (DD) Form 448, “[Military Interdepartmental Purchase Request \(MIPR\)](#),” and DD Form 448-2, “[Acceptance of MIPR](#)”
- Air Force Form 4009, “Government Purchase Card Fund Cite Authorization”
- DD Form 1149 “[Requisition and Invoice/Shipping Document](#)”
- DD Form 1391, “[FY\\_Military Construction Project Data](#)” (used by DoD to submit requirements and justifications in support of funding requests for military construction to Congress)
- Navy Comptroller (NAVCOMPT) Form 2276, “[Request for Contractual Procurement](#).”

**Electronic business tools for requirements generation.** The [Contingency Acquisition Support Model \(cASM\)](#) is a web-based tool used to plan, generate, staff for approval, and track acquisition-ready requirements packages. This tool enables users to get requirements on contract more efficiently. cASM’s output produces a complete, approved, and electronically signed requirements package (RP). Electronic business (e-business) tools like cASM can greatly assist the CCO and supporting acquisition personnel in fulfilling contracting process requirements through automation and the quick transfer of data. The [Contingency Business Environment \(CBE\) Guidebook](#) contains additional information on e-business tools and how to get them operational in theater.

**Lines of approval.** The first step in any requirement is identifying the activity that will serve as the office of primary responsibility (OPR) for the need and determining whether that office has a mechanism to support the requirement. For example, if the requirement is for a vehicle, the CCO would contact the transportation OPR to confirm whether it can fill the need. If not, the CCO would prepare the appropriate documentation to locally lease or purchase the item needed for the requirement. In most cases, a senior official is designated as the approving authority for all local PRs. The deployment commander may retain this authority or delegate it to the staff, depending primarily on the size of the deployed force. Either way, the CCO must obtain approval from the designated approval authority for any item bought locally.

**Personnel who can submit purchase requests.** The CCO should consult the chief of the contracting office (COCO) and the deployed commander to identify supported units, identify

acquisition support personnel, and establish the local lines of authority for requestors and approving officials. In most cases, the deputy chief of staff designates (in writing) specific personnel from each functional area to approve PRs for that area and to submit PRs to contracting.

**Personnel who can obligate the government.** When spending public funds, DoD must substantiate its requirements and strictly control its contracting function. Officially appointed people with express written authority to bind the U.S. government to a contractual agreement accomplish this control. A warranted contracting officer is the only agent who represents the government in this capacity. Pursuant to [FAR 1.603-3\(b\)](#) and [FAR 13.201\(a\)](#), agency heads are encouraged to delegate micro-purchase authority. This delegated authority to non-contracting officers (field ordering officers, for example) must be in accordance with agency procedures.

This unique personal responsibility means that supervisors, commanders, and others with administrative control over CCOs must avoid directing CCOs to take action that might violate laws or contracting regulations (see Chapters [2](#) and [5](#)).

**Purchase descriptions and statements of work.** As noted, all PRs must include a good description of the required services or supplies and a certification of funding. Descriptions can include a text summary, part numbers, specifications, pictures of the items, or other administrative details that enable a CCO to prepare and issue a solicitation and a develop a contract document (see the “Requiring Activity Checklist” in the Critical Checklists appendix for additional information on PR inclusion requirements). For services and construction requirements, the CCO needs a complete SOW, statement of objectives (SOO), or performance work statement (PWS), as well as the name of the contracting officer’s representative (COR) who will provide technical support. A sufficient SOW defines all non-specification requirements for contractor efforts, either directly or with the use of specific cited documents. The SOW becomes part of the contract, so it must clearly portray the expectations of the customer. When appropriate, the SOW should be performance or outcome based. This type of SOW is also referred to as a PWS because it clearly describes specific and objective terms with measurable outcomes. It should tell the contractor the work that needs to be accomplished, not how to accomplish it. This approach makes it easier for the contractor to understand the document and easier for the CCO to point out deficiencies if performance does not meet specified standards. See [FAR subpart 37.6](#) for more information on performance-based acquisition.

Contracting activities and their customers should consider technical needs and business strategies when defining and specifying requirements. CCOs must ensure that specifications reflect only those supplies, services, or construction needed to meet the mission requirements and that the SOW, SOO, or PWS do not unnecessarily restrict competition or innovation. In addition, commercial item descriptions should be used as often as practicable, and functional specifications should be used instead of detailed design specifications when reasonable.

**Describing agency needs.** Identifying and describing needs serve two purposes: (1) enable the CCO to determine what is needed by the end user and where in the marketplace the supplies or services reside and (2) allow the vendor to submit an accurate response and ultimately deliver the right supplies or perform the proper services. Adequate descriptions ensure customers receive what they need at the best value possible.

As noted, the customer's item descriptions, specifications, and technical requirements always should be clear and concise and detailed enough to make agency needs fully understood. Ambiguous descriptions delay contracting actions and can lead to the purchase of the wrong product or service. PR descriptions and other supporting documentation should note 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, you should *not* confuse minimum requirements with minimum descriptive data—and should include as much information as possible to describe exactly what you need. The principal features of a purchase description can be determined by answering the following questions:

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

**Requirements Packages.** For certain acquisitions, additional documentation is submitted alongside the PR as required by the CCO.

**Construction contracts.** For construction projects, required documentation includes the following:

- An independent government cost estimate (IGCE), from a party other than the vendor or contractor
- Drawings and specifications, which must be submitted to the CCO for review before the contract is finalized
- An itemized cost breakdown supporting liquidated damages
- A schedule of material submittals
- A progress schedule
- Accurate quantities, conversions, and units of issue
- A government-furnished property schedule
- A government estimate of completion costs and a bidding schedule.

For MILCON projects, the CCO must understand the requirements development and design process when anticipating a design-build acquisition strategy. During the requirements development process, DD Form 1391, "[FY \\_\\_\\_ Military Construction Project Data](#)," describes the

user's facility needs. During the design process, the SOW describes the work to be performed by the contractor, and the contractor's design drawings show different stages of project design.<sup>17</sup>

**Service contracts.** For services requests, required documentation includes the following:

- A complete SOW, SOO, or PWS
- An IGCE
- Contact information for the COR and quality assurance evaluator (QAE) providing the technical support
- A quality assurance surveillance plan (QASP) that explains how the agency will survey, observe, test, sample, evaluate, and document the contractor's performance in meeting the SOW requirements.

CCOs should work with the requirements generating officials, often the COR, training them on development of the required documentation where needed. CCOs should ensure the SOW, SOO, or PWS include a detailed, performance-oriented description of what is expected of the contractor to meet government needs, not how the work should be accomplished. The SOW and the QASP should be developed concurrently and should include specific information on the evaluation of performance standards specified in the contract. When a service contract is anticipated inside the United States, the contracting officer must ensure the requirements in [FAR part 22](#) are followed regarding the application of labor laws, specifically the Service Contract Act.

**COR nomination package.** As the Deputy Secretary of Defense memorandum, "[Monitoring Contract Performance in Contracts for Services](#)," August 22, 2008, states, "where practicable, the requiring activity shall provide the COR nomination package to the contracting office as part of the purchase request." The unit commander is responsible for identifying and nominating CORs and does so using the [Contracting Officer's Representative Tracking \(CORT\) Tool](#). A sample nomination form can be found at the DAU Acquisition Community Connection's [COR Nomination Letter](#) webpage.

CORs must be designated and authorized in writing by the contracting officer as noted in [FAR 2.101](#) and should be trained in accordance with agency procedures before contract award. They also must meet the minimum DoD certification standards specified in the Under Secretary of Defense for Acquisition, Technology and Logistics, USD(AT&L), memorandum, "[DoD Standard for Certification of Contracting Officer's Representatives \(CORs\) for Service Acquisitions](#)," March 29, 2010. The certification standards define minimum COR competencies, experience, and training according to the nature and complexity of the requirement and contract performance risk.<sup>18</sup>

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<sup>17</sup> Inspector General, DoD, [Guidance Needed to Prevent Military Construction Projects from Exceeding the Approved Scope of Work](#), DODIG-2012-057, February 27, 2012.

<sup>18</sup> USD(AT&L), [DoD Standard for Certification of Contracting Officer's Representatives \(COR\) for Service Acquisitions](#), March 29, 2010.

Follow the procedures at DFARS Procedures, Guidance, and Information (PGI) [201.602-2](#) regarding designation, assignment, and responsibilities of a COR.

**Finance and contracting relationship.** The relationship between contracting and finance personnel is extremely important, especially in contingency environments. An established relationship helps the CCO obtain the funding and supporting documentation needed to initiate the contracting process. Close coordination between the CCO and the budget and certifying officials is necessary to identify actual obligations and expenditures so that the funding data can be accurately reported to both the contracting and finance offices.

**Forensic accounting.** CCOs should keep in mind that forensic accounting is conducted during contingency and humanitarian or peacekeeping operations. Under this investigative accounting, experts from agencies like the Defense Contract Audit Agency, Air Force Office of Special Investigation, Army Criminal Investigation Command, and Naval Criminal Investigative Service may review the accounting practices in a combat zone to ensure illegal activities are not taking place and fiscal law requirements are being met. Some reviews may take place weeks to months after the CCO obligated the funds, or even years later, when the CCO has already redeployed or returned home. Forensic accounting professionals examine and track financial transactions to determine whether the funding ends up in the wrong hands or is being used improperly to make purchases outside the funds' original (and legally authorized) purpose.

### **OCS-Related Boards**

As briefly mentioned, commanders in the field must prioritize requirements at some point during the operation. Ideally, contracting leadership, such as the COCO, briefs deployed commanders on how contracting can support the mission, that contracting as a function is the commander's business,<sup>19</sup> and that it is a key component in implementing operational contract support (OCS). This is critical during initial operations. Part of the commander's responsibility is to set the priority for purchases. This is vital in the initial stages and continues throughout a contingency. Depending on the requirement and the source of funding, the appropriate commander must approve and prioritize the PRs.

**OCS planning and acquisition boards.** OCS planning and the use of contracting-related boards help ensure proper acquisition planning, contracting integration, and prioritization of customer requirements before arrival at contracting. The use of OCS boards, cells, and working groups bolsters OCS planning efforts and the prioritization of requirements. Acquisition boards also help ensure senior leadership is part of the contracting process, overall planning, and decision-making. Joint Publication (JP) 4-10, [Operational Contract Support](#), details OCS planning and coordination boards, cells, and working groups. The CCO should become familiar with this publication before and during deployment.

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<sup>19</sup> See the independent reports of the [Gansler Commission](#) and the [Commission on Wartime Contracting](#); the Secretary of Defense memorandum "Strategic and Operational Planning for Operational Contract Support and Workforce Mix," January 24, 2011; and Commander of International Security Assistance Force (COMISAF)/Commander, U.S. Forces–Afghanistan (USFOR-A), memorandum, "[COMISAF's Counterinsurgency \(COIN\) Contracting Guidance](#)," September 8, 2010.

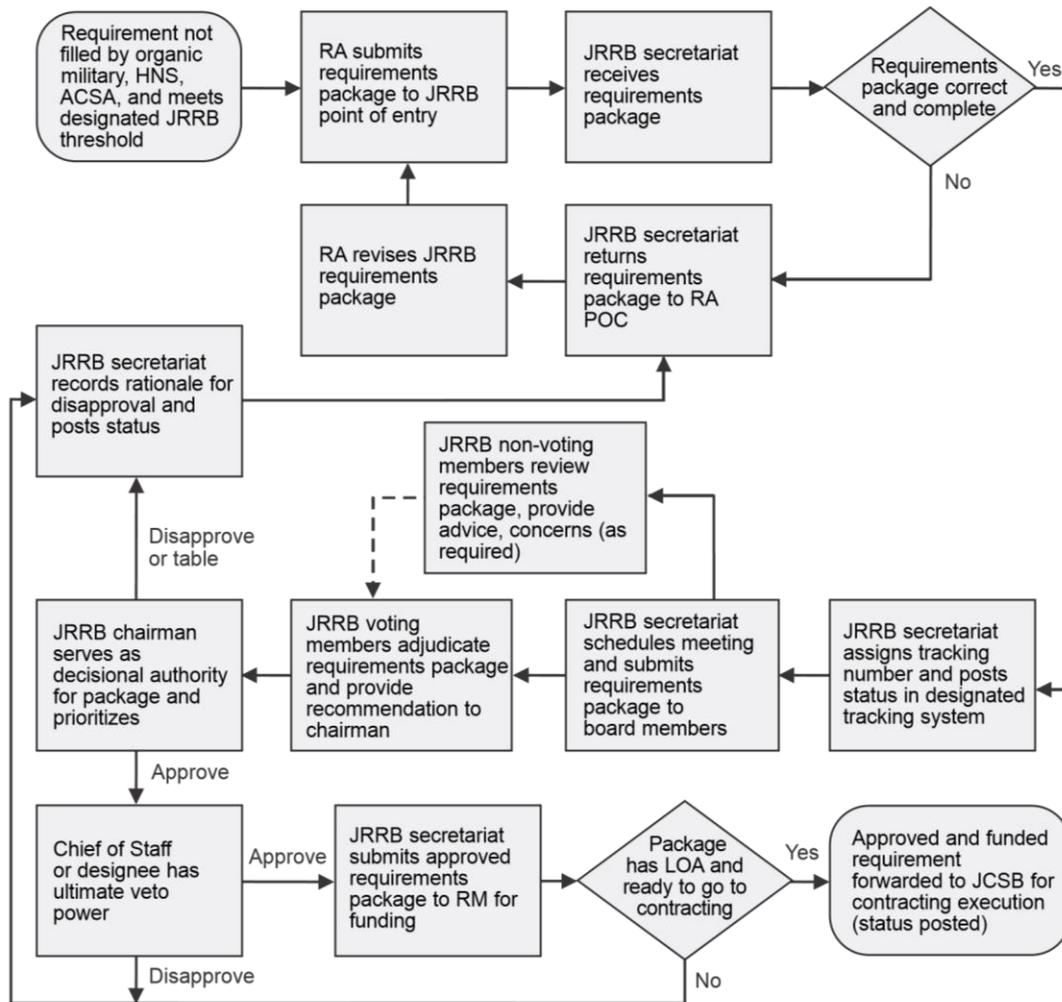
The JRRB, Joint Contracting Support Board (JCSB), and Combatant Commander Logistics Procurement Support Board (CLPSB) ensure OCS actions—including any operational-specific theater business clearance (TBC) directives—are properly synchronized across the joint force.<sup>20</sup> Like other related joint force command-level boards, they can be held as needed, meet simultaneously, or be merged.

**JRRB.** The joint task force or sub-unified commander establishes the JRRB to review, validate, approve, and prioritize contract support requirements.<sup>21</sup> The JRRB can also assist by providing acquisition strategy ideas and discussing potential areas where contract consolidation makes sense. The JRRB is an operations-focused (rather than contracting-focused) board designed to control mission-critical, high-dollar contract requests and ensure other sources of support (such as organic military, multinational, and host nation) have been properly considered before commercial support solutions. The JRRB should be established for sustained operations, but it also provides value during short-term joint operations when needed. In some operations, service components may establish their own requirements review boards. These service component boards are often used to ensure service requirements packages are properly prepared, justified, and prioritized before being submitted to the JRRB. The JRRB also serves as the subordinate joint forces command's (JFC's) venue to assess possible operational impacts of specific contract support requests and, when necessary, provide operationally focused guidance on acquisition strategy to the JCSB. For example, relaying that a required service is a potential high-security threat and providing direction to avoid the use of local national (LN) companies for the respective requirement. **Figure 3-1** illustrates the JRRB process.

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<sup>20</sup> [JP 4-10](#).

<sup>21</sup> [JP 1-02](#) defines the JRRB, which replaces the joint acquisition review board.



Legend

ACSA	acquisition and cross-servicing agreement	LOA	line of accounting
HNS	host-nation support	POC	point of contact
JCSB	joint contracting support board	RA	requiring activity
JRRB	joint requirements review board	RM	resource management

Source: [JP 4-10](#).

Figure 3-1. JRRB Process

**JCSB.** The JCSB is the primary mechanism for coordinating and deconflicting common contracting actions between theater and external support contracting activities executing or delivering contracted support in the operational area—normally a joint operational area (JOA). It is also the major mechanism for implementing JRRB guidance in determining the appropriate contracting mechanism—theater support, Air Force Contract Augmentation Program (AFCAP) or Logistics Civil Augmentation Program (LOGCAP) task orders, and other common external contracts—for major, common services. The JCSB has two goals: (1) ensure contract support actions support the JFC’s OCS-related command guidance (such as maximizing the use of LNF firms and reducing costs) and (2) maximize contracting capabilities of the JOA while minimizing

the competition for limited vendor capabilities. The JCSB proposes, and the combatant commander establishes, specific theater contracting business requirements, usually in the form of TBC. This is vital in the success of OCS when integrating contracted support and especially in the management of contractors deploying into and out of a theater of operations. The JCSB can recommend and determine where contract requirements can be consolidated and can act as a forum for contract support activities to share information, coordinate acquisition strategies, and combine like requirements. These functions are key in fulfilling the contracting process in a JOA, an environment rife with high-priority and duplicative requirements. For example, the JCSB may work on specific contract transition actions, such as moving the requirements off a cost-type CAP task order to fixed-price individual theater support contracts or other types of contracts as appropriate.

**CLPSB.** The CLPSB ensures that contracting and other related logistics efforts are properly coordinated across the entire area of responsibility (AOR). Normally chaired by a geographic combatant command (GCC) J4 (Logistics) representative, it includes representatives from each service component command, combat support agency, and other military and U.S. government agencies or organizations concerned with contracting matters. Although 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 focuses more on coordinating daily contracting support in a specific JOA.

**Table 3-1** shows the differing functions of the three boards.

CLPSB	JRRB	JCSB
Level: combatant commander	Level: subordinate joint force commander	Level: subordinate joint force commander
Focuses on general responsibilities and AOR-wide issues related to contracting support.	Focuses on the requirements priorities and sources of support.	Focuses on <i>how</i> contracting will procure support within the joint operations area.
<ul style="list-style-type: none"> <li>◆ Identifies contracting and other related issues that may require joint staff office of primary responsibility, J4, or Office of the Secretary of Defense action.</li> <li>◆ Establishes AOR-wide contracting and contractor management policies and procedures.</li> <li>◆ Determines theater support contracting organizational structure.</li> <li>◆ Coordinates with U.S. embassies and host nations on contracting support issues and actions (host nation support, status of forces agreements, visa requirements, and others).</li> </ul>	<ul style="list-style-type: none"> <li>◆ Determines the common user logistics support that needs to be controlled.</li> <li>◆ Reviews requirements.</li> <li>◆ Recommends priority of support requirements.</li> <li>◆ Recommends an acquisition method for meeting the requirements (such as organic military, host nation support, multinational support, or contracted support).</li> </ul>	<ul style="list-style-type: none"> <li>◆ Eliminates duplication of effort by coordinating theater support and external support contracting actions.</li> <li>◆ Determines appropriate external or theater support contracting mechanism.</li> <li>◆ Shares information—sources of supply, prices, and contractor performance—across contracting activities.</li> <li>◆ Provides guidance on consolidation of purchases.</li> <li>◆ Establishes theater support contracting procedures.</li> <li>◆ Prescribes payment procedures consistent with currency control requirements and international agreement.</li> </ul>

<ul style="list-style-type: none"> <li>◆ Coordinates with DoD and the military departments on managing the risk of potential loss of contract support in accordance with DoD Instruction 1100.22, "<a href="#">Manpower Mix Instruction</a>."</li> </ul>		<ul style="list-style-type: none"> <li>◆ Establishes contract visibility procedures and reports.</li> <li>◆ Coordinates the enforcement of contractor management policies for external support and theater support contracts.</li> </ul>
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Table 3-1. Contracting-Related Boards

### Types of Funding

In any contingency, CCOs should consult with the relevant finance office to ensure the proper use of each type of funding under their control. If non-DoD funding is provided (such as by the Department of State), CCOs should consult with the head of the contracting activity (HCA) and finance office to ensure it is properly used. Rules apply to each type of funding to prevent misuse. The following sections describe typical types of funding used during contingencies.

**MILCON.** This appropriation is available for 5 years. Congress appropriates funds (under [10 U.S.C.](#)) for MILCON of permanent improvements using separate 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.”<sup>22</sup> Military installation has a very broad definition and may include foreign real estate under the operational control of the U.S. military. Construction projects that exceed \$1.5 million in value require specific approval by Congress. Also, in contingencies, the Secretary of Defense has the authority and flexibility—in the interest of national security and national interests—to authorize MILCON not otherwise authorized by law.<sup>23</sup>

**O&M.** This appropriation is available for 1 year. O&M funds, appropriated under [10 U.S.C.](#), are used for base operations support, expenses incurred during training exercises, deployments, minor construction projects, and the operation and maintenance of installations. Commands may use O&M appropriations for all necessary and incidental operational expenses.

O&M—not MILCON—funds pay for maintenance and repair work. “Maintenance” is recurring work to prevent deterioration (to preserve or maintain a facility so that it is usable for its designated purpose). “Repair” is the restoration of a facility so that it can be used for its designated purpose by overhauling, reprocessing, or replacing parts or materials that have deteriorated because of the elements (or wear and tear) and have not been corrected through maintenance. 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 the separation of construction from maintenance or repair is not possible. In the latter case, all work is funded as construction.

<sup>22</sup> [10 U.S.C. 2801\(a\)](#).

<sup>23</sup> [10 U.S.C. 2804](#).

Special authorities allow for limited use of O&M for MILCON projects:

- 10 U.S.C. 2805(c) “[Unspecified minor construction](#)”
- Contingency construction authority (CCA) under Section 2808 of the National Defense Authorization Act (NDAA) of 2004, as most recently amended in Section 2806 of [NDAA FY15](#)
- Section 1206 of NDAA 2006 (which will become codified as 10 U.S.C. 2282, pursuant to section 1205 of [NDAA FY15](#))
- MILCON under counter-narcotics authority section 1004.

**Real-World Example:** A contracting officer awarded a construction contract for a new \$11 million building using O&M funds. Although the building would benefit supporting mission objectives, the O&M funds were improperly used in this case. O&M funds are normally only used for minor construction projects up to \$750,000. MILCON funds should have been used for the \$11 million major construction project. By the time the error was discovered, the contract was 70 percent complete, and the contracting officer had to terminate the contract for convenience to stop the misuse of funds. The termination for convenience (T4C) action resulted in a contractor claim. This became an administrative nightmare for all parties. The Armed Services Board of Contract Appeals finally resolved the matter—5 years after the projected completion date!

**The Bottom Line:** No matter how high the operations tempo, you must comply with fiscal law—do it right the first time, rather than redoing it and replaying it in court.

**[RDT&E](#).** This appropriation is available for 2 years. RDT&E funds are used to finance research and development (R&D) of equipment, systems, material, and computer application software and the corresponding test and evaluation (T&E). These funds are generally not utilized to support contingency operations.

**Nonappropriated funds (NAF).** NAF are monies derived from sources other than congressional appropriations and commissary surcharge funds, primarily from the sale of goods and services to DoD military and civilian personnel and their family members. They are used to support or provide MWR programs.<sup>24</sup> A CCO does not often come across NAF in contingency environments.

**NAF issues.** Any available NAF can be used to purchase plaques, mementos, coins, organizational mugs, and T-shirts (items that may not in general be purchased with appropriated funds). However, coins, mementos, and unauthorized personal gifts pose a recurring challenge. If the coins are merely mementos to build good will with local officials, they cannot be purchased with O&M funds. Commanders and CCOs must differentiate between tokens of appreciation and mementos (personal gifts), which cannot be purchased with appropriated funds, and awards that may be funded by appropriated funds. In addition, coins purchased with appropriated funds must not contain the name of a specific commander. The bottom line is that commanders may use O&M funds to purchase unit coins to recognize outstanding contributions, but not to give as mementos or to create goodwill with the local community.

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<sup>24</sup> [DoD Directive 4105.67](#).

**Mixed funding.** Construction and architecture-engineer (A-E) contracts that cite both appropriated funds and NAF should be written as appropriated-fund contracts, with all appropriated-fund requirements. Additional information on mixed funding is available in [Air Force Manual 64-302](#) (paragraph 4.2.1) and in [Office of the Chief of Naval Operations Instruction \(OPNAVINST\) 11010.20G](#). For information on A-E contracting and associated funding, see the USACE [Proficiency Guide for Construction, Architect-Engineer \(A-E\) & Contingency Contracting](#).

**Official representation funds.** Another funding option is the commander's official representation funds (ORF), with a legal basis in 10 U.S.C. 127, "[Emergency and extraordinary expenses](#)." Commanders have some discretion to use these funds without the normal statutory controls, but strict regulatory controls govern their use, as noted in DoD Directive 7250.13, [Official Representation Funds](#); Air Force Instruction (AFI) 65-603, [Official Representation Funds: Guidance and Procedures](#); Army Regulation (AR) 37-47, [Official Representation Funds of the Secretary of the Army](#); and Secretary of the Navy Instruction (SECNAVINST) 7042.7, [Guidelines for Use of Official Representation Funds](#). Basically, ORF may be used only to provide official courtesies to authorized guests, which may include foreign dignitaries. The courtesies may include gifts, mementos, or tokens. The same rules for coins normally apply.

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

**Emergency and extraordinary expenses (E&EE).** Service secretaries may use E&EE funds for unanticipated emergencies or extraordinary expenses. Such funds can be expended on unanticipated, short-notice construction, but typically are not. The amount appropriated for E&EE is fairly small, and if the project cost exceeds \$500,000, the Secretary of Defense must notify the appropriate congressional committees.

**Procurement appropriation.** Procurement appropriations are used to finance non-construction investment items, such as the data, factory training, support equipment, and interim contractor support needed for procurement of a new weapon system.<sup>25</sup> These funds are used for new obligations, but only for the three FYs 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 October 1, 2016, through September 30, 2017, but then expires for new obligations. When the appropriation expires, it may be used only to liquidate obligations and make authorized obligation adjustments for an additional 5 years under its original Treasury symbol. If the CCO cannot obligate specific programs in the period for which funds were justified and approved, the CCO must budget any additional funding required to complete them in future years under new requirements, as explained in [DoD FMR 7000.14-R](#).

The rules on using procurement funds are complicated, especially regarding the purchase of any kind of system. When an item of equipment or a system has a unit cost of more than \$250,000, legal counsel should be consulted to determine whether procurement funds may be

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<sup>25</sup> [www.dap.dau.mil](http://www.dap.dau.mil).

used. O&M funds should not fill the role of procurement funds, so legal counsel is needed to ensure their appropriate use.

**Overseas humanitarian, disaster, and civic aid (OHDACA) appropriation.** Funding for OHDACA is used to provide such relief to foreign countries. The OHDACA appropriation supports the Secretary of Defense and combatant commanders' security cooperation strategies to build indigenous capabilities and cooperative relationships with allies, friends, civil society, and potential partners. The appropriation provides low-cost, nonobtrusive but highly effective activities that help partners help themselves, improves access to areas not otherwise available to U.S. forces, and build collaborative relationships with the host nation's civil society.<sup>26</sup> The use of OHDACA funds requires DoD to provide 15 days advance 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 not authorized by law ([10 U.S.C. 2561](#)). Additional guidance on OHDACA is available at the Defense Security Cooperation Agency's [Humanitarian Assistance, Disaster Relief, and Mine Action webpage](#).

**Humanitarian and civic assistance.** "Humanitarian and civic assistance" (HCA) is the DoD term for relief and development activities that take place in the context of an overseas military exercise, training event, or operation. Under the HCA program, U.S. military personnel participating in overseas deployments also carry out humanitarian activities such as road and school construction, vaccination of children and animals, and well digging. HCA programs often are executed with the assistance of host-country civilian and military personnel. U.S. National Guard or reserve units also perform many HCA activities. [DoD Instruction 2205.02](#), June 23, 2014, provides information on HCA activities and funding.

**Foreign disaster assistance.** To prevent the loss of life, the President may direct the Secretary of Defense to provide disaster assistance (including transportation, supplies, services, and equipment) outside the United States in response to human-made or natural disasters.

**Commanders' Emergency Response Program (CERP).** CERP was designed to enable local commanders to respond to urgent humanitarian relief and reconstruction requirements in their AORs and, where authorized by Congress, by implementing programs that immediately help the indigenous population. See [DoD FMR 7000.14-R](#), Volume 12, Chapter 27, CERP, for specific and current information on CERP and use of the funds.

## Funding Procedures

**Bulk funding.** If a bulk-funded PR is issued to the contracting office, that office is responsible for maintaining a record of obligations and the remaining balance of funds. Under the bulk-funding concept and system, 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. Strict control of the bulk funds is necessary to preclude the misuse of funds.

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<sup>26</sup> <http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2011>.

**Request and authority to cite funds.** When approved by the accounting and finance officer or official designee, the bulk-funding document certifies that funds are available and records them as commitments in the accounting records. If a bulk-funding document is issued to the contracting organization, the CCO is responsible for keeping a record of obligations and the remaining balance of funds (on the reverse of the form). Because the accounting classifications for supplies and services differ, separate bulk-funding documents are required for each.

**Other funding procedures.** The CCO or the customer should contact the budget office and other sources, such as the Defense Logistics Agency and the embassy, for applicable procedures to fund other types of purchases, such as the following:

- Vehicle rentals for recreational activities (such as trips and tours) and recreational supplies (such as balls and bats) that will be used for MWR or NAF (after consulting with the NAF fund manager, if available)
- Medical supplies and services (such as medicine, doctor services, and hospitalization)
- Food (such as fresh fruits, vegetables, and bread) that require a subsistence fund cite
- Legal claims payable to the host government, foreign companies and citizens, and other U.S. government agencies
- Equipment, services, and facilities provided by the host government, normally under a host-nation support (HNS) agreement or an acquisition cross-servicing agreement (ACSA) that contains the methods of payment (or, if no HNS or ACSA is in effect with the country in which the CCO is deployed, the disbursing office, which is still the organization the CCO contacts to determine the method or procedures for payment)<sup>27</sup>
- 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 before processing by the contracting office under peacetime conditions. During contingencies, the issue of funding becomes more complicated 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 U.S. dollars. Conversion rates at the time of fund certification should be noted.

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<sup>27</sup> ACSAs generally may extend for an indefinite period because they do not require the obligation of funds. CCOs should check with their J4 representative as to whether ACSAs are available that may meet supply/service needs in the operational area before entering the contract process. The ACSA Global Automated Tracking and Reporting System (AGATRS) is the system of record to automate the ACSA process and track and provide visibility worldwide. The [Department of Defense Contingency Business Environment Guidebook](#) details the use of AGATRS.

**Fund cites.** Accounting classification codes, also known as lines of accounting or as fund cites, are required on all PRs. **Table 3-2** shoes an example fund cite.

**Air Force**

**Fund cite:** 57 0 3400 310 67A2 231010 01 59290 503300 ESP 8Z

**Agency 57:** Air Force (17 is the Navy and Marine Corps; 21 is the Army, and 97 is DoD)

**FY 0:** FY10 funds

**Type of appropriation 3400:** Active duty O&M, where 3400 is the Air Force

**Emergency and Special Program Code 8Z:** Tracks expenses for specific contingency operations. DoD assigns the alphanumeric code. All contingency expenses should include a contingency-specific code.

**Army**

**Fund cite:** 021 202010D13 A76CC 131096QLOG 6100.260B ARMY GFEBSDR  
76CCMSE S21001

**Agency 21:** ARMY (17 is the Navy and Marine Corps; 96 is the Corp of Engineers, and 97 is DoD)

**Type of appropriation 2020:** (Active Duty O&M, where 2020 is Army)

**1:** Years of Availability

**0:** Supplemental Appropriation ID

**D:** Fund Group Designator

**13** Fiscal year of issue

*Table 3-2. How to Read a Fund Cite*

For additional information on fund cites, see the [Fiscal Law Deskbook](#) published by the Judge Advocate General's Legal Center and School.

### **Additional References**

The following references were not mentioned in this chapter but offer additional information related to the contingency funding and requirements process:

- 10 U.S.C. 2241, [Availability of Appropriations for Certain Purposes](#)
- 31 U.S.C. 1501(a), [Documentary Evidence Requirement for Government Obligations](#)
- 31 U.S.C. 1517(a), [Prohibited Obligations and Expenditures](#).



# Chapter 4

## Planning and Guidance

### Key Points

- Planning and preparation are critical to effective contracting support.
- Contracting is an integral part of counterinsurgency (COIN) operations and planning.
- Contingency contracting officers (CCOs) can influence tactical and operational outcomes.
- CCOs must be familiar with the four phases of contracting support.
- CCOs must always be prepared to forward-deploy if the mission changes.
- CCOs must get as much information as possible about the country or domestic disaster area before deployment.
- Part of a CCO's job is to locate sources and become familiar with local conditions, security, and force protection matters.
- The CCO should submit an after action report (AAR) in accordance with agency redeployment procedures, especially during initial contingency operations and bare base build-ups.
- CCOs should coordinate with their contingency operational planners, the applicable contracting activity, and the Defense Logistics Agency (DLA) about redeployments and the drawdown of equipment, personnel, and services.
- CCOs must be familiar with the statutes, directives, treaties, and agreements that affect contracting operations when they are deployed.
- CCOs should seek guidance from the host nation support (HNS) team, command logistics (J4), and U.S. embassy.
- CCOs should familiarize themselves with in-place HN agreements and acquisition cross-servicing agreements (ACSAs), if applicable, before deployment.

### Introduction

Joint force commanders (JFCs) use the joint operation planning process (JOPP) in developing plans for the employment of military power to shape events, meet contingencies, and respond to unforeseen crises. The JOPP is an adaptive, collaborative process that gives actionable direction to commanders and their staffs across multiple echelons of command. The JOPP includes all activities that must be accomplished to plan for an anticipated operation, including mobilization, deployment, employment, and sustainment of forces. These activities are critical to the success of operational contract support (OCS) in contingency environments.

OCS, as defined in Department of Defense Instruction (DoDI) 3020.41, [\*Operational Contract Support\*](#), is the ability to orchestrate and synchronize the provision of integrated contract support and management of contractor personnel supporting the joint force in a designated operational area. OCS planners determine where contract support can assist mission

strategy and objectives. The contingency contracting support phases covered in this chapter closely align with those in the JOPP. Contract support plans should include the capabilities CCOs can deliver as part of an advanced echelon (ADVON) team and during build-up and sustained operations. ADVON teams should have experienced CCOs who can locate sources and become familiar with local conditions before the arrival of additional forces. Planning also should consider adequate security, given the need for disbursing officer support during initial operations.

The JOPP helps commanders, their staffs, and the CCO organize and prioritize their planning activities, share a common understanding of the mission and the commander's intent, and develop effective plans, orders, and contracts. Additional information on the JOPP and OCS planning is available in [Joint Publication \(JP\) 4-10, \*Operational Contract Support\*](#), and [JP 5-0, \*Joint Operation Planning\*](#).

This chapter discusses types of contingencies, predeployment planning, and the contingency contracting phases of deployment. It also addresses how to plug in downrange and offers relevant information from doctrine regarding support phases, types of support, contract organizations, and capabilities and support agencies.

### **Types of Contingencies and Emergency Acquisitions**

Contingency contracting provides supplies, services, and construction to support mission objectives during contingency operations and other emergency operations as determined by the President or the Congress. Emergency acquisitions support several different types of operations:

- Contingency operations as defined in Federal Acquisition Regulation (FAR) [2.101](#)
- Humanitarian or peacekeeping operations (includes foreign disaster assistance), as defined in [FAR 2.101](#)
- Defense or recovery from certain attacks, as described in [FAR 18.202](#) and Defense Federal Acquisition Regulation Supplement (DFARS) [218.202](#)
- Emergency declarations or major disaster declarations, as described in [FAR 18.203](#) and [DFARS 218.203](#).

When supporting operations in response to one of these scenarios, CCOs must be familiar with the emergency acquisition flexibilities in [FAR part 18](#) and [DFARS part 218](#). These flexibilities are specific techniques or procedures that may be used to streamline the standard acquisition process.<sup>28</sup>

No two contingencies are alike, but the main elements the CCO might face in the overall contingency contracting environment include the urgency of requirements, possible austere or limited business infrastructure, and probable cultural or ethical differences.

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<sup>28</sup> See the definitions for simplified acquisition threshold (SAT) and micro-purchase threshold in [FAR 2.101](#) and [DFARS 202.101](#), which detail the increase in respective threshold when supporting emergency operations.

**Declared contingency.** The formal declaration of a contingency operation is very significant for the CCO (see [Chapter 5](#), Figure 5-1), triggering an increase in the micro-purchase threshold and SAT, as designated in [FAR 2.101](#). Also, the threshold limits authorized for use of the test program may be increased for acquisitions to support a contingency operation ([FAR 13.500\(e\) and subpart 18.2.](#)) In accordance with [10 United States Code \(U.S.C.\) 101\(a\)\(13\)](#) and [FAR 2.101](#), a declared Department of Defense (DoD) contingency operation meets the following requirements:

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section [688](#), [12301\(a\)](#), [12302](#), [12304](#), [12304a](#), [12305](#), or [12406](#) of this title, chapter [15](#) of this title, section [712](#) of title [14](#), or any other provision of law during a war or during a national emergency declared by the President or Congress.

**Types of operational designations.** CCOs might support several types of military operations, including major operations, smaller-scale contingencies, noncombat contingency operations, and domestic disasters or emergency relief operations. CCOs also might support military training exercises, routine installation and base operations, and CONUS or OCONUS systems or inventory control point contracting. [JP 3-0, Joint Operations](#), details types of operations.

**Major operations and campaigns.** In some conflicts, hostilities are ongoing, imminent, or likely, and there is a substantial commitment of U.S. military forces. Operation Enduring Freedom and Operation Iraqi Freedom are examples of major operations and campaigns.<sup>29</sup> During such operations, contracting usually supplements robust combat support and combat service support infrastructures.

**Smaller-scale contingency operations.** Some conflicts involve ongoing, imminent, or likely hostilities with the U.S. military, but smaller-scale contingencies involve fewer places and usually a more restricted time schedule (Operation Just Cause in Panama, for example). Contracting often supplements combat support and combat service support capabilities that are limited by the location, strategic lift, or staffing ceilings.

**Humanitarian or peacekeeping operations.** Contingency contracting may support humanitarian or peacekeeping operations, defined as a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.<sup>30</sup> When a humanitarian or peacekeeping operation is declared, the simplified acquisition threshold is raised to the amount specified in

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<sup>29</sup> See the Defense Procurement and Acquisition Policy (DPAP) Contingency Contracting website's [International Operations](#) page for details on current and past operations.

<sup>30</sup> FAR 2.101, [10 U.S.C. 2302\(8\)](#) and [41 U.S.C. 153](#).

[DFARS 202.101](#) for DoD purchases that are awarded and performed, or purchases that are made, outside the United States in support of that operation.

**Domestic disaster and emergency relief.** According to JP 3-28, [Defense Support of Civil Authorities](#), domestic disaster and emergency relief operations can range from domestic natural and human-made disasters to civil disturbances or terrorist incidents in the United States. DoD disaster relief missions include efforts to mitigate the results of natural or human-made disasters such as hurricanes, earthquakes, floods, oil spills, riots, and air, rail, or highway accidents. CCOs should be aware that exercises and training environments do not receive the same flexibilities and consideration as the actual declared emergency. DoD supported domestic disaster and emergency relief efforts for Hurricanes Isabel, Hugo, Katrina, and Sandy.<sup>31</sup> [Chapter 9](#) contains additional information on domestic disaster and emergency relief operations.

Domestic disaster and emergency relief operations should not be misconstrued with a declared contingency operation and the increases in thresholds contingency and humanitarian or peacekeeping operations receive. Incidents of national significance, emergency declaration, or major disaster declaration do, however, receive acquisition flexibilities:

- Limited use of full and open competition ([FAR 6.2](#) and [26.2](#))
- Local firm or area evaluation preference ([FAR 26.202-2](#)).
- Temporary waiver of Cargo Preference Act requirements ([FAR 47.502\(c\)](#)).

See [Chapter 2](#) for information on contract support authorities and structure, which differ on the basis of the size, duration, and complexity of the respective operation.

**Military exercises.** Routine military exercises can be anything but routine for the CCO supporting them. Anyone who participated in Foal Eagle, Cobra Gold, Joint Dawn, Key Resolve, National Training Center rotation, OCS Joint Exercise (OCSJX), or similar types of exercises will attest to the associated sense of urgency, pressure, or risk to life or national interest. Moreover, such exercises do not qualify as declared contingencies or emergencies and thus generally receive no special consideration, flexibilities, or relief. CCOs must know the distinction between actions that are contractually permitted in an actual contingency and actions permitted in an exercise preparing for such a contingency.

## Types of Contract Support

CCOs need to understand the types of contracts commonly used to support contingencies. Support contracts fall into three categories: theater, systems, and external. These three categories are key to adequately describing the numerous contracting and contract administration authorities that support the operational area and to setting the limits on the JFC's ability to control or influence the different types of contracted support (see [Chapters 5](#) and [8](#)).

**Theater support contracts.** These contracts are awarded by contracting officers in the operational area, serving under the direct contracting authority of the service component, SOF

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<sup>31</sup> See the DPAP Contingency Contracting website's [Domestic Emergencies](#) page for details on domestic disaster and emergency relief efforts.

command, or designated joint HCA for the specific contingency operation. During a contingency, theater support contracts are normally executed under expedited contracting authority and provide supplies, services, and construction from commercial sources that, in general, are in the operational area. Also important from the contractor management perspective are the local national personnel who make up the bulk of the theater support contract employees.

Theater support contracting can be used to acquire support from commercial sources, similar to external support contract services. In addition, theater support contracting can be used to acquire commercially available supply items from local and global sources.

**Systems support contracts.** These contracts are awarded by a military department acquisition PMO that provides technical support, maintenance, and (in some cases) repair parts for selected military weapon and support systems. Systems support contracts are routinely put in place to support newly fielded weapons systems, including aircraft, land combat vehicles, and automated command and control systems. Systems support contracting, contract management, and program management authority reside with the military department systems materiel acquisition program offices. Systems support contractor employees, mostly U.S. citizens, provide support in garrison and often deploy with the force in both training and contingency operations. Much of a service component's equipment is maintained partially or fully through contracted logistics support.

**External support contracts.** These contracts are awarded by contracting organizations with a contracting authority not derived directly from theater support contracting HCAs or from systems support contracting authorities. External support contracts provide a variety of logistics and other noncombat-related services and supply support. External support contracts are illustrated by the services' CAP contracts (discussed in the [Civil Augmentation Programs](#) section of this chapter), including the Army LOGCAP, Air Force AFCAP, Navy GCCC and GCSC, DLA prime vendor contracts, and Navy fleet husbanding contracts. External support contracts normally include a mix of U.S. citizens, third-country nationals, and local national contractor employees.

These contracts are often used to provide significant logistics support and selected nonlogistics support to the joint forces. The type and scope of this support vary among operations but can be very extensive depending on a variety of operational factors. In addition, in some operations, DLA may use existing contracts or award new prime vendor contracts to furnish selected supply support (primarily subsistence and bulk fuels) during contingency operations. Other examples of external support contracts include fuel contracts awarded by the Defense Energy Support Center, construction contracts awarded by USACE, contracts awarded by the Air Force Civil Engineer Center, and translator contracts awarded by the Army Intelligence and Security Command.

Similar to the authority for systems support contracts, external support contracting authority does not directly result from the contingency operation. In general, these contracts are issued during peacetime for use during contingencies. CAP and other external support contracts remain under the control of the service components and do not normally fall under the authority of the GCC operational contract support.

Although logistics planners must make allowances for CAP contracts early in the contingency, every effort should be made to transition individual CAP task orders to theater support contracts as soon as practical. Of course, operation-specific factors such as security considerations, availability of local sources of support, and on-hand theater support contracting management capabilities are the actual drivers of the number of these CAP task orders that can be transferred to theater support contracts and how rapidly that transfer occurs. JP 4-10, [Operational Contract Support](#), Appendix B, “Services’ External Support Contract Overview,” details the service CAP organizations and capabilities.

**Coordination of theater support and external support contracting effort.** The J4 staff must ensure the Annex W (Operational Contract Support) synchronizes the theater support, service CAP, and any DLA contracting efforts to avoid undue competition for the same locally available supplies, equipment, and subcontractor employees. Without proper coordination, the competition between CAP and theater support contracts inevitably drives up the prices of local goods and services and could create shortages.

CCOs should understand the value and capabilities of external support contracts. The following are examples of common external support contracts that may be placed to support operations from outside theater:

- Logistics external support contracts
  - Base operating support (such as billeting, food service, laundry, and bath)
  - Transportation port, terminal warehousing, and other supply support operations
  - Facilities construction and facilities management
  - Prime power
  - Materiel maintenance
- Non-logistics external support contracts
  - Communications services
  - Linguist/translation services
  - Commercial computers and information management
  - Signal support
  - Physical security (limited in accordance with DoD policy)
  - Staff augmentation (various functions)
  - Intelligence support services.

An established theater business clearance (TBC) policy and process can help ensure visibility and control over external support contracts in designated areas of operations.

**Interagency support.** Similar to multinational support, U.S. forces may be required to provide common user logistics support for governmental actors, as well as international bodies such as the United Nations and non-governmental organizations (NGOs) such as the

International Red Cross. Contracting officers must be aware of NGOs operating in the area, their status with both the HN and the U.S. military, and the parameters restricting support to and from the NGO before entering into any contractual arrangement where the NGO is either the supplier or customer.

## Strategic Planning

**OCS Planning and Integration.** The integration of contractor support into military operations is very important. Although OCS planning and integration are primarily the responsibility of the GCC and OCS planners, the Contracting Officer should assist in planning and take part in OCS-related boards such as the Joint Acquisition Review Board (JARB), which is explained in more detail later in this chapter.

**Money as a weapon system.** Contracting and money are critically important weapon systems in any combatant command (CCMD) and must be treated as such. Unit leaders who use proactive management controls to provide timely and accurate funding to warfighters are paramount to success or failure on the counterinsurgency (COIN) battlefield anywhere in the world. Contracting and money defeat COIN targets, without creating collateral damage, by motivating antigovernment forces to cease lethal and nonlethal operations, creating and providing jobs along with other forms of financial assistance to the indigenous populations, and restoring or creating vital infrastructure. With regard to contracting as a weapon system (CAAWS) and money as a weapon system (MAAWS), the CCO should keep the following points in mind:

- Money is a valuable weapon system.
- Money and contracting in a COIN environment are vital elements of combat power.
- Leaders must leverage money and contracting in operations.
- Leaders must understand funding programs and contracting.
- Financial management administrative requirements in a combat environment can be extremely burdensome but are necessary for good stewardship.
- Financial management, contracting expertise, and knowledge of funding are critical to successful operations.
- Without proactive leadership involvement, the potential for extensive fraud, waste, and abuse of funds exists in any environment and degrade the COIN objectives.
- Warfighters with timely access to the right types of contracting support can influence the outcome of operations with both temporary and, hopefully, permanent results.

Contracting actions can have significant economic and political implications. CCOs should be aware of these and the need to validate contract requirements appropriately to ensure they meet mission needs.

## CCO Predeployment Planning

**Personnel and administrative preparations.** CCOs should prepare for deployment to the maximum extent practicable. This includes learning about the deployment area, understanding any country clearance requirements, and listing items that may be needed for contract support to meet mission needs. CCOs can contact the intelligence directorate (J2) and nearest embassy to determine cultural specifics and obtain country-specific requirements.

The following generic list of documents and equipment that a CCO might need to initiate a contingency contracting operation is useful not only for CCOs, but also for the requesting unit, which should refer to the need for such information in the line remarks of individual deployment tasking letters (or tasking orders) and may modify the list to meet deployment location mission support requirements:

- An official passport and 6 to 10 extra photographs for visas, which might be required to move from country to country. Official passports might be required for each CCO designated to support no-notice deployments that demand immediate departure to countries requiring a passport for entry. Each unit determines whether the CCO needs to obtain an official passport when initially designated as a CCO.
- Travel orders prepared through the Defense Travel Service.
- Standard Form (SF) 1402, “Certificate of Appointment as a Contracting Officer,” with authority equal to potential responsibilities.
- A prepacked kit of regulatory guidance, forms—such as [SF 1449](#), [SF 30](#), Defense Department (DD) [1155](#), and [SF 44](#)—books, templates, prepopulated sample documents (such as statements of work, requests for proposals, and justification and approval documents) supplies, and equipment.
- International driver’s license.
- Civilian clothes. In some instances, military uniforms are not advisable. The regional contracting center (RCC) chief provides instructions regarding the wearing of uniforms.
- Government-wide commercial purchase card (GCPC) that is bulk-funded to the level possible, enabling immediate expenditure upon arrival.
- A list of unit-assigned procurement instrument identification numbers (PIINs), in accordance with [DFARS 204.7003](#) and the uniform PIIN issued by the senior contracting official (SCO).
- Where possible, advance registration for any applicable systems, such as the Contracting Officer’s Representative Tracking (CORT) Tool, Joint Contingency & Expeditionary Services (JCXS),<sup>32</sup> Contingency Acquisition Support Model

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<sup>32</sup> Joint Contingency & Expeditionary Services (JCXS) is the new name for the Joint Contingency Contracting System (JCCS) platform.

(cASM), 3in1 Tool, Federal Procurement Data System–Next Generation (FPDS-NG), Contractor Performance Assessment Reporting System (CPARS), and Electronic Data Access (EDA) system. The [Department of Defense Contingency Business Environment Guidebook \(CBE Guidebook\)](#) contains additional information on registering for e-business tools and getting them up and running in theater.

- DD Form 1833, “Isolated Personnel Report (ISOPREP).” The ISOPREP contains data elements that have personal data, photographs, and other information to help in the recovery of U.S. military, civilian, or DoD contractor personnel who are isolated, missing, detained, or captured. The ISOPREP and the evasion plan of action are the most important tools for executing timely rescue and recovery. Once DD Form 1833 is completed, it becomes classified confidential and therefore should be submitted electronically, not carried in person. [Army Graphic Training Aid \(GTA\) 80-01-001](#) contains additional information on personnel recovery. More information on isolated personnel reports can be found in the [ISOPREP](#) section of this chapter.

**Mature and immature contracting environments.** CCOs must consider the maturity factor when planning for contingency operations because the contracting tools used are based on the maturity of the environment and the contingency phase, as follows:

- **Mature.** A mature contracting environment is characterized by a sophisticated distribution system that can rapidly respond to changing requirements and priorities; sufficient vendors, with government contracting experience, that can comply with FAR requirements to meet contingency contracting demands; an infrastructure capable of housing e-business tools; and, in the best case, an in-place DoD contracting office or structure. Examples of mature contracting environments include Kuwait, Saudi Arabia, Qatar, Korea, and Western Europe.
- **Immature.** An immature contracting environment is an area with little or no built-up infrastructure and few vendors. The available vendors are likely to have limited to no experience contracting with the U.S. government. An example of an immature contracting environment is the Horn of Africa (HoA) and the initial stages of Operation Enduring Freedom in Afghanistan. CCOs in immature contingency contracting areas should meet with the Department of State General Service Officer (GSO), who may be able to provide critical information on the local vendor base. Also, the local chamber of commerce (if any) can serve as a wealth of information on responsible vendors.

**Contracting during hostilities.** Hostilities can break out during any phase of a contingency operation. The more rapidly the CCO matures the contracting operation, the better support the CCO can provide if hostilities occur. However, unavoidable problems may include the following:

- Contractor employees who don’t report for work, abandon the job site, or refuse to drive vehicles in certain areas
- Vendors and shops that close during hours of darkness or cease operations

- Increased threats to the CCO when traveling in the local area from snipers, terrorists, or enemy action
- Increased risk to vendors doing business with the U.S. government, making locating sources of supply difficult.

As a CCO, you are likely to have the opportunity to observe the local community. Seek help from the supporting intelligence unit (J2) to identify existing and potential threats and to report suspicious activity. If you cannot perform the CCO contracting mission, you must advise the SCO and head of the contracting activity (HCA), as well as the units you're supporting, so military personnel can be redirected and used instead of contractors. Similarly, if a contractor refuses to perform, you need to find another contractor (and prevent lapses in service), seek alternate arrangements (in-house support, HN agreements, etc.), or do without the service. CCOs must keep customers informed about contracting activities so they can plan accordingly.

**Research is the key.** Before deployment, get as much advance information as possible about the country or domestic disaster area. Work with the CCO you will replace (if applicable) to get an understanding of local conditions and existing contract support requirements. CCOs must review site surveys that other ADVON teams have performed and use the information to develop a site survey checklist. CCOs should read relevant acquisition guidance—such as acquisition instructions (AIs) and standard operating procedures (SOPs)—for the area of responsibility (AOR) to be supported. (See the Critical Checklists appendix for a sample Site Survey Checklist.) Also, AIs established in other combatant commands (CCMDs) may contain best practices of use to the CCO, even though the environments may differ. CCOs should become familiar with the currency, conversion rate, and local business customs. In addition, cultural and social differences, such as language or literacy barriers, can compound the difficulties the CCO must include in planning (as described in [Chapter 8](#)). Good sources for investigating a country, and preparing for deployment, include the following:

- AARs (unclassified reports available at <https://acc.dau.mil/aar>).<sup>33</sup>
- The [Central Intelligence Agency World Factbook](#).
- Websites of U.S. embassies, consulates, and diplomatic missions, available at <http://www.usembassy.gov/>.
- The [Department of State website](#).
- The [United States Agency for International Development \(USAID\) website](#), which is an excellent source of country-specific information. One of the USAID missions is support for economic growth and trade (such as the USAID Trade for African Development and Enterprise and the USAID economic opportunity projects in Jordan), making it an excellent source for locating vendors and contractors. USAID typically has offices in each U.S. embassy.
- U.S. Navy husbanding contracts to support fleet port visits, which might be able to support an initial response for humanitarian assistance or disaster response,

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<sup>33</sup> The Defense Acquisition University's Acquisition Community Connection is not the official repository of AARs; each Service has its own system and method for collecting them for validation and input into the Joint Lessons Learned System (JLLS).

helping the CCO at the very beginning of an event. One of the following regional fleet logistics centers (FLCs) can help determine whether a contracting vehicle is in place to support critical needs for an emergency response, but orders must be placed by the applicable FLC contracting officer: [FLC Yokosuka](#), U.S. Pacific Command (PACOM) AOR; [FLC Sigonella](#), U.S. European Command (EUCOM), CENTCOM, and U.S. Africa Command (AFRICOM) AOR; and [FLC Norfolk](#), U.S. Southern Command (SOUTHCOM) and U.S. Northern Command (NORTHCOM) AORs. The [Naval Supply Systems Command \(NAVSUP\) website](#) provides more information on Naval husbanding contracts.

- Geographic combatant command (GCC) websites for OCS material that supports respective AORs. See the [GCC AOR link](#) for a consolidated list of GCC websites.

**AARs.** AARs are a great way for CCOs to capture best practices and assist fellow CCOs who may be taking over contract support responsibilities. AARs should be forwarded through the responsible SCO within 30 days after redeployment to home station in accordance with agency procedures. AARs should include follow-on plans for contracts issued in support of the contingency mission. CCOs should start writing the AAR as soon as they arrive and should leave a copy of the AAR in the continuity book before leaving. To access sample AARs, take the following steps:

3. Join the [Acquisition Community Connection](#). After you receive membership notification, you must request access to AARs.
2. Send a message to [msc@dau.mil](mailto:msc@dau.mil) noting the reason for access. When your access is approved, you will receive a confirmation message. AAR lessons learned are available at the Defense Acquisition University (DAU) [Acquisition Community Connection](#) website.

**CCO continuity book.** When the CCO arrives at the deployed location, one of the first requirements is reviewing information in the CCO continuity book. The CCO should maintain and continually update the CCO continuity book to assist follow-on CCOs. When a deployment is terminated, the last CCO should forward the continuity book to the J4 supporting the AOR. The book should include at least the following:

- A current vendor or contractor source list, including vendor names, addresses, telephone numbers, points of contact (POCs), and type of supplies or services provided
- A current list of vendors and contractors willing to provide emergency support 24 hours a day
- Copies of all headquarters (HQ) policy letters, acquisition instructions, and guidance messages received to date
- Minutes of all meetings attended by CCO personnel, including open action items impacting the contracting function
- A list of all ratification actions to date
- Contractor delivery and gate security information

- Copies of all customer education handouts developed to date
- Key POCs at the deployed site, including names, grades, duty title units, telephone numbers, and after-hours POCs, if available
- Lessons learned during the deployment to date
- Copies of weekly reports of actions and dollars spent to date
- Reconciliation reports
- Bulk-funding logs showing remaining balance
- A list of local contractors and vendors that are debarred or are unapproved pursuant to local vendor vetting policy and procedures
- The disposition of purchase records
- An AAR, submitted electronically within 30 days after redeployment by each CCO to the parent command, which in turn forwards the report to the theater command supporting the AOR, with select AARs forwarded to DAU for inclusion in the contingency contracting community of practice
- A current list of enduring contract vehicles with contingency clauses.

**Advance echelon teams.** Within the first 30 days after a contingency declaration, a CCO deploys with the ADVON team. At a minimum, the team should consist of an experienced CCO, engineering representative, finance representative, logistics personnel, security personnel, comptroller representative or funds certifier, and legal representative. The size and number of teams depends on the size, anticipated duration and complexity of contingency, humanitarian or peacekeeping operational requirements, and overall mission requirements, as determined by the HCA and SCO. The priority of the ADVON CCO is to locate sources; become familiar with local conditions and the marketplace; and, before arrival of unit personnel, consult with the Army Criminal Investigation Division (CID), Air Force Office of Special Investigations (OSI), and Naval Criminal Investigative Service (NCIS) concerning security and force protection and personnel recovery matters. In addition, the CCO should consult with the embassy regional security officer to identify any existing interfaces with interagency or HN recovery procedures. Plans should provide for adequate security arrangements and disbursing officer support during advanced deployments. Bulk funds (and a means to replenish them) also should be provided. CCOs or field ordering officers (FOOs) should carry an approved GCPC to facilitate the procurement process when and where possible.

**Site surveys.** In general, the ADVON team conducts the site survey, which should include sources of supplies and services, business customs, maps, interpreter sources, and other important information. The CCO should take a camera on the site survey and document everything on film. Pictures of runways, water pumps, generators, control towers, and perimeter fencing greatly aid engineering, operations, and security forces personnel who were not part of the site survey. Photographs also refresh the CCO's memory for subsequent requirements and can even be used to solicit quotes from contractors as appropriate (check with security regarding pictures of installations). Also, the CCO must check with the U.S. Embassy or HN to confirm whether taking pictures is allowable.

## Plugging in Downrange

Once feet are on the ground, the CCO must learn how to plug into the new environment. The CCO must find the support structure (J4) and meet with the on-site commander to accomplish the following:

- Obtain a prioritization of initial requirements based on mission needs
- Discuss purchase request (PR) control procedures, including funds accountability, PR validation and approval, inspection, acceptance, quality assurance procedures, and disposition of purchased assets
- Inform the on-site commander that additional duties might impede contracting responsibilities or create a conflict of interest and create the potential for undue influence
- Advise the on-site commander that only the CCO is authorized to obligate the U.S. government for local purchases, and offer to present a briefing on this topic at the first commander's call
- Have the on-site commander create a policy that no one should place undue pressure or command influence on CCOs to purchase any goods and services that violate laws or regulations.

Simultaneously, the CCO must promptly locate customers, obtain finance support, and identify POCs at the local embassy. If an embassy is not available, the CCO may check nearby country embassies. Two embassy contacts are of major importance from a contingency contracting perspective—the government services officer (GSO) and executive coordinating agency (ECA). The GSO is essentially a contracting officer in the embassy who would likely know the support agreements in place. If an embassy is asked to assist with contracting actions, it may charge an international cooperative and administrative support service fee. If the country hosting the deployment has an HN support agreement or an ACSA in place, it could provide U.S. forces with logistics support, supplies, or services, thereby not needing contract support.

The CCO, through coordination with the J4 counterpart, should check the ACSA Global Automated Tracking and Reporting System (AGATRS) or [Department of State website](#) with the command to identify in-place agreements that may meet requiring activity needs. The [JCXS](#) website and [CBE Guidebook](#) contain information on registration for AGATRS. Food, water, fuel, transportation, and facilities might be available, eliminating potential problems such as having to procure such services at startup from unknown vendors and time delays. Embassies have important country-specific knowledge, too, and can guide the CCO in dos and don'ts and serve as a prime resource for locating and vetting vendors. The CCO should also know whether the [Surface Deployment and Distribution Command](#) or the Navy has port contracts. Some embassies have an ECA, which might offer greater support than the GSO. Like other organizations, embassies differ in how much and how well they can support a CCO, depending on their location and the attitude of their staff members. A list of U.S. embassies is available at the [USEmbassy.gov website](#).

**Acquisition and cross-servicing agreements.** ACSAs are reimbursable, bilateral support agreements that allow the exchange of logistics, supplies, and services between the United States and military forces of eligible countries and international organizations of which the United States is a member. Per [Department of Defense Directive \(DoDD\) 2010.9](#), ACSAs are legal instruments entered into under the authority of [10 U.S.C. 2341](#). CCOs should work with their J4 counterpart to determine whether ACSAs exist in the CCO-supported operational area. For example, U.S.–Canada bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation for work performed in Canada. U.S. Forces, component policy, and U.S.–Canada bilateral agreements govern logistics support and base privileges of contractor employees.

Key aspects of an ACSA include the following:

- Transactions may be cash reimbursements, equal-value exchanges, or replacement-in-kind of logistic support, supplies, and services.
- The kinds of logistics support that may be exchanged are food; billeting; transportation; petroleum, oil, and lubricants (POL); communications services; nonaccredited training; ammunition; emergency medical services; and base operations.
- Categories of support that may never be exchanged are guided missiles and kits, major end items, chemical or nuclear munitions, formal accredited course training, official uniforms, and major construction projects.

**AGATRS.** AGATRS is an automated tool that tracks and provides visibility into worldwide ACSAs, including those available that may satisfy requirements through support from the HN or other nations supporting the contingency. CCOs, through interaction and correspondence with their J4 counterpart, must check this tool to see available resources to support agency needs. ACSAs may provide the supplies or services needed without having to enter into the contract support process. See the [CBE Guidebook](#) for information on registering for AGATRS and how to use AGATRS in theater.

**Host Nation Support.** The CCO must establish a link with the HNS teams and obtain cooperation from HNS authorities and personnel to enhance the CCO's ability to fulfill contingency contracting needs. The CCO needs to know the support that can be obtained through the host nation (HN). Make contact with local U.S. authorities and higher-level HQ officials to determine whether HNS is available. Before deployment, coordinate with legal assistance, civil affairs units, intelligence, and the U.S. embassy to identify information on contractors in the area. A liaison officer should know the HNS laws, regulations, and military command structures and should be able to coordinate with the HN to initiate site surveys. Reconnaissance visits to proposed contingency, humanitarian assistance, or peacekeeping operation sites will help identify the support that the HN can render.

**Status of forces agreement (SOFA).** A SOFA clarifies the terms under which the foreign military is allowed to operate. Typically, purely military issues, such as the location of bases and access to facilities, are covered by separate agreements. SOFAs are more concerned with the legal issues associated with military individuals operating in country and property,

including entry into and exit from the country, tax liabilities, postal services, and employment terms for host-country nationals, but the most contentious issues are civil and criminal jurisdiction over the bases. For civil matters, SOFAs cover procedures for the determination and payment of civil damages caused by the forces. Your local legal counsel can help with SOFAs and their impact on contract support.

### **Exhaustion of Logistics Supply and Required Sources of Supply**

Many supplies and services for any contingency operation can be obtained through the logistics supply pipeline established for the operation. **Table 4-1** lists the basic supply classes.

<b>Class</b>	<b>Item</b>
<b>I</b>	Subsistence (food) and gratuitous (free) health and comfort items
<b>II</b>	Clothing, individual equipment, tentage, organizational tool sets and kits, hand tools, unclassified maps, administrative and housekeeping supplies, and equipment
<b>III</b>	Petroleum, oil and lubricants (package and bulk): petroleum, fuels, lubricants, hydraulic and insulating oils, preservatives, liquids and gases, bulk chemical products, coolants, deicer, antifreeze compounds, components, additives of petroleum and chemical products, and coal
<b>IV</b>	Construction materials, including installed equipment and all fortification and barrier materials
<b>V</b>	Ammunition of all types: bombs, explosives, mines, fuzes, detonators, pyrotechnics, missiles, rockets, propellants, and associated items
<b>VI</b>	Personal demand items (such as health and hygiene products, soaps and toothpaste, writing material, snack food, beverages, cigarettes, batteries, and cameras—nonmilitary sales items)
<b>VII</b>	Major end items such as launchers, tanks, mobile machine shops, and vehicles
<b>VIII</b>	Medical materiel including repair parts peculiar to medical equipment
<b>IX</b>	Repair parts and components to include kits, assemblies, and subassemblies (repairable or nonrepairable) required for maintenance support of all equipment
<b>X</b>	Material to support nonmilitary programs such as agriculture and economic development (not included in Classes I through IX)
<b>Misc</b>	Water, salvage, and captured material

*Table 4-1. Supply Classes*

Before initiating any local acquisition for supplies and services, the CCO must ensure that requiring officials have exhausted the established logistics supply pipeline and that it cannot provide the required supplies or services to meet mission needs in a timely manner.

In any contingency operation, quality acquisition support for the commander is critical to mission accomplishment. As stated, virtually all requested services, supplies, and construction are urgent and high priority. Local procurement actions should be initiated only when the following have been exhausted:

- **Basic deployment kits and prepositioned items.** CCOs should check with the J4 network to determine whether basic deployment kits and prepositioned items are readily available before making a local purchase. For example, Harvest Eagle and Harvest Falcon are two examples of deployment kits that, combined, are known as the Air Force Basic Expeditionary Airfield Resources (BEAR) program. The BEAR program is designed and sized to support simultaneous major theater wars. The equipment provided in these two kits gives theater warfighters the capability to support a total of 68,200 combat troops and 822 aircraft at austere locations, working from the ground up to build complete bases.
- **Other required government sources.** CCOs must comply with [FAR part 8](#) and [DFARS part 208](#), which establish required sources for supplies and services throughout the government, DoD, General Services Administration (via federal supply schedules), and other agencies. Legal advisors to an operation also must become familiar with [FAR part 8](#) and [DFARS part 208](#) to ensure contracting officials in any operation are fully using these sources.
- **HN and allied forces supply sources.** CCOs also must become familiar with the supplies and services the HN has agreed to supply under any applicable HNS agreements for the operation.
- **Interservice support agreements.** These agreements cover actions by one military service or element to provide logistics or administrative support to another military service or element. Such actions can be recurring or nonrecurring on an installation, in an area, or even worldwide.
- **Contingency (coalition) partners.** Allied forces that are contingency partners might have agreed to provide supplies or services pursuant to an implementing arrangement to an ACSA. A memorandum of agreement (MOA) or protocol to the implementing arrangement might have been executed for the contingency.

### NATO Tasking

A CCO may be deployed for the North Atlantic Treaty Organization (NATO) in two situations: (1) a national tasking (U.S. troop contribution), where the FAR and a normal warrant are used, and (2) a NATO tasking against a crisis establishment staffing document, normally supporting a NATO HQ, where NATO rules apply. For example, CCOs stationed at Camp Bondsteel in Kosovo use U.S. rules, while CCOs stationed at KFOR HQ in Pristina use NATO rules. The application of rules comes down to funding: if U.S. funds are used, U.S. rules and U.S. warrants apply; if NATO funds are used, NATO rules and NATO warrants apply. If tasked to support a NATO operation, CCOs should be aware that the contracting rules differ vastly from U.S. rules. You will not be required to comply with the FAR, but rather must comply with [Bi-Strategic Command \(Bi-SC\) Directive 60-70](#).

The HQ chief of the purchasing and contracting branch nominates contracting officers, gains financial controller (FC) endorsement, and seeks a formal certificate of appointment by the NATO commander or the chief of staff/financial controller. The contracting officer authority, in the form of a written warrant, is valid only for contracts issued on behalf of NATO HQ or the

agencies to which the CCO is assigned or designated to support. No other warrant is considered valid authority for Bi-SC contracting officers.

### **Additional Planning Considerations**

CCOs should consider a number of additional planning elements. For example, the agreements and operation plans can affect how work is performed under the contract:

- Applicability of any international agreements, such as SOFAs, to the acquisition. Check with the relevant command, or see the [Department of State website](#) (under Treaties in Force) for a list of these agreements
- Security requirements that apply to the AOR
- All contractor personnel authorized to be armed, who must be fully briefed on U.S. laws, HN laws, SOFAs, and JFC policies regarding the circumstances in which they may use force
- Standards of conduct for the prospective contractor and its employees and any consequences for their violation
- Requirements for use of foreign currencies, including the applicability of U.S. holdings of excess foreign currencies
- Availability of government-furnished logistical support for contractor employees, such as lodging, meals, medical, and office supplies
- Physical inventory of all government-furnished property, which the contractor performs periodically in accordance with [FAR Clause 52.245.1](#)
- Information on taxes and duties and possible government exemption from them, including information available from the local embassy
- Applicability of ACSAs.<sup>34</sup>

SOFAs and other international agreements and treaties also can affect contract work:

- For work performed in Japan, U.S.–Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Japan, component policy, and U.S.–Japan bilateral agreements govern logistics support and base privileges of contractor employees.
- For work performed in Korea, U.S.–Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Korea and component policy as well as U.S.–Korea bilateral agreements govern logistics support and base privileges of contractor employees.

The state of the local banking system and its impact on contract business arrangements also can affect contract work.

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<sup>34</sup> [DoDD 2010.9, “Acquisition and Cross-Servicing Agreements.”](#)

**Real-World Example:** A chief of contracting, a prepared and experienced person, responded to a humanitarian effort in Pakistan with a moment's notice. The chief of the contracting office initially asked for volunteers from his unit but determined that he was the best suited for the emergency operation and would accept the deployment. He left a sustainment effort where things were established and was thrown into a bare-base operation overnight, where the environment was unknown and immature. He was able to support a critical mission by being physically, mentally, and deployment ready for the extremely demanding forward operation.

**The Bottom Line:** A CCO should always be prepared to forward-deploy, whether as an ADVON CCO or to support buildup or sustainment operations. CCOs often receive very short notice of deployment, especially at the onset of a contingency.

**Referrals and reachback.** Some PRs cannot be fulfilled through the local market. The CCO should not overlook or underestimate the usefulness of the referral system for fulfilling requirements. Requirements may be referred to another contracting activity for action or may be returned to a CONUS location for reachback support. Many sources of contracting expertise geographically separated from the deployed CCO could be used, such as the following:

- U.S. embassy or consulate
- Nearest permanent military installation contracting office
- Theater J4
- CONUS contracting offices
- Army Contracting Command (ACC)–Rock Island
- DLA
- Navy husbanding contracts
- Joint Theater Support Contracting Command (JTSCC).

**Real-World Example:** At times, Continental United States (CONUS) contracting offices may be asked to support outside CONUS (OCONUS) contingencies in some capacity. For example, CCOs in Haiti supporting the January 2010 earthquake had to reachback to Hurlburt Field CCOs to purchase supplies for U.S. personnel supporting the operation and fly them in on a daily C-130 flight to avoid pulling scarce resources off the shelf in the local disaster area.

**The Bottom Line:** Deployed CCOs should determine whether reachback support is available for the respective operation and if so, the CCO should make the effort to fully understand the reachback office's capabilities and utilize the support to the extent practicable pursuant to agency procedures. Similarly, Contracting Officers serving in a reachback support office should reach forward to deployed CCOs to explain the capabilities and offer support where able.

In some cases, the forward-deployed assets might not be able to process the deluge of requirements for large-scale contingencies. In other cases, conditions in the contingency area of operations might be so dangerous that a large contracting footprint cannot be made and maintained. The complexity of the contract requirement might also lead to its assignment to a contracting center of excellence for the pre-award and contract award phases and then its transfer

to the CONUS activity for contract administration. No matter the factors that drive the situation, the following ground rules govern supporting an OCONUS contingency from a CONUS site:

- The OCONUS CCO who will administer the contract needs to participate in the contract award process and assist in the development of the acquisition strategy. The OCONUS CCO understands the environment and will ultimately drive the acquisition. The OCONUS CCO and designated COR must be contacted early and often.
- The CONUS office must be aware of established memorandums of understanding or agreement with the OCONUS partner to ensure operation-specific issues are clearly specified and all parties are aware of existing SOFAs or other agreements.

For CCOs using reachback buying units, basic funding and shipment information is useful for the reachback cell to know. In most cases, the vendor is asked to deliver to a specified AOR buying office—the normal free on board (FOB) destination point. A determination of shipping costs should be included for shipping and handling per item in case the CONUS vendor's FOB point is at origin rather than destination. The CCO must know that the more preferred purchasing method is through the local AOR to prevent customs and delivery nightmares. The CCO should check the local market before resorting to reachback solutions or Internet purchases.

### **Civil Augmentation Programs**

Civil augmentation programs (CAPs) plan for the use of civilian contractors during contingencies or in wartime to augment the logistics support of selected forces. Typically, these programs could apply in all phases of contingency operations. The Army, Navy, and Air Force each have a CAP contract, CCOs need to understand the capabilities of each type. All three CAPs support U.S. joint operations worldwide and prevent the dilution of military forces stemming from their provision of the required services and support. However, these contracts are expensive, so they should be used only when it is not appropriate for military personnel to provide needed services and functions. Commanders must be vigilant in the use of civilian augmentation because contract costs can easily become inflated, particularly when changes or additions are made late in the execution phase. However, civilian augmentation contracts often are the only means for obtaining the skilled people and services needed to quickly construct and repair buildings and equipment as well as critical services formerly provided by military personnel.

**Logistics Civil Augmentation Program (LOGCAP).** [LOGCAP](#) is an Army regulatory program that augments the force by pre-planning for and executing contracted services in support of DoD-directed and -supported missions. Operational commanders identify their requirements and request LOGCAP, as appropriate, to meet mission needs. LOGCAP is characterized by the following elements:

- *Capabilities.* In general, it can be used to provide scalable logistics and base support services to short- and long-term operations.
- *Planning.* The LOGCAP Program Management Office (PMO) helps requiring activities by engaging in deliberate planning. LOGCAP planners participate in

designated planning conferences and prepare general and operationally specific plans.

- *Management.* LOGCAP is a Headquarters, Department of the Army (HQDA), program. HQDA G-4 holds primary responsibility for LOGCAP policy and base program funding and is the approval authority for LOGCAP use. The U.S. Army Materiel Command, through its subordinate command, the Army Sustainment Command (ASC), is responsible for program planning and execution. Within ASC, the LOGCAP PMO is the focal point for overseeing the program in coordination with requiring activities, contracting activities, contingency contract administration service activities, and compliance organizations. (See Army Regulation (AR) [700-137](#) for further information on LOGCAP planning, procedures for requesting LOGCAP support, and program management.)

**Air Force Contract Augmentation Program (AFCAP).** [AFCAP](#) is a worldwide contingency contract tool available to support the Air Force, joint forces, and any U.S. government agency in need of urgent logistics assistance to support contingency operations. Like all CAP programs, AFCAP is designed to rapidly leverage private-industry capabilities as a force multiplier in supplying highly responsive solutions to meet global mission objectives across the full range of military operations. AFCAP contractors have a worldwide capability, coupled with a breadth and depth of commercial business interests aligned to meet contingency operations requirements. Unlike the other service CAPs, AFCAP can be used to procure and expeditiously ship just-in-time (JIT) commodities. Depending on urgency, degree of requirements definition, and task stability, contracts can be tailored as firm-fixed-price (FFP), cost-plus-fixed-fee (CPFF), or cost-plus-award-fee (CPAF) task orders as necessary to best match government needs. AFCAP is characterized by the following elements:

- *Capabilities.* AFCAP can provide, at a minimum, 72 core general engineering and other logistics services and associated commodity procurement and shipment capabilities. It can also be used to provide initial force beddown of non-Air Force personnel (the Air Force has an organic military capability for its own life support). AFCAP may be used to help transition and upgrade bare bases from initial austere support to temporary standard facilities and utilities. This approach allows the recovery and reconstitution of critical war reserve materiel resources for use at other locations or for the support of additional expansion for a specific mission.
- *Planning.* AFCAP contractors can be asked to provide rough order of magnitude (ROM) estimates; however, most ROM estimates are performed by the HQ Air Force Civil Engineering Support Agency (AFCESA) staff. Task orders for planning by AFCAP contractors can be awarded to help customers with their requirements.
- *Management.* HQ AFCESA performs program management functions, and the Air Force Education and Training Command (AETC) provides contracting support for AFCAP requiring activities. HQ AFCESA is located at Tyndall Air Force Base, FL, and program management is deployed forward as required. The AETC contracting staff retains all contracting functions, including all procuring contracting officer (PCO) and contingency contract administration services

(CCAS) functions (and issuance of all task orders), execution of modifications resulting in price changes to task orders, and execution of modifications to the basic contract (exercise of options). If requested by AFCAP, the Defense Contract Management Agency (DCMA) supports property administration as required.

**Administrative requirements for referrals.** Referral packages should be tracked until completed. This tracking supports the CCO in knowing referral status and the finance officer and resource manager in tracking outstanding commitments. Before sending a requirement to another location, usually via e-mail or fax, the CCO should ensure that the acquisition package is complete. Funds should be transferred in accordance with DoDI 4000.19, “[Support Agreements](#).”

**Other contracting offices in the AOR.** DoD has contracting offices around the world. No matter where CCOs deploy, a contracting office is always in the geographic vicinity. A few of the unified commands have contract representation on the J4 staffs, but most delegate theater contracting to an SCO. DoD unified commands and associated contact information are as follows:

- CENTCOM: 813-827-6420; <https://www2.centcom.mil>
- PACOM: <http://www.pacom.mil>
- EUCOM: <http://www.eucom.mil/policies-and-compliance/eucom-operational-contract-support>
- SOUTHCOM: <http://www.southcom.mil/workwithsouthcom/Pages/Contracting-Support.aspx>
- NORTHCOM: <http://www.northcom.mil>
- AFRICOM: <http://www.africom.mil>

**FLCs.** The regional FLC structure supports contracting for Navy units. The regional FLC can offer details on potential existing contract support for noncombative contingency operations. Links to each of the regional FLCs are available at the [NAVSUP Global Logistics Support \(GLS\) webpage](#).

**OCONUS defense contractors.** The contractor support option is available to field commanders to augment available military support resources and HNS. In the initial stages of an operation, the supplies, services, and construction provided by local contractors can improve response time and free military resources for combat operations. As the operation progresses, contractors provide traditional logistics support and other nonlogistics-related support. Contractors also may provide services such as security, interpreters, communications, or infrastructure support. Such contractor support allows the commander to minimize the number of combat personnel used for such noncombat functions and to maximize the number of combat personnel focused on combat operations. At the conclusion of operations, contractors also can facilitate early redeployment of military personnel.

DoDI 1100.22, “[Policy and Procedures for Determining Workforce Mix](#),” sets restrictions on the functions contractors can perform and those inherently governmental.

Activities that are restricted at least in part include security furnished in hostile or volatile areas as well as procurement functions.

When determining requirements for contract guard force or other private security functions in contingency operations, humanitarian or peace operations, or other military operations or exercises, requiring activities must be familiar with the information found at <http://www.acq.osd.mil/log/PS/psc.html>. Functions that may be provided by private security contractors (PSCs) include the protection of fixed facilities, assets, and personnel and the use of mobile convoy security to protect personnel and materiel movements in the insecure areas outside U.S. bases. PSCs must be employed cautiously when major combat operations are ongoing or imminent. Several factors should be weighed when considering specific security contracts, including the location where contract security personnel will operate; anticipated threat; property or personnel to be protected; manner in which the contractor will be operating in areas of increased risk, including command and control, sharing of threat information, and communication with forces; and the training and qualifications of contract security personnel. CCOs must be familiar with DoDI 3020.50, [“Private Security Contractors \(PSCs\) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises,”](#) which implements policy for the use of PSCs in contingency operations. For additional policy, procedures, and guidance for contractors performing outside the United States; see [DFARS PGI 225.74](#). This includes the use of PSC contracts.

### **External Contracts**

[U.S. Navy global contingency contracts](#). The Naval Facilities Engineering Command (NAVFAC) has awarded two worldwide contingency theater support contracts, the Global Construction Capability Contract (GCCC) and the Global Contingency Services Contract (GCSC). The GCCC focuses on construction, while the GCSC addresses facilities support. Any GCCC or GCSC orders must be coordinated through a NAVFAC coordinating officer.

**GCCC.** The GCCC is a competitively solicited, multiple-award, cost-reimbursable contract with an award fee. This acquisition vehicle has three prequalified sources to provide a maximum of \$1 billion of construction over 5 years. The contract furnishes construction, design and build construction, and related engineering services in response to natural disasters, humanitarian assistance needs, conflicts, or situations with similar characteristics. This scope includes occasional projects to ensure readiness to perform during emergency situations and military exercises. NAVFAC also uses the GCCC as an acquisition tool to support DoDD 4270.5, [“Military Construction.”](#) The GCCC is characterized by the following elements:

- *Capabilities.* The GCCC gives the Navy—or the Navy on behalf of DoD or other federal agencies when authorized—an immediate response for civilian construction capability needs. The scope includes the capability to provide general mobilization services for personnel, equipment, and material to support naval construction forces (NCF) mobilization and similar mobilization efforts and to set up and operate material liaison offices at a deployed site in support of NCF operations. The work is mostly construction, but services incidental to the construction may also be included. Construction critical response during an

emergency primarily supports response to natural disasters, military conflicts, or humanitarian aid needs.

- *Planning.* Each contractor is required by contract to maintain an in-place contingency response plan, available to facilitate responses to emerging requirements. The plan identifies prepositioned resources, suppliers, and procedures for rapidly developing, detailed execution plans tailored to the specific requirements of the emergency.
- *Management.* NAVFAC Atlantic in Norfolk, VA, manages the GCCC. Other NAVFAC components also may be given ordering office authority under this contract.

**GCSC.** The GCSC is an indefinite delivery, indefinite quantity (IDIQ), CPAF contract designed to quickly provide short-term facilities support services with incidental construction at other locations (including remote sites) throughout the world. The GCSC is characterized by the following elements:

- *Capabilities.* This performance-based contract is designed to respond to natural disasters, humanitarian efforts, contingencies, or other requirements (such as nonperformance by an incumbent contractor or instances of unanticipated lapses in service). The contract has a ceiling of \$450 million over 5 years.
- *Planning.* The contractor is required by contract to maintain an in-place contingency response plan, available to facilitate responses to emerging requirements. The plan identifies prepositioned resources, suppliers, and procedures for rapidly developing, detailed execution plans tailored to the specific requirements of the emergency situation.
- *Management.* NAVFAC Pacific manages the GCSC. Other NAVFAC components may also be given ordering office authority under this contract.

### **General Deployment Procedures**

Before departing for a contingency operation, all contractors authorized to accompany the forces (CAAF) personnel are required to report to the deployment center designated in the contract to complete the following general deployment procedures:

- Validate entry of accountability information in the Synchronized Predeployment and Operational Tracker (SPOT) database.
- Issue or validate possession of proper identification cards.
- Receive applicable government-furnished equipment.
- Receive medical and dental screening, including required military-specific vaccinations and immunizations (such as against anthrax, smallpox, and typhoid).
- Validate or complete required training on topics such as the Geneva Conventions; law of armed conflict; general orders; standards of conduct; force protection; personnel recovery; medical issues; operational security; antiterrorism efforts; nuclear, biological, and chemical protective gear; country briefing and cultural

awareness; combating trafficking in persons (CTIP); and other appropriate subjects.

After completing deployment processing, certified by annotation of the letter of authorization (LOA) or provision of a separate deployment processing certification letter, CAAF personnel receive deployment process certifications to bring with them to the joint reception center (JRC). The contractor certification documentation for CAAF personnel deploying as part of a specific unit is included in the appropriate unit manifest. CAAF personnel deploying individually are required to carry this certification at all times.

**In-theater contractor personnel management.** The in-theater contract and contractor management challenges discussed in this section include accountability, reception, onward movement, and restrictions on contractor support (by area, phase of operation, or other measures as appropriate). Other key in-theater contractor personnel management considerations (such as discipline, force protection, and security) are addressed in other sections of this chapter.

**Personnel accountability.** JFCs view the proper establishment and maintenance of the accountability of all CAAF personnel as extremely important. Without such information, properly planning for and integrating contingency contractor personnel into the overall operation are impossible. Personnel accountability is critical in determining and resourcing government support requirements such as facilities, life support, force protection, and force health protection in hostile or austere operational environments. The Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, OUSD(AT&L), has designated SPOT as the DoD enterprise system for managing and maintaining accountability (by name) of contractor personnel when they are deployed to an operational area. SPOT gives CCDRs the foundation for operational contract support planning and enables functional oversight and integration of all contracted capabilities. A web-based database, SPOT allows authorized users to view, enter, and manage contractor personnel predeployment, accountability, and location data. In addition, SPOT is designed to issue automated LOAs, which document the authorized government services negotiated in the terms and conditions of the contract, as part of the contractor accountability process. Contractors are required to carry the LOA with them at all times while deployed. SPOT business rules are found in [\*DoD Business Rules for the Synchronized Predeployment and Operational Tracker \(SPOT\)\*](#).

**Reception.** All CAAF personnel are processed in and out of the operational area through a JRC or other JFC-designated personnel center. The CCO should give the contractor JRC guidance to ensure its accountability in theater is current and maintained. The JRC verifies contractor personnel are included in the SPOT database and they meet all theater entrance requirements. Contractor personnel who do not satisfy established theater entrance requirements may be returned to the point of origin or placed in a holding area until these requirements are met. GCCs and their subordinate JFCs need to set and enforce specific policies for handling CAAF personnel who do not meet all established theater entrance requirements.

**Onward movement.** After the JRC fully verifies that the contractor is included in the SPOT database and that all theater entrance requirements are met, the required operationally specific identification documents should be issued to contractor personnel. The JRC arranges for transportation of the contractor and contractor equipment to the point of performance. The

arrangement of intra-theater transportation of CAAF personnel includes appropriate force protection and security measures, commensurate with those taken for DoD civilians.

**Location and movement considerations.** Contractors can be expected to perform virtually anywhere in the operational area, subject to the terms of the contract and the JFC risk assessment of the local threat level. On the basis of this risk assessment, the JFC or subordinate area commanders may restrict the location and timing of contract support; however, care must be taken to coordinate such restrictions with component commanders, applicable DoD agencies, and contracting officers. In addition, contractor personnel location reporting and equipment movement must be incorporated into the JFC movement control, personnel accountability, and force protection plans.

### **SPOT Registration<sup>35</sup>**

DoDI 3020.41, “[Operational Contract Support](#),” requires contractor visibility and accountability to be maintained through a common joint database—SPOT or its successor—in applicable contingency operations. Also, all required data must be entered into SPOT or its successor before a contractor employee is permitted to deploy to or enter a military theater of operations. Contracting officers, through the terms of the contracts, must require contractors to enter by-name data before an employee’s deployment and to maintain and update the information in SPOT or its successor. Additional information on SPOT registration and contractor personnel LOAs is available in the [Register for SPOT Access Quick Guide](#).

[DFARS Clause 252.225-7040](#) is required in contracts when supporting contingency and humanitarian or peacekeeping operations unless a deviation is in place to replace or supplement the clause (See [DFARS 225.7402-5](#) for examples of deviations that include supplemental or additional SPOT requirements.) The clause also applies, and is required, when supporting other military operations or military exercises, as designated by the combatant commander or as directed by the Secretary of Defense. The clause requires contractors to use SPOT to enter all applicable data on contracted personnel before deployment and maintain data for all contractor personnel authorized to accompany U.S. armed forces deployed outside the United States. It further requires contractor personnel to have a SPOT-generated LOA signed by the contracting officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The LOA identifies any additional authorizations, privileges, or government support to which contractor personnel are entitled under the contract. The contractor and contracting officer must ensure SPOT is maintained and up-to-date with current contractor information and solicitations and contracts include the requisition provisions and clauses in accordance with agency policy and procedures.

### **ISOPREP**

CCOs, their designated representatives, and contractors must be aware of the personnel recovery system in place and designed to support their recovery. CCOs and supporting acquisition personnel often travel outside their base to meet with contractors, visit sites, etc., and can therefore be exposed to hostile environments where the threat of abduction and capture are high. ISOPREP training provides information on the processes and actions required if someone

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<sup>35</sup> See the Office of the Deputy Assistant Secretary of Defense (Program Support), [SPOT](#), for more information.

is isolated from friendly control. This training includes individual survival, evasion, resistance, and escape (SERE) training, as specified by the requiring activity and supported by JFC and the service component. [SERE 100](#) is a universal basic requirement for all theaters.

CCOs should ensure the contractor is aware of, and complies with, the requirements in DFARS Clause 252.225-7040, “[Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.](#)”

## OCS across the Phases of an Operation<sup>36</sup>

**Operational Phases.** Pursuant to JP 3-0, “Joint Operations,” there are six operational phases. These phases often overlap or may not even apply, depending on the operation. Operational contract support (OCS) (and contingency contracting) spans across all operational phases and is a critical component to supporting military forces and achieving commander objectives during contingencies. Specific OCS actions can vary across the phases depending on the size, complexity, and duration of the operation and conditions on the ground. CCOs play an important role in the successful execution of OCS and therefore must understand the operational phases below and determine where contingency contracting can help achieve mission objectives.

The phases of an operation, along with applicable OCS actions, are as follows:

- *Phase 0—Shape.* Designed to dissuade or deter adversaries; develop relationships with, and assure multinational partners; and set conditions for the successful execution of contingency plans. Missions generally are conducted through security cooperation activities.
  - *OCS Actions:* Contract-related boards, cells, and working groups are established; OCS planning and analysis of the operational environment is conducted; support is provided to security cooperation activities; and contracting support is executed normally, pursuant to peacetime requirements.
- *Phase I—Deter.* Characterized by preparatory actions that indicate the intent to execute subsequent phases of the operation.
  - *OCS Actions:* Contracting support is limited to deterrence activities, such as support to special operations forces (SOF). Additionally, contracting support can be utilized to establish specific sustainment capabilities (e.g., staging base for enabling joint operations in subsequent phases).
- *Phase II—Seize initiative.* Focused on applying force to gain access to the operational area and expand friendly freedom of action. Military actions are characterized by an extremely high operating tempo and freedom of action of maneuvering forces and their supporting organizations.
  - *OCS Actions:* Theater support contracts are primarily used. Service and commodity contracts are limited to supplement organic military support to

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<sup>36</sup> Much of the information in this section was derived from [JP 4-10](#), “Operational Contract Support.”

initial deployed units. Basic life support requirements are acquired, if needed. CCOs must understand commander requirements and acquisition priorities.

- *Phase III—Dominate.* Focused on breaking the enemy's will to resist or, in noncombat situations, focused on controlling the operational environment (OE). Service component contingency contracting teams would normally operate in direct support of their habitually supported units, emphasizing effectiveness and responsiveness. Coordination of common contract support generally is limited to major contract actions in support of operational-level logistics and selected other support requirements.
  - *OCS Actions:* Theater support contracts continue to be used to provide support not covered by CAP task orders or other support. There is an increased use of external support and systems support contracts in large-scale operations.
- *Phase IV—Stabilize.* Generally characterized by a shift in focus from sustained combat operations to stability operations. During this transition, the subordinate JFC generally expands and formalizes the requirements review, validation, and approval process and may implement measures to control the flow of contracted support and the associated personnel from outside the operational area. The number of contracts often increases, and they become more complex and costly. Work with OCS support personnel to ensure a well-planned and -executed programmatic systems approach to OCS actions is in place.
  - *OCS Actions:* OCS efforts are expanded from forces support requirements to non-forces support (e.g., security force assistance (SFA) actions and emergency support to the reconstruction of local civil infrastructure). Requirements review, validation, and approval become more formalized to assist in controlling flow of contract support into the OE. CCOs should expect an increase in the use of external support contracts (e.g., staff augmentation services).
- *Phase V—Enable civil authority.* Characterized by joint forces support to legitimate civil governance and drawdown of forces.
  - *OCS Actions:* New requirements should be minimized unless in support of drawdown activities. Typical requirements include packing, crating, and freight services; commercial transportation of military equipment; construction and operation of wash racks for vehicles; and environmental cleanup. This phase should include an overall reduction in OCS requirements and a focus on contract termination, closeout, and transition (if applicable) to external support agencies.

### **Contract Support Organizations and Capabilities**

Theater support contracting organization capabilities differ among military services. On the basis of the individual mission and organization, each service has its own approach to developing, training, and deploying contracting personnel. Although differing in organization,

training, and experience, each service must have its contracting personnel meet the Defense Acquisition Workforce Improvement Act (DAWIA) certification requirements. However, knowing the organizational approaches and capabilities of each service can help the JFC maximize the capabilities each provides.

**DLA.** DLA is responsible for providing effective and efficient worldwide logistics support to military departments and CCMDs under conditions of peace and war; other DoD components and federal agencies; and, when authorized by law, state and local government organizations, foreign governments, and intergovernmental organizations. DoD created the DLA Joint Contingency Acquisition Support Office (JCASO) to establish a capability to orchestrate, synchronize, and integrate program management of contingency acquisition across GCCs and, when requested by the combatant commander, to deploy as an enabling joint staff organization to augment the combatant commander staff for OCS support. JCASO can provide combatant commanders (CCDRs) a deployable OCS capability to help coordinate OCS program activities. JCASO provides expeditionary support in the initial phases of a declared contingency through its mission support teams (MSTs). Additional information on JCASO and MSTs is available at the Defense Logistics Agency's [JCASO web page](#).

**Defense Contract Management Agency.** DCMA is the combat support agency (CSA) responsible for contract administration for the DoD acquisition enterprise and its partners to ensure delivery of quality products and services to the operating force. Also, while not a core mission, DCMA (along with the services) may serve as a CCAS force provider in major contingency operations when requested by the supported GCC and as directed by USD(AT&L). Currently, DCMA is delegated and executing CCAS for LOGCAP and other theater-wide contracts in Afghanistan and will transition this responsibility to the Army (Army Contracting Command) in January 2016. Once the transition is complete, DCMA will continue to support the Army in executing CCAS as a force provider. ([JP 4-10](#) details CCAS roles and responsibilities and DCMA's capabilities as a CCAS force provider.)

**DCAA.** Although not a CSA, DCAA provides invaluable in-theater support. Under the authority, direction, and control of the Under Secretary of Defense (Comptroller), it performs all DoD contract audits and advises DoD components that procure supplies and services and administer contracts on contract and subcontract accounting and financial matters. These services are furnished in connection with the negotiation, administration, and settlement of contracts and subcontracts to ensure that taxpayer dollars are spent on fair and reasonable contract prices. DCAA provides contract audit services to other federal agencies as appropriate.

**Other DoD and Intelligence Community CSAs.** CCOs should be familiar with other CSAs that can provide department-level and tactical support to the U.S. military during combat operations:

- Defense Intelligence Agency
- Defense Threat Reduction Agency
- Defense Information Systems Agency
- National Security Agency

- National Geospatial-Intelligence Agency
- National Reconnaissance Office.

### **Additional References**

The following references were not mentioned in this chapter but offer additional information related to planning and guidance:

- JP 4-05, [Joint Mobilization Planning](#)
- JP 4-08, [Logistics in Support of Multinational Operations](#).

# Chapter 5

## Contract Support Execution—Processes, Policy, and Tools

### Key Points

- In any contingency operation, quality acquisition support to the commander is critical in mission accomplishment.
- The absence of direction should be interpreted as permitting innovation and the use of sound business judgment, so long as no rules are broken.
- A wide selection of contract types is available to provide the needed flexibility in acquiring required supplies and services. Many contingency purchases can be made through simplified acquisition procedures (SAP).
- Contingency contracting officers (CCOs) should emphasize price negotiations, even when competition exists, at sustained or established locations pursuant to the regulations governing the acquisition procedures used.
- The type of contract selected determines both the clauses to be included and the degree of risk accepted by the government.
- The objective is to select the contract type most appropriate for the respective acquisition that places a reasonable degree of risk on the contractor and gives the contractor the greatest incentive to perform efficiently and economically.
- E-business tools can automate processes and help deliver rapid goods and services to the end user.
- The Department of Defense (DoD) procure-to-pay (P2P) process is the same end-to-end acquisition process in contingency environments, although the acquisition flexibilities in [Federal Acquisition Regulation \(FAR\) part 18](#) and [Defense Federal Acquisition Supplement \(DFARS\) part 218](#) apply in contingencies, which can streamline the process.
- Joint operation areas (JOAs) may have their own acquisition instructions (AIs) and standard operating procedures (SOPs) that describe tailored processes for the respective JOA. CCOs should understand theater-specific processes and procedures before deployment when possible. They can do so by working with CCOs who are already in country.

### Introduction

Contingency contracting processes can differ on the basis of the size, duration, and complexity of the contingency, but mechanisms are in place to help deliver rapid contracting support to the warfighter. CCOs and all DoD officials have an ethical obligation to abide by laws and regulations, even in contingency environments when the operational tempo is high and every acquisition seems to be “priority one.” However, in the absence of clear-cut directions and theater-specific procedures, [FAR 1.102-\(4\)\(e\)](#) encourages personnel to be innovative and use sound business judgment—but not bend or break rules. The CCO needs to find ways to conduct business professionally but still be innovative, providing support expediently, efficiently, and legally.

This chapter summarizes contract support execution and introduces processes, procedures, tools, and other mechanisms that can help the CCO execute the P2P process in theater and ensure expeditious delivery of supplies and services to the end user. It also summarizes the limitations on, and exceptions to, contracting operating procedures in a contingency environment. Also, specific processes common to the contingency environment are explained, including SAP, establishment of a field ordering officer (FOO) program, and use of e-business tools to automate and streamline acquisition processes. **Figures 5-1** and **5-2** show basic contracting processes and contract formats, respectively.

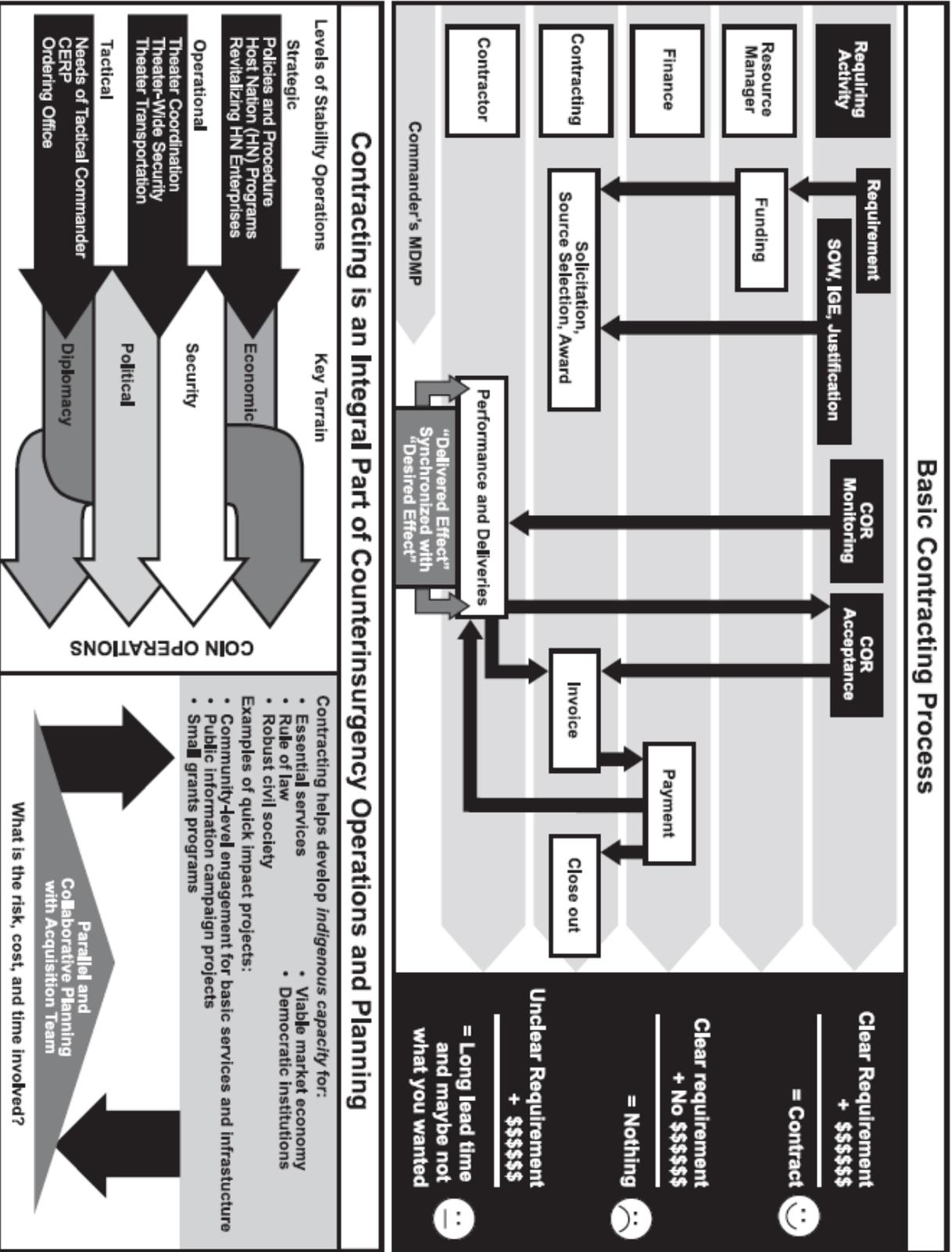


Figure 5-1. Basic Contracting Processes

Uniform Contract Format <sup>a</sup>	
<b>Part I—The Schedule</b>	
A—Solicitation/contract form	E—Inspection and acceptance
B—Supplies or services and prices/costs	F—Deliveries or performance
C—Description/specifications/statement of work	G—Contract administration data
D—Packaging and marking	H—Special contract requirements
<b>Part II—Contract Clauses</b>	
I—Contract clauses	
<b>Part III—List of Documents, Exhibits, and Other Attachments</b>	
J—List of attachments	
<b>Part IV—Representations and Instructions</b>	
K—Representations, certifications, and other statements of offerors or respondents/bidders	
L—Instructions, conditions, and notices to offerors or respondents/bidders	
M—Evaluation factors for award	

<sup>a</sup> See [FAR 15.204-1](#), Table 15-1, and 14.201-1, Table 14-1.

Contract Format (Commercial) <sup>a</sup>
<ul style="list-style-type: none"> <li>◆ Standard Form (SF) <a href="#">1449</a></li> <li>◆ Continuation of any block from SF 1449, such as the following: <ul style="list-style-type: none"> <li>▶ Block 10 if a price evaluation adjustment for small disadvantaged business concerns applies (the contracting officer indicates the percentages and applicable line items), if an incentive subcontracting clause is used (the contracting officer indicates the applicable percentage), or if set-aside for emerging small businesses</li> <li>▶ Block 18B for remittance address</li> <li>▶ Block 19 for contract line item numbers</li> <li>▶ Block 20 - 24 for schedule of supplies/services</li> <li>▶ Block 25 for accounting data, including invoicing and acceptance information and the contracting officer's representative (COR's) name</li> </ul> </li> <li>◆ Contract clauses <ul style="list-style-type: none"> <li>▶ <a href="#">FAR 52.212-4</a>, Contract Terms and Conditions—Commercial Items, by reference (see SF 1449 block 27a)</li> <li>▶ Any addendum to FAR 52.212-4</li> <li>▶ <a href="#">FAR 52.212-5</a>, Contract Terms and Conditions Required to Implement Statutes and Executive Orders—Commercial Items</li> </ul> </li> <li>◆ Any contract documents, exhibits, or attachments</li> <li>◆ Solicitation provisions <ul style="list-style-type: none"> <li>▶ <a href="#">FAR 52.212-1</a>, Instructions to Offerors—Commercial Items, by reference (see SF 1449, Block 27a)</li> <li>▶ Any addendum to FAR 52.212-1</li> <li>▶ <a href="#">FAR 52.212-2</a>, Evaluation—Commercial Items, or other description of evaluation factors for award, if used</li> <li>▶ <a href="#">FAR 52.212-3</a>, Offeror Representations and Certifications—Commercial Items</li> </ul> </li> </ul>

<sup>a</sup> See [FAR 12.303](#).

*Figure 5-2. Contract Format*

## P2P Process

DoD's P2P process—an established end-to-end acquisition process—encompasses the business steps necessary to obtain goods and services through contracting,<sup>37</sup> explained in a contingency context as follows:

1. **Receive and accept purchase requests (PRs).** The CCO manages requests for the purchase of goods or services. As mentioned in [Chapter 3](#), the CCO should work with finance and the customer on PRs and requirements generation. All acquisition personnel should fully understand the procedures for executing PRs and defining and generating contract requirements.
2. **Develop procurement strategy.** The CCO reviews sourcing alternatives for the goods or services requested to determine the products and services from vendor sources that best meet the requirement. Gauging the marketplace and vetting vendors is key in contingency environments. Sources of supply can be found through site surveys and use of government points of entry (GPEs) like [Joint Contingency & Expeditionary Services \(JCXS\)](#) and [Federal Business Opportunities \(FedBizOpps\)](#).<sup>38</sup> In the initial stages of a contingency, site surveys and vendor meetings at secure sites can help the deployed CCO.
3. **Award procurement instrument.** Results from the execution of an approved acquisition/sourcing plan, and results in the execution of contractual documentation and legal obligation of funds. Contract awards during the initial stages of a contingency may be made using hard-copy forms (such as [SF 44](#) and [SF 1449](#)) and the government wide commercial purchase card (GCPC). Electronic contract writing systems, if operational, like Procurement Desktop Defense (PD2), can help the CCO award contracts and maintain transparency of contract-related documentation. Also, JCXS features a government-to-industry portal where contract award notifications and documents can be released to vendors.
4. **Administer procurement instrument.** Composed of monitoring the contract, agreement, or order to ensure a supplier is meeting requirements from award to physical completion, including change request management and vendor performance evaluation. This step is vital in any operation, but especially in contingencies.
5. **Perform receipt, acceptance, and return.** Involves confirming that goods or services were delivered as ordered, any errors resolved, and formal acceptance rendered by the government. Streamlined mechanisms like the [SF 44](#) and the [3in1 Tool](#) can accomplish all three for cash-and-carry and field-type purchases.
6. **Manage procurement instrument entitlement.** Includes approval of the request for payment from the commercial vendor for goods or services rendered. This step also includes requests for payment on the basis of contract terms and conditions such as financing payments. Upon approved completion, the monthly statement is authorized for payment.

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<sup>37</sup> DoD has a business enterprise architecture (BEA) that contains documentation in six domains: strategy, business (process), application, data, infrastructure, and security. The P2P process, P2P Version 10 (P2P 10.0) lies within the business domain process and is managed by the P2P Process Advocates' Working Group (P2PPAWG).

<sup>38</sup> JCXS is the new name for the JCCS (Joint Contingency Contracting System) platform.

7. **Manage disbursements.** Supports all activities necessary to execute the payment process for transactions that have been authorized for payment. Payments to vendors in contingency environments can be complicated at times. CCOs should ensure vendors are paid promptly to avoid mission delays, interest payments, and requests for equitable adjustment (REAs). CCOs should be familiar with the “Accelerated payment methods” at 5 Code of Federal Regulations (CFR) [1315.5](#).
8. **Perform instrument closeout.** Includes contract closeout procedures, from physical completion confirmation to archiving contracts in accordance with statutory regulations. This final step also includes the requirements for records retention. Reachback support like that provided by the Army Contracting Command-Rock Island (ACC-RI) Closeout Branch can greatly assist the CCO and streamline closeout by doing so outside the area of operations.

Figure 5-3 illustrates the P2P process.

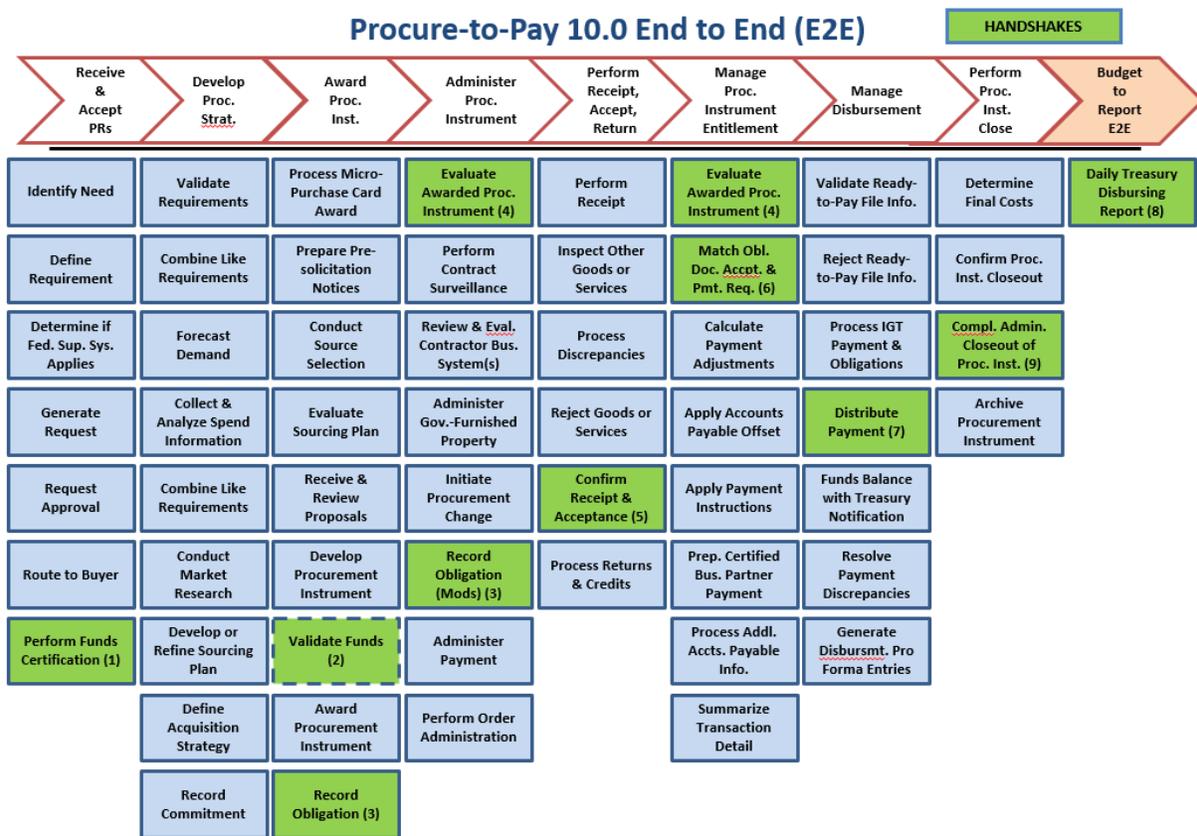


Figure 5-3. Handshake Validation Services across the P2P End to End

For information on how the P2P, DoD policy, and electronic business (e-business) tools align, see the [Department of Defense Contingency Business Environment Guidebook \(CBE Guidebook\)](#).

## Common Contracting Support Procedures in Contingency Environments

**SAP.** Contingency contracting execution for most purchases can be accomplished using SAP, as described in [FAR part 13](#), [DFARS part 213](#), and [DFARS Procedures, Guidance, and Information \(PGI\) part 213](#). This includes procedures for the acquisition of supplies, services, and minor construction so long as the aggregate amount does not exceed the simplified acquisition threshold (SAT) for declared contingency and humanitarian or peacekeeping operations as defined in [FAR 2.101](#).

**Competition requirements under SAP.** The competition requirements in [FAR part 6](#) apply to contingencies. The CCO must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is fair, reasonable, and most advantageous to the government. Maximum competition ordinarily can be obtained by soliciting quotations or offers from sources in the local trade area. Unless the contract action requires a synopsis pursuant to [FAR 5.101](#) and an exception under [FAR 5.202](#) does not apply, the CCO should consider a solicitation with responses from at least three sources to promote maximum competition. When possible, the CCO should request quotations or offers from two sources not included in the previous solicitation in accordance with [FAR 13.104](#) procedures.

**GCPC.** The GCPC is the preferred method of purchasing supplies and services within the micro-purchase threshold. All purchases made or paid for by using GCPCs are subject to the applicable provisions of [FAR subpart 13.2](#) and [DFARS 213.270](#) and must be authorized and documented accordingly. Using the GCPC has well-known benefits, but it might not be readily accepted in many locations in a contingency situation. If the GCPC is not accepted or feasible, the 3in1 Tool or [SF 44](#) may be used. See the [DoD Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs](#) and other DoD GCPC policy documents at the [Purchase Card Policy Documents web page](#).

**Contracting officer GCPC use.** Contracting officers may use the GCPC to support a contingency, humanitarian, or peacekeeping mission to buy immediately available supplies or services that will be delivered at one time and do not exceed the applicable SAT.<sup>39</sup>

**Use of [SF 44](#) and 3in1 Tool.** The [SF 44](#) (Purchase Order-Invoice-Voucher) or 3in1 Tool (which automates the [SF 44](#) process) can be used by CCOs and FOOs to make cash-and-carry (one delivery, one payment) purchases at or below the established micro-purchase threshold, or if made by warranted CCOs in declared contingency operations, the SAT. See [FAR 13.306](#) and [DFARS 213.306](#) for more information on [SF 44](#). The 3in1 Tool automates the [SF 44](#) field order, receipt, and purchase process. CCOs should be familiar with the 3in1 Tool, as it reduces risk to the field team, improves procurement and cash management in the field, and makes payments and purchases immediately visible. (See the [CBE Guidebook](#) for more information on the 3in1 Tool.)

**Imprest fund and third-party drafts.**<sup>40</sup> These instruments are cash funds of a fixed amount. Imprest funds and third-party drafts are not standard DoD instruments and normally require special approval as stated in DFARS 213.305-3, “Conditions of Use.” However,

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<sup>39</sup> See [DFARS 213.301\(3\)](#).

<sup>40</sup> See [FAR Subpart 13.305](#) and [DFARS Subpart 213.305](#).

imprest funds are authorized for use without further approval for overseas transactions at or below the micro-purchase threshold in support of a contingency operation or humanitarian or peacekeeping operation. CCOs should use these instruments as a last resort given the significant security requirements for obtaining the money. [SF 44s](#) and GCPCs generally have eliminated the need for imprest funds.

## **Contract Types**

As described in [FAR 16.101](#), a wide selection of contract types are available to the CCO, providing the flexibility needed to acquire the large variety and volume of supplies and services required in contingency environments. Contract types vary according to the following factors:

- Degree and timing of the responsibility assumed by the contractor for the costs of performance
- Amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

Contract types fall into three broad categories: fixed-price contracts ([FAR subpart 16.2](#)), where the contractor carries full responsibility and risk for the performance costs and the resulting profit or loss; cost-reimbursement contracts ([FAR subpart 16.3](#)), which provide for payment of *allowable* incurred costs to the contractor; and time and materials (T&M) or labor-hour (LH) contracts ([FAR subpart 16.6](#)), which provide for the acquisition of supplies or services on the basis of direct labor hours at specified fixed hourly rates. In addition, in a number of incentive contracts ([FAR subpart 16.4](#)), the contractor's responsibility for performance costs and for the offered profit or fee incentives is tailored to the uncertainties involved in contract performance. Moreover, in some situations, the government benefits from negotiating master indefinite delivery contracts for supplies or services ([FAR subpart 16.5](#)), with specific requirements detailed later in specific task or delivery orders.

Noncompetitive contracting, cost-reimbursable contracts, and T&M and LH contracts pose special risks of overspending. DoD has received specific guidance to reduce the use of these high-risk contract authorities, as specified in [Office of Management and Budget \(OMB\) Memorandum M-09-25, "Improving Government Acquisition."](#)

### **Fixed-Price Contracts**

As described in [FAR subpart 16.2](#), under a fixed-price contract, the government must describe exactly the required contract results and give the contractor the flexibility to plan, manage, and execute the work to achieve those results. This type of contract has tremendous advantages because the performance and cost risks lie with the contractor. Contract types commonly used in a contingency environment are as follows:

- Firm-fixed-price (FFP) contract
- Fixed-price contract with an economic price adjustment
- Fixed-price incentive contract, with determination and finding (D&F) required.

As described in [FAR 16.202-1](#), an FFP contract specifies a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type specifies that the contractor assumes maximum risk and full responsibility for all costs and resulting profit or loss. An FFP contract gives the contractor maximum incentive to control costs and perform effectively and imposes a minimum administrative burden on the government. An FFP contract may include an award fee incentive ([FAR 16.404](#)) or performance or delivery incentives ([FAR 16.402-2](#) and [16.402-3](#)) when the award fee or incentive is based solely on factors other than cost. The contract is still an FFP contract when such incentives are used. FFP contracts are suitable under the following conditions:

- Price competition is adequate.
- The prices of previous purchases of the same or similar supplies or services—made on a competitive basis or supported by valid cost or pricing data—are available.
- Available cost or pricing information permits realistic estimates of the probable costs of performance.
- Performance uncertainties can be identified, reasonable estimates of their cost impacts can be made, and the contractor is willing to accept an FFP contract, along with the associated assumption of the risks involved.

(Construction contracting is generally executed using FFP contracts ([FAR 36.207](#)).

### **Cost-Reimbursement Contracts**

In contingency environments, CCOs generally do not execute cost-type efforts as often as FFP efforts. These contracts, as stated in [FAR subpart 16.3](#), include an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor cannot exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts generally are labor intensive and require additional scrutiny of the contractor's cost accounting system; however, they have their purpose. CCOs should use this type of contract only when uncertainties in contract performance do not permit costs to be estimated with sufficient accuracy to justify the use of any type of fixed-price contract. Consequently, this type of contract generally entails larger dollar values, more complex requirements, and external support. Cost-reimbursement contracts also are limited by mandatory contractor certification and accreditation requirements: they must have a certified cost accounting system and a certified purchasing system in order to be awarded a cost-reimbursement contract. The Defense Contract Audit Agency (DCAA) and Defense Contract Management Agency (DCMA) are the certification authorities for these systems, respectively.<sup>41</sup>

### **T&M and LH Contracts**

CCOs are least likely to execute this type of contract. They require a D&F (approved by the head of an agency) from the CCO that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk ([FAR 16.601](#)). As described in [FAR subpart 16.6](#), under a T&M or an LH contract, the contractor agrees to provide its best

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<sup>41</sup> See FAR [16.301-3\(a\)\(3\)](#) and [7.105\(b\)\(3\)](#).

efforts to accomplish a specific requirement for services at predetermined hourly rates for the categories of labor to be performed. In T&M contracts, but not LH contracts, the contractor is reimbursed for the actual costs of any materials or other direct costs required to perform the work. T&M and LH contracts call for periodic payments for the actual labor performed, using the labor category rates in the contract, which include all direct labor, associated indirect costs, and an amount for profit. In addition, to the extent that materials or other direct costs are incurred in providing the services, the contractor is reimbursed at actual cost, up to the ceiling amount noted in the contract or order. T&M and LH contracts can be particularly useful and appropriate in contingency contracting situations when the need for services is clearly understood but the particular parameters of the required labor or materials cannot be definitively established at the time of contract award.

### **Indefinite Delivery Contracts**

The three types of indefinite-delivery contracts are definite-quantity, indefinite-quantity, and requirements contracts ([FAR subpart 16.5](#) and [DFARS subpart 216.5](#)). These types of contracts can prove valuable to CCOs in contingency environments given the potential for unknown delivery time and quantities during initial operations.

**Definite-quantity contracts.** As described in [FAR 16.502](#), a definite-quantity contract provides for the delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance scheduled at a designated location, time, and date after the order is placed. A definite-quantity contract may be used when the following can be determined in advance:

- A definite quantity of supplies or services will be required during the contract period.
- The supplies or services are regularly available or will be available after a short lead-time.

**Indefinite-quantity contracts.** As described in [FAR subpart 16.5](#) and [DFARS subpart 216.5](#), an indefinite-quantity contract may be used when the government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that it will require during a fixed contract period, so it is inadvisable for the government to commit itself to procuring more than a minimum quantity. Such quantity limits can be stated as number of units or as dollar values. The contracting officer should use an indefinite-quantity contract only if a recurring need is anticipated.

Indefinite-quantity contracts are characterized as follows:

- The contract must require the government to order—and the contractor to furnish—at least a stated minimum quantity of supplies or services. If an order is placed, the contractor must furnish any additional quantities, not to exceed the stated maximum.
- The contracting officer should establish a reasonable maximum quantity on the basis of market research, trends on recent contracts for similar supplies or services, a survey of potential users, or any other rational basis.

- To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount the government is fairly certain to order.
- The contract may also specify maximum or minimum quantities the government may order under each task order or delivery order and the maximum quantity that it may order during a specific period.

**Requirements contracts.** As described in [FAR 16.503](#), a requirements contract is an indefinite-delivery contract that provides for filling all of the actual purchase requirements for specific supplies or services of designated activities during a specified contract period, with deliveries scheduled by the timely placement of orders with the contractor.

The advantages of this type of contract include the following:

- They have the flexibility to support deployment without the financial risk and administrative burden that an indefinite-delivery contract imposes. The activity orders only the needed supplies or services when they are needed and pays only upon acceptance. Funds are obligated only when the government issues a delivery order against the contract.
- The contract price can be on the basis of an FFP or cost-reimbursement determination. The agreed-upon prices can be derived from catalog or market prices.
- If the government no longer requires the supplies or services covered by the contract, the contractor has the burden of proving whether additional compensation is warranted. The maximum and minimum order quantity limitations are included in the original contract. The better the customer defines its needs up front, the better the resulting competition and prices.
- The CCO should perform a spend analysis of known requirements to determine the categories of supplies and services that might be suitable for a centralized contract. One approach would be reviewing the number of simplified acquisition actions for the same items.

**Letter contracts and undefinitized contract actions.** As described in [DFARS 217.74](#), undefinitized contract actions (UCAs) are any contract actions for which the contract terms, specifications, or prices are not agreed upon before performance begins. Examples include letter contracts, basic ordering agreements, and provisioned item orders when the price is not agreed upon before performance begins. The CCO should be mindful of local policy and procedures that may provide additional information on letter contracts. For example, in the September 2014 version of the U.S. Central Command Joint Theater Support Contracting Command (C-JTSCC) AI, letter contracts were not authorized for the designated area of operations.

### **Contract Type Selection and Risk Assessment**

The CCO decides on the type of contract to use depending on the facts surrounding the individual acquisition. The objective is to select the contract type that places a reasonable degree of risk on the contractor and gives it the greatest incentive to perform efficiently and

economically. The CCO must consider the factors in [FAR 16.104](#) as well as the stability, complexity, and predictability of the requirement, specificity of the work description, records of the available contractors, and general acquisition environment. The CCO must document in the contract file the rationale for the contract type selected.

**Commerciality of the requirement.** As described in [FAR 12.207](#), when acquiring a commercial item, the CCO should consider a number of factors, including the following:

- Most often, the CCO must use an FFP contract or fixed-price contract with an economic price adjustment ([FAR 12.207\(a\)](#)).
- To protect the government's interests, the CCO should assess each purchase of commercial items and services to determine whether to use a unilateral or bilateral contractual instrument.
- The CCO may use a T&M or LH contract under certain circumstances if the determination is made that no other authorized contract type is suitable ([FAR 12.207\(b\)](#)).

When assessing unilateral and bilateral options, the CCO should consider factors such as the following:

- ***Business and cultural environment.*** Commercial practices vary among countries. Market research can clarify the risk associated with local commercial practices and the protection required to maintain the government's interests ([FAR 10.002\(b\)](#)).
- ***Nature of the requirement and impact on the mission.*** A unilateral purchase order is an offer by the government to a contractor. The contractor is not obligated to perform. A binding agreement is created when the contractor begins performance. A bilateral signature makes the agreement binding for both parties ([FAR 13.004\(b\)](#)).
- ***Order amount, contractor financial capabilities, and potential impact on mission*** (if order is not filled).

**Acquisition method.** As described in [FAR 16.102](#) and [DFARS 216.104-70](#), the acquisition method selected for a particular acquisition can limit the available choice of contract type as follows:

- ***Simplified acquisition.*** When using SAP, purchase orders are normally FFP.
- ***Unpriced orders.*** Pursuant to [FAR 13.302-2](#), unpriced purchase orders can be used in certain situations when it is impossible for the CCO to obtain firm pricing before issuing the purchase order. Whenever the CCO uses an unpriced order, it must include a dollar limit on the government's obligation, and the contracting officer must follow up to ensure timely pricing.
- ***Negotiation.*** When using the negotiation procedures prescribed in [FAR part 15](#), the CCO may use any contract type (or combination of contract types) that promotes the best interests of the government, so long as the specific limitations

in [FAR part 16](#) are met. CCOs must only use authorized contract types in accordance with the FAR and respective FAR supplements or authorized by agency regulation or a FAR deviation. Negotiation is a common method of doing business in the world, and the CCO should understand the appropriate contract type for the respective negotiation.

- **Cost risk.** CCOs should assess cost risk and the possible monetary loss or gain with regard to contractor performance. The cost risk element is considered when negotiating a fair and reasonable price and when determining the appropriate contract type to use. Requiring contractors to accept unknown or uncontrollable cost risk can endanger contract performance, substantially reduce competition, or substantially increase contract price. To realistically choose the proper contract type to meet a specific contract situation, CCOs must consider the proper allocation of cost risk. (See [FAR 16.103](#).)
- **Performance risk.** Most contract cost risk is related to contract requirements and the uncertainty surrounding contract performance—the lower the uncertainty is, the lower the risk. Therefore, the appraisal of cost risk should begin with an appraisal of performance risk. For larger, more complex contracts, the CCO likely will need assistance from other members of the government acquisition team (such as representatives from the requiring activity, engineering staff, contracting, and program or project management). Relevant considerations include the following:
  - Stability or clarity of the contract specifications or statement of work
  - Type and complexity of the item or service being purchased
  - Availability of historical pricing data
  - Previous experience in providing required supplies or services
  - Urgency of the requirement
  - Contractor technical capability and financial responsibility
  - Extent and nature of proposed subcontracting.
- **Market risk.** Changes in the marketplace affect contract costs. Preferred acquisition practice calls for forward pricing of contract efforts because it provides a baseline the CCO and contractor can use to measure cost or price performance against contract effort. Forward pricing requires the contracting parties to make assumptions about future changes in the marketplace. A volatile market increases the cost risk involved in contract pricing, particularly when the contract period extends several years. What will material and labor cost years from now? Will material shortages occur years from now? If these unknown costs are significant, the length of the contract becomes an important consideration in the selection of contract type. A fixed-price contract with an economic price adjustment is designed specifically to reduce this market risk for contractors.

## Determinations and Findings

**Definition.** As described in [FAR 1.701](#), a D&F is a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions. The determination is a conclusion or decision supported by the findings, which are statements of fact or rationale that are essential to support the determination and must cover each requirement of the statute or regulation.

**General.** As described in [FAR 1.702](#), a D&F ordinarily is for an individual contract action. Unless otherwise prohibited, class D&Fs may be executed for classes of contract actions ([FAR 1.703](#)). The approval granted by a D&F is restricted to the proposed contract action, as reasonably described in that D&F. D&Fs may provide a reasonable degree of flexibility. Furthermore, in the application of D&Fs, reasonable variations in estimated quantities or prices are permitted unless the D&F specifies otherwise.

Some of the more common general D&Fs address type of contracting action, exercising of an option, extension of period of performance, and ratification. When an option is anticipated, the D&F states the approximate quantity to be awarded initially and the level of the increase permitted by the option. (Sample D&Fs are available on the [Defense Contingency Contracting Handbook website](#).)

**Class D&F.** As described in [FAR 1.703](#), CCOs must be aware of any class D&Fs for their area of responsibility (AOR). A class D&F provides authority for a class of contract actions. A class may consist of contract actions for the same or related supplies or services (or other contract actions that require essentially identical justification).

Important D&F considerations include the following:

- The findings in a class D&F must fully support the proposed action, either for the class as a whole or for each action. A class D&F is for a specified period, with the expiration date stated in the document.
- The contracting officer ensures that individual actions taken pursuant to the authority of a class D&F fall within the scope of the D&F.
- Expiration dates are required for class D&Fs and are optional for individual D&Fs. (See [FAR 1.706](#) for more information on D&F expiration dates, and see [FAR 1.704](#) for D&F content.)

**Supersession and modification.** As described in [FAR 1.705](#), D&Fs function as follows:

- If a D&F is superseded by another D&F, that action does not render invalid any action taken under the original D&F before the date on which it was superseded.
- The contracting officer does not need to cancel a solicitation if the D&F, as modified, supports the contract action.

**Signatory authority.** As described in [FAR 1.707](#), when a D&F is required, the appropriate official signs it in accordance with agency regulations. Authority to sign (or delegate signature authority for D&Fs) is specified in the applicable parts of the FAR.

## Justifications and Approvals

**Justification and approval (J&A) for other than full and open competition.** When using procedures other than those for full and open competition, the contracting officer must complete a thorough written justification in accordance with [FAR 6.303](#), explaining the reasons for proceeding with the award of a contract without full and open competition. The CCO must also ensure that a fair and reasonable price is achieved. This justification must be approved by the approval authorities, as specified in [FAR 6.304](#), within established J&A thresholds. The CCO should be familiar with the deployed agency's thresholds and should know when legal review of the J&A is required. Further, legal can provide interpretations before contract action review to ensure any decision to restrict competition is legally sufficient. (Sample J&As are available on the [Defense Contingency Contracting Handbook website](#).)

New contracts and modifications are exempt from the requirements in [FAR part 6](#) (if the requirements in [FAR 13.501](#) apply), but CCOs must still prepare sole-source justifications for sole-source (including brand-name) acquisitions or portions of an acquisition requiring a brand-name. Documentation requirements apply to cases where only one source is solicited, and the use of the format of J&As is required for [FAR subpart 13.5](#) procurements where only one source is solicited.

Exceptions apply to contract actions or modifications that are not exempt from the requirements for full and open competition. The most commonly used exception in a deployed environment is unusual and compelling urgency. The CCO must be familiar with the complete list of FAR exceptions, noted as follows in [FAR 6.302](#):

- Only one responsible source (sole source) and no other supplies or services will satisfy agency requirements ([FAR 6.302-1](#)).
- The unusual and compelling urgency (see [FAR 6.302-2](#)) authority is when an unusual and compelling urgency precludes full and open competition and a delay in contract award would result in serious financial hardship or injury to the government. CCOs should note (1) unusual and compelling requirements are not to be confused with sole-source requirements ([FAR 6.301 \(c\)\(1\)](#)), and (2) CCOs are warned against contracting without providing for full and open competition because of a lack of advance planning by the requiring activity or because of concerns related to the level of funds available (for example, expiring funds).
- Industrial mobilization; engineering, developmental, or research capability; or expert services ([FAR 6.302-3](#)).
- International agreement ([FAR 6.302-4](#)).
- Statutory authorization or requirement ([FAR 6.302-5](#)).
- National security ([FAR 6.302-6](#)).
- Public interest ([FAR 6.302-7](#)).

When unusual and compelling urgency is the basis for using procedures other than those for full and open competition, the written J&A may be made after contract award if the preparation and approval of the J&A before award would unreasonably delay the acquisition

([FAR 6.302-2\(c\)\(1\)](#)). Contracts awarded under this circumstance should include an appropriately limited period of performance, with follow-on contracts awarded on the basis of full and open competition or the submission of cost or pricing data for sole-source awards.

**Class J&As.** As prescribed in [FAR 6.303-1\(d\)](#), class justifications and international agreement competitive restriction (IACR) documents may be used in certain circumstances. For example, they may be used when citing similar justification authority for a group of related contract actions for the same or related supplies or services. Information that is the same for multiple contracts need not be restated for each. CCOs must be aware of the class J&As and IACRs for their AORs.

### **Lease or Buy**

Pursuant to [FAR subpart 7.4](#), CCOs should decide whether to lease or purchase equipment on the basis of a case-by-case evaluation of comparative costs and other factors. At a minimum, CCOs should consider the following (in addition to applying [10 United States Code \(U.S.C.\) Section 2401](#) statutory authorization requirements to the lease of a vessel, aircraft, combat vehicle or commercial vehicle, and associated equipment):

- Estimated period the equipment will be used and the extent of use during that period
- Financial and operating advantages of alternative types and makes of equipment
- Cumulative rental payments for the estimated period of use
- Net purchase price
- Transportation and installation costs
- Maintenance and other service costs
- Potential obsolescence of the equipment because of imminent technological improvements.

The CCO should consider the following additional factors, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment:

- Availability of purchase options
- Potential for use of the equipment by other agencies after its use by the acquiring agency
- Trade-in or salvage value
- Imputed interest
- Availability of a servicing capability (the ability of the equipment to be serviced by the government or other sources if purchased), especially for highly complex equipment.

Leases—either capital or operating—should be funded in accordance with [DoD Financial Management Regulation \(FMR\) 7000.14-R](#). Procurement funds are used for capital leases, which are essentially installment purchases of property. If a lease is justified, a lease with option to purchase is the preferred acquisition method ([FAR 7.402\(b\)\(2\)](#)).

## Publicizing Contract Actions

**Publication of contract actions.** Pursuant to [FAR 5.002](#), contracting officers are required to publicize contract actions to increase competition unless the contracting officer determines that an exception applies pursuant to [FAR 5.202\(a\)](#). The contracting officer's determination must be filed accordingly. To publicize contract actions, CCOs should at least post in a public place a notice of all unclassified solicitations for goods and services to support the contingency operation.

**Synopsis of requirements in FedBizOpps.** A CCO can unilaterally determine that a particular requirement does not need to be synopsisized in FedBizOpps under 14 specific exceptions ([FAR 5.202\(a\)](#)). In a contingency or humanitarian situation, the most commonly used exception applies when the proposed action will be made and performed outside the United States and its outlying areas and only local sources will be solicited. However, the CCO should carefully consider whether one of the other exceptions might apply to the proposed action before proceeding with a synopsis. Local contracting organization policies might require some form of posting or prior notification to potential offerors or bidders, even if the proposed action does not require a synopsis in FedBizOpps.

**Synopsizing using the Joint Contingency & Expeditionary Services.** If the [JCXS](#) is operational in the respective area of operations, the Joint Contingency Contracting System (JCCS) application within JCXS can be used to publicize requirements. CCOs should consult senior contracting leadership for the proper e-business systems to use for synopsizing (and soliciting) requirements in contingency environments in a designated AOR. See the [CBE Guidebook](#) for more information on JCXS.

**Oral solicitations.** Oral solicitations or verbal requests for proposals (RFPs) can be of value in contingency environments, especially at the onset; however, they are rare. Oral solicitations are authorized when a written solicitation would delay the acquisition of supplies or services—such as perishable items, support of contingency operations, or other emergency needs—to the detriment of the government, and a solicitation notice is not required under [FAR 5.202](#). This technique does not excuse the CCO from complying with all other statutory and regulatory requirements. Oral solicitations are typically a last resort because of potential associated problems, and they require immediate follow-up in writing. CCO documentation also must provide a sufficient rationale for the use of an oral solicitation.

The contract file must include the following:

- Justification for use of an oral solicitation
- Item description, quantity, and delivery schedule
- Sources solicited, including the date, time, name of the person contacted, and prices quoted
- Solicitation number provided to prospective offerors.

Once the CCO completes the oral solicitation and selects an offeror, a contract is prepared as quickly as possible for the contractor's signature. Delay might require further explanation in the contract file that describes the rationale for failing to take prompt action.

Sample contract formats, electronic prepopulated forms, and electronic copies of the required clauses in the contingency contracting support kit accelerate the contracting documentation process.

### **Domestic Source Restrictions**

**Foreign acquisitions.** [FAR part 25](#) and [DFARS part 225](#) establish regulations implementing the Buy American Act, Balance of Payments Program, and Trade Agreements Act.

**Buy American Act.** The Buy American Act restricts the purchase of supplies that are not domestic end products for use in the United States. The Buy American Act does not apply to articles, materials, and supplies for use outside of the United States, its possessions, Puerto Rico, and other sites subject to its jurisdiction ([FAR 25.001\(a\)\(1\)](#)). A foreign end product may be purchased if the contracting officer determines that the price of the lowest-cost domestic offer is unreasonable. In view of this exception, most overseas acquisitions to support a foreign contingency operation are not subject to the Buy American Act and the implementing regulations at FAR subparts [25.1](#) and [25.2](#).

**Balance of Payments Program.** This program applies to purchases of supplies or construction for use outside of the United States. The program institutes a preference for domestic (U.S.-made) products and construction materials. Exceptions to the program are specified in [DFARS 225.75](#). A foreign end product may be acquired for use outside of the United States—or a foreign construction material may be used in construction outside of the United States—without regard to the restrictions of the Balance of Payments Program if the following conditions are met:

- The estimated cost of the end product does not exceed the SAT.
- The end product or construction material is listed at [FAR 25.104](#), or the head of the contracting activity (HCA) determines that the requirement (1) can only be filled by a foreign end product or construction material ([FAR 25.103\(b\)](#)); (2) is for end products or construction materials that, by their nature or as a practical matter, can be acquired only in the geographic area concerned (such as ice or bulk material such as sand, gravel, or other soil material; stone; concrete masonry units; or fired brick); or (3) is for perishable subsistence products and delivery from the United States would significantly impair their quality at the point of consumption.
- The acquisition of foreign end products is required by a treaty or executive agreement between governments or laws passed supporting buy local first programs.
- The end products are petroleum products or products for commissary resale.
- The end products are eligible products subject to the Trade Agreements Act, North American Free Trade Agreement (NAFTA), or Israeli Trade Act, or the construction material is subject to the Trade Agreements Act or NAFTA.

- The cost of the domestic end product or construction material (including transportation and handling costs) exceeds the cost of the foreign end product or construction material by more than 50 percent.
- The head of the agency has determined that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material or that it is impracticable to apply the restrictions of the Balance of Payments Program to the construction material.

**Trade Agreements Act.** The Trade Agreements Act ([19 U.S.C. 2501 et seq.](#) and [FAR subpart 25.4](#)) authorizes the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States or that meet certain other criteria, such as having least-developed-nation status. The President has delegated this waiver authority to the U.S. trade representative.

[FAR 25.401](#) lists all designated countries to which the Trade Agreements Act applies. The Trade Agreements Act does **not** apply to the following:

- Purchases of supplies below the dollar threshold established by the U.S. trade representative ([FAR 25.402\(b\)](#))
- Purchases of arms, ammunition, or war materiel
- Construction contracts valued at less than established dollar threshold
- Some service contracts ([FAR 25.403\(c\)](#))
- Purchase from foreign sources that is restricted by the DoD Annual Appropriations or Authorization Act. ([DFARS 225.401-70](#) identifies all products to which the act applies.)

**Berry Amendment.** As required in [DFARS 225.7002](#), CCOs must comply with the Berry Amendment. Unless a specific exception in law applies, the following products, components, or materials must be grown, reprocessed, reused, or produced wholly in the United States if they are purchased with funds made available (but not necessarily appropriated) to DoD ([DFARS clause 252.225-7012](#)):

- Food
- Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, them<sup>42</sup>
- Tents and structural components of tents, tarpaulins, or covers
- Cotton and other natural fiber products
- Woven silk or woven silk blends
- Spun silk yarn for cartridge cloth

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<sup>42</sup> Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

- Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics
- Canvas products
- Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles)
- Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing the fibers, yarns, fabrics, or materials listed here.

[DFARS 225.7002-2](#) explains Berry Amendment exceptions, several of which may apply in a deployed environment.

The DFARS clauses pertaining to the Berry Amendment must be included in DoD solicitations, such as invitations for bids (IFBs) or RFPs, and DoD contracts. If the cited clause is included in a solicitation or contract, the Berry Amendment restrictions apply to that procurement. **Table 5-1** shows the applicability of [FAR subpart 25.5](#).

Subpart	Supplies for Use		Construction		Services Performed	
	Inside US	Outside US	Inside US	Outside US	Inside US	Outside US
25.1 Buy American Act—Supplies	X	—	—	—	—	—
25.2 Buy American Act—Construction Materials	—	—	X	—	—	—
25.3 Contracts Performed Outside the United States	—	X	—	X	—	X
25.4 Trade Agreements	X	X	X	X	X	X
25.5 Evaluating Foreign Offers— Supply Contracts	X	X	—	—	—	—
25.6 American Recovery and Reinvestment Act—Buy American Act—Construction Materials			X			
25.7 Prohibited Sources	X	X	X	X	X	X

Subpart	Supplies for Use		Construction		Services Performed	
	Inside US	Outside US	Inside US	Outside US	Inside US	Outside US
25.8 Other International Agreements and Coordination	X	X	—	X	—	X
25.9 Customs and Duties	X	—	—	—	—	—
25.10 Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11 Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

*Table 5-1. FAR Subpart 25.5 Provides Comprehensive Procedures for Offer Evaluation and Examples*

### Other Unique Contracting Considerations

**Synchronized Predeployment and Operational Tracker (SPOT).** SPOT is the U.S. Government system of record for contractor and contractor personnel accountability and visibility. Per [DFARS clause 252.225-7040\(g\)](#), SPOT is mandated for all contractors authorized to accompany the forces (CAAF) serving in a declared contingency or humanitarian or peacekeeping operation (or in other military operations or exercises) when designated by the combatant commander. CAAF may include U.S. citizens, U.S. legal aliens, third-country nationals, local nationals who reside with U.S. forces, and others as required by each combatant command (CCMD). Additional information on SPOT, including information and supporting systems under the SPOT-Enterprise Suite (SPOT-ES), authorities, policies, business rules, and training, is available at the [SPOT website](#). CCOs should know this website and the SPOT-ES.

**Theater business clearance (TBC) and contract administration delegation (CAD).** TBC/CAD is an acquisition support process designed to give joint force commanders (JFCs) and senior contracting leadership visibility over all contracts and contractors performing work in their AORs. TBC/CAD is a clearance process that ensures theater-specific mandatory and unique requirements are included in solicitations (and therefore contractor proposals) and contracts at the pre-award and award phases. CAD allows the CDR to control the assignment of contract administration for the portion of contracted effort that relates to performance in, or delivery to, designated operational areas. It also allows the CDR to oversee contractor compliance with directed policies. CCOs should understand the role the CCMD Operational Contract Support Integration Cell (OCSIC) plays in planning, developing, and coordinating TBC implementing guidance if TBC measures are directed. CCOs should determine before deployment whether a

formal TBC/CAD process has been established and, if so, work to fully understand the requirements and ensure they are executed properly. See [DFARS 225.74](#), [DFARS PGI 225.74](#) and [Joint Publication \(JP\) 4-10](#) for more information.

**Defense Base Act (DBA) insurance.** DBA insurance is required in solicitations and contracts when the Defense Base Act applies ([FAR 28.305](#)), and (1) the contract will be a public-work contract performed outside the United States, or (2) the contract will be approved or financed under the Foreign Assistance Act of 1961 ([Pub. L. 87-195](#)) and is not excluded by [FAR 28.305\(b\)\(2\)](#), regardless whether the personnel performing those services have CAAF status. In addition, before personnel with CAAF status can deploy, the DBA insurance information block in SPOT must include a valid policy or binder number. Contractors are not authorized to perform U.S. Government contracts without the proper insurance. (Additional information on DBA is available at the Department of Labor's [Defense Base Compensation](#) web page.

### Payment Information

**Wide Area Workflow (WAWF) eBusiness Suite.** The [WAWF suite](#) is a secure, web-based system for government contractors and authorized DoD users for generating, capturing, and processing receipt and payment documents. WAWF has many different resident applications, including the Contracting Officer Representative Tracking (CORT) Tool, Electronic Document Access (EDA) application, and iRAPT (an invoicing, receipt, and property transfer application, which allows the government to assign many different roles and establish an acceptance and invoice routing method). WAWF enables electronic submission of contractor invoices, as well as government inspection and acceptance documents ([DFARS 232.7002](#)).

Contractors submit payment requests and receive reports in electronic form, except for

- purchases paid for with a GCPC;
- awards to foreign vendors for work performed outside the United States;
- classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security;
- contracts awarded by deployed contracting officers in the course of military operations, including contingency operations as defined in [10 U.S.C. 101\(a\)\(13\)](#); humanitarian or peacekeeping operations, as defined in [10 U.S.C. 2302\(8\)](#); or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or to national or civil emergencies;
- purchases to support unusual or compelling needs of the type described in [FAR 6.302-2](#);
- cases in which DoD is unable to receive payment requests or provide acceptance in electronic form; or
- cases in which the contracting officer who administers the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the contractor.

**Payment in local currency.** As described in [FAR 25.1002](#), CCOs must determine whether the respective contract requires local currency or U.S. currency, unless an international agreement or the World Trade Organization (WTO) Government Procurement Agreement (GPA) requires a specific currency. For currency conversions, CCOs can use the [Currency Converter](#). This help them ensure adequate funds are available to cover currency fluctuations to avoid a violation of the [Anti-Deficiency Act](#) (31 U.S.C. 1341, 1342, 1511–1519) when the contract is priced in foreign currency. Using electronic funds transfer (EFT) when paying vendors and contractors is a preferred practice. Currency exchange rates are available from the local finance office or the [Bureau of the Fiscal Service](#) website.

**Contingency contracting officer currency declaration.** As noted in [FAR 25.1002](#), the contracting officer has the authority to determine whether the contract will be priced in U.S. dollars or the local currency. CCOs must include in the contract the exchange rate to be used for converting the contract price from U.S. dollars to the local currency—even in austere environments. (For example, see [DFARS 232.72](#).)

One of the CCO's functions is to help stabilize the local economy. An influx of U.S. dollars often works against this goal by devaluing the local currency. Before placing overseas contracts in U.S. dollars, the CCO should discuss the subject with the embassy, host nation liaison office, staff judge advocate, and accounting and finance office.

**Choice of law.** Per [DFARS 233.215-70](#), each contract awarded in a foreign country in support of a contingency operation should contain a contract clause stating that U.S. laws apply to the contract, the contract will be interpreted in accordance with U.S. laws, and all disputes under the contract will be handled in accordance with the disputes clause of the contract.

### **Pre-Award Determinations and Memorandums**

**Negotiating practices.** Much of the business conducted by contractors overseas is accomplished through negotiation. When setting the price of an item, CCOs should keep in mind that the first price quoted is usually only a starting position for negotiations. CCOs who deal with foreign contractors know that most of them can be shrewd negotiators. CCOs should consider negotiating for lower prices as a normal and necessary business practice. For supplies, services, and construction, experience has shown that prices drop dramatically when discussions are initiated with an offeror. The CCO's bargaining position is enhanced when the product or service is available elsewhere or the requirement is not urgently needed. However, if the reverse is true—and the contractor is aware that the product or service is unavailable or the requirement is urgent—the CCO may be hard pressed to negotiate a better deal.

**Price negotiation memorandum.** The business culture in most deployed locations relies on price negotiations. CCOs should emphasize price negotiations, even if competition exists, at sustained or established locations. In awarding negotiated contracts, contracting officers should always engage in aggressive negotiations on the basis of renegotiation objectives ([FAR 15.405](#)). All negotiation results must be documented in a price negotiation memorandum (PNM) and properly filed ([FAR 15.406-3](#)).

**Certified cost or pricing data.** The award of any negotiated contract (or the modification of any contract) that exceeds \$700,000 requires the contractor to submit certified cost or pricing data unless one of the exemptions to the requirement for certified cost or pricing data applies ([FAR 15.403-4\(a\)\(1\)](#)). The CCO can seek a waiver if it has a reasonable basis. When the certificate of cost or pricing data is required, offerors must complete the certificate form available at [FAR 15.403-4\(b\)\(2\)](#).

Per [FAR 15.403-1\(b\)](#), contracting officers are not required to obtain certified cost or pricing data from offerors under the following conditions:

- Acquisition is at or below the SAT.
- Prices are on the basis of adequate price competition (two or more responsible offerors responded).
- Commercial items are being acquired.
- A contract or subcontract for commercial items is being modified.
- Prices are set by law or regulation.
- A waiver has been obtained (only for contracts in excess of \$700,000).

**Independent government estimate (IGE).** A key part of price determination, IGEs generally are used for commercial items, supplies, equipment, and simple services routinely available on the open market at competitive prices. They help ensure the government has thought through the acquisition requirements and cost elements before award. Price or cost estimates are required for all contracts anticipated to exceed the SAT and must be independently developed, on the basis of a comparison and analysis of factors such as historical prices paid and market survey information. The IGE usually is developed by the requiring unit and is used to establish a realistic price or cost. The IGE is also a critical component of negotiation and formulating the government's negotiation position. IGEs ultimately help in negotiating a fair and reasonable price. Ensure your customer understands the importance of establishing pricing with proper research. The customer owns the requirements and therefore must provide an IGE to support your effort to provide the best value to the government and taxpayer.

**Responsible prospective contractor and vendor vetting.** Per [FAR 9.103\(a\)](#), contracts may be awarded only to responsible prospective contractors. A responsible contractor is an entity that meets the criteria in [FAR 9.104-1](#). The CCO is responsible for researching a contractor and determining whether it is responsible. Prospective contractors must be registered in the SAM database before award of a contract or agreement, unless one of the exceptions at [FAR 4.1102](#) applies (for contracts awarded by deployed CCOs in support of contingency or humanitarian or peacekeeping operations). The Contractor Performance Assessment Reporting System (CPARS) and the Federal Awardee Performance and Integrity Information System (FAPIS) can aid the CCO in researching contractor responsibility. Also, approved host nation business advisors can render valuable insight into responsible local vendors. The CCO, through the appropriate chain

of command, can work with the HCA, the local embassy, and the State Department to establish a responsible local vendor base. The following general standards apply:

- Adequate financial resources (or the ability to obtain them) needed to perform contract work ([FAR 9.104-1\(a\)](#)).
- Ability to comply with the delivery schedule ([FAR 9.104-1\(b\)](#)).
- Satisfactory performance record ([FAR 9.104-1\(c\)](#)). Additional information on contractor performance records and evaluation of such information can be found at [FAR 9.104-3\(b\)](#) and [FAR subpart 42.15](#). CCOs should note that contractor responsibility shall not be determined solely on the basis of a lack of relevant performance history, except as provided in [FAR 9.104-2](#).
- Satisfactory record of integrity and business ethics ([FAR 9.104-1\(d\)](#)).
- Necessary organization, experience, accounting, operational controls, and technical skills required to perform contract work ([FAR 9.104-1\(e\)](#)).
- Necessary production, construction, and technical equipment (or the ability to obtain them) ([FAR 9.104-1\(f\)](#)).
- Eligibility to receive the award ([FAR 9.104-1\(g\)](#)).
- Lack of contractor insurance and other protections, including any necessary reinsurance agreements, can negatively impact contract execution in the designated area of operations.

The CCO must be familiar with agency vendor vetting procedures for the theater of operations supported. Local AIs and SOPs, if and when developed, normally provide specific procedures for determining whether prospective contractors are responsible and have been adequately vetted, validated, and approved. For example, in Afghanistan, the CJTSCC SOP subpart 5104.200 provides specific vendor vetting and installation access procedures. The SOP also directs the use of the JCCS to record vendor registrations and assign risk ratings. CCOs should discuss vendor vetting with senior contracting leadership if no established SOP or AI contains tailored information for the respective AOR.

**Check for excluded, debarred, and restricted sources.** CCOs must check the [Excluded Parties List System](#) (EPLS), a function of the SAM system, for exclusions before opening proposals or bids and again before award. CCOs should also check the “[Identified Enemies List](#),” as required by the National Defense Authorization Act (NDAA) FY12 (Section 841) and NDAA FY14 (Section 831). If Internet connectivity is down, CCOs can contact the nearest embassy or contracting activity for assistance. Also, CCOs should ensure local vendor vetting procedures are followed, if developed, and e-business tools, like JCXS, are used pursuant to DoD regulations and local AIs or SOPs.

**Protect your contractors.** CCOs are responsible for safeguarding contractor information. In some cases, the safety of contractor personnel depends on you and your vigilance to keep their information safe. In certain deployed locations, CCOs must not advertise contractors that have won awards, including e-mail address, physical address, and names of

employees. Upon arrival in the AOR, the CCO will be informed whether these strict information safeguards apply to the deployed location.

**Host-nation-first programs.** Host-nation-first programs leverage contracting resources to promote economic expansion, employment, and skills development for indigenous populations. CCOs must understand the specifics of the host-nation-first program if active in the respective operational area, whether the program allows for direct award to local vendors, the use of socioeconomic information—where the winning contractors must maximize the employment, training, and transfer of knowledge, skills, and abilities to the local workforce—or some other allowance, as part of the source selection process. This is part of the campaign for building trust and establishing habitual relationships, and it is a valuable counter-insurgency strategy that can be used worldwide. The CCO should determine whether such a program has been established in the AOR. For example, [DFARS 225.7703](#) allows for enhanced authority to acquire products or services from Afghanistan.

DFARS Procedures Guidance and Instruction (PGI) [225.7703](#) provides acquisition procedures and D&F requirements for use when using the AFI enhanced authority. CCOs should become familiar with local AIs and SOPs to determine whether country-first programs are in place for the designated area of operations.

## Contract Forms

**Contractual instruments for contingency.** Most contingency requirements can be met by using SAP, such as manual or electronic versions of SF 44, “[Purchase Order-Invoice-Voucher](#)” or the 3in1 Tool; DD Form 1155, “[Order for Supplies and Services](#)”; SF 1449, “[Solicitation/Contract/Order for Commercial Items](#)”; blanket purchase agreements (BPAs); and the GCPC ([DFARS 253.213](#)).

**SF 44.** [SF 44](#), described in [FAR 13.306](#) and [DFARS 253.213](#), is a pocket-sized purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services. [SF 44](#) can be used as a purchase order, receiving report, invoice, and public voucher. Because [SF 44](#) contains no written terms and conditions, its use is authorized only when no other simplified acquisition method is more economical or efficient and all of the following conditions are met:

- The supplies or services are immediately available.
- One delivery and one payment are to be made.
- The amount of the purchase is at or below the micro-purchase threshold.<sup>43</sup>

Also, if an item is below the micro-purchase threshold for a contingency operation, a competitive procurement is not needed.

**The 3in1 Tool.** The [SF 44](#) execution and clearing process can now be automated by using the handheld 3in1 Tool. The 3in1 Tool records and electronically transmits purchase,

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<sup>43</sup> Warranted CCOs may use [SF 44](#) for overseas transactions when supporting contingency or humanitarian or peacekeeping operations, as defined in [FAR 2.101](#), not to exceed the SAT in accordance with [DFARS 218.201\(6\)](#).

receipt, and payment information to a central database for automated clearing of orders and gives the CCO visibility into remote purchases for oversight and analysis. 3in1 delivers an easy-to-use technology to execute immediate, off-the-shelf field purchases of supplies and services where use of the GCPC is appropriate, but not feasible. The 3in1 Tool reduces risk to the field team, improves procurement and cash management in the field, and renders the payments and purchases immediately visible. (See the [Joint Contracting and Contingency Services website](#) and the [CBE Guidebook](#) at for additional information on the 3in1 Tool and quick-start steps to get 3in1 up and running in theater.)

**DD Form 1155.** As described in [FAR 13.302](#), purchase orders are self-contained, one-time contracts that typically result in one delivery and one payment. When used as a purchase order, [DD Form 1155](#) is authorized for purchases that do not exceed the SAT. Vendors are solicited orally or in writing. When the item requested is received or the requested service is performed, the bottom of the front page may be used as a receiving report for the government.

**Contract termination.** Contract termination may be for the convenience of the government (or for default) under the contract clause authorizing the termination. A contract termination includes the effective date of termination, extent of termination, and any special instructions. It also discusses steps that the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor workforce ([FAR 49.601-2\(g\)](#)) and, if the termination notice is by telegram, includes these steps in the confirming letter or modification.

**SF 1449.** As described in [FAR subparts 53.212 and 53.213](#), the use of [SF 1449](#) is required in solicitations and contracts for commercial items. [SF 1449](#) is required for the purchase of commercial items that exceed the SAT if a paper solicitation or contract is being used and the streamlined procedures of [FAR 12.693](#) are not being used. [SF 1449](#) is encouraged, but is not required, for purchases of commercial items that fall below the SAT ([FAR 12.204](#)) Agencies can require additional detailed instructions for use of the form to acquire commercial items. [SF 1449](#) can also be used to acquire items that fall below the SAT, establish BPAs, and issue orders under basic ordering agreements.

**DD Form 1155 or SF 1449 as a task order or delivery order.** As with the [SF 1449](#), [DD Form 1155](#) can also be used to acquire items that fall below the SAT, establish BPAs, and issue orders under basic ordering agreements. These forms can be used as a task or delivery order against requirements-type contracts. Delivery orders are orders for supplies, and task orders are orders for services, both placed against an established requirements contract. As exact requirements become known, a [DD Form 1155](#) or [SF 1449](#) is sent to the supplier, initiating the delivery of supplies or services as specified in the delivery order, subject to the terms and conditions of the existing requirements contract.

**Table 5-2** summarizes basic contract forms. (See [FAR part 53](#) and [DFARS part 253](#) for additional information on contracting forms.)

Threshold/Transaction Limit	Use	Limitations
GCPC		

Threshold/Transaction Limit	Use	Limitations
<ul style="list-style-type: none"> <li>◆ Micro-purchase threshold (<a href="#">FAR 13.301(c)</a>)</li> <li>◆ Up to SAT if requirements in <a href="#">DFARS 213.301(3)</a> are met</li> <li>◆ Any other threshold or limitation stated in <a href="#">FAR 13.301</a>, <a href="#">DFARS 213.301</a>, and <a href="#">DFARS 218.2</a></li> </ul>	<ul style="list-style-type: none"> <li>◆ Micro-purchases up to SAT as payment in conjunction with other purchase methods</li> <li>◆ Supplies, services, or construction except as stated in <a href="#">FAR 32.1108(b)(2)</a></li> <li>◆ No cash advance</li> <li>◆ No rental/lease or real estate</li> <li>◆ Place a task order or make payment (<a href="#">FAR 13.301(c)</a>)</li> </ul>	<ul style="list-style-type: none"> <li>◆ No clauses</li> <li>◆ Up to SAT for GSA</li> <li>◆ No incrementation</li> <li>◆ No telecommunications</li> </ul>
SF 44 <sup>a</sup>		
<ul style="list-style-type: none"> <li>◆ Micro-purchase threshold (<a href="#">DFARS 213.306(a)(1)</a>)</li> <li>◆ Up to SAT if made by contracting officer (<a href="#">DFARS 213.306(a)(1)(B)</a> and <a href="#">DFARS 218.201(6)</a>)</li> </ul>	<ul style="list-style-type: none"> <li>◆ Supplies and non-personal services immediately available</li> <li>◆ Purchase order/receiving report/invoice/public voucher</li> <li>◆ One delivery and one payment will be made</li> <li>◆ All other uses specified in <a href="#">FAR part 13</a>, <a href="#">DFARS part 213</a>, and <a href="#">PGI part 213</a></li> </ul>	<ul style="list-style-type: none"> <li>◆ No clauses</li> <li>◆ Commercial items without technical specs</li> <li>◆ <a href="#">FAR part 12</a> does not apply</li> <li>◆ One delivery, one payment</li> <li>◆ Can decentralize ordering officer</li> </ul>
DD Form 1155		
Thresholds in effect under FAR parts <a href="#">2,12</a> , and <a href="#">13</a> and DFARS parts <a href="#">202</a> , <a href="#">212</a> , and <a href="#">213</a>	<ul style="list-style-type: none"> <li>◆ Order supplies or services</li> <li>◆ Purchase order or delivery order</li> <li>◆ Establish a BPA</li> <li>◆ Place a call against a BPA</li> <li>◆ Follow the procedures at <a href="#">PGI 253.213(f)</a></li> </ul>	SAP
DD Form 250, "Material Inspection and Receiving Report"		
N/A	Material inspection and receiving reports	N/A
SF 1449		
Thresholds in effect under FAR parts <a href="#">2,12</a> , and <a href="#">13</a> and DFARS parts <a href="#">202</a> , <a href="#">212</a> , and <a href="#">213</a>	<ul style="list-style-type: none"> <li>◆ Solicitation/contract/order of commercial items</li> <li>◆ Establish a BPA</li> <li>◆ Place a call against a BPA</li> </ul>	Commercial purchase only under SAP (agencies may prescribe additional detailed instructions for use of the form ( <a href="#">FAR 53.212</a> ))
SF 1442, "Solicitation, Offer, and Award (Construction, Alteration, or Repair)"		
<ul style="list-style-type: none"> <li>◆ Soliciting offers and awarding contracts expected to exceed the SAT (<a href="#">FAR 53.236-1(d)</a>)</li> <li>◆ May be used at or below the SAT (<a href="#">FAR 36.701(a)</a>)</li> </ul>	Solicitation/contract/order of construction	Construction
SF 26, "Award/Contract"		
N/A	<ul style="list-style-type: none"> <li>◆ May be used to award negotiated contracts in which the signature of both parties on a single document is appropriate.</li> </ul>	If using the SF 26 for a negotiated procurement, block 18 is not to be used

Threshold/Transaction Limit	Use	Limitations
	<ul style="list-style-type: none"> <li>◆ Used in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, (<a href="#">FAR 14.408-1(d)(1)</a>)</li> </ul>	
SF 33, Solicitation, Offer, and Award		
N/A	<ul style="list-style-type: none"> <li>◆ May be used to prepare RFPs or requests for information (RFIs) when contracting by negotiation (<a href="#">FAR 15.210(a)</a>)</li> <li>◆ May be used to award negotiated contracts in which the signature of both parties on a single document is appropriate</li> <li>◆ Sealed bidding (<a href="#">FAR 14.201-2(a)(1)</a>)</li> </ul>	N/A
SF 30, "Amendment of Solicitation/Modification of Contract"		
N/A	<ul style="list-style-type: none"> <li>◆ May be used for modifying purchase orders (<a href="#">FAR 13.307(c)(3)</a>)</li> <li>◆ May be used for amending RFPs and RFIs (<a href="#">FAR 15.210(b)</a>)</li> <li>◆ Used in connection with novation and change of name agreements (<a href="#">FAR 42.1203(h)</a>)</li> <li>◆ Used in amending invitation for bids (<a href="#">FAR 14.208</a>), modifying purchase and delivery orders (<a href="#">FAR 13.302-3</a>), and modifying contracts (<a href="#">FAR 42.1203(h)</a>, <a href="#">43.301</a>, and <a href="#">49.602-5</a>)</li> </ul>	N/A

<sup>a</sup> White = seller invoice/accounting and finance; blue = Seller's copy; pink = receiving copy; green = keep in book.

*Table 5-2. Basic Contract Forms*

### Blanket Purchase Agreements

**BPAs.** As described in [FAR 13.303](#), a BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing charge accounts with qualified sources of supply.

BPAs have the following characteristics:

- Prepared without a purchase requisition.
- Prepared and issued on [DD Form 1155](#) or [SF 1449](#).
- Do not cite accounting and appropriation data.
- Made with firms from which numerous individual purchases likely will be made during a given period. For example, if experience shows that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities—and if numerous simplified acquisitions are usually made from such suppliers—establishing BPAs with those firms is advantageous.
- Placed concurrently with more than one supplier for items of the same type (if practicable). In that instance, all capable contractors in the portfolio of BPAs for

that service or supply must be given a fair opportunity to respond to the government's requirement.

- Need oversight by the chiefs of contracting office (COCOs) to ensure compliance with [FAR 13.303](#). This oversight is especially important for decentralized BPAs because they carry greater risks, such as splitting of requirements, exceeding of spending limits, and unauthorized purchases.
- Need CCO review of the strategy for their use or that of a contract. In addition, the CCO should document the strategy, ensure all BPA vendors receive a fair share of award opportunities, and verify that the prices are fair and reasonable.

### **Source Selection Process**

**Figure 5-4** summarizes the source selection process. (See [FAR subpart 15.3](#) and the [DoD Source Selection Guide](#) for information on source selection and procedures.)

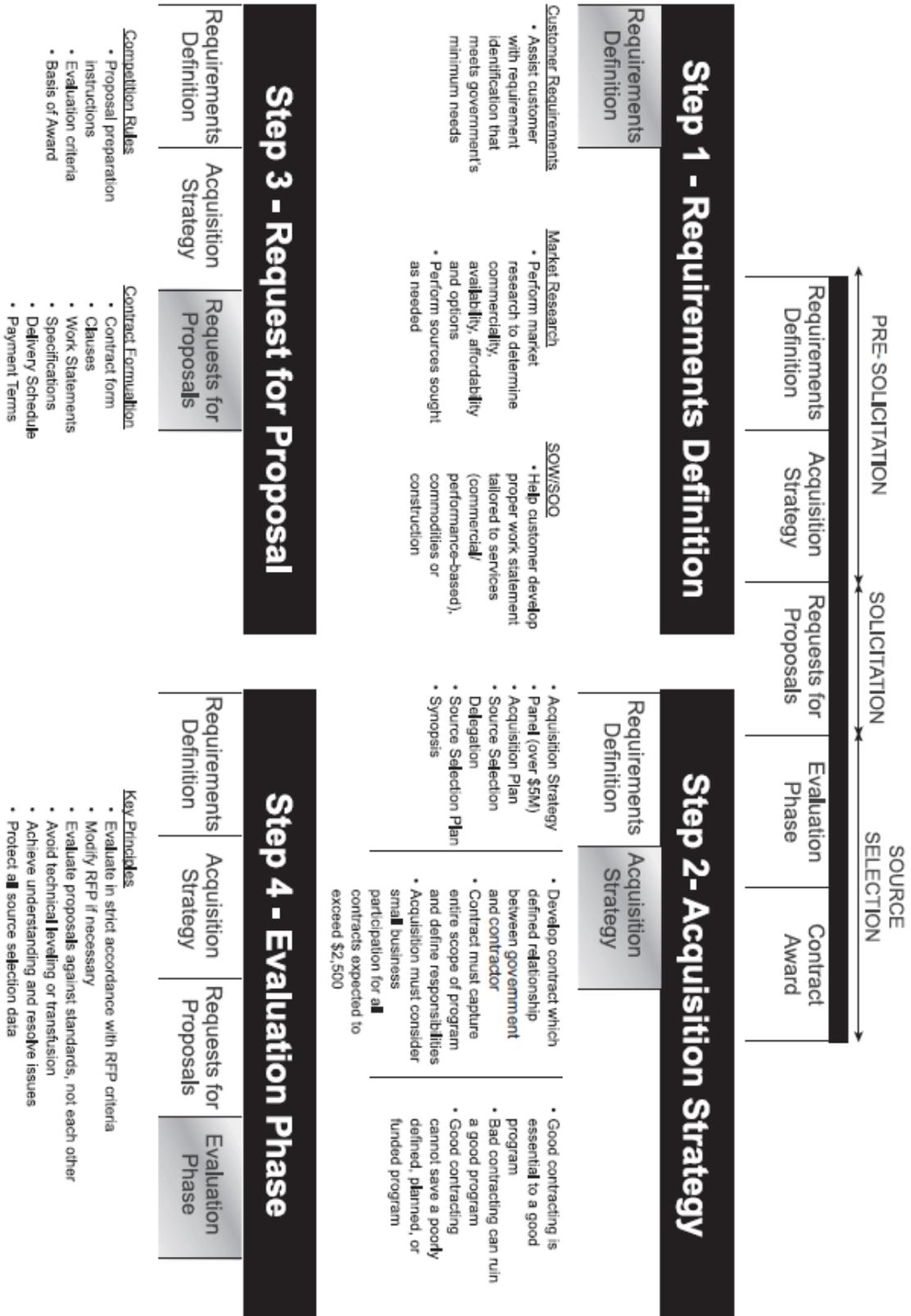


Figure 5-4. Source Selection Process

**Source selection procedures and techniques (competitive).** As described in [FAR 15.302](#) and [DFARS 215.3](#), the objective of a source selection is to choose the proposal that represents the best value to the government. For competitive contract actions not using SAP, source selection procedures must be followed ([FAR subpart 15.3](#)), as well as applicable Service guidance and procedures. CCOs need to know the various review thresholds at their deployed location (such as acquisition plan, acquisition strategy, source selection plan, source selection authority, solicitation/contract review, other than full and open competition, ratification, undefinitized contract actions, and non-DoD contracts and delivery orders). Source selection has the following characteristics.

**Best value continuum—lowest price technically acceptable (LPTA) and tradeoff processes.** Best value can be obtained by using any one source selection approach (or a combination of them). The relative importance of cost or price varies depending on the acquisition. Therefore, the evaluation factors and their relative importance (when not using SAP) must be clearly stated in the solicitation and otherwise must comply with the requirements of [FAR 15.101-1](#). The perceived benefits of a higher-priced proposal must be demonstrated to merit the additional cost: (1) the LPTA source selection process is appropriate when the expectation is that best value will result from selection of the technically acceptable proposal with the lowest evaluated price, and (2) the performance price tradeoff (PPT) source selection process allows performance as the only tradeoff for price. This process permits tradeoffs among cost or price and non-cost factors and allows the government to accept other than the lowest-priced proposal. The perceived benefits of the higher-priced proposal must merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with [FAR 15.406](#).

**Evaluation factors for award.** [FAR subpart 15.304](#) specifies the principles associated with crafting sound evaluation factors. Although it permits latitude in methods, it clearly states that evaluation factors must be qualitative in nature (such as adjectival, colors, or other indicators, but not numbers) and must represent the key areas of importance for consideration in the source selection process, including past performance where applicable. Conversely, when not using SAP contracting, authorities may require the use of these elements.

- **Proposal evaluation and discussions.** Pursuant to [FAR 15.305](#), proposals must be evaluated solely on the evaluation factors specified in the solicitation.
- **Source selection decision and documentation.** A source selection decision (SSD) that adheres to [FAR subpart 15.3](#) must be prepared for all source selections when not using SAP. The SSD is composed of the background of the acquisition, evaluation criteria, summary of the technical and past performance evaluations, and summary of the proposed cost or price.

**SAP evaluation and award.** Pursuant to [FAR 13.003](#), agencies use SAP to the maximum extent practicable for all purchases of supplies or services not exceeding the SAT (including purchases at or below the micro-purchase threshold). Important points CCOs must consider for evaluation and award under SAP are as follows:

- Use the procedures outlined in [FAR subpart 13.1](#) and [DFARS subpart 213.1](#).

- Use your discretion in the evaluation of offers and use the procedures in FAR part [14](#) or [15](#) as determined practical and feasible for the respective acquisition.
- Consider all offers or quotations received and evaluate them impartially and on the basis established in the solicitation manner.
- Include transportation charges from the shipping point of the supplier to the delivery destination.
- Before award, determine that the proposed price is fair and reasonable. See [FAR 13.106-3\(a\)\(2\)](#) for ways the CCO may determine price reasonableness when using SAP.

**Streamlined procedures for acquisition of commercial items.** [FAR subpart 12.6](#) allows for optional procedures for (1) streamlined evaluation of offers for commercial items and (2) streamlined solicitation of offers for commercial items for use where appropriate. The FAR states “these procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices.” This can greatly assist in providing expeditious contract support in contingency environments. For example, CCOs can use a combined synopsis-solicitation, which can reduce the time required to solicit and award contracts for the acquisition of commercial items. The procedures in [FAR 12.602](#) give the contracting officer flexibility in the evaluation of offerors. Contracting officers should make sure to document the acquisition decisions and maintain a detailed contract file.

**Sealed bidding procedures.** As noted in [FAR 14.101](#), sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. Sealed bidding procedures are rarely used in contingency environments. (See [FAR part 14](#) for specific procedures.)

**Advance and partial payments.** The full spectrum of government financing should be considered to facilitate business partnerships in any contingency, including progress payments, payments for partial deliveries, performance-based payments, and commercial interim payments. Advance payments present the highest risk and are the most regulated financing option. These should be used as a last resort—see options instead of advance pay in the sections that follow. However, their use should not be completely dismissed. An advance-payment business strategy (commercial and noncommercial) will consider (1) conditions that warrant the request (such as lack of an established or robust banking system, unstable commercial environment, or hostilities), (2) other financing options (such as progress payments or partial payments), (3) tangible risks and mitigation plan, and (4) adequate security to protect the government’s interests. Such payments can be used for the following purposes:

- Experimental projects and research and development with nonprofit institutions
- Operation of government-owned plants
- Acquisition at cost of facilities for government ownership
- Classified items and national security
- Financially weak contractors

- Vendors when a private loan is not practicable
- Other exceptional circumstances.

**Real-World Example:** A contracting officer paid a foreign contractor advance pay in the amount of \$400,000 before the start of a minor construction contract. There was a critical need for the project to begin, so the CCO agreed to advance payment after the contractor gave his word that the contractor would mobilize and begin work immediately. The contractor later left the local area with the money and never started the contracted work.

**The Bottom Line:** As a professional CCO, you must recognize that advance payments are very risky, especially in contingency environments, and many alternatives are available, like partial payments and progress payments. Also, proper vendor vetting can help in determining responsible vendors. Be mindful of this risk and your options during contract negotiations.

### Paying Agent Duties

DoD FMR 7000.14-R, Volume 5, Chapter 2, “[Disbursing Offices, Officers, and Agents](#),” describes the duties of paying agents. The commander appoints (in writing) paying agents to make payments for purchases by using cash or other negotiable instruments. A contracting officer should not be designated as a paying agent in accordance with Volume 5, Chapter 33, of DoD FMR 7000.14-R because it would violate the concept of checks and balances and create a potential conflict of interest. However, there are exceptions to this policy, usually at the Service component level, and in extreme circumstances, and as a last resort, a CCO can be dual-hatted, serving as both the CCO and the paying agent. CCOs cannot make cash payments unless they are designated as paying agents. If appointed as a paying agent, the individual CCO should be thoroughly briefed on duties and responsibilities by the financial services officer or local deputy disbursing officer.

**Cash advances.** The quantity of cash that the disbursing office gives to the paying agent is governed by the following considerations:

- Facilities available for replenishment of funds
- Anticipated mission requirements
- Capability to safeguard funds.

The maximum sum to be advanced to the paying agent is specified in the appointing order. The CCO might need to advance cash to others for payment of orders. When advancing cash, the CCO should obtain a receipt on DD Form 1081, “[Statement of Agent Officers Account](#),” or SF 1165, “[Receipt for Cash Subvoucher](#).” The disbursing officer should be informed about any losses or shortages as soon as possible.

**Noncommercial advance and partial payments.** As noted in [FAR subpart 32.4](#), these payments can be used under the following conditions:

- The contractor gives adequate security.
- The payment does not exceed the unpaid contract price.

- The agency head or designee determines that such a payment is in the public interest or facilitates national defense.
- The payment does not exceed interim cash needs.
- The CCO submits the request to a higher-level headquarters official and must ensure that findings, determinations, and authorizations are provided.

**Commercial advance and interim payments.** As noted in [FAR subpart 32.2](#), these payments can be used under the following conditions:

- The HCA determines the terms and conditions are appropriate.
- The commercial practice in the local market is to use buyer financing.
- The purchase is for a commercial supply or service.
- The price exceeds the SAT.
- The CCO concludes that advance payments are appropriate for the market.
- Advance payments are in the best interests of government.
- Adequate security is obtained.
- The advance payment does not exceed 15 percent of price, before performance.
- Competitive or normal financing is not available.
- The CCO obtains concurrence from the finance office and ensures that a D&F is completed for advance payments.
- Made to prime contractors for the purpose of making advances to subcontractors.

**Options instead of advance payments.** Other payment options include the following:

- Partial payments
- Commercial interim payments
- Progress payments
- Purchasing needed materials as a supply commodity with the [SF 44](#) or 3in1 Tool, then providing the materials to the contractor as needed for service or minor construction
- Requesting that the disbursing officer pay cash to the vendor

The CCO can also recommend the use of [SF 44](#) or [DD Form 1155](#). The CCO may have to explain to the vendor that using these forms normally results in prompt payment, and explain to the customer that the CCO may decide to not do business with the vendor if the vendor will only accept advance payments. Proper market research and an understanding of the local vendor base will assist in making that determination. Advance payments are acceptable for subscriptions ([FAR 32.404\(a\)](#) and [FAR clause 52.213-2](#)).

**Partial payment.** The CCO places a statement on the invoice so the finance officer knows the invoice is a partial—rather than final—payment. The partial payment statement complies with the following regulations:

- Finance guidance for partial payment in [DoD FMR 7000.14-R](#), Volume 10, Chapter 10, Section 1003
- Exceptional circumstances only ([FAR 32.403\(h\)](#)).

**Settlement of paying agent account.** After deployment operations or when the disbursing office resumes operations, the paying agent terminates this account with the disbursing office. The paying agent obtains and completes DD Form 1081, “[Statement of Agent Officer’s Account](#),” showing the account reduced to zero.

### Ordering Officers and FOOs

**Ordering Officers and FOOs.** These individuals have been authorized, in accordance with FAR [1.603-3\(b\)](#) and [13.201\(a\)](#), and DFARS [201.603-3\(b\)](#), by the contracting officer in writing to execute micro-purchases using [SF 44](#) and the 3in1 Tool. [SF 44](#) or the 3in1 Tool may be used by personnel other than the CCO provided that the individual does the following:

- ***Receives written authorization from the contingency contracting officer.*** The CCO should give a copy of the written authorization to the finance and accounting officer, in effect delegating authority to sign a contract instrument.
- ***Receives training by the contingency contracting officer on the [SF 44](#) and 3in1 Tool.***
- ***Is teamed with an appointed and trained paying agent.*** In addition, the paying agent must also be designated in writing.

**Designation.** The CCO may designate individuals as FOOs, either from within or outside the contracting organization, with the authority to execute micro-purchases by using [SF 44](#) or 3in1 Tool. The CCO needs to exercise strict operational control and oversight of FOOs to prevent violations of laws and regulations. The CCO is responsible for helping the commander determine the adequate number of FOOs required to ensure mission accomplishment. Commanders should have a point of contact for each FOO team.

**Nomination, appointment, and termination.** Commanders must formally nominate FOO candidates, by name, to the CCO for appointment; this responsibility cannot be delegated. The FOO candidate must be a DoD employee; contractor employees cannot be FOOs. The CCO must determine the validity of the requirement and formally appoint personnel as FOOs via official appointment letters. The appointment letter must specify the extent and limitations of the FOO’s authority to act on behalf of the CCO. The appointment is effective until the FOO is reassigned to another unit or the CCO terminates the individual’s duties. The CCO (or higher authority) reserves the right to revoke an FOO appointment at any time. Such a revocation must be made in writing.

**Qualification and training.** At least annually, the FOO candidate must review the standards of conduct as specified in DoD Directive 5500.7-R, “[Joint Ethics Regulation](#).” The

CCO must develop an effective FOO training program, and the FOO candidate must complete training before official appointment as a FOO. Refresher training is conducted when the CCO deems it necessary. In larger contingencies, the COCO (rather than individual CCOs) is responsible for management and oversight of the FOO and ordering officer decentralized purchasing programs.

**Authority and responsibilities.** The scope of the delegated authority limits all FOOs in terms of the dollar limitation they may obligate. The FOO must review the written appointment to ensure a complete understanding of the scope and limitations of FOO authority. Before making any purchases, the FOO must receive written appointment orders from the CCO and a funded document from the comptroller, showing a fund cite with a specific dollar amount. The FOO cannot exceed the amount specified in the document. If additional funds are required, the FOO must request and receive more funds from the comptroller before proceeding with any purchases. After the FOO receives a valid PR, the FOO must answer the following questions:

- Is the purchase allowable in accordance with established purchasing procedures?
- Are funds available?
- Do I have authority to purchase the item (type and dollar threshold)?
- Are the supplies available in the supply system or from another government source?
- Is this the most efficient purchase method?

After considering this information, the FOO must record all PRs in a logbook, as approved by the CCO. The FOO must maintain the original PR document, a copy of the [SF 44](#) used for the purchase, logbook, original receipt of the purchase, and receipt for property received (RPR). When the 3in1 Tool is used, it records all information and documents it electronically. FOO considerations include the following:

- **Limitations.** FOOs may not redelegate their authority. The CCO may set additional limitations to maintain an effective and efficient FOO program.
- **Separation of functions.** To ensure the integrity of the procurement process, the FOO must avoid, if possible, being a paying agent, certifying official, or individual receiving the products or nonpersonal services.
- **Evaluation, documentation, and reconciliation.** The CCO supervises the FOO. At least monthly, or as otherwise determined by the CCO, the CCO reviews and reconciles the FOO's purchase documents. This review is documented on the FOO clearance letter, which can be done electronically when using the 3in1 Tool. After receiving this letter, the FOO reconciles the account with the paying agent. The CCO immediately forwards any potential case of waste, fraud, or abuse to the appropriate legal office for review.
- **Revocation of authority.** When a FOO appointment is terminated for any reason, the FOO gives the CCO (1) a copy of the appointment letter; (2) copies of all previously filed reports; (3) a complete report for any period between the last

audit and termination date; (4) receipts, PRs, and RPRs; and (5) any unused [SF 44s](#).

Once the CCO conducts a final review and documents the outcome, the CCO issues an official Revocation of Authority to the FOO, terminating the appointment. One copy each is provided to the terminated FOO, FOO’s commanding officer, and appropriate disbursing office; one copy is maintained on file with the contingency contracting office. Any additional purchases or business agreements by the FOO after revocation of this authority are considered unauthorized commitments, for which the former FOO may be held liable.

**FOO violations.** The CCO may revoke the FOO appointment for any violation of regulations, orders, or statutory authority. The administration of decentralized purchasing programs carries an increased risk of becoming problematic. Typical violations include the following:

- Unauthorized commitments
- Splitting of requirements to stay below authorized thresholds
- Purchases above authorized limits
- Purchases outside the purpose of the appropriated funds
- Purchasing items not authorized under local programs or BPA price lists or not authorized by the CCO
- Delinquent reconciliation with the CCO
- Training delinquencies
- Circumvention of Competition in Contracting Act (CICA) requirements.

Violations may result in revocation of the FOO appointment and of any additional FOOs within the unit, section, or battalion. In the case of an unauthorized commitment, the revocation remains effective until the unauthorized commitment is ratified by the appropriate authority and reviewed by legal officials to determine whether disciplinary action is recommended. For other violations, the CCO may reinstate the FOO appointment after correcting the deficiency.

### Contract Tracking and Reporting

**Procurement instrument identification numbers.** [DFARS 204.70](#) specifies policies and procedures for assigning procurement instrument identification numbers (PIINs) to all solicitations, contracts, and related instruments. The PIIN is designed to help track all actions. **Table 5-3** shows an example of a PIIN from DFARS subparts [204.7003](#) and [204.7004](#).

DoDAAC	Last 2 Digits of FY	Instrument Type	Serial no.	Supplemental no.
N00062	15	D	0001	0005

*Table 5-3. Sample PIIN N00062-15-D-0001-0005*

**Procurement instrument identification number logs.** Establishing and maintaining accurate PIIN logs in accordance with [DFARS 204.70](#) is essential in the contingency environment.

**Contract action report (CAR).** As noted in [FAR 4.601](#), a CAR is required for all contract actions that obligate or deobligate more than \$3,000 in funds and must be submitted within 3 business days of executing an action. In addition, all modifications, regardless of price, must be reported. However, in a contingency, OCONUS reporting might not be possible because of the lack of Internet connectivity. Therefore, actions that require reporting must be accomplished after arrival in an area where Internet connectivity is available, which may be upon redeployment to CONUS bases or stations ([DFARS PGI 204.606\(1\)\(iii\)](#)). CARs can be created on the Federal Procurement Data System–Next Generation (FPDS-NG) [website](#). The CAR replaced reports using DD Form 350, “Individual Contracting Action Report,” and DD Form 1057, “Monthly Summary of Contracting Actions.”

The CAR process is as follows:

- The contract is complete, through approval by the CCO.
- The CCO creates the CAR from the unreleased contract, through validation and approval. The CAR is created directly on the [FPDS-NG website](#), with a link to the CAR in the Standard Procurement Data System.
- Both the contract and CAR are routed to the CCO for release of the contract and finalization of the CAR.

An express CAR is used to report data for more than one contract action. The following contract actions may be reported on an express CAR instead of an individual CAR:

- Indefinite delivery/indefinite quantity (IDIQ) contract vehicles, requirements contracts, BPAs, and basic ordering agreements
- Contracts from foreign vendors not registered in the [System for Award Management \(SAM\)](#),

The CAR is created before the release of the contract action. In [FPDS-NG](#), much of the CAR is prepopulated with data in the contract (such as data from the North American Industry Classification System and Service Contract Act). Creation of the CAR before release of the contract enables correction of the contract so that the CAR can pass the validation process in FPDS-NG. Training for FPDS-NG is available at the [FPDS-NG website](#).

Awards using appropriated funds must follow the congressional notification procedures in [DFARS 205.303](#) unless an exception in [FAR 5.202](#) applies. The reachback office can assist in preparing congressional notifications to alleviate the burden on forward-deployed units or CCOs. Training personnel early and often is a best practice because turnover occurs routinely.

### **Unauthorized Commitments and Ratifications**

An unauthorized commitment is an agreement that is nonbinding solely because the government representative who made it lacked the authority to enter into that agreement, as

explained in [FAR 1.602-3](#). An unauthorized commitment typically occurs in a contingency environment when a well-meaning individual believes that immediate action is necessary to support the mission. Ratification occurs when an official who has the appropriate authority approves an unauthorized commitment to pay for supplies or services provided to the government as a result of an unauthorized commitment ([FAR 1.602-3\(a\)](#)). The need for ratification can be avoided if the CCO is involved in the operation early and becomes highly visible.

The HCA may ratify an unauthorized commitment up to a specified threshold, as designated by agency procedures. The HCA may further delegate ratification authority at specific thresholds to the Senior Contracting Official or the Regional Contracting Center (RCC) office.

At least quarterly, the RCC chief must publish to the base populace a reminder that only duly appointed contracting officers can obligate the government. Commanders reinforce this policy by publishing letters to emphasize the seriousness of obligating the government without proper authority.

The processing of a ratification involves determining whether the action should be ratified into a contract and then creating the contract document. Actions that do not meet the criteria are deemed non-ratifiable and are subject to resolution by the Government Accountability Office under its claim procedures.

### **Additional References**

The following references were not mentioned in this chapter but offer additional information related to contract support execution:

- 10 U.S.C. 2305, [Contracts: Planning, Solicitation, Evaluation, and Award Procedures](#)
- DoDI 3020.41, [Operational Contract Support \(OCS\)](#)
- DoDI 1100.22, [Policy and Procedures for Determining Workforce Mix](#)
- GAO-13-283, [GAO High Risk Series: An Update](#).

# Chapter 6

## Contract Administration

### Key Points

- All administrative record-keeping and file management requirements in the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) apply under contingency, humanitarian assistance, and peacekeeping conditions.
- Contract files must be organized and sufficiently annotated to document the actions taken and the supporting rationale for the entire procurement process.
- The use of electronic business tools can automate some aspects of contract administration and are key in ensuring data accuracy and overall transparency.
- Contracting does not end with contract award. Contract administration ensures that customer needs are satisfied and that the contractor has been paid for performance.
- Fast and accurate reporting is critical to satisfactory contract performance. This includes timely identification and documentation of contractor performance.
- Contracting officer's representatives (CORs) must be appointed and properly trained.
- When the contractor satisfactorily completes the terms of the contract and final payment is made, the contract file should be closed out as soon as possible.
- Redeployment and demobilization place demands on the contingency contracting officer (CCO). The CCO must coordinate with the operational planners and Defense Logistics Agency (DLA) in the associated reduction of equipment, personnel, and services.

### Introduction

A subset of contracting, contract administration includes efforts to ensure that supplies, services, and construction are delivered in accordance with the terms, conditions, and standards expressed in the contract. Contract administration is the oversight function, from contract award to contract closeout, performed by contracting professionals and designated non-contracting personnel. It includes ensuring that both parties (government and contractor) meet the specified terms and conditions of the contract. Contract administration is composed of more than 90 functions, described in [FAR part 42](#) and [DFARS part 242](#), including monitoring contract compliance, administering property, and assuring quality. Contract administration during contingency operations is referred to as contingency contract administration services (CCAS).<sup>44</sup>

This chapter discusses the actions that a CCO should take to administer a contract (including documentation), from contract award to contract closeout, while supporting in contingency environments. Such administration includes monitoring, transferring, terminating, and closing out contracts.

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<sup>44</sup> Joint Publication (JP) 4-10, [Operational Contract Support](#), July 2014.

## Administration Documentation

Contract administration documentation involves record keeping and ensuring the documentation is adequate for an audit trail. The importance of accurately documenting all purchases, especially in a contingency environment, cannot be overemphasized. Because normal checks and balances and electronic administration tools might not exist right away in contingency environments, CCOs should put due diligence in maintaining hard-copy contract files with proper documentation to “tell the story” of the respective acquisition. CCOs can be assured that auditors, inspectors general (IGs), and external agencies like the government Accountability Office (GAO) will request paperwork and other sources of contract data during inspections, investigations, or audits during the contingency or soon thereafter.

**Problems and high-risk areas.** Contingency contracting involves unique challenges. Effective contract administration and a healthy awareness of certain contracting risks can help prevent problems, now and in the future. The establishment of effective administrative procedures, audit capabilities, and maintenance protocols early in a contingency situation can greatly enhance supportability and minimize potential fraud, waste, and abuse problems. Areas of concern include the following:

- ***Difficulty obtaining detailed documentation from contractors.*** The problem of incomplete contractor documentation holds true, not only for documents supporting contractor claims, but also for general purchases, because many overseas vendors operate on a cash-and-carry basis and are not in the habit of furnishing paper receipts or using invoicing procedures. ([FAR subpart 4.8](#) and [DFARS subpart 204.8](#) contain guidance on record keeping.)
- ***Field ordering officer (FOO) operations.*** The use of FOOs allows maximum flexibility in supporting field operations. However, their use entails a greater risk of fraud, given the delegated authority to non-contracting personnel. Training and strong oversight by the CCO are required. FOOs who deviate from the regulations or misuse their authority must be immediately terminated.
- ***Blanket purchase agreements (BPAs).*** Although BPAs are easy to set up and use and can serve well in certain situations, BPAs physically located with the customers and set up for customers to call from their physical location (commonly known as decentralized BPAs) can be risky. Common risks include exceeding periods of performance (POP), breaking price ceilings, and lack of overall contractor accountability.
- ***Relief in place/transfer of authority (RIP/TOA).*** When military units replace each other during the RIP/TOA process, the contracting office must coordinate with the incoming and outgoing forces to ensure all operational contracting assignments are turned over to the new unit. Such responsibility transfers include property books and the assignment of CORs and FOOs.
- ***Advance payments.*** Advance payments and progress payments are normal procedures in the Continental United States (CONUS), but in a contingency, these procedures can be extremely risky. Vendors might not return to complete the agreed-upon work.

- **Redeployment and demobilization.** The risks associated with redeployment and demobilization decrease dramatically with the timely involvement of the various commands and personnel associated with contingency contracting Phase IV, “Redeployment.” These include DLA, operational contract support (OCS)/contingency planners, operational commanders, and the United States Transportation Command (TRANSCOM).

## **File Management**

**Contract files.** All FAR and DFARS administrative record keeping and file management apply under contingency, humanitarian assistance, or peacekeeping conditions unless specifically stated otherwise. CCOs should also become familiar with local acquisition instructions (AIs) and standard operating procedures (SOPs) available to support the contingency and give the CCO more information on contract administration for the respective area of responsibility (AOR).

Contract files must be organized and sufficiently annotated to document the actions taken and the supporting rationale for the entire procurement process. This includes use of BPAs, governmentwide commercial purchase cards (GCPCs), and other mechanisms outside standard contracting procedures.

The following questions will help in determining whether the contract file has the requisite information to protect the government’s interests and the CCO:

- Does it contain all of the required and pertinent acquisition information as required by the FAR and DFARS?
- How will it be reviewed and understood if it ends up in court?
- Will the follow-on CCO understand the acquisition history by reviewing the standalone file?
- Will it hold up to the scrutiny of an inspection, including efforts to track funds and transactions through forensic investigation or forensic accounting?

CCOs must do the following to help ensure the contract file tells the acquisition story:

- Furnish essential facts (include a description of the acquisition environment) used as a basis for informed decisions at each step in the process.
- Document the rationale for actions taken, for example, deciding an agreed-upon price was fair and reasonable and restricting competition.
- Furnish a complete audit trail that may be used to support reviews and future investigations, litigation, or congressional inquiries.

**File contents.** The following are examples of the records normally contained in contract files, if applicable ([FAR 4.803](#)):

- Purchase requests (PRs), acquisition planning information, and other pre-solicitation documents

- Justifications and approvals (J&As), determinations and findings (D&Fs), price negotiation memorandums, and supporting documents
- Evidence of availability of funds
- Lists of sources solicited
- Independent government estimates (IGEs)
- Copies of solicitations and all amendments
- Copies of each offer or quotation and related abstract and records of determinations concerning late offers or quotations
- Contractor contingent fee representations and other certifications and representations
- Pre-award survey reports
- Source selection documentation
- Cost and pricing data and certificates of current cost or pricing data
- Packing, packaging, and transportation data
- Cost or price analysis
- Records of negotiation
- Required approvals of award and evidence of legal review
- Notices of award
- Original signed contracts, all contract modifications, and documents supporting modifications
- Notices to unsuccessful bidders or offerors and records of any debriefings
- Post-award conference records
- Orders issued under the contract
- COR appointment letters and training
- Quality assurance records
- Property administration records
- Bills, invoices, vouchers, and supporting documents
- Records of payments or receipts
- Receiving documentation
- Contract completion documents.

**Real-World Example:** The program executive officer (PEO) for simulation, training, and instrumentation was unable to support fair and reasonable price determinations for more than \$94 million in acquired supplies and services that supported training efforts for warfighter field operations. This occurred because contracting officials lacked required documentation, such as properly annotated pre-negotiation objective and price negotiation memorandums, essential for accountability and transparency. Also, contracting officials did not require the procuring contracting officer to maintain a complete history of the contract (as a basis for making informed decisions during the acquisition process) and centralized and integrated program and contract files. They did not adhere to federal and Department of Defense (DoD) policies for subcontract-related work in a contingency environment and may not have received fair and reasonable prices. Furthermore, decentralized contract files could indicate questionable contract management and oversight.

**The Bottom Line:** CCOs must ensure that contract decisions are supported by documentation, such as the pre-negotiation objective, and that the contract file includes the information needed to explain the history of the acquisition. CCOs must always be able to justify the expenditure of funds as stewards of taxpayer dollars. Even in a combat zone, CCOs must articulate, document, and show a fair and reasonable price was paid for goods and services.

## General Contract Administration

**Contract administration.** The CCO must understand that the contracting process does not end with the award of a contract, purchase order, or delivery order. The role of contract administration is to complete the cycle, oversee the contract, ensure customer needs are satisfied, and confirm the contractor is fully compensated for services or supplies rendered, per the contract terms and conditions. Recent contingency operations proved that contract administration sometimes takes a back seat to contract execution. Ineffective contract administration can waste the efforts spent planning, describing, and funding customer requirements.

**Purchase, pickup, receipt, and delivery.** CCO responsibilities for supply purchases are more challenging during deployments than during peacetime. Many of these challenges are associated with the lack of proper receipt of goods and services. The unreliable communications in many contingency environments necessitate travel to the vendor's location. No policy or procedures mandate the site where merchandise is received. The CCO should expect frequent changes and possibly cumbersome procedures during deployment.

**CCO follow-up efforts.** Deployed CCOs may not have the benefit of interconnected computer information systems that simplify communication. Therefore, following up with the customer by any means available is a must. Giving the customer as much information as possible along the way will prevent problems later. If the delivery date passes or the customer receives the wrong item, part of an item, or a broken or damaged item, the CCO is accountable, too. Clear delivery instructions to the contractor and proper quality assurance procedures help ensure the right goods and services are received on time. CCOs need to establish solid working relationships with the customer so that any discrepancies or problems can be handled expeditiously. The customer should know to contact the CCO as soon as practical (if possible, while the delivery truck is still there) if discrepancies arise. All correspondence should be maintained in the contract file.

**Receipt, inspection, and payment.** The customer inspects goods and services. Once the item is delivered or the service performed, the customer must sign a receiving report

acknowledging receipt and authorizing payment. The contractor invoice is then submitted to the contracting office, which ensures it is correct. This receiving report must accompany the invoice so that the vendor can be paid in a timely manner. (Government support contractors *are not* authorized to accept or sign for the government in any situation.) The report is then sent to finance personnel, who issue payment to the vendor. Finance personnel will not pay without a signature acknowledging that the government received the goods or services. All documentation must be placed in the contract file.

**Typical problems encountered.** Many problems are associated with the proper receipt of goods. For example, there may be no central control point where contractors can deliver goods. Vendors might deliver directly to the user, but the user might fail to notify the contracting activity upon receipt. In addition, someone at the site might accept the delivery, but no one accepts responsibility for receiving the goods when it is time to verify delivery and quantity. Consequently, payments to the vendor are ultimately delayed. Without all the key support members involved in, and coordinating, contract actions, accountability is quickly lost, contractor performance may decrease, and safety may be jeopardized. CCOs should involve multiple functions outside contracting to ensure as much coordination of contracting activities as possible. Work with the acquisition team to refine processes and procedures tailored for the immediate situation. Communicate the process and procedures to senior leadership. These actions significantly improve your ability to track ordered goods and services and ensure all protocols are followed.

Tracking initial vendor deliveries is difficult, but the failure to take the time to organize for receipt of vendor goods results in long-term problems. The CCO has two options for alleviating problems involved in receiving emergency goods:

- Strive for a central base receiving point where all goods can be processed, to account for all goods and support timely payments to vendors.
- Have supply personnel furnish a receiving officer to accompany the CCO on all initial buys, establishing accountability and control from the onset. (This approach has limited application and resolves the problem for government pickup items only. Direct vendor deliveries to the base still require proper receipt.)

Regardless of the system used, coordinate in advance with base supply personnel to ensure accountability for all emergency goods delivered. A reliable accountability system can ensure quick and accurate payments to vendors.

**Customer and contractor training.** As a business advisor, the CCO can't just issue an order or contract and assume the customer and contractor understand the delivery, acceptance, and invoicing procedures. The CCO *must ensure* both parties understand their responsibilities, because receipt of the goods and the payments that follow are of paramount interest to both parties. Correspondence detailing agreements and understandings must be filed with the contract.

Security personnel must establish clear procedures for local installation authorities to facilitate access to the base. In some cases, deliveries and shipments are held at the gate for hours or not made at all because of access problems, which can also pose safety risks in some environments. To work around these problems, installations can establish receiving sections

outside the gate, if authorized, and then reload supplies and equipment onto government vehicles to make final delivery. CCOs should be mindful of local security protocols for traveling off the installation and work with security to build proper delivery requirements into the contract. In hostile areas, security personnel can assist CCOs at time of pickup.

**Shipment of supplies and equipment to overseas location.** Waiting for supplies and equipment ordered from the United States can be very frustrating for CCO customers. To minimize shipping time, contractors can use the mail or similar commercial services (such as DHL or FedEx) if available and authorized. Although the shipping time may be shorter, shipments sent by ordinary mail incur some additional risk because they are not traceable.

**Customs.** CCOs must be aware of local customs clearance procedures and must contact the proper authorities for expeditious clearance of inbound goods. Advance coordination with proper customs officials is critical, particularly when clearing personal equipment and baggage. Military transportation, whether by ship or aircraft, makes shipments traceable. For military transportation, the reachback buying offices may check with the local traffic management office for assistance in determining the following:

- Port of embarkation, or the geographic point in a routing scheme from which cargo or personnel depart
- Port of debarkation, or the geographic point at which cargo or personnel are discharged.

In addition, the reachback buying office can obtain a transportation control number for the shipment. If contractors use commercial transportation, they must understand that preference is given to U.S.-flag vessels and air carriers.

### **Construction Contract Administration**

Full administration is used on construction contracts, including construction schedules and progress reporting. Additional policy and guidance on unspecified minor construction is contained in [10 United States Code \(U.S.C.\) 2805](#) and Department of Defense Directive (DoDD) 4270.5, "[Military Construction](#)." The U.S. Army Corps of Engineers (USACE) also has a handbook that helps with construction contracts, [51C/1102 Proficiency Guide for Construction, Architect-Engineer \(A-E\) & Contingency Contracting](#), EP 715-1-8, September 2011. CCOs also should lean on the USACE and other construction experts like Naval Facilities Engineering Command (NAVFAC) personnel and Air Force Red Horse engineers as able.

The CCO needs to ensure that all pre-award actions (as described in the rest of this section) are accomplished.

**Preconstruction conference.** Construction contracts can require a preconstruction conference. This conference gives the government one more opportunity to inform the contractor about obligations, discuss safety and fire precautions, emphasize the personnel who are authorized to obligate the government, and organize everyone for the start of work. The contracting officer chairs the preconstruction conference. (See [FAR 36.522](#) for more information.)

Before work begins on a construction contract with a value that exceeds \$25,000, a notice to proceed (NTP) should be issued in compliance with [FAR 52.211-10](#). The contractor uses the period between contract award and NTP to meet bond, insurance, and other administrative requirements. The contracting officer or COR must accept all submittals.

For contracts valued at more than \$1 million, Unified Facilities Guide Specification 01 45 00.00 10, “[Quality Control](#),” should be included in the contract to furnish guidelines for the quality management program. The specification also provides for development of a quality control (contractor) and quality assurance (government) program and notes the requirement for daily construction logs to support the quality evaluations.

**Liquidated damages.** Although liquidated damages (LDs) are most commonly used in construction contracts, CCOs need to be aware that LDs can be used in other types of contracts, except for cost-plus-fixed-fee contracts. Review all information on LDs before deciding whether they can or should be used. Consider LDs carefully before applying them to the contract (see the real-world example). (See [FAR 11.501](#) and [DFARS 211.503](#).)

**Real-World Example:** When a contractor did not finish a contract on time, a contracting officer did not issue letters of concern or inform the contractor that it was in breach of contract. For several months, the contractor was allowed to work without a new schedule, proper direction, or administration efforts from the contracting office. The contractor filed a claim months after the original completion date for \$450,000, claiming additional costs. The contracting officer responded with LDs, and the case went to court. The judge ruled that (1) the contracting officer did not protect the government’s rights by not taking action *before* the completion date, and (2) the LDs appeared to be retaliatory and thus were thrown out.

**The Bottom Line:** If LDs are not placed in the contract during the pre-award stage, the CCO should bilaterally add LDs post-award if the CCO decides LDs are in fact needed for the respective contract.

## Government Property

“Government property” is all property owned or leased by the government, including government-furnished property (GFP) and contractor-acquired property to which the government has title. Normally, contractors furnish all equipment and materials necessary to perform government contracts. CCOs provide property to contractors only when it is clearly demonstrated to be in the best interests of the government.

A property administrator is an authorized representative of the CCO who is appointed in accordance with agency procedures and is responsible for administering the contract requirements and obligations relating to government property in the possession of the contractor.

Department of Defense Instruction (DoDI) 5000.64, “[Accountability and Management of DoD Equipment and Other Accountable Property](#),” establishes policy, assigns responsibilities, and provides procedures for DoD-owned equipment and other accountable property. Instructions for contract property management are explained in [Defense Contract Management Agency Instruction \(DCMA-INST\) 124](#).

[FAR part 45](#) specifies policies and procedures for the provision of government property to contractors; contractor management and use of government property; and reports on,

redistribution of, and disposal of contractor inventory. [FAR subpart 45.6](#) establishes policies and procedures for reports on, reuse of, and disposal of contractor inventory that is excess to the contract. [FAR 45.603](#) addresses abandonment or destruction of excess personal property, and [FAR 45.604](#) describes the disposal of surplus property. Chapter 9 of the [Defense Material Disposition Manual](#), 4160.21-M, covers excess personal property in foreign locations. [Disposition Services Instruction](#), 4160.14, Chapter 6 covers sales. The COR may be asked to assist the CCO in administering contractor use of GFP. If available, the property administrator acts on behalf of the CCO to oversee government property in the possession of a contractor.

If a commander is seeking disposal support, use one of the following e-mail addresses:

- Air Force: [DLADispositionServicesAirForceHelp@dla.mil](mailto:DLADispositionServicesAirForceHelp@dla.mil)
- Army: [DLADispositionServicesArmyHelp@dla.mil](mailto:DLADispositionServicesArmyHelp@dla.mil)
- Navy: [DLADispositionServicesNavyHelp@dla.mil](mailto:DLADispositionServicesNavyHelp@dla.mil)
- Marines: [DLADispositionServicesMarineHelp@dla.mil](mailto:DLADispositionServicesMarineHelp@dla.mil)
- Coast Guard: [DLADispositionServicesCoastGuardHelp@dla.mil](mailto:DLADispositionServicesCoastGuardHelp@dla.mil).

CCOs and other officials can contact the DLA Customer Interaction Center (CIC), accessible around the clock at 877-DLA-call (877-352-2255), or e-mail the CIC at [DLAContactCenter@dla.mil](mailto:DLAContactCenter@dla.mil) regarding customer support inquiries about programs, products, or services; status of requests; or general information.

## **Contract Monitoring**

As a representative of the contracting officer, the COR is responsible for ensuring that the contractor has performed at least the minimum contract requirements. Any perceived deviations from the statement of work (SOW), statement of objectives (SOO), or performance work statement (PWS) should be brought to the attention of the contracting officer. The customer should not attempt to interpret these documents for the contractor and cannot direct changes or accept substitute performance. Many people have improperly cost the government (or themselves) substantial sums of money by making seemingly nonchalant remarks asking the contractor to act outside the scope of the contract. (The following paragraphs contain more information on the COR. See also the [Defense Contingency COR Handbook](#).)

**Contract monitoring system (past performance).** Pursuant to [FAR 42.1502](#), agencies evaluate past performance, using the Contractor Performance Assessment Reporting System (CPARS) and Past Performance Information Retrieval System (PPIRS) tools to measure the quality and timely reporting of past performance information. Architect-engineer and construction contracts or orders are reported into the Architect-Engineer Contract Administration Support System (ACASS) and Construction Contractor Appraisal Support System (CCASS) databases of CPARS respectively. During initial operations in austere environments, contract monitoring systems may be unavailable. CCOs must still evaluate and document past performance and ensure the data are entered into the respective contract monitoring system as soon as practicable.

**CORs.** Contractor surveillance by contracting personnel under contingency conditions can be difficult because of ongoing military operations, lack of qualified personnel, local threat conditions, remote locations, broad customer bases, and time involved for performance and delivery. Therefore, a properly trained cadre of CORs needs to be established to support the CCO and contracting activities. CORs are qualified personnel appointed and trained by the CCO to help with the technical monitoring or administration of a contract. The CCO should include DFARS clause 252.201-7000, “[Contracting Officer’s Representative](#),” in the solicitation and the resulting contract when use of a COR is anticipated. **Figure 6-1** summarizes key COR duties, file content, and important forms.

<p><b>COR File should include the following:</b></p> <ul style="list-style-type: none"> <li>▶ A copy of your letter of appointment from the contracting officer, a copy of any changes to that letter, and a copy of any termination letter.</li> <li>▶ A copy of the contract or the appropriate part of the contract and all contract modifications.</li> <li>▶ A copy of the applicable quality assurance surveillance plan (QASP).</li> <li>▶ All correspondence initiated concerning performance of the contract.</li> <li>▶ The names and position titles of individuals who served on the contract.</li> <li>▶ A record of inspections performed and the results.</li> <li>▶ Memorandum for record of minutes of any meetings and discussions with the contractor or others pertaining to the contract or contract performance.</li> <li>▶ A copy of the surveillance schedule.</li> <li>▶ Documentation pertaining to your acceptance of performance of services, including reports and other data.</li> </ul> <p>Remember you should receive most of these files from your contracting officer during your COR training. COR File should be considered confidential and safeguarded appropriately.</p> <p><b>COR Key Duties:</b> Monitor the contractor performance, perform inspections, verify corrected deficiencies, perform governmental acceptance, liaison with all parties, submit performance reports and perform properly surveillance. See your COR appointment letter for further details of your duties.</p>	<p><b>Forms you need to know:</b></p> <p><b>Typical Contractual Instruments</b></p> <ul style="list-style-type: none"> <li>▶ SF 44 Pocket-sized purchase order/invoice/voucher</li> <li>▶ DD Form 1155 Order for supplies or services</li> <li>▶ SF1449 Solicitation/contract/order for commercial items (common)</li> <li>▶ SF 1442 Solicitation/offer/award for construction</li> <li>▶ SF 30 Amendment of solicitation//modification of contract (common)</li> </ul> <p><b>Typical Receiving Report Instruments</b></p> <ul style="list-style-type: none"> <li>▶ SF 44</li> <li>▶ SF 1449</li> <li>▶ DD 250 (common)</li> <li>▶ Invoices used as receiving reports</li> <li>▶ SF 1442</li> </ul> <p><b>Typical Funding Instruments</b></p> <ul style="list-style-type: none"> <li>▶ DA 3953 Purchase request (PR) form (common)</li> <li>▶ AF 9 Air Force purchase request</li> <li>▶ DD 448 military interdepartmental purchase</li> </ul>
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*Figure 6-1. COR Key Duties, File Content, and Important Forms*

COR characteristics and duties include the following:

- Both commanders and CORs must understand that they do not have the authority to issue directions on, or make changes to, any contract or purchase order. If unauthorized personnel make changes, the CCO must be immediately notified. The CCO then determines whether the work performed falls within the scope of the original contract. If the work does not fall within the contract scope, the CCO takes corrective action through the ratification process.

- CORs must forward any correspondence from the contractor to the CCO. Because the COR is an authorized representative of the CCO, COR records are part of the official post-award contract files and are forwarded to the CCO for retirement (in conjunction with the official contract file) after completion of the contract. Documents that pertain to the contract are clearly identified when forwarded to the CCO.
- The CCO appoints CORs through the Contracting Officer's Representative Tracking (CORT) Tool—or the Army Virtual Contracting Enterprise (VCE)—COR for operations in Afghanistan—or in writing, including the rank or grade of the COR and the applicable contract number. The requiring activity must first submit a nomination package for a trained COR to the CCO via the CORT Tool. The Defense Procurement and Acquisition Policy website has [Contracting Officer Representative Tracking \(CORT\) Tool Guidance and Instruction](#).
- The appointment letter defines the scope and limitations of COR responsibilities and specifies the period for which the appointment is effective.
- The CCO normally appoints a COR and an alternate COR. Ideally, both are identified and trained before deployment.
- All service and construction contracts require CORs. Some contracts for highly technical goods also may require a COR. CCOs must ensure that COR personnel have the technical experience and ability to monitor contractor performance.
- The COR appointment must state that the COR authority cannot be redelegated.
- The COR appointment must state that the COR may be personally liable for unauthorized acts.
- The CCO should appoint the COR before contract award, if practical, identifying the COR in the PR.
- CORs must *not* do any of the following:
  - Obligate funds.
  - Direct the contractor by words, or actions (failure to act), to take on new work.
  - Interfere with contractor performance.
  - Supervise contractor employees.
  - Authorize the contractor to obtain property or use government property from another contract.
  - Modify contract terms and conditions by words, actions, or failure to act.
  - Suggest the contractor hire, fire, or manage employees.
  - Make statements promising future contract work or awards or threaten to have the contractor removed.

COR training is critical to performance. [COR training](#) is available before deployment from the Defense Acquisition University (DAU), including the following:

- [CLC 106, COR with a Mission Focus](#)
- [COR 206 and CLC 206, CORs in a Contingency Environment](#)
- [COR 222](#) and [CLC 222](#), COR's Course and Online Training.

To the maximum extent practicable, CORs must receive COR training, including theater-specific training, before deployment so that they are ready upon arrival. COR training should focus on the duties of a COR, ethics training, and specific issues, terms, and conditions of the SOW associated with the contract to which the COR will be assigned.

The following additional courses are available and may be relevant depending on the mission of the COR:

- [CLC 004, Market Research](#)
- [CLC 006, Contract Terminations](#)
- [CLC 007, Contract Source Selection](#)
- [CLC 011, Contracting for the Rest of Us](#)
- [CLC 013, Services Acquisition](#)
- [CLC 055, Competition Requirements](#)
- [CLC 133, Contract Payment Instructions](#)
- [CLM 013, Work-Breakdown Structure](#)
- [CLM 024, Contracting Overview](#)
- [CLM 031, Improved Statement of Work](#)
- [CLM 039, Foundations of government Property.](#)

On March 29, 2010, the Under Secretary of Defense for Acquisition, Technology and Logistics, USD(AT&L), issued the "[DoD Standard for Certification of Contracting Officer's Representatives \(COR\) for Service Acquisitions.](#)" This standard defines minimum COR competencies, experience, and training on the basis of the nature and complexity of the requirement and contract performance risk. The standard identifies COR competencies, experience, and minimum training for the following three types of requirements:

- Type A—fixed-price, low-performance-risk requirements
- Type B—other than fixed-price, low-performance-risk requirements
- Type C—unique requirements that necessitate a professional license, higher education, or specialized training.

The standard introduces structure and rigor to COR responsibilities and performance and will be the basis for a DoD instruction establishing a comprehensive COR certification program that addresses roles and responsibilities for the COR, COR management, and contracting officer.

(The [Defense Contingency COR Handbook](#) contains additional information on the role and responsibilities of the COR.)

## Contract Modifications

**Contract modifications.** In the post-award contract administration phase, the contracting officer can expect changes to contract requirements. [FAR subpart 43.1](#) and [FAR clause 52.212-4](#) provide definitions, policy, and limitations regarding the modification of contracts. One important aspect of modifying contingency contracts is the impact these changes have on timely performance and cost. Contract terms and contractor performance can be changed in three ways: change orders, administrative changes, and constructive changes. Contracts can be modified either bilaterally or unilaterally. The CCO must understand the difference. (See [FAR part 43](#) for additional information.)

**Change orders.** “Contract modification” is a generic term defined as any written change in the terms or scope of the contract. Contracts may be modified by using a change order. A clear distinction must be made between the terms “change” and “change order,” and between the terms “in scope” and “out of scope,” as follows:

- A *change* is any alteration within the scope of the contract. Changes can be made in the specifications, drawings, designs, method of packing or shipment, time or place of delivery, or quantity or type of government-provided materiel.
- A *change order* is a unilateral order, signed by the contracting officer, that directs the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent, within the general scope of the contract. If the change order results in an increase or decrease in the cost of, or the time required for, performance of any part of the work under the contract, the contracting officer shall make an equitable adjustment in the contract price, delivery schedule, or both. See [FAR 43.204](#) and [DFARS 243.204](#) for additional information on change order execution, resulting equitable adjustments, and definitization. CCOs shall follow the procedures at DFARS Procedures, Guidance, and Information (PGI) [243.204](#) for administration of change orders.
- The question of whether work is *in scope* or *out of scope* is critical. Final determination rests with the CCO. Oral agreements, letter contracts, and the rapid pace of acquisition can lead to loosely worded arrangements for contractual actions. However, this does not mean that CCOs can broadly interpret the items in the original scope of the contract. Issuing an out-of-scope modification generally means that (1) the modification must be bilateral, (2) a J&A is required; and (3) approval from an official above the CCO level may be needed in accordance with local approval thresholds.
- CCOs should verify that proper *change order authority* is used on [Standard Form \(SF\) 30](#) before issuing a modification.
- CCOs should ensure that supplemental agreements containing an equitable adjustment as the result of a change order also include a *statement of release* ([FAR 43.204\(c\)\(2\)](#)).

**Administrative change.** Administrative changes are unilateral changes that do not affect the substantive rights of the parties. They are used to change things like the paying office or the name of the contracting officer.

**Constructive change.** A constructive change involves contract work that has actually changed, but the procedures on the changes clause have not been followed. All constructive changes have two essential change and order elements as well as other common characteristics, as follows:

- The *change element* is determined by examining the actual performance to decide whether it went beyond the minimum standards demanded by the terms of the contract.
- The *order element* also must be present for the change to be compensable. The government must order the change. That is, the government representative, by words or deeds, must require the contractor to perform work not within the scope of the contract.
- Several common actions often lead to a constructive change: (1) directing a particular method of performance, (2) providing late or defective government-furnished equipment (GFE), (3) requiring higher quality than specified in the contract, and (4) failing to approve time extensions. For example, if a contractor fails to complete performance within the specified contract date and time and the government allows work to continue without approval, the government has executed a constructive change by not placing the contractor on notice for failure to meet a contract deadline.
- Constructive changes must be formalized with a contract modification.

**Unilateral and bilateral modifications as a method to incorporate contract changes.**

For the protection of all parties, unilateral and bilateral contract actions should be priced before execution of the modification. In accordance with [FAR clause 52.212-4\(c\)](#), commercial item contracts require bilateral modifications. However, the magnitude of some changes and the contingency environment can make this difficult as follows:

- Unpriced orders are risky because, during negotiations when performance is proceeding, the contractor has no incentive to minimize costs. If a contract action cannot be priced before it is authorized, the government should agree with the contractor on a ceiling (not-to-exceed) price.
- For changes that result in a relatively small increase or decrease in price, the parties should try to agree to incorporate them into the contract on a no-cost basis.

**Bilateral modifications.** Supplemental agreements must be in writing and must be signed by both parties, per [FAR 43.103\(a\)](#). Supplemental agreements are appropriate when contractor consent is needed before modifying the contract. All supplemental agreements to contracts for commercial items must be bilateral. Details on such agreements include the following:

- Circumstances that require a supplemental agreement include (1) incorporating substantive contract changes that both parties agreed to accept and (2) negotiating an equitable adjustment resulting from a change order.
- The issue of prepriced or unpriced services must be considered. (The more formal regulatory terms for this concept are definitized or undefinitized services.) The risk of unpriced actions is that the government must be willing to pay for what it wants. ([DFARS 217.74](#) details policy and procedure for definitizing an unpriced action. [Chapter 5](#) contains additional information on undefinitized contract actions.)

**Unilateral modifications.** Unilateral modifications (those signed by the contracting officer only) are used to make administrative changes, issue change orders or termination notices, make changes authorized by clauses other than the changes clause (such as the option, property, or suspension of work clause), change GFP, or incorporate a value engineering proposal into the contract (see [FAR 43.103\(b\)](#)).

**Changes clause.** In general, government contracts contain a changes clause that permits the contracting officer to make unilateral changes in designated areas within the general scope of the contract. The particular changes clauses differ slightly, depending on the item purchased (supplies, services, or construction) and the type of contract awarded (fixed price or cost reimbursable), as described in [FAR subpart 43.2](#). However, the following elements are common to all changes clauses:

- A change order must be within the general scope of the contract.
- The change order must be in writing.
- The contracting officer must issue the change order.
- Quantities may not be unilaterally adjusted by use of the changes clause.
- The changes clause does not apply to commercial contracts.

A partial termination for convenience (T4C) can effect a decrease in quantity. If the contract contains the *variation in estimated quantity* clause, a price adjustment is required for items received in excess of the specified quantity (including the variation allowed) that exceed a value of \$250. These items may, however, be returned at the contractor's expense. (See [FAR 11.701](#).)

## **Transferring Contract Functions**

Established permanent-station contracting offices rarely if ever transfer contract administration functions to another agency. On the other end of the spectrum, many CCOs will transfer contract functions for redeployment. As one unit packs its bags to return to the home station, another unit arrives to assume the mission.

**Delegation of contract administration.** CCAS is a process recognized by the DFARS to centrally administer selected contingency contracts through formal contract administration delegation (CAD) procedures. It involves a mixture of acquisition corps and specialties,

including administrative contracting officers (ACOs), contract administrators, quality assurance representatives (QARs), and property administrators, along with service-provided CORs and, in some cases, technical inspectors. CCAS procedures normally apply only to large-scale, large-dollar, mission-critical external support—primarily civil augmentation program (CAP) task orders—and theater support contracts.

In the absence of geographic combatant command (GCC)-requested, USD(AT&L)-directed, joint CCAS guidance, or when contracts fall below or outside of the preestablished GCC criteria, service contracting and CAP organizations are responsible for providing their own CCAS capability as appropriate. The actual scope of CCAS measures and supporting organizational structure varies, depending on operational requirements. Doctrinally, joint-directed CCAS is a joint theater support contracting command (JTSCC) function overseen by the senior contracting official (SCO)-CCAS.

When a JTSCC has been stood up, its SCO-CCAS should review proposed CAD arrangements as part of the approval process and decide whether it should assume responsibility for contract administration in theater or whether the procuring contracting officer (PCO) should retain it. In some cases, reachback support may be required. The lead service for contracting (LSC) SCO should take similar actions when they apply.

Once delegated by the contract PCO, the JTSCC SCO CCAS will furnish the ACOs, QARs, and property administrators to administer the contracts or CAP task orders as applicable. If a JTSCC is not formed, the applicable contracting activity will coordinate with the LOGCAP deputy program director to arrange CCAS support. Supported units, under the direction of the requiring activity (normally the Army component to the subordinate joint force command) will be required to provide COR support where LOGCAP support is used.

(See [FAR 42.202](#) for additional information pertaining to delegating functions.)

## **Terminations**

Basically, two options are available for terminating contracts: T4C and termination for default (T4D) or cause. After deciding which method to use, the CCO should be prepared to negotiate a fair and reasonable settlement. Termination implies a breach of contract, and adequate compensation is appropriate. The CCO must follow local procedures for reporting and reviewing any termination actions.

The notice of termination should be in writing and specify the following:

- Termination of the contract
- Extent of the termination
- Any special instructions
- Steps that the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor workforce.

After receipt of a termination notice, the contractor should take the following actions, per [FAR 49.104](#):

- Stop work immediately.
- Terminate all subcontracts.
- Immediately advise the termination contracting officer of any special circumstances that preclude the stoppage of work.
- Perform any continued portion of work.
- Submit a request for equitable adjustment (REA), if necessary.
- Protect any GFP.
- Notify the termination contracting officer of any legal proceedings arising from terminated subcontracts.
- Settle any outstanding liabilities (subcontracts).
- Submit a settlement proposal.
- Dispose of termination inventory.

**T4C.** The rapid pace of changing requirements can often result in the government's no longer needing the supplies or services for which it has contracted. A request for the contractor to stop providing such supplies or services can often be met with confusion from the contractor. Regardless of the reason for not wanting contract performance to continue, the contractor might perceive that the CCO simply is not satisfied with contractor performance. If less than \$5,000 remains on the contract, the CCO should not terminate the contract. (See [FAR 49.101\(c\)](#).)

The general procedures for T4C include the following actions (not necessarily in the sequence listed):

- Issue a suspension-of-work order for construction or architecture and engineering, which specifically excludes profit ([FAR 42.1302](#) and [FAR clause 52.242-14](#)).
- Issue a stop-work order for the service or supply, which does not exclude profit ([FAR 42.1303](#) and [FAR clause 52.242-15](#)) and is usually in effect for 90 days (but if no notice is given after 90 days, contractor work restarts).
- Negotiate a settlement or, if no settlement is reached, unilaterally make a determination and notify the contractor that the changes are under the disputes clause.

When a T4C is requested, the CCO should take the following actions:

- Request or recommend a meeting with contractor.
- For construction, obtain an estimate of the contractor cost incurred from engineering.
- Establish and negotiate a cost settlement.

- Prepare a stop-work or suspension-of-work order, consulting if necessary with the head of contract activity (HCA).
- Prepare [SF 30](#), using the T4C clause ([FAR clause 52.249-2](#)).

When the CCO uses a partial contract cancellation or a total contract cancellation, the following should be considered:

- No-cost settlement
- Partial settlement (such as restocking charge)
- Total termination.

**T4D.** When the contractor fails to perform as required, the CCO may terminate the existing contract and begin procurement under a new one. If the CCO anticipates the need to enter into another contract with a specific vendor in the future (especially in areas with limited sources), defaulting that vendor on an existing contract can hinder future contracts.

The general procedures for T4D include the following actions (not necessarily in the sequence listed):

- Reference the appropriate default clause ([FAR clause 52.249-8](#) for a supply or service or [FAR clause 52.249-10](#) for construction).
- Issue a cure notice and give the contractor a minimum of 10 days to cure (using the format in [FAR 49.607](#)). (See “Cure notice” below.)
- After 10 days (or if fewer than 10 days remain in the performance schedule), issue a show-cause notice (using the format in [FAR 49.607](#)).
- Ask an engineer to verify the extent of completion of work and to give an estimated value of the completed work.
- Consult with the HCA before issuing the modification.
- Report on the steps taken ([FAR 42.1503\(f\)](#)).

**Termination or cancellation of purchase orders.** As described in [FAR 13.302-4](#), if a purchase order accepted in writing by the contractor is to be terminated, the contracting officer must process the termination in accordance with [FAR clause 52.212-4\(l\)](#) or [52.212-4\(m\)](#) for commercial items or [FAR clause 52.213-4](#) for noncommercial items.

If a purchase order not accepted in writing by the contractor is to be cancelled, the contracting officer must notify the contractor in writing that the purchase order has been cancelled and request the contractor’s written acceptance of the cancellation. If the contractor does not accept the cancellation or claims that costs were incurred under the purchase order, the contracting officer should process the action as a termination, as previously detailed.

**Termination for cause.** The government may terminate for cause after any default by the contractor if the contractor fails to comply with the terms and conditions of the contract or fails to provide the government, on request, with adequate assurance of future performance. Contracts

for commercial items purchased under the procedures in [FAR part 12](#) may be terminated for convenience or for cause. In general, the constraints of [FAR part 49](#) (T4C) and [FAR subpart 49.4](#) (T4D) do not apply. ([FAR 12.403](#) details procedures for termination of commercial item contracts.)

**Delinquency notice.** The formats of the delinquency notices described in [FAR 49.607](#) and discussed in this section may be used to satisfy the requirements of [FAR 49.402-3](#). All notices must be sent with proof of delivery requested. ([FAR 42.1303](#) addresses procedures for stop-work orders.)

**Cure notice.** If a contract is to be terminated for default before the delivery date, a cure notice, as described in [FAR 49.607\(a\)](#), is required by the default clause. Before using this notice, the CCO must confirm that an amount of time equal to or greater than the period of the cure remains in the contract delivery schedule (or any extension to it). If the time remaining in the contract delivery schedule is not sufficient to permit a realistic cure period of 10 days or more, the cure notice should not be issued.

After the cure notice is issued, the CCO takes the following actions:

- Negotiates changes.
- Prepares a modification to the T4D.
- Documents the negotiations.
- Obtains the contractor's receipt of cure notice.

**Show-cause notice.** If the time remaining in the contract delivery schedule is not sufficient to permit a realistic cure period of 10 days or more, a show-cause notice may be used ([FAR 49.607\(b\)](#)). The show-cause notice should be sent immediately after expiration of the delivery period.

**Considerations.** When deciding whether to use a T4C or T4D or to allow the contract to run to completion, the CCO must use sound business judgment. The CCO must remember that contractors are providing goods and services at a time when the government has been fairly demanding. Vendors may incur costs to perform in accordance with CCO and government wishes and should be properly compensated for doing so. The CCO needs to balance fair and just compensation with legally sufficient adjustments and allowability of costs.

## Contract Closeout

**Contract closeout process.** When the contractor satisfactorily completes performance of the terms of the contract and the final payment is made, the CCO should close out the contract file as soon as possible as follows:

- Upon receipt of final invoice and a receiving report, issue a unilateral modification to deobligate any excess funds.
- Address release of claims. On a final invoice with a payment amount that is subject to contract settlement actions (release of contractor claims), the settlement

occurs on the effective date of the contract settlement. ([FAR 43.204\(c\)\(2\)](#) provides language for supplemental agreements.)

- Complete Department of Defense (DD) Form 1594, “[Contract Completion Statement](#),” or agency-specified form for all contracts, and complete DD Form 1597, “[Contract Closeout Checklist](#)” (or agency-specific form, such as Air Force Form 3035) for contracts that exceed the simplified acquisition threshold (SAT) after receiving proof that work or delivery is complete.
- Place the completed and certified [DD Form 1594](#) in the contract file, write “closed” on the file (preferably in large bold letters), remove the file from the active contracts, and retain the completed contract file as required by the FAR or the relevant agency.
- Use [DD Form 1597](#) as the primary document for initiating a systematic contract closeout. When all necessary and applicable actions are completed, the contracting officer will sign and attach this form to [DD Form 1594](#).
- Identify physically completed contracts that involve government property in the possession of the contractor. In such cases, the contracting officer forwards DD Form 1593, “[Contract Administration Completion Record](#),” to the property administrator to request the actual or estimated dates for completion of property administration. [DD Form 1593](#) should be used to verify that other functional activities have completed their required closeout actions.
- Address remaining funds. The contracting officer reviews the status of funds on physically completed contracts to determine whether they are available for removal before final payment.
- Address all contracts that fall below the SAT. In such cases, the contracting officer must include a statement that all contract actions have been completed in the contract file. The completed form or statement is authority for closing out the contract file.
- Manage closeout of contracts administered by the purchasing office. In such cases, that office is responsible for ensuring that all required purchase actions and contract administration are completed, using as necessary [DD Form 1597](#) and [DD Form 1593](#).
- Complete [DD Form 1594](#). When all required actions are completed, the purchasing office must prepare [DD Form 1594](#) for all contracts that exceed the SAT. The contract completion statement must be added to the official contract file. ([DFARS 204.804](#) requires the use of [DD Form 1594](#).)

Contracting officers should be aware, and ensure respective contractors are aware, of the contractor records retention requirements and retention periods described in FAR 4.7 DoD policy is that contractors make available all records—including books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form—and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General unless an exemption applies.

**CCO closeout of FOO and BPA authorized caller accounts.** When FOO and BPA authorized callers are ready to redeploy, the CCO must be sure that they return their original appointment orders, all completed forms and documents, updated Procurement Instrument Identification Number (PIIN) logs, and unused forms (especially [SF 44s](#)). Throughout the contingency, the CCO should be receiving Joint Uniformed Lessons Learned System and after action report input from ordering officers.

[FAR 4.804-5](#) describes procedures for closing out contract files, including the following main issues:

- Contractor release of claims
- Final invoice that has been submitted and paid
- Completed contract funds review and deobligated excess funds
- Storage, handling, and disposal of contract files.

**Abandoned or unclaimed property.** One issue that might arise is the disposal of abandoned contractor-owned property in accordance with [FAR subpart 45.6](#). The CCO should consult with the local judge advocate about the disposition of contractor property left behind by the contractor before using or appropriating the asset.

### **Redeployment and Demobilization Considerations**

“Redeployment” is defined as the transfer of forces, personnel, equipment, and materiel to home or demobilization stations for reintegration and out-processing. When possible, the CCO should become part of the joint contingency planning staff that is planning the redeployment or demobilization phase of the operation. The CCO must communicate with operational planners, DCMA, and DLA in the drawdown planning.

### **Electronic Contingency Business Tools**

The contingency contracting process can involve many different supporting systems, tools, and interfaces. The use of electronic business (e-business) tools can automate aspects of the contracting process and can greatly assist in delivering goods and services faster to the user. Electronic tools also help to ensure data accuracy and overall transparency. In the event of accessibility issues, Internet connectivity problems, or other situations that prevent the use of e-business tools in theater, the CCO should rely on hard-copy forms, tools, and methods to ensure contract support is uninterrupted.

In September 2014, the Defense Procurement and Acquisition Policy (DPAP) office published the [Department of Defense Contingency Business Environment Guidebook](#). This guidebook introduces six e-business tools that give CCOs automation support and information on how to get them up and running in theater. These six tools are as follows:<sup>45</sup>

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<sup>45</sup> Usage of these tools may vary by situation, so the CCO should check with the local command for additional guidance. See [Chapter 5](#) for details on contract action reporting, payment information, Joint Contingency & Expeditionary Services (JCXS), and Procurement Desktop Defense (PD2).

- The [Federal Procurement Data System – Next Generation](#) (FPDS-NG) allows millions of procurement transactions from across the government to be recorded and reported in real-time. The system contains detailed information on contract actions that exceed \$3,000 (FY04 and later). It can identify who bought what, from whom, for how much, when, and where.
- The [Wide Area Work Flow](#) (WAWF) eBusiness suite is a paperless, DoD-wide contracting application designed to eliminate paper records from the receipts and acceptance process of the contracting life cycle. The WAWF systems allows government vendors to submit and track invoices and receipt and acceptance documents over the web and enables government personnel to process those invoices in a real-time paperless environment. WAWF is the only application used to capture the unique identification (UID) of tangible items information.
- The [Joint Contingency & Expeditionary Services](#) (JCXS) is a web-based information technology (IT) system used by contingency programs that rapidly deploy for humanitarian, peacetime, and wartime missions.<sup>46</sup> Theater contracting commands and host nation (HN) vendors access the JCXS website for accurate and up-to-date contingency business information. JCXS provides such capabilities as HN vendor management for centralized registration, vendor vetting and validation, solicitation posting, proposal receipt, and past performance (in both English and Arabic); tracks banking information for vendors that select electronic funds transfer (EFT) as their payment method; captures contract data; supports contract closeout and historical data reference; and offers simplified and advanced reporting features.
- [Procurement Desktop Defense](#) (PD2) provides automated strategic and streamlined contract management support for the procurement professional as part of a complete workflow management solution. PD2 is an integral part of the DoD Standard Procurement System (SPS), which is integrating acquisition, logistics, and financial management in one end-to-end enterprise business system.
- The [Contractors Performance Assessment Reporting System](#) (CPARS) is a web-enabled application used to document contractor and grantee performance information required by federal regulations. CPARS supports the FAR requirement to consider past performance information before making a contract award ([FAR part 15](#), [part 36](#), and [part 42](#)). [FAR part 42](#) identifies requirements for documenting contractor performance assessments and evaluations for systems, nonsystems, architect-engineer, and construction acquisitions.
- The [Electronic Document Access](#) (EDA) system is an online document access system designed to provide acquisition-related information for use by all of DoD. The EDA system offers two concurrent operating sites (in Ogden, UT, and Columbus, OH). If one site is down or unavailable, the alternate site can be used.

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<sup>46</sup> Joint Contingency and Expeditionary Services (JCXS) is the new name for the Joint Contingency Contracting System (JCCS) platform.

- DAU's [Acquisition Requirements Roadmap Tool \(ARRT\) Suite](#) is a collection of tools that helps users build acquisition documents. It currently includes requirements definition and evaluation factors components.

### **Additional References**

The following references were not mentioned in this chapter but offer additional information related to contract administration:

- Office of Federal Procurement Policy, [A Guide to Best Practices for Contract Administration](#)
- 5 U.S.C. Appendix 8L, [Special Provisions Concerning Overseas Contingency Operations](#)
- GAO-13-283, [GAO High Risk Series: An Update](#).

# Chapter 7

## Protests, Claims, Disputes, and Appeals

### Key Points

- The contingency contracting environment does not reduce or relieve the contractor's right to protest, dispute, or submit claims, including appealing decisions.
- After receipt of a protest, the contingency contracting officer (CCO) needs to act quickly and contact the supporting legal counsel.
- To avoid time-consuming disputes and litigation, the CCO should strive to resolve contract performance issues by mutual agreement with the contractor.
- A CCO may be able to take simple, proactive actions to resolve disagreements between contractors and government team members. Resolve issues before they become full-blown protests, disputes, or claims and litigation when possible.
- Proper documentation is critical in protecting the rights of the government.
- Alternative dispute resolution (ADR) procedures should be added to contracts.
- CCOs must review and understand the requirements in [Federal Acquisition Regulation \(FAR\) Part 33](#) and should be familiar with local acquisition instructions (AIs) and standard operating procedures (SOPs) that may exist to provide tailored guidance for the respective contingency location.

### Introduction

Contingency environments are not immune from protests, claims, disputes, and appeals. These can be complicated, and CCOs need to understand how to handle them to avoid work stoppage and unneeded delays. As a contracting officer, you are responsible for safeguarding the interests of the United States and Department of Defense (DoD) in contractual relationships. In addition, [FAR 1.602-2\(b\)](#) makes it clear that contracting officers are responsible for ensuring contractors receive fair, impartial, and equitable treatment.

Effective lines of communication between the contingency contracting office and the supporting legal office are critical in dealing with protests, claims, disputes, and appeals. As part of deployment preparations, the CCO must identify and understand agency procedures and be familiar with the regulations and policy in [FAR Part 33](#) that govern contracting officer response to protests, claims, disputes, and appeals. Introduce yourself to the supporting legal counsel to ensure the contracting and legal departments are synchronized with local procedures for the respective contingency environment. In addition, protests can sometimes be averted by frank and open communications with the vendors, which might recognize significant errors in solicitations and evaluations overlooked by the CCO because of the pace of the operation. The CCO should encourage vendors to attempt to resolve their concerns with the CCO before pursuing an agency protest. As a last resort, a protest can be filed with the Government Accountability Office (GAO). Although the vendor has complete freedom to protest in any forum, and the CCO is never an advocate of the vendor, the interests of the government can often be best protected when vendor concerns are resolved quickly and at the lowest level.

This chapter discusses actions that a CCO should take when notified of a possible protest, claim, dispute, or appeal.

## Protests

**Protests Defined.** A “protest,” as described in [FAR Part 33](#), is a written objection by an interested party to any of the following:

- A solicitation or other request by an agency for offers of a contract for the procurement of property or services
- Cancellation of the solicitation or other request
- An award or proposed award of a contract
- Termination or cancellation of an award of a contract if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning contract award
- Delivery orders and task orders under multiple award contracts that exceed \$10 million, as specified in [FAR 16.505 \(a\)\(10\)\(B\)](#).

An interested party must have a direct economic impact from the award of the contract.

**Protests to the agency.** Executive Order 12979, “[Agency Procurement Protests](#),” and [FAR 33.103](#) establish policy and guidance on agency procurement protests. Before submission of an agency protest, all parties should make their best effort to resolve concerns raised by an interested party at the CCO level by undertaking open and frank discussions.

Protests to the agency must include the following ([FAR 33.103\(d\)\(2\)](#)):

- Name, address, fax, and telephone numbers of the protester
- Solicitation or contract number
- Detailed statement of legal and factual grounds for the protest, including a description of resulting prejudice to the protester
- Copies of relevant documents
- Request for a ruling by the agency
- Statement about the form of relief requested
- All information establishing the protester as an interested party
- All information establishing the timeliness of the protest.

Failure to substantially comply with these requirements may be grounds for dismissal of the protest.

**Timelines.** If a contractor decides to protest an alleged impropriety in the solicitation, it must do so before bid opening or the time designated for the receipt of initial proposals. In all

other cases, the time limit for filing a protest is 10 calendar days after the grounds for protest were known or should have been known, whichever is earlier.

If an award is withheld pending agency resolution of the protest, the CCO must inform the offerors whose proposals or bids may become eligible for the contract award. If appropriate, the CCO should ask the offerors to extend the time for acceptance to avoid the need for resolicitation.

Pursuing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agency protests are denied and the protester subsequently files at GAO.

**Agency actions after receipt of protest.** After receipt of a protest, the CCO must immediately suspend performance pending resolution of the protest by the agency. This resolution includes any review by an independent, high-level official unless continued performance is justified. One exception to suspending performance is if the procurement is urgent and compelling, in which case the agency is permitted to continue with the procurement. Additional information on receipt of protests is available in [FAR 15.505 and 15.506](#).

Agencies must make their best effort to resolve protests within 35 days after the protest is filed. Agency protest decisions must be well reasoned and clearly explain the agency position. The protest decision must be provided to the protester using a method that furnishes evidence of receipt.

## Protests at GAO

**Receipt of protest.** As described in [4 Code of Federal Regulations \(CFR\) 21](#), this guidance focuses on protests before GAO, where the vast majority of protests are filed. After receipt of a protest, the CCO should immediately contact the supporting legal counsel. GAO protests are fast-moving actions: a government report is due to GAO within 30 days (or within 20 days under the express option), and GAO issues a decision within 100 days (or within 65 days under the express option).

**Reachback.** Reachback is a highly effective tool during a protest. A CCO's legal counsel for working on bid protests may be a remote reachback asset. If the CCO has local legal counsel available, the local counsel is likely to work with a reachback legal office for support. Such reachback offices frequently work on bid protests and can respond rapidly to protest issues.

**Protest before award.** As described in [FAR 33.104\(b\)](#), when the agency receives notice from GAO of a protest filed directly with GAO, a contract may not be awarded unless authorized, in accordance with agency procedures, by the head of the contracting activity (HCA) on a non-delegable basis, after a written finding of the following:

- Urgent and compelling circumstances that significantly affect the interest of the United States will not permit awaiting the GAO decision.
- Award is likely to occur within 30 days of the written finding.

A contract award will not be authorized until the agency has notified GAO of the finding ([FAR 33.104\(b\)\(2\)](#)). When a protest against an award is received and the award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose proposals or bids might become eligible for award after the protest.

**Protest after award.** As discussed in [FAR 33.104\(c\)\(1\)](#), when the agency receives notice of a protest from GAO within 10 days after contract award, or within 5 days after a debriefing date offered to the protester for any debriefing required by [FAR 15.505](#) or [FAR 15.506](#), whichever is later, the contracting officer must immediately suspend performance or terminate the awarded contract. In accordance with agency procedures, the HCA, on a non-delegable basis, may authorize contract performance, notwithstanding the protest, upon a written finding of the following:

- Contract performance is in the best interests of the United States.
- Urgent and compelling circumstances that significantly affect the interests of the United States do not permit waiting for the GAO decision.

Contract performance (or continued performance) will not be authorized until the agency has notified GAO of the aforementioned finding. When a decision is made to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis. When the agency receives notice of a protest filed with GAO after the dates in [FAR 33.104\(c\)\(1\)](#), the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award might be invalidated and a delay in receiving the supplies or services is not prejudicial to the government's interests.

**Real-World Example:** *Most Prevalent Grounds for Sustaining Protests.* In FY13, Congress added a new provision for GAO's Annual Report on Bid Protests. This provision requires the report to "include a summary of the most prevalent grounds for sustaining protests" during the preceding year ([31 United States Code \(U.S.C.\) 3554\(e\)\(2\)](#)). During Fiscal Year (FY) 14, GAO sustained 13 percent of the decisions resolved on the merits. The most prevalent reasons for sustaining the protests in FY14 were (1) failure to follow evaluation criteria, (2) flawed selection decision, (3) unreasonable technical evaluation, and (4) unequal treatment.<sup>47</sup>

**The Bottom Line:** Planning for a source selection; communicating source-selection team requirements, roles, and responsibilities; and adherence to source-selection plans and evaluation criteria are all critical components of successful contracting and protecting the government's interests if and when a protest occurs. Contracting officers must ensure documentation is completed pursuant to agency procedures and filed accordingly.

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<sup>47</sup> [GAO Bid Protest Annual Report to Congress for Fiscal Year 2014.](#)

## CCO Protest Response Procedures

**Response to a protest, the first 24 hours.** The CCO should take the following actions within 24 hours of receipt of a written protest:

- Transmit a copy of the protest package to the supporting legal office. Do not release copies of the protest to other parties (such as the awardee or offerors) until you discuss the release with the legal office, as the protest may contain proprietary or source-selection-sensitive information.
- Confirm the identity of the attorney assigned to work on the protest, and exchange contact information (e-mail addresses and telephone numbers).
- Discuss the allegations with the attorney, and explain the impact on mission operations if a delay of award or performance is triggered by a protest.
- If a delay is triggered, the award cannot be made (pre-award protests) and contract performance may not begin (post-award protests).
- Following coordination with the assigned attorney, inform offerors and the awardee that a protest has been filed and that contract award or contract performance has been stayed. Ensure the assigned attorney informs GAO of the status of the delay.
- If the HCA authorizes contract performance, discuss this development with the attorney ([FAR 33.104](#)).
- Identify the key personnel who know the allegations in the protest, obtain their contact information, and provide it to the legal office. They may include technicians, evaluators, or personnel at the requiring activity. Inform them of the protest, and confirm their availability for the next 100 days (the protest time frame) to support the government's response. Determine whether declarations, affidavits, or other statements of fact from key personnel will be necessary.

**Response to a protest, the first 30 days.** The first 30 days of any GAO protest are key. The government must submit its agency report to GAO and the protester within 30 days. This period gives the CCO and legal counsel an opportunity to assess the merits of the case and develop an appropriate response. Items to consider or accomplish are as follows:

- GAO protests typically are document intensive. The CCO and supporting legal counsel should decide on the best way to fulfill the requirements and assemble the agency report.
- The CCO should immediately coordinate with, and begin transmitting key contract documents to, the supporting legal counsel. This approach enables the counsel to understand the relevant facts and issues and to assess the merits of the protest early in the process. Such an approach also allows the legal office to begin assembling the agency report to GAO.

## Agency Report to GAO

Required report documents include the following:

- CCO statement of relevant facts
- Bid or proposal submitted by protester
- Bid or proposal of the awardee
- Solicitation
- All evaluation documents
- Other relevant contract and source-selection documents (such as debriefing slides).

CCOs should be aware of the classifications of the supporting documentation and follow agency security procedures before releasing sensitive or classified material. Given the short timeline involved, the CCO should communicate daily with counsel regarding the status of the protest.

**Corrective action before day 30 (day 20 under the express option).** GAO has held that the government is not liable for a protester’s legal fees and costs if the government takes corrective action in response to a protest within the first 30 days (20 days under the express option). Timely review and assessment of the merits of a protest, however, help the acquisition get back on schedule and avoid potentially significant legal expenses.

**Actions after day 30 (day 20 under the express option).** A protester has 10 days to file a written response to the government’s agency report, usually in the form of a legal brief. GAO issues its decision by day 100 (day 65 under the express option). On occasion, to clarify the record or the issues involved, GAO requests a hearing and requires testimony from government officials.

### Claims

A “claim,” as defined in [FAR 2.101](#), is a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain,<sup>48</sup> the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. CCOs should understand and prepare for resolution of claims given the challenges of working in high-operational-tempo contingency environments.

The administrative burden that contractor claims can place on the CCO and the mission can be mitigated by an understanding of FAR and Defense Federal Acquisition Regulation Supplement (DFARS) requirements and flexibilities, an understanding of what is (and is not) a contract claim, continual communications with the contracting officer’s representative (COR), the existence and quality of contract file documentation, and the application of ADR techniques ([DFARS Appendix A, Addendum II](#)).

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<sup>48</sup> A “sum certain” is a legal term for a specified amount of money.

## Mitigation of Claims

CCOs can mitigate contract claims by

- being proactive with all aspects of the contracting process and establishing working professional relationships with both the customer and the contractor;
- establishing a strong communication network for contract parties to discuss and correct issues, especially when unforeseen;
- ensuring contract requirements, terms, and conditions are clear to both the government and the contractor and are followed; and
- providing customer training on the development of contract requirements and the claims process (which greatly reduces ambiguous specifications or requirements and mitigates unauthorized communications and commitments between non-contracting personnel and the contractor).

As appropriate, the CCO should strive to resolve contract performance issues by mutual agreement with the contractor, thereby avoiding distracting and frequently time-consuming litigation. Clarification and discussion of the contractor's perception of the problem may be enough to resolve a disagreement. When a claim (or a potential claim) arises, the CCO should contact the supporting legal counsel and contracting leadership for assistance and advice. If an agreement cannot be reached with a contractor, the CCO must issue a final decision on the contractor claim. During a contingency, the CCO must strike a balance between expeditious settlement of contract claims and protection of government interests. Other recommended actions include clarification of contractor performance (to create a clear record of what the contractor did) and performing ongoing market research (to monitor fair and reasonable price data).

**CCO actions for contractor claims received.** Because of the high operational tempo of contingency contracting, responding to contractor claims and disputes can divert precious time from the mission. The CCO should consider or accomplish the following:

- A claim made by the contractor must be submitted in writing to the CCO.
- Not every contractor request for costs or other relief is a claim. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. Another example is a contractor request for equitable adjustment (REA)—a request that is related to changed or increased contract requirements. The CCO should first determine the type of request the respective contractor is making.
- Unlike requests for adjustments, the submission of a contract claim begins accrual of interest on the claim.
- Seeking early and frequent counsel from the supporting legal office will greatly assist the response to contractor claims.
- After receiving a claim that exceeds \$100,000, the CCO should ensure the claim is *certified by the contractor*, consistent with [FAR 33.207](#).

- Any suspected fraudulent claim or other misrepresentation of fact should be reported to the supporting legal office and the chief of the contracting office (COCO).

**Contingency contracting officer final decision.** The CCO must consider the following points when making a final decision regarding a claim:

- The CCO should use the specialized skills of the functional representatives (such as the COR) when addressing the facts and issues in dispute.
- Final decisions for a claim of \$100,000 or less must be issued within 60 days after receipt of the claim.
- For claims exceeding \$100,000, within 60 days after receipt of a certified claim, the CCO must either issue a final decision or notify the contractor when a final decision will be issued.
- Final decisions are prepared in accordance with [FAR 33.211](#). They must include notification to the contractor pursuant to the disputes clause in the contract.
- The CCO's final decision to deny a contractor claim (either in part or in whole) can result in a dispute by the contractor under the applicable contract disputes clause.

### **Disputes and Appeals**

Procedures and requirements for asserting and resolving claims subject to the Disputes Act ([FAR 33.202](#)) are contained in [41 U.S.C. 7101](#). The rules for handling contract disputes and appeals are the same in contingency environments as they are for routine operations at home base. As discussed, the CCO should work diligently to resolve disputes at the CCO level through mutual agreement of the parties. As with bid protests, the CCO should seek legal support, which may be provided by a reachback attorney. Experience shows that early involvement by legal counsel before the contracting officer's final decision can help avoid a contractor appeal. If an appeal is received, legal counsel can support the CCO in assessing and orchestrating a government response to the contractor appeal. The underlying record of evidence related to any contract dispute is critical to crafting the government's response. By applying a few simple practices, the CCO can greatly enhance the underlying contract record and the government's position in a contract appeal. DoD contractors should send appeals to the following address:

Armed Services Board of Contract Appeals  
Skyline 6, Room 703  
5109 Leesburg Pike  
Falls Church, VA 22041-3208  
703-681-8500 (general)  
703-681-8502 (recorder)  
703-681-8535 (fax)  
[asbca.recorder@mail.mil](mailto:asbca.recorder@mail.mil) (e-mail)  
[www.asbca.mil](http://www.asbca.mil) (website)

**A few best practices.** In general, contract disputes involve issues that develop over time and require a series of actions by the contractor and government personnel. In a contingency contracting environment, assembling an adequate contract record presents unique challenges.

To mitigate these challenges, the CCO should employ the following simple tools in the contingency contracting office:

- **Digital and video images.** As so often noted, a picture is worth a thousand words. Case law and experience demonstrate that evidence obtained concurrently with contract performance or a disputed event generally is given greater weight than evidence cobbled together after contract litigation begins. The CCO should ensure that inspectors, quality assurance personnel, CORs, and other representatives make it a standard practice to use digital cameras when able. This approach is particularly valuable for vehicle leases in the area of responsibility (AOR). Pictures and videos should be e-mailed immediately to the CCO for review and should be included as part of the contract file. Such pictures are especially useful for assessing, if not enhancing, the strength of the government's case.
- **Accounting for personnel turnover.** The turnover of government personnel involved in contingency contracting actions impedes developing the government's case in an appeal. The CCO should work with J1, Manpower and Personnel, to ensure that key witnesses, past and present, can be located. The CCO must employ a personnel locator process that permits the CCO and successors to identify and locate witnesses, including personnel who redeploy away from the contingency. At a minimum, the CCO should inform key personnel about the appeal and their associated roles and should ensure that the government can locate them if necessary.
- **Contract files and related documentation.** The key to success in prosecuting any contract dispute is the availability of contract documents. Without the necessary documents, a case is seriously weakened. Hence, the CCO should establish an administrative process for obtaining and filing the documentation that underlies a contract action.
- **Storage and retrieval.** The CCO should consider developing an electronic contract file where documents, digital pictures, charts, and other records can be readily stored and retrieved. CCOs also should make an electronic copy of all e-mails pertaining to claims and should include them with the contract file before leaving the AOR. This documentation might be needed later to assist with claims.
- **Appeals.** As appropriate, the CCO should use the reachback legal office to assemble the underlying record for any contract appeal, referred to as the "Rule 4 file" ([DFARS Appendix A, Rules 19 and 20](#)). At this point, the CCO practice of establishing an electronic contract file pays significant dividends.

### **Contract Settlements and Alternative Dispute Resolution**

If a dispute cannot be resolved between the parties, a protracted litigation process often results. To avoid distracting, time-consuming litigation, the CCO may consider negotiating a settlement with the contractor or using more formal ADR procedures ([FAR 33.214](#)). In either

event, the CCO should always seek the assistance and support of legal counsel. As stated previously, CCOs should regard legal counsel as useful problem-solvers who can help negotiate settlements or pursue ADR measures, expediting the resolution of contractor disputes and reducing negative impacts on the mission. A timely agreement developed by the parties—rather than a decision resulting from litigation—is better in maintaining a continuing business relationship with the contractor and other industry partners during a contingency.

**ADR elements.** The essential ADR elements are (1) existence of an issue in controversy, (2) voluntary election by both parties to participate in the ADR process, (3) agreement on an alternative procedure and terms, and (4) participation in the process by officials of both parties who have the desire and authority to settle the dispute. If ADR is used, the CCO should consider the following tips before beginning:

- Know your facts.
- Avoid using words and body language that might produce a negative reaction.
- Be professional, and observe local customs at all times.
- Develop an appreciation for the other side’s viewpoint.
- Diffuse hostilities and conflict at the start. Facilitate an environment where direct communication can take place to allay confusion as to what the parties are working to achieve.
- If using a mediator or facilitator, talk to the other side, not the mediator, who is there to help, not to judge.
- Consider the time and cost when conducting dispute resolution efforts.
- Use simple, clear, and concise language, and recognize that most people want to settle a dispute.

**Claims under ADR.** If a claim has been submitted, ADR procedures may be applied to all or only part of the claim. If ADR is used subsequent to a CCO’s final decision, its use does not alter any of the time or procedural requirements for filing an appeal, nor does it constitute reconsideration by the CCO of the final decision.

**Continued performance.** If a determination is made under agency procedures that continued performance is necessary pending resolution of any claim arising under (or relating to) the contract, the CCO must use the disputes clause ([FAR clause 52.233-1](#) and Alternate I when applicable).

**Reminder.** The CCO must remember to insert FAR clause 52.233-1, “[Disputes](#),” in all solicitations and contracts unless the conditions in [FAR 33.203\(b\)](#) apply. Also, the CCO must insert FAR clause 52.233-4, “[Applicable Law for Breach of Contract Claim](#)”—which states that *U.S. law* applies during breach of a respective contract—into all solicitations and contracts.

**Request for equitable adjustments.** Government policy is to try to resolve all contractor REAs at the contracting officer level without litigation. If a mutual agreement regarding an appropriate equitable adjustment to the contract cannot be reached with the contractor, the

contractor can submit a claim. The contracting officer must then issue a final decision on the contractor claim (see [Chapter 7](#)). The CCO should ensure the contract file is updated to include REA supporting documentation, correspondence and the CCO's final decision.

A valid final decision by the contracting officer must meet the following conditions ([FAR 33.211](#)):

- Be recorded in writing.
- Be the decision of the contracting officer.
- Inform the contractor of the right to appeal.
- Adequately inform the contractor of the reasons for the contracting officer's decision.

*See your legal counsel for support as needed.*

### **Additional References**

The following references were not mentioned in this chapter but offer additional information related to protests, claims, disputes, and appeals:

- 10 U.S.C. 2305, [Contracts: Planning, Solicitation, Evaluation, and Award Procedures](#)
- 5 U.S.C. 504, [Costs and Fees of Parties](#)
- 5 U.S.C. Chapter 5, Subchapter IV, [Alternative Means of Dispute Resolution in the Administrative Process](#)
- 10 U.S.C. 2324, [Allowable Costs under Defense Contracts](#).

# Chapter 8

## Cross-Cultural Competence and Situational Awareness

### Key Points

- Contracted support can have a direct strategic impact on civil aspects of the operation. Contingency contracting officers (CCOs) control, directly or indirectly, a significant amount of spending that can be targeted to improve economic conditions on the ground.
- The purpose of cross-cultural competence is to enable the CCO and deployed forces to be more effective operating in cross-cultural situations. Developing cultural competence results in an ability to understand, communicate with, and effectively interact with people across different cultures.
- CCOs must be familiar with the statutes, directives, treaties, and agreements that will affect contracting operations when they are deployed.
- CCOs are a valuable member of the team, who engage with leadership, customers, contractors, and local nationals.
- As a CCO you may be assigned to an agency or Service outside your own. You must learn the culture of the agency you support.
- Most contractor business overseas is conducted by negotiation. Therefore, negotiating for lower prices is a normal business practice.
- CCOs must be aware of antiterrorism countermeasures and security. Mobility is key in performing CCO duties, which can include traveling outside the wire in hostile areas.
- CCOs must be aware of the risks associated with contracting in contingency environments. For example, they must maintain information on operations security (OPSEC) during all activities.
- Contracting is an integral part of counterinsurgency (COIN). One of the most important contributions a CCO makes is impacting the human terrain and building habitual relationships with the local community.

### Introduction

As a CCO, you travel to many places around the globe to support the assigned mission. This chapter addresses the nuances of supporting contracts in foreign environments, including business advisor considerations, antiterrorism and security, antiterrorist countermeasures, and OPSEC. These issues often are inherent in doing business in a foreign country.

### Cross-Cultural Competence

Cultural competence comprises four elements: (1) awareness of one's own cultural worldview, (2) attitude toward cultural differences, (3) knowledge of different cultural practices and worldviews, and (4) cross-cultural skills. The cognitive ability of a CCO to recognize and practice these skills helps achieve the cross-cultural effectiveness critical in expeditious contract

support in contingency environments. Cross-cultural competence challenges a CCO to learn the societal worldview of the host nation (HN) and find ways to put any cultural differences aside in order to work as a unified team to achieve unity of effort.

**Cross-cultural competence.** As noted, CCOs should try to learn as much as possible about the country in which they will be deployed. The J2 (Intelligence), Department of State (DOS), Central Intelligence Agency (CIA), U.S. Agency for International Development (USAID), and other organizations can support the CCO in understanding HN cultures, customs, business practices, and laws before deployment.

A CCO can better operate in an unfamiliar foreign environment by doing the following:

- Humble yourself as a guest and respect the HN and its customs. As a CCO, part of your mission is to be an ambassador, build trust, and form habitual relationships with the local nationals the United States is supporting.
- Try to understand the culture and customs. Learn the local language for pleasantries such as “please,” “thank you,” “you’re welcome,” and emergency phrases such as “I need a policeman,” “I need a doctor,” “help,” and “fire.”
- Learn about the business environment and infrastructure in which you are operating. For example, some cultures rarely perform business functions early in the day, so plan your meeting times to accommodate them. Also, realize that your sense of urgency does not always translate to those in other cultures. As a CCO, you must respect this difference but still find ways to ensure supplies and services are delivered on time.
- Recognize that an informed visitor is a safer visitor.
- Recognize that other nations might not have lifestyles and habits similar to those of the United States. Resist the temptation to make value judgments or criticize.
- If you are a female CCO, recognize that contractors may resist or even refuse to conduct business with you because of gender. (Gender equality is not recognized internationally, and this issue is prevalent in the Middle East.) Although the situation is unfair and burdensome, try to find ways to work around this cultural difference. Try using a male interpreter.
- Establish a genuine rapport with local nationals, who can forewarn you of suspicious activities and impending attacks, and can assist in preventing grave social errors that could offend other local nationals and negatively impact operations. If you receive information, take it seriously and ensure you know how to report it; your life and those around you may depend on it.
- Avoid becoming involved in local politics, and steer clear of civil disturbances.
- When able, carry a cell phone or radio with you and travel in teams. Learn how to use local telephones, and keep sufficient pocket change on hand to use them.
- Try to blend in with the local environment as much as possible, including your clothing and mannerisms (do not talk loudly or use hand gestures). For example, rather than going to popular restaurants and establishments frequented by U.S.

personnel, try local establishments (if authorized) suggested by trusted local national advisors and approved by your chain of command. Tourist attractions can become targets for trouble.

- Be aware of forbidden areas posted by your supporting intelligence agency. If major attractions in the country have security problems, stay away. Instead, try to keep a low profile by visiting less frequented places.
- Get to know all mission partners and nonpartners operating in the operational area, including interagency and interorganizational ones. Understand the operational environment and strategy to meet mission goals and objectives, as well as the business environment and infrastructure, to ensure activities and events are applied in a manner that is culturally appropriate and leads to positive results.

**Ethics.** Ethical standards in the United States differ from those in other parts of the world. Another nation's common business practices can get a CCO into trouble. When ethical or procurement integrity requirements conflict with local practices, you should explain to contractors the restrictions placed on U.S. procurement officials. All personnel, not just CCOs, must be conscious that many business cultures expect kickbacks, "finder's fees," exchanges of gifts, or other gratuities illegal for U.S. personnel to provide or accept. Review and become very familiar with Department of Defense (DoD) 5500.07-R, [Joint Ethics Regulation](#), and other [laws and regulations](#) as depicted on the DoD Office of the General Counsel's website. The mission depends on your ability to legally and ethically provide goods and services to the warfighter regardless of your environment.

**Foreign business practices.** Many foreign business cultures encourage the use of deceptive techniques during negotiations. Be aware of this and document all transactions and correspondence, as corruption levels often influence outcomes. For example, you may discover that a contractor has restricted competitors by bribing or threatening them. Furthermore, contractors might promise more than they can deliver or faster timelines than are actually possible. Always ask for specific details about delivery capabilities and ask the contractor to provide a delivery plan and schedule. Also, you should inspect sites and physically observe the procured items when possible, ensuring they meet the specifications in the contract. Be familiar with how deliveries are made at your location and ensure a viable system is in place that has been vetted through leadership and security. Last, ensure payments are made for legitimate supplies and services only in accordance with contract terms and conditions. See Federal Acquisition Regulation (FAR) [Part 25](#) and Defense Federal Acquisition Regulation Supplement (DFARS) [Part 225](#) for more information on executing foreign acquisitions.

**Negotiating practices.** Like other business elements, negotiation practices can vary greatly depending on the area in which you are deployed and supporting. When obtaining the price of an item or service, keep in mind that the first price quoted is usually only a contractor's starting position. Foreign contractors with which CCOs conduct business can be shrewd negotiators; understand that negotiating for lower prices is often viewed as a normal business practice. Setting a pre-negotiation objective and conducting several exchanges with the vendor can help reduce prices and obtain services and supplies quickly. Regardless of the negotiation

scenario, CCOs must remember that they are responsible for determining fair and reasonable prices before award. Further, negotiations must be documented (see [Chapter 6](#)).

In determining price reasonableness, the CCO must consider the following:

- Availability of the needed supply or service in the local marketplace
- Feasibility of meeting the need from outside the local area
- Issues with customs or clearing agencies for deliveries
- Ability to secure delivery within the requested time frame
- Urgency of the requirement
- The need to build the local economy (you may be tasked with local “country-first” procurement programs, similar to U.S. Central Command’s (CENTCOM’s) previous procurement initiative to procure from the Central Asian States, as prescribed in [DFARS 225.7703](#) and CENTCOM Policy Letter 40, “Acquisition of Products and Services in Central Asian States.”<sup>49</sup>

(See FAR [13.106-3\(a\)](#), [15.405](#), and [15.406](#) for more specific information on price negotiation and determining price reasonableness depending on the type of acquisition procedures used. See also [Chapter 5](#) for additional information on negotiating practices.)

**Oral agreements.** The prevalent practice in many countries is to conclude an agreement or contractual understanding with nothing more than a handshake. This approach may be used at the outset of the contingency, humanitarian assistance, or peacekeeping operation, but should be followed quickly with a written contract. Vendors can view contracts written in English with suspicion and sometimes anger. Obtaining a vendor’s signature on a contract can become a challenge. When a local vendor refuses to sign contractual documents, the ordering officer (OO), field ordering officer (FOO), and CCO must either document the file with a memorandum for the record or annotate the unsigned contractual document. CCOs, OOs, and FOOs should ensure that another U.S. Government official countersigns the document. Once a contract is performed and the contractor is paid, relations between vendors and government representatives (the CCO and the government team) should improve. CCOs should remember to always keep oral communications simple and straightforward. Light-hearted joking and sarcasm can sometimes be misinterpreted through translation and can be insulting to some cultures.

**Local business practices.** Local business practices in a less-than-stable environment and the contractor’s lack of knowledge of DoD payment procedures might require CCOs to arrange for immediate payment after completion and acceptance of work. ([Chapter 5](#) describes payment procedures.) CCOs should understand that interaction with local nationals often requires patience and lengthy conversations. Plan to engage in discussions in unfamiliar areas but be mindful of OPSEC. Be aware of your surroundings and who might be listening to the conversation, and take care not to reveal the details of your mission.

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<sup>49</sup> CENTCOM [Policy Letter 40, “Acquisition of Products and Services Produced in the Central Asian States \(CAS\).”](#) June 26, 2012.

**Interpreter services.** CCOs should be prepared to deploy to locations where the local contractors speak little or no English. In these situations, CCOs need the services of interpreters. The CCO, in consultation with the requiring activity, deems some interpreters as mission-essential contractor employees. Mission-essential interpreters have managerial or technical skills not commonly found in the general population. CCOs should contact the embassy for a list of approved interpreters. In the absence of embassy support, CCOs may check with hotels, telephone books, or bus drivers for tour operations. Contacting local schools and colleges for assistance in locating interpreters is another option. You should, however, be cautious about using interpreter services from unapproved sources and, where applicable, vet interpreters through the Office of Special Investigations (OSI), Criminal Investigation Command (CID), Naval Criminal Investigation Service (NCIS), or the embassy for security approval. Be respectful of the interpreters' time, as they can become overwhelmed. Get to know the interpreters and notice whether their behavior changes around certain contractors or locations. This can be useful awareness to have when conducting business transactions and considering OPSEC procedures.

**Limitations.** Deployed CCOs do not have the authority to negotiate or enter into agreements with foreign governments. For example, as a CCO you cannot enter into a contractual agreement with the Philippines Government to provide interpreter services. That level of contracting is handled by DOS and senior DoD officials. If an HN agreement with a foreign government is in place already, you may be able to place an order against it. You should obtain authority through the head of the contracting activity (HCA) to work with the HN support office to write priced delivery orders against the agreement. If a new agreement is needed, you may request its creation through the HN support office.

**Multinational programs.** A deployment is highly likely to involve coalition forces and capabilities coming from interagency, intergovernmental, and nongovernmental partners, with emphasis on a multinational perspective. The CCO should know that the international environment is governed by a myriad of statutes, directives, treaties, and implementing arrangements for conducting transactions. Guidance on these matters should be sought from the HN support team, combatant command J4 (Logistics), joint interagency coordination group or directorate responsible for interagency coordination, and U.S. Embassy. For contingency and exercise operations in a foreign country (and acquisitions under provisions of mutual support logistics between the U.S. Government and the government of eligible countries), options include HN support agreements, assistance-in-kind agreements, status of forces agreements (SOFAs), and acquisition and cross-servicing agreements (ACSAs) (see [Chapter 4](#) for a discussion of ACSAs). CCOs must understand the role of each of these types of agreements, their function, and their advantages and disadvantages.

**Customs and taxes.** Many times, SOFAs address contracting support related to legal obligations (such as taxes and customs), as well as the process and documentation needed for an exemption. Issues arising from problems with customs can be burdensome. The better the CCO understands the process and the political climate, the easier it is to work with the customs agents. Too often, supplies that require delivery through an HN entry port become frustrated freight, and the delays can be critical to the mission. You may have to seek help from higher authorities to help remedy the release of frustrated deliverables. Contact the customs office or U.S. embassy for additional guidance, especially if local procedures do not exist.

**Additional Resources.** The resources below can assist CCOs become familiar with the host nation, especially during initial operations in unfamiliar areas:

- The CIA offers a [World Factbook](#), which contains information on the history, people, government, economy, geography, communications, transportation, military, and transnational issues for 267 world entities.
- The [WorldSmart Resource Center](#) offers global information, including currencies, gestures, measurements, telephone codes, and voltages.
- The Defense Language Institute Foreign Language Center offers culturally based education in more than 40 languages. The center's [website](#) offers downloadable products for predeployment training, deployment use, or refresher training.
- The U.S. Marine Corps Center for Advanced Operational Culture Learning (CAOCL) contains information on regional cultures and languages to support planning and operations in a joint expeditionary environment. The CAOCL [website](#) includes specific cultural links related to Operation Iraqi Freedom, Operation Enduring Freedom, United States Africa Command (AFRICOM), United States Pacific Command (PACOM), United States Southern Command (SOUTHCOM), and CENTCOM.
- The Air Force Air University [website](#) offers sociocultural and language resources.
- The Defense Language Institute's [Foreign Language Center](#) offers "[Country in Perspective](#)" and [cultural orientation videos](#).

### **Situational Awareness**

Situational awareness involves never letting your guard down while constantly observing and understanding your surroundings. CCOs should remain situationally aware at all times, trusting their instincts and relying on their training. Especially during initial contingency operations, CCOs may travel outside the wire in convoys or with personal security details (PSDs) to visit sites, attend meetings, meet with local contractors, and handle cash-and-carry transactions. They must understand local security procedures and protocols. Include others from the acquisition team when feasible, and do not hesitate to request security assistance while in hostile areas. Seek out secure locations to meet with contractors. For example, if you are supporting a mission not located at an established forward operating base (FOB), you may not have an office or established meeting area. Work with the supporting security personnel to determine a safe location for meeting and communicating with contractors. Check local standard operating procedures (SOPs) and acquisition instructions (AIs), if developed, for additional information on these types of situations.

### **OPSEC**

**Awareness.** Awareness of security fundamentals allows CCOs to focus their attention on the security measures needed during emergencies and in certain peacetime operations. OPSEC is a broad-based security program designed to prevent all types of sensitive information from falling into the wrong hands. Such information can be extremely valuable to adversaries of the United States. It can provide intelligence indicators of daily operations and, more important,

future plans and activities. For example, if you are expected to conduct missions away from your base or embassy and overnight accommodations are needed, contact joint staff intelligence (J2) for information on areas been vetted for various security and intelligence concerns. Also, contact J2 to receive the most recent threat brief, which will provide critical information for you to keep in mind.

**Definition.** OPSEC is the process of identifying critical information and subsequently analyzing friendly actions attendant to military operations and other activities to accomplish the following:

- Identify actions that can be observed by adversary intelligence systems.
- Determine indicators that an adversary's intelligence operatives might obtain that could be interpreted or pieced together to produce critical information (in time to be useful).
- Select and execute measures that eliminate (or reduce to an acceptable level) the vulnerabilities of friendly actions to adversary exploitation.

The key to successful OPSEC is identifying indicators that are tipoffs of impending activities, such as stereotyped SOPs or, in some cases, observable deviations from normal operations.

**Process.** OPSEC is a continuous, systematic process involving security and common sense. It is used to analyze operational plans or programs to detect any weakness that could give useful information to adversaries or potential adversaries. The most important steps in the process are as follows:

- Knowing the unit's mission
- Recognizing the adversary's intelligence threat to the unit
- Being aware of the unit's critical information (essential elements of friendly information)
- Identifying indicators that might disclose or point to this information
- Developing protective measures to eliminate these indicators
- Being constantly alert for vulnerabilities in the unit.

### **Communication with Vendors (Elicitation, Espionage, and Subversion)**

Over time, CCOs develop a rapport with most of the foreign contractors with whom they deal. However, CCOs must be wary of statements to even the most trusted of contractors. A CCO might find that contractors are soliciting information of possible intelligence value. For example, a CCO might be asked about the likelihood that an exercise will be conducted soon, number of people on the base, or when additional personnel will arrive. CCOs must immediately report any suspicious activities to the

- [Army Criminal Investigation Division](#),

- [Air Force Office of Special Investigations](#),
- [Naval Criminal Investigative Service](#), or
- local security personnel.

CCOs must always be mindful of what is discussed with the contractor base. Likewise, information in contract requirement documents should be secured to the maximum extent practicable. Information should be limited only to people who have a need to know. Disclosure of certain contractual information (such as completion dates, troop movement, and delivery locations) could harm the operational mission. Be cautious of how your documents are disposed of, and ensure you follow proper disposal protocol for your location and mission.

CCOs also should be cautious when using satellite communications, cellular phones, and e-mail. These methods of communication generally are not secure and should be used with the understanding that the information can be intercepted. Ensure all communications are secured in accordance with the level of classification of your documents and mission.

Gaining the trust of the local communities, especially the contractors that supply needed goods and services, is vital to the success of your contracting mission. Remember, the presence of danger is very real for the local nationals as well as the deployed force. Many contractors live in the local area, and doing business with the U.S. Government can be dangerous for them and their families. CCOs must take all precautions to ensure that a contractor's personal information is protected. In addition, CCOs should consider the possibility that local contractors might need to be billeted on the base to reduce the security risk to themselves and their families, thus changing their status to contractors authorized to accompany the forces (CAAF). See [DFARS Part 225](#) for additional information on foreign acquisition requirements. Before publicizing award notifications and other contracting data, CCOs should check the local policy and procedures regarding the public posting of information. In austere and hostile locations, postings may not be authorized.

### **Antiterrorism and Security**

**Threat factors.** CCOs should ask the following eight questions to understand threats in the local environment:

1. Do terrorist groups operate in the area?
2. Are they violent?
3. Do they attack U.S. personnel?
4. How active are they?
5. How sophisticated are they?
6. How do they operate?
7. How much popular support do they enjoy?
8. Do they use common tactics?

DOS publishes annual [Country Reports on Terrorism](#), which identify terrorist groups and describe their actions against U.S. citizens and personnel. Your intelligence officer and chain of command are also sources of information on terrorist groups in the area. In addition, CCOs should monitor stories in the newspaper, on radio, and on television.

If terrorist groups are operating in the area, the CCO needs to know their level of sophistication—whether they use highly targeted, carefully planned attacks or simply explode bombs randomly in public places. Knowing how the terrorist groups operate will enable the CCO to avoid danger spots and detect evidence of an attack before it occurs. For example, some terrorists study their targets for a month or more to carefully plan an attack. If CCOs know how to detect this type of surveillance, they can take protective steps and report the information to the intelligence officer.

Knowing whether a terrorist group has local popular support is also important. If not, the local population is more likely to warn U.S. personnel about events leading up to an attack. DoD and agencies of the U.S. Government study these factors to help protect U.S. forces. The CCO's personal awareness can contribute to these efforts. CCOs must always be attentive to their surroundings and ready to react at the first sign of danger.

**Target selection and identification.** A useful exercise for the CCO is trying to take the terrorist's view and determining whether the CCO stands out as a U.S. military official, spends time with large groups of U.S. troops in public, behaves (individually or in groups) in a way that draws attention, or appears to be an important person. Large groups of U.S. personnel can be an inviting target. Terrorists also identify and target specific individuals by name, so personal CCO information must be protected to minimize exposure. Moreover, terrorists might target people who appear to be important, whether they agree with that assessment or not. Before launching an attack, terrorists must perceive the CCO, associates, or location as a target. Thus, CCOs must make every effort not to be an easy target.

### **Personal Security and Situational Awareness**

As mentioned, CCOs may be required to travel outside of the installation, putting themselves at risk. OSI, CID, NCIS or other security forces personnel can brief you on potential risks and may even accompany you and your convoy as part of standard force protection practices. You should also consider the following:

- Maintain mapped-out routes—with Global Positioning System (GPS) grid coordinates if possible—to nearby U.S. Embassy or Consulate offices, other ally-nation embassies, local police stations, hospitals, and other safe havens.
- Enroll in the DOS [Smart Traveler Enrollment Program](#) (STEP) to receive alerts and warnings via e-mail for specific regions, countries, and cities.
- Carry a “drop wallet” or briefcase that contains newspapers or other non-value items. The wallet or case should not contain any personally identifiable information (PII), but may contain a nominal amount of local currency funds. This can be passed off as your personal wallet or case to an assailant should you find yourself in a burglary, pirate, or theft situation.

- Limit your communications involving currency and funding. Publicly discussing this information can make you a target.

**Real-World Example:** In recent operations, local contractors gave members of the deployed force valuable intelligence, such as the location of improvised explosive devices (IEDs) along the roadside.

**The Bottom Line:** Building solid professional relationships with support contractors can help strengthen your situational awareness. Build strong relationships, but do so with a watchful eye.

## Personnel Recovery

“Personnel recovery” is the sum of military, diplomatic, and civil efforts to prepare for and execute the recovery and reintegration of isolated personnel.

**Isolated personnel.** “Isolated personnel” are U.S. military personnel, DoD civilians, and contractor personnel (and others designated by the President or Secretary of Defense) who are separated from their units (as an individual or group) while participating in a U.S.-sponsored military activity or mission and are (or may be) in a situation where they must survive, evade, resist, or escape.

**Personnel recovery requirements.** The geographic combatant commander and subordinate commands must plan for the possible isolation, capture, or detention of contractors by adversarial organizations or governments. Contractors must be included in the personnel recovery plan, as demonstrated in the Joint Operation Planning and Execution System (JOPEs), subordinate operational orders and plans, and contractor integration plans. Regardless of the threat environment, contracts should require contractors to complete training in personnel recovery, prepare DoD Form 1833, “[Isolated Personnel Report \(ISOPREP\) Instructions](#),” and prepare an evasion plan of action. Contracts also should clearly identify the organization and responsibility for (1) ensuring that personnel recovery training is accomplished and ISOPREPs and evasion plans of action are included in the theater personnel recovery plan, and (2) recovering and reintegrating isolated contractors. Reference FAR clause 52.225-19, “[Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States](#),” and DFARs Clause 252.225-7040, “[Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States](#),” in the contract’s personnel recovery section.

([Joint Publication 3-50](#) and [DoD Directive 2310.2](#) focus on personnel recovery and contain additional information on personnel recovery planning and development of ISOPREPs and evasion plans of action. [Chapter 4](#) includes additional information on personnel recovery as related to planning.)

## Additional References

The following references were not mentioned in this chapter but offer additional information related to cross-cultural competence and situational awareness:

- DoDI 3000.05, [Stability Operations](#)
- JP 3-24, [Counterinsurgency](#)
- JP 3-26, [Counterterrorism](#)
- JP 3-07.2, Antiterrorism (available through JEL+ at the [Joint Electronic Library](#))
- JP 3-29, [Foreign Humanitarian Assistance](#).

# Chapter 9

## Domestic Emergency Response

### Key Points

- The Federal Emergency Management Agency (FEMA), a branch of the Department of Homeland Security (DHS), is the lead federal agency responsible for coordinating contracting support for domestic emergency operations.
- The Department of Defense (DoD) does not augment FEMA or other federal agencies with contracting staff but can support specific contracting-related tasks as directed by the President or the Secretary of Defense (SecDef).
- Military forces working on domestic support operations should minimize contracted support to the deployed force to avoid competing with other support efforts for limited local resources.
- Many domestic support operations are handled at the state level. In these cases, U.S. Army and Air National Guard units provide military support under state active duty or under [32 United States Code \(U.S.C.\)](#).
- Contingency contracting officers (CCOs) can be expected to respond to disasters on or around bases, especially when DoD assets are involved.
- It is critical to know how to plug into a multi-functional response effort when DoD is not the lead agency but is called upon for assistance by FEMA or other lead federal agencies.
- Acquisition and emergency acquisition flexibilities are identified in [Federal Acquisition Regulation \(FAR\) part 18](#) and [Defense Federal Acquisition Regulation Supplement \(DFARS\) part 218](#).
- The [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#) applies to emergency declarations or major disaster declarations.
- The small business policies and procedures in [FAR part 19](#) and [DFARS part 219](#) apply when consistent with preferences provided to local businesses.
- Contracting officers are fully authorized to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority.
- Contracting units must practice regularly for responses to domestic emergency incidents and create standardized procedures for local response efforts.
- The entire spectrum of human-made and natural disasters must be anticipated.

### Introduction

As a CCO, you may be called upon to provide acquisition support to different types of domestic emergency operations. Domestic emergencies can affect the public welfare, endanger life and property, and/or disrupt government operations. Domestic emergencies can result from an enemy attack, natural disasters (such as hurricanes, tornadoes, earthquakes, floods, or fires), or human-made disasters (such as dirty bombs, insurrections, or civil disturbances). Private

industry continues to play a vital role in response efforts to support recovery and reconstruction and deliver essential items such as ice, water, and food supplies. CCOs need to establish a robust contracting support network and understand those involved in domestic emergency operations in order to effectively support contracts. The effectiveness of domestic contracting operations after a disaster such as an earthquake, a hurricane, a tornado, a flood, or other severe weather conditions depends on advance planning and preparation and a thorough understanding of how to partner with local, state, and other federal agencies to execute domestic emergency acquisitions.

This chapter discusses the emergency response actions a CCO can take in support of relief and recovery operations after a domestic emergency and the emergency acquisition flexibilities available to support the respective operation. It also provides guidance to help contracting offices that support the mission before, during, and after an emergency at their home stations. Although this chapter discusses many topics covered elsewhere in the handbook, it does so from the perspective of domestic emergency responses. (The [Emergency Acquisitions Guide](#), issued by the Office of Federal Procurement Policy (OFPP), contains additional DoD contracting information regarding domestic emergency response.)

**Real-World Example:** On October 28, 2012, the President authorized an emergency declaration for the states affected by Hurricane Sandy. The President's actions authorized FEMA to coordinate all disaster relief efforts to provide assistance for required emergency measures directly to state, tribal, and local governments to save lives and protect property and public health and safety. The President directed FEMA to ensure federal partners continue to bring all available resources to bear to support state, local, territorial, and tribal communities in Hurricane Sandy-affected areas. The SecDef directed DoD to provide any available disaster response resources requested by FEMA and state authorities as states throughout the Northeast began to recover from Hurricane Sandy. DoD coordinated with FEMA, U.S. Northern Command, and the National Guard Bureau on providing life-saving and -sustaining assets to FEMA and governors, as requested.<sup>50</sup>

**The Bottom Line:** The 2012 National Defense Authorization Act built on earlier legislation to enable individual states and DoD to coordinate their efforts through a single commander, usually a National Guard officer, who is given tactical control of both state-controlled National Guard forces and DoD military forces. While state and federal military forces maintain separate and distinct chains of command, this dual-status commander leads all military forces and directs their response efforts, achieving a unified effort. During Hurricane Sandy, this unified effort enabled much-needed assistance from DoD to move quickly to support states.<sup>51</sup>

## DoD Response to Domestic Emergencies

When the President issues an emergency declaration after a natural or other major disaster, it gives the federal government the authority to engage in various emergency response activities. The President or SecDef can then direct DoD assets to support response efforts. CCOs need to note that a large portion of the federal response is through contracts with private businesses, including those for debris removal, reconstruction, and the provision of supplies.<sup>52</sup>

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<sup>50</sup> American Forces Press Service, "[DoD, FEMA, Other Agencies Aid Storm-Affected Areas](#)," October 30, 2012.

<sup>51</sup> Gen. Charles H. Jacoby Jr. and Gen. Frank J. Grass, "[Dual-Status, Single Purpose: A Unified Military Response to Hurricane Sandy](#)," March 11, 2013.

<sup>52</sup> Government Accountability Office (GAO), [Disaster Recovery: Federal Contracting in the Aftermath of Hurricanes Katrina and Rita](#), GAO-11-942T, September 15, 2011.

The Secretary of Homeland Security is responsible for coordinating federal operations in the United States to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. For most emergency operations in the United States, FEMA serves as the lead federal agency and supports local, tribal, or state authorities under the provisions of the Stafford Act and guidance in the National Response Framework (NRF). DoD supports these missions by providing defense support of civil authorities (DSCA). **Figure 9-1** shows the national response framework for domestic emergencies.

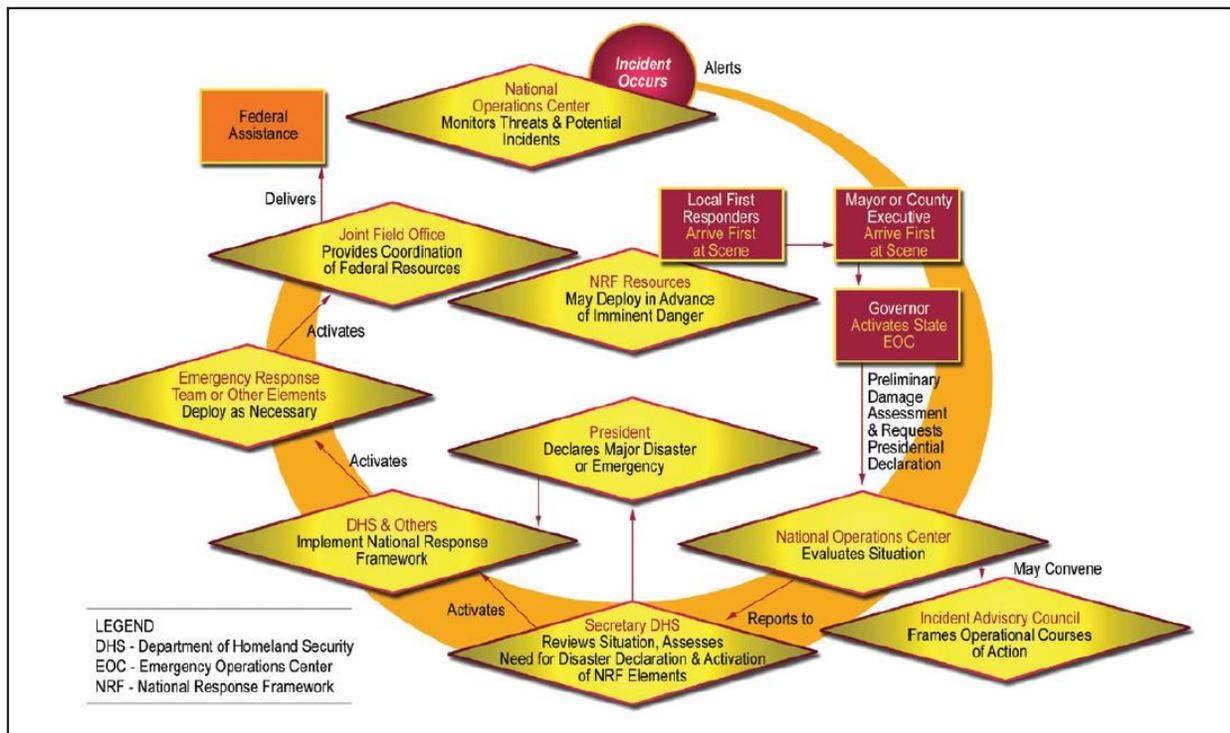


Figure 9-1. National Response Framework

CCOs should also note that DoD response to domestic incidents is almost always the last resort. All DoD support to disaster response is temporary, and the end state is the transfer of all emergency functions back to civilian authorities.<sup>53</sup>

**DSCA.** As defined in [DoD Directive 3025.18](#), DSCA is support by U.S. federal military forces, DoD civilians, DoD contract personnel, DoD component assets, and National Guard forces, in response to requests for assistance (RFAs) from civil authorities for domestic emergencies, law enforcement, and other domestic activities. DSCA is initiated by a request for DoD assistance from civil authorities or qualifying entities or is authorized by the President or SecDef. Contracting support for homeland security operations is similar to the support for foreign contingency contracting.

<sup>53</sup> Center for Army Lessons Learned, Handbook 06-08, [The Department of Defense \(DoD\) Role in Incident Response](#), May 2006.

**DoD Domestic Preparedness Support Initiative (DPSI).** Located in the Office of the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs, DPSI coordinates DoD efforts to identify, evaluate, deploy, and transfer technology, items, and equipment to federal, state, and local first responders. CCOs need to understand this because it can help connect external agencies and support personnel to DoD programs, allowing them to leverage the government's buying power to procure DoD technology and equipment while maximizing the use of American taxpayer dollars.<sup>54</sup>

**NRF.** The NRF is an all-hazards plan—coordinated and managed by FEMA—that provides the structure and mechanisms for national-level policy and operational direction for incident management to ensure timely and effective federal support. The NRF specifies how federal departments and agencies will respond to state, tribal, or local RFAs. The Secretary of Homeland Security executes overall coordination of federal incident management activities. (The [FEMA website](#) contains additional information on the NRF.)

**Robert T. Stafford Act.** The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. [5121–5206](#)) authorizes the federal government to help state and local governments alleviate the suffering and damage caused by disasters. DoD assistance can be requested under Stafford Act or non-Stafford Act conditions. A Stafford Act incident is one in which state and local authorities declare a state of emergency and request federal assistance. The Stafford Act establishes programs and processes for the federal government to provide major disaster and emergency assistance to states, local governments, tribal nations, individuals, and qualified private nonprofit organizations. A non-Stafford Act incident is essentially any of the other emergencies each year that do not necessarily overwhelm state and local authorities, but would benefit from federal assistance and coordination. The Secretary of Homeland Security is responsible for the overall coordination of federal Stafford Act and non-Stafford Act incident management activities.

**RFA.** DoD assistance is requested by a lead federal agency (LFA) through a formalized RFA process. DoD capabilities and assets can greatly support domestic emergency response efforts but are normally requested only when other local, state, and federal capabilities and resources have been exhausted or when a military-unique capability is required. DoD handles RFAs on the basis of factors such as its categorization as a Stafford Act or non-Stafford Act event, urgency of the incident, establishment of a joint field office if a defense coordinating officer (DCO) or joint task force has been appointed, and originator of the request (such as incident command or state, regional, or national organization).

**Contracting support for domestic emergency operations.** Normally, FEMA is the LFA in domestic emergency operations. Supporting DoD CCOs need to partner with other federal, state, and local agencies and coordinate acquisitions with the LFA and supporting personnel like DCOs. This will assist in procuring needed supplies and services effectively and efficiently and reduce duplication of effort, given the large number of agencies that could potentially be involved in the response. Military forces operating in domestic support operations

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<sup>54</sup> See the [DPSI webpage](#).

should minimize contracted support to the deployed force to avoid competing with state and federal agencies for limited local commercial resources.

**Real-World Example:** During support to Hurricane Katrina, lack of communication and coordination between FEMA and the U.S. Army Corps of Engineers resulted in an order for at least double the needed amount of ice. This resulted in an oversupply of ice and a lack of distribution sites to handle the volume ordered.

**The Bottom Line:** A high operational tempo and the “need now” mentality that arise in emergency environments can affect the way contracting is executed. Effective communication and coordination between the requiring and contracting activities supporting an operation protect against waste.<sup>55</sup>

**U.S. Northern Command (NORTHCOM).** NORTHCOM regional DCOs and the defense coordinating element can deploy in advance of disasters or other emergency incidents to validate, plan, and coordinate potential DoD support of response efforts from FEMA or other LFAs and facilitate DoD support of life-saving and response operations. CCOs should understand the value that DCOs bring to coordinating requests for assistance from civil authorities following a declared disaster.

**Homeland Security Office of Operations Coordination and Planning (OPS).** The DHS OPS serves as the primary national-level multiagency situational awareness and operational coordination office.

**National Guard operations.** Many domestic support operations are handled at the state level. In these cases, Army and Air National Guard units provide military support under [U.S.C. Title 32](#). Similar in concept to the National Guard tiger teams, the Office of Management and Budget (OMB) may deploy members of the Contingency Contracting Corps to help during an emergency situation ([41 U.S.C. 2312](#)). ([National Guard Regulation 500-1](#) describes National Guard support operations.)

**Incident Command System (ICS).** The ICS is a standardized, on-scene incident management tool designed to allow responders to adopt an integrated organizational structure equal to the complexity and demands of a single incident or multiple incidents without hindrance by jurisdictional boundaries. The ICS manages and addresses the following problems:

- Too many people reporting to one supervisor
- Differing emergency response organizational structures
- Lack of reliable incident information
- Inadequate and incompatible communications
- Lack of structure for coordinated planning among agencies
- Unclear lines of authority

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<sup>55</sup> GAO, [Hurricane Katrina: Improving Federal Contracting Practices in Disaster Recovery Operations](#), GAO-06-714T, May 4, 2006.

- Terminology differences among agencies and unclear or unspecified incident objectives.

An ICS enables integrated communication and planning by establishing a manageable span of control.

### **Domestic Emergency Acquisition Flexibilities**

CCOs must be familiar with the acquisition flexibilities available while providing contracting support during domestic emergency operations. [FAR Part 18](#) and [DFARS Part 218](#) provide generally available acquisition flexibilities, which don't require an emergency declaration or designation of a contingency operation, as well as emergency acquisition flexibilities that are available only for the following specified and designated circumstances:

- Contingency operation ([FAR 18.201](#) and [Chapter 5](#))
- Defense or recovery from chemical, biological, radiological, or nuclear (CBRN) attack ([FAR 18.202](#))
- Emergency declaration or major disaster declaration ([FAR 18.203](#)).

The contracting flexibilities available during domestic emergencies vary with the specific circumstances involved in the respective incident. For example, when the President issues a major disaster declaration, the thresholds for micro-purchases and simplified acquisitions do not automatically increase. However, such increases may be triggered by incident-specific legislation (such as the emergency supplemental appropriations acts passed to fund the response to Hurricane Sandy).

**Domestic emergency acquisition flexibilities.** Below is a listing of the flexibilities available for designated domestic emergencies. Refer to [FAR Part 18](#) and DFARS Subpart 218 for additional information on emergency acquisitions, both domestic and outside the United States, to include those generally available to the CCO that do not require emergency declaration.

1. *Acquisition threshold increases.* Thresholds are increased when the head of the contracting activity (HCA) determines the supplies or services are to be used in support of a contingency operation or to facilitate defense against or recovery from a chemical, biological, radiological, or nuclear (CBRN) attack: <sup>56</sup>

- The micro-purchase (MP) threshold increases to \$15,000 for any contract to be awarded and performed, or purchase to be made, inside the United States (FAR 2.101).
- The Simplified Acquisition Threshold (SAT) increases to \$300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States (FAR

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<sup>56</sup> Acquisition thresholds are subject to change. Refer to FAR 2.101 and DFARS 202.101 for current micro-purchase and simplified acquisition thresholds, and refer to FAR 13.5 for current test program thresholds.

2.101). Under the test program for certain commercial items,<sup>57</sup> the threshold limit may be increased for acquisitions to support a contingency operation (FAR 13.500(e)).

2. *Relief from registration in the [System for Award Management \(SAM\)](#).* Contracting Officers may make an award to contractors not registered in SAM if conducting emergency operations, such as responses to natural or environmental disasters or national or civil emergencies ([FAR 4.1102](#)). However, CCOs should note that contractors are required to register with SAM in order to gain access to the Disaster Response Registry for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (FAR 26.205).

3. *Local area preferences and set-asides.* CCOs must give preference to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Preference may take the form of local area set-asides or an evaluation preference. A local area set-aside restricts competition to offerors that reside or do business primarily in the area affected by a major disaster or emergency. CCOs are to determine whether a local area set-aside should be further restricted to small business concerns in the set-aside area when consistent with preferences provided to local businesses. (Follow agency requirements and the policies and procedures in FAR 6.208, FAR Part 19 and DFARS 219.2 when setting aside an acquisition during a major disaster or emergency. See also FAR 26.2 for in-depth disaster or emergency assistance activities.)

4. *Use of commercial item procedures for acquiring non-commercial items.* CCOs may treat any acquisition of supplies or services to be used to facilitate defense against or recovery from a CBRN attack as an acquisition of commercial items under [FAR Part 12](#). This allows noncommercial items to be purchased using the policies and practices applicable to commercial items ([FAR 12.102\(f\)\(1\)](#)). **Caution:** Cost accounting standards generally do not apply to commercial item acquisitions. However, a contract in an amount greater than \$17.5 million awarded on a sole-source basis for an item or service treated as a commercial item that does not otherwise meet the definition of a commercial item is *not* exempt from cost accounting standards or cost or pricing data requirements ([FAR 12.102\(f\)\(2\)](#)).

5. *Establishing or maintaining alternative sources.* The DFARS PGI contains a sample format for Determination and Findings citing the authority of FAR 6.202(a), regarding exclusion of a particular source in order to establish or maintain an alternative source or sources. Alternate 2 of the sample format addresses having a supplier available for furnishing supplies or services in case of a national emergency. See PGI [206.202](#).

6. *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for contracts awarded by contracting officers in the conduct of military operations, including contingency operations, humanitarian or peacekeeping

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<sup>57</sup> [Class Deviation- 2015-O0004](#) provides permanent authority for use of Simplified Acquisition Procedures for certain commercial items.

operations, or emergency operations, such as responses to natural disasters or national or civil emergencies. (DFARS [232.7002\(a\)\(4\)](#)).

7. *Policy for unique item identification.* Contractors will not be required to provide DoD unique item identification if the items, as determined by the head of the agency, if they are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. ([DFARS 211.274-2\(b\)](#))

Absent the threshold increases available under the specific incidents, Contracting Officers are fully authorized to innovate and use sound business judgment otherwise consistent with law and within the limits of their authority. CCOs should not assume that a new approach is prohibited simply because it is not in the FAR or DFARS. Facing emergency situations, CCOs should seek legal assistance to identify and confirm their options.

### Other Considerations

**Sourcing.** CCOs must be aware of the limited resources within an area and should be mindful not to compete against FEMA for those resources or contractors. Further, CCOs should be careful not to overload construction contractors and should limit the number of short-term emergency projects for each. Some small contractors will overextend themselves and then not make progress on all work. CCOs should watch for contractor workers who jump from one construction site to another—a sign that a contractor may not have adequate personnel and resources to complete all work on time. CCOs also should consider the following:

- ***Contractor qualifications.*** When supporting emergency operations, CCOs might not have time to thoroughly evaluate contractor qualifications. Although CCOs cannot exclude sources simply because they are unfamiliar, they should consider limiting sources to known contractors as much as possible. During planning, CCOs need to prepare an emergency vendor list and refer to it regularly. CCOs must identify the contractors that can expeditiously respond to natural disasters and specialize in all-purpose emergency recovery contracting.
- ***Bid guarantees and bonds.*** In emergency acquisitions, the chief of the contracting office (COCO) may decide to waive the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required. A bid bond, however, can weed out less-qualified contractors. CCOs should use their discretion in emergency environments in obtaining bonds ([FAR part 28](#)).

**Long-term issues.** The effects of a disaster often last beyond the initial recovery effort. Although most long-term support involves administering construction contracts, other long-term issues arise. This section discusses long-term contracting issues and offers suggestions on avoiding common pitfalls:

- ***Prolonged emergency use.*** The contracting office must inform senior leadership that emergency buying procedures are for designated emergency response operations only. Because of the short turnaround involved with emergency contracting procedures, customers try to stretch emergency work to the limit.

CCOs also should watch for companion contracting projects to emergency repairs (such as adding garages to damaged units). Emergency procedures can only be used for emergencies. CCOs must be vigilant of these potential issues.

- ***Contract administration.*** Contract administration and oversight of emergency projects can prove very challenging, but this is not an excuse for poor contract management and monitoring of contractor performance. CCOs should understand going in that specifications and solicitations will be rushed, potentially leading to loosely written contracts. CCOs can expect a significant increase in change orders if a contract is broad and includes poorly defined requirements. Proper communication and coordination, acquisition planning, and a focused approach to ensure requirements are well defined enhance overall contract administration.
- ***Service contracts.*** Existing service contracts may be altered significantly during and after an emergency to provide services expeditiously. For example, a grounds maintenance contract could see a large increase in work orders for services such as clearing debris, removing stumps, and trimming trees. The military family housing contract also might be significantly affected by an increased need for interior minor damage repair work. CCOs should monitor new work closely and promptly return service contract terms to their original scope after the recovery-related work is satisfactorily completed.
- ***Custodial contracts.*** If the installation suffers major structural damage, organizations may move into temporary facilities. This approach requires the modification of custodial service contracts to temporarily add and delete services for buildings, which can be both costly and administratively burdensome.
- ***Construction contracts.*** Depending on the extent of damage to the installation, the construction contract administration workload increases and might continue for a prolonged period. If so, the CCO should consider detailing more administrators to the construction branch until workload levels return to normal.
- ***Contractor employees.*** Existing contractor support also might be impacted because employees either have evacuated or are responding to personal needs.

### **Advance Planning for Emergencies at the Home Station**

Successful domestic contracting operations after a disaster depend on advance planning and preparation. Apparent as this may sound, proper planning is often neglected.

The remainder of this chapter covers domestic emergency response operations, focusing on readiness and response for installations and home stations. This focus is consistent with the current DoD role in domestic emergencies—providing organic military forces with limited operational contract support to assist FEMA or other LFAs.

No one is ever truly prepared to handle the devastation caused by a natural or human-made disaster, but a viable readiness plan can soften the impact. When a disaster hits, personnel must be well versed in advance in contingency and emergency contracting procedures. The

remainder of this section addresses issues that contracting offices can prepare and train for before emergency response:

### **Planning Considerations**

The CCO should develop a plan that best suits the particular operating location (or area of deployment). If the office is located in an area susceptible to hurricanes or tornadoes, the plan should reflect response procedures for these potential incidents. The plan discussed in this section is generic; it should be further tailored to fit the specific needs of the operating location. The plan should also be coordinated and integrated into local support plans. The plan should communicate the following to senior leadership and DoD coordinating officials:

- The role of contracting during domestic emergency operations
- Contracting authorities
- The importance of establishing a requirements process and the need for support personnel such as contracting officer's representatives (CORs) and quality assurance representatives (QARs)
- The use of contracting to support installation recovery
- The tools required to provide this support.

The CCO should consider the following when drafting the office plan:

- *Contingency support for local emergencies.*
- *Review of installation operation plans (OPLANs).*
- *Defense Logistics Agency (DLA) capabilities and sources.* DLA is formally designated as the DoD executive agent for specific commodities: subsistence goods, bulk fuel, construction and barrier materials, and medical materials. DLA contracts contain surge clauses for added flexibility to meet increased demands, including those associated with emergency responses. The plan should include using DLA to the fullest extent possible.
- *Prepositioned contractors.* Agencies are encouraged to seek out prepositioned contractors to facilitate a timely emergency response. Prepositioned contractors that have products and services often needed for emergency responses are available at websites such as the General Services Administration (GSA) [Disaster Relief Program](#), [GSA Wildland Fire Program](#), and [Interagency Contract Directory](#).
- *Pre-identified contractors.* When contractors register in [SAM](#), they can designate their potential availability to provide disaster response products and services. CCOs should consult the [SAM website](#) for information on these firms ([FAR 26.205](#)).

### **Local Contracting Support Plans**

Contracting offices should develop a comprehensive local support plan (usually as an annex to the logistics chapter of the installation plan) to ensure contingency contracting support

for tasks assigned by the installation OPLANs. Local contracting support plans contain at least the following:

- The capability for the commander to contact contracting personnel on short notice through the unit emergency action center or command post and to account for all contracting personnel for emergencies during duty hours
- Identification of CCOs, who may be on unit recall rosters, and consideration of how contracting officers in tenant organizations can assist recovery efforts
- Instructions on where to relocate the contracting office if the primary contracting facility is not usable, considering alternate locations on and off the installation
- A current list of installation emergency plans, which should include a section on contracting
- Provisions for emergency communications with installation officials, customers, and suppliers
- Procedures for manual requisitioning of supplies, including required approval authorities, forms, and general processing requirements
- Procedures for each functional area to identify site personnel who can generate, validate, and approve requirements, accept deliveries, and verify quality of goods purchased
- Provisions for funding requests
- Instructions for manual purchase registers and record keeping
- Guidance for use of the government commercial purchase card (GCPC) for emergency purchases, including keeping a manual purchase log in the absence of connectivity to the automated log available at [U.S. Bank Access® Online](#).
- Procedures for using alternate data automation facilities to restore automated purchasing support and records
- Instructions for use of the unit deployment kit, which must include a global positioning system (GPS), even for local disasters
- Current telephone listings for key regional contracting offices, local suppliers, and other nearby installations, as well as grid maps of the installation and local areas
- Ongoing process for developing, maintaining, and using available source lists for emergency supplies and services, and identifying the sources available for 24-hour response to emergency requirements<sup>58</sup>
- An advance strategy to address surge capability for supplies with contractors to source critical supplies outside of the local area, such as lumber and roofing materials, because these supplies will quickly be consumed or destroyed in a natural disaster (if there is time to act ahead of the disaster, as with a hurricane,

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<sup>58</sup> These lists should include the commodity or service contractor address, point of contact, and 24-hour telephone number. The lists should be updated quarterly to ensure that the sources are available to help address the contingency or emergency.

most contractors preposition items outside the disaster area to facilitate a quick response)

- Procedures for accommodating a spike in contract terminations.
- Procedures for accommodating unusual contract administration requirements.

### **After Action Reports**

One way to plan and prepare for local emergencies is to review applicable after action reports (AARs) from previous emergencies (see the [AAR website](#) for more information).

When reviewing AARs, the CCO should consider the following:

- The type of emergency and the associated needs for each phase (such as initial response and recovery)
- The types of acquisition vehicles relied on, contract terms and conditions, and prices paid
- Roles and responsibilities assumed by other agencies providing acquisition assistance and the interagency agreements used to document responsibilities
- Process for, and type of, funding for the acquisitions
- Types of logistical challenges encountered in delivering products and services, as well as the steps taken to address these challenges
- Any legal issues that arose
- Management's overall assessment of agency and contractor performance.

### **Other Considerations**

**Training.** [FEMA's Emergency Management Institute](#), in coordination with the Defense Acquisition University and the Federal Acquisition Institute, offers online courses on the National Incident Management System and the ICS for all contracting officers who may be deployed during an emergency.

**Power.** For planning purposes, CCOs must assume there will be no power to operate office equipment. Securing access to a portable generator and adequate fuel should be a top priority. CCOs should prioritize these items and procure them quickly, given the potential for a shortage of supply. In the event power is scarce, CCOs should consider relocating the operation to a site where generators are available (such as hospital, commander's office, or command post). These arrangements must be made in advance and detailed in the contingency plan.

**Off-site location.** As briefly mentioned, CCOs might need to work from an alternate location, so this option should be included in the continuity of operations plans. If the installation is severely damaged, the establishment of an off-site location will become a critical necessity. Each CCO should designate proposed on-and off-installation alternative contracting sites in advance and incorporate them into the installation contingency plan. When an emergency or disaster occurs, senior management must quickly decide how and from where the CCO will operate.

**Buying procedures.** CCO plans should include the buying procedures that the contracting officers will use during an emergency and the applicable acquisition flexibilities ([FAR part 18](#)). CCOs can also avoid buying problems by establishing and maintaining a current and accurate emergency support source list for commodities, services, and construction. This list should include the following:

- Multiple vendors for all required goods and services
- Telephone numbers (business and home) for each vendor
- Accurate vendor street addresses (in case telecommunications are out)
- A 24-hour point of contact for each business
- Backup vendor lists from outside the local area in case local vendors become incapacitated.

One critical lesson learned is that local vendors might not be able to support the installation in an emergency. If the installation is trying to recover, chances are that local civilian contractors and support agencies also are in recovery mode. Therefore, use of assets outside the local area is key in responsive acquisition support. If other installations are nearby, CCOs should exchange vendor lists for wider coverage. CCOs must ensure vendor listings are current by reviewing them quarterly, updating the list and supplementing it with new sources from market research and recent performance data.

**Reachback.** In a catastrophic disaster or an event that produces severe and widespread damage of such a magnitude that the local contracting office cannot execute its mission, contracting offices must coordinate lateral support with other regional contracting offices unaffected by the disaster or event. Contracting offices may be requested to commit contracting resources to the affected area, in the form of personnel or reachback contracting support. Contracting offices in areas that have a greater potential to be affected by a catastrophe should team with other nearby contracting offices (and those capable of providing reachback contracting support because they have similar missions) to plan and prepare for a catastrophic contingency. Partnering with other contracting activities should be included in the CCO emergency response plans.

### **On-Scene Operations**

Initial contracting actions during a recovery effort are the most critical. How support capabilities are assessed and how widespread the damage is sets the tone for the entire recovery process.

**Activating recall procedures.** The CCO's first priority during an emergency is to get personnel to work. Fortunate CCOs will be able to contact them by telephone or by recall announcements over the radio or television. However, CCOs might have to go house to house to recall personnel. The more personnel whom can be recalled, the more comprehensive support will be.

**Assessing damage to the contracting office.** The CCO must quickly assess the contracting office's physical appearance and its overall functioning capabilities and then decide

whether to stay or relocate to the alternate site. At a minimum, the CCO must find a site where personnel can safely access tables, desks, and telephones. CCOs should consider the following when evaluating the contracting office and alternate sites:

- Telephone capabilities
- Electricity
- Extent of the damage
- Safety and other aspects of suitability for operations.

**Organizing the contingency staff.** Once personnel are recalled, the CCO needs to assess division support capabilities. If personnel are experienced, a flat organization should be established that allows experts to buy and administer supply, construction, and service requirements with as little supervision as possible. If personnel are inexperienced, a more structured, centralized support organization is appropriate. The next step is designating the roles that personnel must perform, including dedicating staff members to order from preestablished blanket purchase agreements (BPAs) or federal supply schedules and assigning another group to acquire other requirements (such as equipment rentals, specialized parts, and supplies from the open market). CCOs also might need to take the following actions:

- For major construction and service contracts, team with the inspector to evaluate construction sites for damage and determine the extent of damage, liability, and need to modify construction requirements and assign staff members to coordinate with major service contractors to restore sanitation, refuse, and grounds maintenance support as quickly as possible.
- Assign staff members as runners to pick up needed goods in the local area; however, if local area vendors are unable to support the installation, send a runner to a CCO outside the local area to procure needed goods and services.

### **Initial Setup Actions**

Once the support organization is established, the CCO takes the following actions immediately:

- Identify initial requirements that will need to be procured and prioritize them on the basis of need.
- Contact the local commander to provide an update on status and the plan of operations. Obtain the commander's list of priorities if possible.
- Establish communications. First, determine what is already available, such as telephone lines and Internet. Next, secure additional communications such as mobile radios or cellular phones, if available, to ensure communications continue in the event telephone and Internet connectivity are lost.
- Contact finance personnel to ensure funds are available. CCOs should request a single obligation authority, if possible, and ensure procedures are in place for the use of cash-and-carry methods.

- Seek lateral support, if long-distance communications are possible, by contacting the head of the contracting activity (HCA) and neighboring installations to put them on standby for possible support.
- Continue to assess power capabilities and consider relocating to a building on the installation that has power if necessary, as mentioned. Hard-copy contracting forms can be used in the event contracting automation systems are down.
- Obtain transportation and make sure that enough vehicles are available to support CCO needs. Most initial purchases will be picked up by government personnel, so at least one vehicle should be capable of transporting large volumes of goods (such as lumber, plywood, and rolls of plastic sheeting).

**Managing initial purchases.** The first 24 hours of recovery are the most hectic and require a concentrated buying effort. The CCO should organize immediately by making sure procedures are in place to do the following:

- Generate requirements.
- Establish a purchase request (PR) tracking system. Start with a separate block of purchase order numbers for ease of tracking. It may also be a good idea to appoint a requisition control point (RCP) monitor who can track requests throughout the acquisition process and help avoid duplication of effort.
- Track obligations, contract awards, and payments.
- Oversee contractor performance and verify government receipt.
- Perform quality assurance to the maximum extent practicable.

All contracting, acquisition support and coordinating personnel should be made aware of established procedures.

CCOs should also consider taking the following actions to support the management of initial purchases:

- ***Establish one focal point for each customer.*** The local commander will have the majority of initial inputs, and some might not be properly coordinated. CCOs should communicate to the commander the need for one point of contact for all requests.
- ***Establish comprehensive procedures for receiving goods.*** CCOs should have a central receiving point for all goods brought into the installation. If the goods are delivered directly to the customer, a point of contact must be established, and the customer must receive instructions on the proper method of receiving goods. CCOs should give the customer responsibility for the timely submission of paperwork.

**Response to rental requests.** During the first week of recovery, numerous requests might be made for equipment and vehicle rental and for temporary living and office quarters. A number of factors should be considered before filling customer requests.

**Heavy equipment.** Before renting, the CCO must first confirm that the equipment cannot be borrowed from other bases, posts, military installations, or federal agencies.

**Real-World Example:** During hurricane recovery operations at Charleston and Shaw Air Force Bases (AFBs), several pieces of equipment were received from other installations and from the Southwest Asia (SWA) transportation unit at Seymour Johnson AFB. The SWA unit alone transported 42 pieces of heavy equipment and vehicles to Shaw AFB and 17 pieces to Charleston AFB.

**The Bottom Line:** Other bases, posts, military installations, and federal agencies can be a great source of needed supplies during recovery operations.

Exhaust all internal sources before renting for the following reasons:

- Renting heavy pieces of equipment and vehicles is very expensive. Many companies insist that their operators accompany the equipment, creating an additional expense.
- If disaster recovery is extensive, rental periods can be long, increasing the risk of damage. If forced to rent heavy equipment or vehicles, CCOs must ensure that they are returned immediately when no longer required.

**Leasing trailers and temporary buildings.** If installation facilities are damaged extensively, the CCO might need to lease trailers or temporary buildings. However, CCOs must be very careful when leasing trailers and must set minimum acceptable requirements (such as size, amount of functional office space, outlets, doors, and windows). The CCO must emphasize to commanding officials that time is needed to ensure procurement of a quality product.

**Management of other service requirements.** Grounds maintenance, refuse, and mess attendant contractors could significantly help installation recovery with appropriate modifications to their contracts. The grounds maintenance contractor might have the equipment and staffing needed to help clear debris from the installation. The refuse contractor can play a similar role by increasing the frequency of pickups and providing several large dumpsters. The mess attendant contractor can offer support by shifting to a 24-hour food service operation.

Such increased contractor efforts represent changes to their contracts, so compensation will be due; however, the CCO will be dealing with known and likely reliable sources. Contracting officers can issue change orders (with the appropriate funds) and can negotiate the changes when the situation eases. In some cases, the CCO might have already established unit prices for the increased work. By going to reliable contractors, the CCO can save time and avoid emergency contracts with unknown sources.

**Procurement of key commodities.** Several supply items will be in high demand during disaster recovery. The CCO should consider establishing BPAs with multiple suppliers within and outside the local area for commodities such as the following, if the installation is located in an area with a high risk of disaster:

- **Ice.** Ice might be a difficult commodity to find. If the power is out, the commissary, food service, and installation residents will need ice to preserve their

food. CCOs should develop at least one source outside the local area to avoid competition with the local community during a disaster. The person receiving the ice must monitor the quantity carefully. All ice and water purchases must be authorized by an approved medical authority (such as an Army veterinarian). (The [Approved Food Sources](#) page on the U.S. Army Medical Department website lists approved sources by theater.)

- **Paper products.** With the power off, installation dining facilities will use paper products to feed local military and civilian personnel. Because personnel might be working 24 hours a day, paper product usage will increase substantially.
- **Other common items.** Items such as lumber, plastic sheeting, and chain saws probably will be scarce in the local market because the CCO will be competing with the demands of local residents.

Coordinating officials can greatly assist in determining where needs exist in multi-agency relief efforts.

**Evaluation of construction needs.** Hurricane Hugo recovery efforts had the largest impact on the construction branch of local contracting offices. Construction work involved assessing and modifying ongoing construction projects damaged by the storm and rapidly procuring new construction projects to repair installation damage. The following steps will help minimize construction issues encountered during installation recovery:

- The CCO should evaluate current construction sites by using a team approach, with a construction contract administrator and an inspector evaluating the damage at each construction site. After an initial government assessment, the CCO should meet with the contractor to develop a plan of action. Resolving any storm damage assessment differences among contractors and inspectors early in the process will go a long way to prevent future contract claims.
- After all parties agree on the extent of damage, liability must be addressed. Natural or human-made disasters are created by an act of God or an external source, and neither is the responsibility of the contractor. The contracting officer is responsible for determining whether additional time is due to the contractor and who is liable to pay damages that may have occurred to the construction site. Mandatory clauses are always a critical part of the contract but especially during emergencies. For example, ensuring permits and responsibilities are addressed in accordance with [FAR clause 52.236-7](#) will save time and grief and will ultimately protect the government's rights in possible litigation after the smoke clears and the floodwaters recede.
- The CCO should be careful when negotiating time extensions. Lost productivity, staging of work, and availability of subcontractors all must be considered. If behind schedule at the time of the disaster, the contractor might try to pad the estimate to catch up with other work commitments. CCOs must remember that time is money.
- The CCO can expect several new construction requirements after a natural disaster. Most short-term emergency efforts involve repairing existing facilities.

Initially, local senior leadership may push hard for issuing letter contracts to local contractors. This is *not* always the best route and can create more work and expend more dollars in the long run. In some cases, this option might be unavoidable, but the use of alternate emergency procedures is preferable for installation construction recovery. CCOs should use letter contracts or cost-reimbursement contracts only as a last resort. The CCO should always coordinate such procedures with the relevant HCA.

- Another alternative to mitigate the increased demand for contracting support is pre-established indefinite delivery/indefinite quantity (IDIQ) or requirements-type contracts (such as job order contracts or simplified acquisition for installation engineering requirements contracts). These contracts are ideal for small, limited-design, repair, and high-priority projects. The CCO can expand the role of these contracts by using them to repair minor damage to housing units. CCOs should avoid using these contracts as a cure-all for installation emergency construction needs, as the contractors might not be able to keep up with the work demands.

### **Additional References**

The following references were not mentioned in this chapter but offer additional information related to domestic emergency response:

- DoDI 2000.12, [DoD Antiterrorism \(AT\) Program](#)
- DoDI 3020.52, [DoD Installation Chemical, Biological, Radiological, Nuclear, and High-Yield Explosive \(CBRNE\) Preparedness Standards](#)
- DoDI 5535.10, [Coordination of DoD Efforts to Identify, Evaluate, and Transfer DoD Technology Items, Equipment, and Services to Federal, State, and Local First Responders](#)
- JP 4-10, [Operational Contract Support](#)
- JP 3-07.2, Antiterrorism (available through JEL+ at the [Joint Electronic Library](#)).

## Appendix A

### Abbreviations and Acronyms

<b>Abbreviation</b>	<b>Term</b>	<b>Chapter(s)</b>
A-E	architecture-engineer	3, 6
AAR	after action report	4, 9
ACASS	Architect-Engineer Contract Administration Support System	6
ACC	Army Contracting Command	4
ACC-RI	Army Contracting Command – Rock Island	5
ACO	Administrative contracting officer	6
ACSA	acquisition and cross-servicing agreement	3, 4, 8
ADA	Antideficiency Act	3
ADR	alternative disputes resolution	7
ADVON	advance eschelon	4
AETC	Air Force Education and Training Command	4
AF	Air Force	3
AFB	Air Force Base	9
AFCAP	Air Force Contract Augmentation Program	3, 4
AFCESA	Air Force Civil Engineering Support Agency	4
AFI	Air Force Instruction	3
AFOSI	Air Force Office of Special Investigations	1
AFRICOM	United States Africa Command	4, 8
AGATRS	Acquisition and Cross-Servicing Agreement Global Automated Tracking and Reporting System	3, 4
AI	acquisition instruction	2, 4, 5, 6, 7, 8
AOR	area of responsibility	2, 3, 4, 5, 6, 7
AR	Army Regulation	3, 4
ARRT	Acquisition Requirements Roadmap Tool	6
ARSOUTH	United States Army South	3
ASC	Army Sustainment Command	4
BEAR	Basic Expeditionary Airfield Resources	4
Bi-SC	Bi-Strategic Command	4
BPA	blanket purchase agreement	4, 5, 6, 9
C2	command and control	2
CAAF	contractor authorized to accompany the force	2, 4, 5, 8
CAAWS	contracting as a weapon system	3
CAD	contract administration delegation	5, 6
CAOCL	Center for Advanced Operational Culture Learning (U.S. Marine Corps)	8
CAP	civil augmentation program	2, 4, 6
CAR	contract action report	5
CAS	Central Asian States	8
cASM	Contingency Acquisition Support Model	3, 4
CBE	contingency business environment	4
CBRN	chemical, biological, radiological, or nuclear	9

<b>Abbreviation</b>	<b>Term</b>	<b>Chapter(s)</b>
CCA	contingency construction authority	3
CCAS	contingency contract administration services	4, 6
CCASS	Construction Contractor Appraisal Support System	6
CCDR	Combatant Commander	2, 4
CCIF	Combatant Commander Initiative Fund	3
CCMD	Combatant Command	2, 3, 4, 5
CCO	Contingency contracting officer	1, 2, 3, 4, 5, 6, 7, 8, 9
CENTCOM	United States Central Command	4, 8
CERP	Commanders' Emergency Response Program	3, 4
CFR	Code of Federal Regulations	1, 2, 5, 7
CIA	Central Intelligence Agency	8
CIC	Customer Interaction Center	6
CICA	Circumvention of Competition in Contracting Act	5
CID	U.S. Army Criminal Investigation Division	1, 4, 8
CJOTF	Coalition Joint Operations Task Force	2
C-JTSCC	Central Command Joint Theater Support Contracting Command	5
CLPSB	Combatant Commander Logistic Procurement Support Board	2, 3
COCO	chief of the contracting office	2, 3, 5, 7, 9
COIN	counterinsurgency	3, 4, 8
COMISAF	Commander of International Security Assistance Force	3
CONUS	Continental United States	2, 4, 6
COP	common operating picture	2
COR	contracting officer's representative	1, 2, 3, 5, 6, 7, 9
CORT Tool	Contracting Officer's Representative Tracking Tool	2, 3, 4, 5, 6
COWC	Commission on Wartime Contracting	1
CPAF	cost plus award fee	4
CPARS	Contractor Performance Assessment Reporting System	4, 5, 6
CPFF	cost plus fixed fee	4
CSA	combat support agency	2, 4
CTIP	combating trafficking in persons	1, 4
DA	Department of the Army	3
DAU	Defense Acquisition University	3, 4, 6
DAWIA	Defense Acquisition Workforce Improvement Act	4
DBA	Defense Base Act	5
DCAA	Defense Contract Audit Agency	1, 2, 4, 5
DCIS	Defense Criminal Investigative Service	1
DCMA	Defense Contract Management Agency	1, 4, 5, 6
DCMA-INST	Defense Contract Management Agency Instruction	6
DCO	defense coordinating officer	9
DD	Department of Defense (documents)	3, 4, 5, 6
D&F	determination and finding	5, 6
DFARS	Defense Federal Acquisition Regulation Supplement	1, 2, 3, 4, 5, 6, 7, 8, 9

<b>Abbreviation</b>	<b>Term</b>	<b>Chapter(s)</b>
DHS	Department of Homeland Security	9
DLA	Defense Logistics Agency	2, 4, 6, 9
DOC	Department of Commerce	3
DoD	Department of Defense	1, 2, 3, 4, 5, 6, 7, 8, 9
DoDD	Department of Defense Directive	4, 6
DoDI	Department of Defense Instruction	4, 6
DOS	Department of State	8
DPAP	Defense Procurement and Acquisition Policy	2, 4, 6
DPAS	Defense Priorities and Allocations System	3
DPSI	Domestic Preparedness Support Initiative	9
DS	direct support	4
DSCA	Defense Support of Civil Authorities	9
DSN	Defense Switched Network	4
e-business	electronic business	5
E2E	end to end	5
E&EE	emergency and extraordinary expenses	3
ECA	executive coordinating agency	4
EDA	Electronic Data Access (system)	4, 5, 6
EFT	electronic funds transfer	5, 6, 9
EOC	Emergency Operations Center	9
EPLS	Excluded Parties List System	5
EUCOM	United States European Command	4
FAPIS	Federal Awardee Performance and Integrity Information System	5
FAR	Federal Acquisition Regulation	1, 2, 3, 4, 5, 6, 7, 8, 9
FC	financial controller	4
FedBizOpps	Federal Business Opportunities	5
FEMA	Federal Emergency Management Agency	9
FFP	firm fixed price	4, 5
FLC	Fleet Logistics Center	4
FMR	Financial Management Regulation	1, 3, 5
FOB	forward operating base	8
FOB	free on board	4
FOO	field ordering officer	2, 4, 5, 6, 8
FPDS-NG	Federal Procurement Data System – Next Generation	4, 5, 6
FY	fiscal year	3, 7
GAO	Government Accountability Office	6, 7, 9
GCC	Geographic combatant command	2, 3, 4, 6
GCCC	Global Construction Capability Contract	4
GCPC	Governmentwide Commercial Purchase Card	4, 5, 6, 9
GCSC	Global Contingency Services Contract	4
GFE	government-furnished equipment	6
GFP	government-furnished property	6
GFS	government-furnished support	2, 5

<b>Abbreviation</b>	<b>Term</b>	<b>Chapter(s)</b>
GLS	Global Logistics Support	4
GPA	Government Procurement Agreement	5
GPE	government point of entry	5
GPS	Global Positioning System	8, 9
GSA	General Services Administration	5, 9
GSO	General Service Officer	4
GTA	Graphic Training Aid	4
HCA	head of contracting activity	2, 3, 4, 5, 6, 7, 8, 9
HCA	humanitarian and civic assistance	3, 6, 7, 8
HN	host nation	4, 6, 8
HNS	host nation support	3, 4
HoA	Horn of Africa	4
HQ	headquarters	4
HQDA	Headquarters, Department of the Army	4
IACR	international agreement competitive restriction	5
ICS	Incident Command System	9
IDIQ	indefinite delivery, indefinite quantity	4, 5, 9
IED	improvised explosive device	8
IFB	invitation for bid	5
IFO	integrated financial operations	2
IG	inspector general	6
IGCE	independent government cost estimate	3
IGE	independent government estimate	1, 5, 6
iRAPT	invoicing, receiving, and property transfer	5
ISOPREP	Isolated Personnel Report	4, 8
IT	information technology	2, 6
J1	manpower and personnel directorate of a joint staff	2, 7
J2	intelligence directorate of a joint staff	2, 4, 8
J3	operations directorate of a joint staff	2
J4	logistics directorate of a joint staff	2, 3, 4, 8
J5	plans directorate of a joint staff	2
J6	communications system directorate of a joint staff	2
J&A	justification and approval	4, 5, 6
JCASO	Joint Contingency Acquisition Support Office	2, 4
JCCS	Joint Contingency Contracting System (now JCXS)	4, 5
JCXS	Joint Contingency & Expeditionary Services	4, 5, 6
JCSB	Joint Contracting Support Board	2, 3, 5
JFC	joint force commander	2, 3, 4
JIPOE	joint intelligence preparation of the operational environment	2
JIT	just in time	4
JLLS	Joint Lessons Learned System	4
JOA	Joint operational area	2, 3, 5
JOPES	Joint Operation Planning and Execution System	8
JOPP	Joint operation planning process	4

<b>Abbreviation</b>	<b>Term</b>	<b>Chapter(s)</b>
JP	Joint Publication	2, 3, 4, 5, 6
JPRC	Joint Personnel Recovery Center	4
JRC	joint reception center	4
JRRB	joint requirements review board	1, 2, 3
JTF	joint task force	2
JTSCC	Joint Theater Support Contracting Command	2, 4, 6
LD	liquidated damage	6
LFA	lead federal agency	9
LH	labor hour	5
LN	local national	3
LOA	letter of authorization	4
LOA	line of accounting	3
LOGCAP	Logistics Civil Augmentation Program	3, 4, 5
LPTA	lowest price technically acceptable	5
LSC	lead Service for contracting	2, 5, 6
LSCC	lead Service for contracting coordination	2
MAAWS	money as a weapon system	3
MFR	memorandum for the record	1
MILCON	military construction	3
MIPR	Military Interdepartmental Purchase Request	3
MOA	memorandum of agreement	4
MPFU	Major Procurement Fraud Unit	1
MST	mission support team	4
MWR	morale, welfare, and recreation	2, 3, 4
NAF	nonappropriated funds	3, 4
NAFTA	North American Free Trade Agreement	5
NATO	North Atlantic Treaty Organization	4
NAVCOMPT	Navy Comptroller (form)	3
NAVFAC	Naval Facilities Engineering Command	4, 6
NAVSUP	Naval Supply Systems Command	3, 4
NCF	Naval Construction Force	4
NCIS	Naval Criminal Investigation Service	1, 4, 8
NCO	noncommissioned officer	2
NDAA	National Defense Authorization Act	3, 5
NGO	nongovernmental organization	4
NORTHCOM	Northern Command	4, 9
NRF	National Response Framework	9
NTP	notice to proceed	6
NTV	nontactical vehicle	5
O&M	operations and maintenance	3
OAR	obligation adjustment reporting	3
OCONUS	outside Continental United States	2, 4
OCS	operational contract support	2, 3, 4, 6
OCSIC	operational contract support integration cell	2
OCSJX	operational contract support joint exercise	4

<b>Abbreviation</b>	<b>Term</b>	<b>Chapter(s)</b>
OE	operational environment	2
OFPP	Office of Federal Procurement Policy	9
OGE	Office of Government Ethics	1
OHDACA	overseas humanitarian, disaster, and civic aid	3
O&M	operations and maintenance	3
OMB	Office of Management and Budget	5, 9
OO	ordering officer	4, 8
OPLAN	operations plan	9
OPNAVINST	Office of the Chief of Naval Operations Instruction	3
OPR	office of primary responsibility	3
OPS	Office of Operations Coordination and Planning	9
OPSEC	operations security	8
ORF	official representation funds	3
OSI	Office of Special Investigations	1, 4, 8
PACOM	Pacific Command	4, 8
PCO	procuring contracting officer	4, 6
PD2	Procurement Desktop Defense	5, 6
PEO	program executive officer	6
PGI	Procedures, Guidance, and Information	1, 3, 5, 6
PII	personally identifiable information	8
PIIN	procurement instrument identification number	4, 5, 6
PMO	program management office	4
PNM	price negotiation memorandum	5
POC	point of contact	3, 4
POL	petroleum, oil, and lubricants	4
POP	period of performance	6
P2P	procure to pay	5
PPIRS	Past Performance Information Retrieval System	6
P2PPAWG	Procure-to-Pay Process Advocates' Working Group	5
PPT	performance price tradeoff	5
PR	personnel recovery	2
PR	purchase request	3, 4, 5, 6, 9
PRCC	Personnel Recovery Coordination Center	4
PSC	private security contractor	4
PSD	personal security details	8
PWS	performance work statement	3, 6
QAE	quality assurance evaluator	1, 3
QAR	quality assurance representative	6, 9
QASP	quality assurance surveillance plan	1, 3, 6
RA	requiring activity	3
RCC	regional contracting center	2, 4, 5
RCO	regional contracting office	2
RCP	requisition control point	9
R&D	research and development	3
RDT&E	research, development, test, and evaluation	3

<b>Abbreviation</b>	<b>Term</b>	<b>Chapter(s)</b>
REA	request for equitable adjustment	5, 6, 7
RFA	request for assistance	9
RFP	request for proposals	5
RIP/TOA	relief in place/transfer of authority	6
RM	resource management	3
ROM	rough order of magnitude	4
RP	requirements package	3
RPR	receipt for property received	5
RUF	rules for the use of force	2
SAM	System for Award Management	5, 9
SAP	simplified acquisition procedure	5
SAT	simplified acquisition threshold	4, 5, 6
SCO	senior contracting official	2, 4, 6
SecDef	Secretary of Defense	9
SECNAVINST	Secretary of the Navy Instruction	3
SERE	survival, evasion, resistance, and escape	4
SF	standard form	2, 4, 5, 6
SFA	security force assistance	4
SIGAR	Special Inspector General for Afghanistan Reconstruction	5
SOCOM	Special Operations Command	2
SOF	special operations forces	4
SOFA	status of forces agreement	4, 8
SOO	statement of objectives	3, 6
SOP	standard operating procedures	2, 4, 5, 6, 7, 8
SOUTHCOM	Southern Command	4, 8
SOW	statement of work	3, 4, 6
SPOT	Synchronized Predeployment and Operational Tracker	4, 5
SPOT-ES	Synchronized Predeployment and Operational Tracker – Enterprise Suite	5
SPS	Standard Procurement System	6
SSD	source selection decision	5
	Smart Traveler Enrollment Program	8
SWA	Southwest Asia	9
T4C	termination for convenience	3, 6
T4D	termination for default	6
TBC	theater business clearance	3, 4, 5
TIP	trafficking in persons	1
T&E	test and evaluation	3
T&M	time and materials	5
TRANSCOM	Transportation Command	4, 6
TSOC	Theater Special Operations Command	2
UCA	undefinitized contract action	5
UCMJ	Uniform Code of Military Justice	1
UID	unique identification	6
USAAA	United States Army Audit Agency	1

<b>Abbreviation</b>	<b>Term</b>	<b>Chapter(s)</b>
USACE	United States Army Corps of Engineers	3, 4, 6
USAID	United States Agency for International Development	4, 8
U.S.C.	United States Code	1, 2, 3, 4, 5, 6, 7, 9
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology and Logistics	3, 4, 6
USFOR-A	United States Forces – Afghanistan	3
VCE	Virtual Contracting Enterprise	6
WAWF	Wide Area Workflow	5, 6
WTO	World Trade Organization	5