EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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OFFICE OF FEDERAL
PROCUREMENT POLICY

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES

FROM: Daniel I. Gordon
Administrator

SUBJECT: Emergency Acquisitions Guide

The attached guide is intended to assist the federal contracting community with planning and carrying out procuring activities during contingency operations, defense or recovery from certain attacks, major disaster declarations, or other emergencies. The guide describes strategies for effective acquisition planning and provides a list of flexibilities available when contracting during emergencies. The guide also incorporates a number of management and operational best practices that agencies developed in response to natural disasters and other emergency situations. These practices should be considered in planning related to contingency operations, anti-terrorism activities, and national emergencies.

This guide is intended to supplement, not supplant, agency-specific guidance, and should be read in conjunction with Parts 18 and 26 of the Federal Acquisition Regulation and the National Response Framework documents published by the Federal Emergency Management Agency (FEMA). This guide will be maintained electronically and updated, as needed, on the OFPP Web site, http://www.whitehouse.gov/omb/procurement/. This document supersedes OFPP's May 2007 *Emergency Acquisitions* guide.

Please distribute this guide to your acquisition officials, program managers, contracting officers' technical representatives, legal staff, and others involved in your agency's emergency response efforts. These officials should be encouraged to continuously examine internal management structures, human capital plans, and contracting practices to ensure the acquisition workforce can respond to emergencies quickly, effectively, and appropriately. Successful practices and lessons learned should be shared within agencies.

Attachment

EMERGENCY ACQUISITIONS

January 2011

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Introduction

This guide is intended to assist the federal contracting community with planning and carrying out procuring activities during contingency operations, defense or recovery from certain attacks, major disaster declarations, or other emergencies. Each emergency is different. Viable readiness plans and personnel trained in emergency contracting procedures will help to optimize the government's responsiveness during an emergency situation. This document highlights pre-emergency planning, considerations when awarding or administering contracts supporting emergencies, and acquisition flexibilities to improve the agility of the acquisition workforce during these critical situations. It reflects a number of management and operational best practices that agencies have developed in response to natural disasters, contingency operations, and other emergency situations. It also reflects a number of lessons documented by various oversight activities.

The guide is presented in three parts:

- Part I discusses organizational and individual response planning efforts agencies should undertake to improve responsiveness during an emergency.
- Part II contains reminders for agencies to consider when awarding and administering contracts during emergencies.
- Part III reviews the flexibilities available to agencies for use during emergencies.

Developed jointly by the Office of Federal Procurement Policy (OFPP) and the Emergency Response and Recovery Working Group under the Chief Acquisition Officers Council (CAOC), this guide is not all-inclusive. It is intended to supplement, not supplant, agency-specific guidance. It should be read in conjunction with Parts 18 and 26 of the Federal Acquisition Regulation (FAR) and the National Response Framework documents published by the Federal Emergency Management Agency (FEMA).[1] This document supersedes OFPP's *Emergency Acquisitions Guide* issued in May 2007.

Special thanks to Brigitte Meffert of the Department of the Interior, Jill Stiglich of the Department of Defense (DoD), and David Duda of the Department of Homeland Security (DHS) for their participation in the development of this revision.

Questions or comments may be directed to EmergencyAcquisitionsGuide@omb.eop.gov.

[1] The National Response Framework documents are located at http://www.fema.gov/emergency/nrf/.

I. Pre-emergency Planning

Planning for emergencies allows for effective contracting support. Timely response may save lives, reduce property loss, enable greater continuity of services, and enhance logistical capability in the wake of disasters.

A. Initial Considerations

Emergencies are not predictable. However, agencies can and should have a reasonable idea of how to respond to a given incident or situation. Establishing organizational priorities and planning effectively before an emergency arises will help to avoid delays in meeting requirements, reduce complexities, and eliminate redundancy of effort when a contract action is required.

To ensure timely and effective decision making, functional roles and responsibilities for individuals supporting emergency operations must be clearly defined. Contracting professionals should work closely with others (program/project managers, logistics personnel, legal counsel) to develop a common and coordinated understanding to meet the government's needs during an emergency. Working together, these personnel should review historical data to identify the products and services the agency has required in previous emergencies. Figure 1 lists some topics for consideration, and the appendix contains additional lessons learned and oversight reports that will be helpful guidance in emergency or contingency responses.

Figure 1. Evaluating How Previous Emergency Needs Were Met

Agencies should evaluate how emergency needs were addressed in the past. Consideration should be given to the following:

- Type of emergency and the associated needs with each phase of the emergency (initial response, recovery)
- Types of acquisition methods, 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
- Approach to funding the acquisitions
- Types of logistical challenges encountered in delivering products and services and steps taken to address those challenges
- Legal issues
- Management's overall assessment of agency and contractor performance

Note: Reprinted from DoD's *Contingency Contracting: A Joint Handbook for the 21st Century*.

Agencies should familiarize themselves with precompeted contracts to determine if any such contracts meet potential needs. For example, the pricing and the terms and conditions may be suitable for immediate post-disaster needs, but may not be suitable for follow-on reconstruction efforts.

The CAOC's Emergency Response and Recovery Working Group seeks to improve access to information that can assist the acquisition workforce with planning for and addressing emergencies. The working group created a community of practice website (https://acc.dau.mil/emergencyresponse) so that agencies can share information about their policies and procedures, best practices, training resources, and other information of interest. The site also provides links to other resources of interest, such as Internet pages managed by the Department of Health and Human Services and the Department of Homeland Security for information on preventing and preparing for avian and pandemic flu. Agencies are encouraged to periodically visit the community of practice and share their practices and other suitable information.

Agencies should develop emergency contracting training exercises to test processes and familiarize personnel with all phases of an emergency or contingency.

B. Anticipating Contracting Workforce Needs

Anticipating personnel issues and addressing any gaps in resources before an emergency arises will save valuable time. Key areas to address are training and the availability of additional acquisition support personnel. Emergency-specific training will help ensure understanding of the appropriate roles of federal, state, tribal, and local government entities in a response effort.

1. Training.

a. ***Emergency-specific training***. FEMA's Emergency Management Institute (EMI) offers online courses on the National Incident Management System (NIMS) and the Incident Command System (ICS) for all who may deploy during an emergency.[2] EMI courses may be found at http://training.fema.gov/EMICourses/.

FEMA also offers emergency-specific acquisition courses, which may be of particular value to contracting officers (COs). Some courses are classroom based; others are available as independent study. The following may be of particular interest for COs and other personnel involved in the acquisition process:

- Disaster Contracting
- Introduction to FEMA Office of Chief Counsel
- Introduction to the Defense Priorities and Allocations System (DPAS).[3]

Additional information and sign-up procedures for these and other FEMA EMI courses are available at http://training.fema.gov/emicourses/.

b. ***Contingency contracting courses.*** DoD has defined standard contingency contracting courses. These courses are apart from the minimum training required by the Defense Acquisition Workforce Improvement Act (DAWIA). The Defense Acquisition University

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[2] NIMS establishes standardized processes, protocols, and procedures that all first responders—federal, state, tribal, and local—will use to coordinate and conduct response actions. ICS, a key feature of NIMS, is a management tool designed to enable effective and efficient domestic incident management by integrating facilities, equipment, personnel, procedures, and communications within a common organizational structure.

[3] The Defense Production Act (DPA) Reauthorization of 2009 (Public Law 111-67) authorized the use of DPAS for domestic emergency preparedness, response, and recovery activities; critical infrastructure protection and restoration; and homeland security activities.

(DAU) has worked with service representatives to standardize required contingency contracting courses to ensure well-trained, prepared contracting officers. The DoD contingency contracting training is at least 90 percent common material across all DoD services.

The core training for DoD contingency contracting officers (CCOs) consists of the following DAU courses:

- CON 100, Shaping Smart Business Arrangements
- CON 110, Mission Support Planning
- CON 111, Mission Support Execution
- CON 112, Mission Performance Assessment
- CON 120, Mission Focused Contracting
- CON 234, Joint Contingency Contracting
- CON 237, Simplified Acquisition Procedures
- ACQ 101, Fundamentals of System Acquisition
- CLC 033, Contract Format and Structure for DoD eBusiness Environment.

In addition to the above, the newest contingency contracting course, CON 334, Advanced Joint Contingency Contracting, is now a core course for DoD civilian and military contingency leadership positions. CON 244, Construction Contracting, is optional but recommended for contingency contracting deployments.

2. Acquisition support. Each agency with responsibilities for conducting emergency acquisitions should establish, in advance of actual emergencies, a cadre of contracting personnel to function as a rapid deployment force on short notice. Because funds are not usually available in advance of an emergency and requirements may vary considerably, agencies should consider establishing basic ordering agreements (BOAs) or blanket purchasing agreements (BPAs) for additional acquisition professional support from the private sector. BOAs and BPAs will facilitate access to additional support when needed. An agency may wish to use acquisition support personnel to help federal contracting professionals responsible for activities such as market research, contract documentation, , and contract closeout. Agency officials would retain responsibility for all inherently governmental activities, including the award and modification of contracts. See FAR 7.503(c)(12). Where agencies have engage contractors in acquisition support roles, they must ensure they are providing appropriate oversight of activities closely associated with inherently governmental functions and have sufficient in-house capability to maintain control of their mission.

Agencies should also consider establishing service-for-fee agreements with the

- Defense Contract Management Agency (DCMA) or the General Services Administration (GSA) Assisted Acquisition program to evaluate contractor capabilities and support contract administration and
- Defense Contract Audit Agency (DCAA) to evaluate cost reasonableness and conduct contract audits.

To provide additional technical support at the point of operations, an agency may plan to collocate contracting personnel in the field with contracting officer's representatives (CORs) who have received emergency contract surveillance training. DHS employed this practice to mitigate risk during Hurricane Katrina–related operations.

3. Deployment readiness. The CAOC recommends that contracting professionals have deployment/to-go kits available for use when deployed. To-go kits may vary depending on the disaster environment and expected resources available at the disaster site. Some agencies may have items pre-positioned, but the uncertainties of the emergency environment make it wise to be prepared. (Figure 2 identifies key items to be included in the kits.)

Figure 2. Deployment/To-Go Kits for Contracting Personnel

Deployment kits for contracting professionals should include the following:

- Warrant
- Laptop (with wireless capability and solar chargers)
- Cell or satellite phone with charger
- Government travel card
- Government purchase card and convenience checks
- Blank contract forms (SF 44, SF 30, SF 1442, and model contract files)
- Current FAR, including FAR 18 on emergency acquisitions and FAR 26.2 on disaster or emergency assistance activities
- Wireless email device
- Basic office supplies necessary for immediate use
- Badges or other government-issued identification
- List of important contact numbers
- Maps of the affected and adjacent areas
- Authorized USB flash or storage device
- Web access (or compact disk) to
  - the agency's contract writing system;
  - current sites needed for sourcing, data collection, guidance and references to agency unique requirements, and points of contact; and
  - an electronic copy of this guide.

4. Defense contingency contracting handbook. DoD has developed a contingency contracting handbook, *Contingency Contracting: A Joint Handbook for the 21st Century*, with necessary and practical tools and information for the CCO. The handbook, available in its entirety or by chapter, is at http://www.acq.osd.mil/dpap/pacc/cc/jcchb/. Although portions of the handbook apply only to DoD personnel, other information in the handbook, especially the chapters on fiscal law (Chapter 3, Contingency Funding and Requirements Process) and contract administration (Chapter 6, Contract Award and Administration), may be valuable for all emergency contracting personnel.[4]

C. Internal Process Adjustments

Agencies should review and adjust internal processes, as necessary, to ensure that warrant thresholds, new approving authorities (such as increased purchase card or third-party draft

[4] The Defense Contingency Contracting Handbook and the Defense Contingency Contracting Officer Representative (COR) Handbook are both available at http://www.acq.osd.mil/dpap/pacc/cc/index.html.

thresholds, SF 44 dollar limitations) and other changes to the acquisition process can be made quickly in the event of an emergency. Agency heads should be prepared to quickly authorize acquisition threshold increases when responding to a contingency or in defense against certain attacks. COs should be familiar with applicable thresholds and other acquisition flexibilities related to their deployment.

The following are priorities for agencies to address in internal operating procedures for emergency acquisitions.

1. **Warranting and certification processes.** Agencies should establish expedited processes for modifying or issuing new warrants, as needed, for personnel deployed to an emergency situation. The Federal Acquisition Certification in Contracting (FAC-C) program establishes core, common competencies for civilian agency contracting professionals and is recognized as the standard contracting credential by all civil agencies. Civilian employees who may be deployed should hold a FAC-C at the appropriate level to support the mission.

DoD has similar certification programs to support DAWIA requirements. More information on the DoD acquisition certification programs can be found at www.dau.mil/catalog/Appendix_B.pdf. CO qualification requirements for DoD personnel do not apply in a contingency contracting force (see the Defense Federal Acquisition Regulation Supplement at 201.603-2).

2. **Micropurchase thresholds and purchase limits.** Agencies should have processes in place for determining when an increase in purchase card authority is helpful. Purchase card program managers should document the training given to agency personnel, current transaction limits, merchant code limitations, and usage reports. Easy access to training and other administrative records will help agency officials make timely and informed decisions on acceptability of limit increases during emergencies. Agencies should remind purchase card holders that single/monthly purchase limits do not automatically increase simply because the micropurchase threshold has been increased for a particular emergency.

3. **Solicitation/contract review procedures.** Agencies should examine current solicitation/contract review procedures to determine how they may be modified to accommodate emergency situations. They also should examine business clearance requirements related to emergency acquisition flexibilities and increased thresholds. Agencies should also be cognizant of where key players will be and how to contact them during emergency situations. COs should know the answers to key questions: "Where will my lawyers be?" "If I need Head of Contracting Activity approval, how can I contact him or her?"

4. **Contract files.** Before an emergency response or deployment is required, agencies should develop model contract files that contain all necessary forms needed during an emergency. This will help ensure consistency in file setup and documentation and will provide a quick reference for contracting professionals. Proper contract file documentation remains a requirement during this fast-paced environment and is an important element that should not be overlooked. The documentation helps in current contract management and can provide helpful insight for future decision-making. See also Section II.A.13 below.

5. Transition of work. Agencies should plan to transition response, relief, and reconstruction work to local firms unless the head of the agency determines in writing that it is not feasible or practicable. (See FAR 26.203.)

D. Contract Closeout

Agency planning should anticipate requirements to close out emergency acquisitions either onsite or after the CO, the COR or contracting officer's technical representative (COTR), and the contract files have been relocated to different or permanent locations. Closing out contracts on emergency or contingency awards may be particularly challenging due to successive acquisition personnel assignments over the period of performance and variations in award and administrative systems over the life cycle of the emergency. Quick closeout procedures may reduce the closeout burden for certain contracts. See FAR 42.708.

II. Emergency Operations

This section contains reminders to consider when awarding and administering contracts during emergencies.

A. Contract Formation

1. Authority. Properly appointed contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings to the extent of the authority delegated to them. COs must receive clear instructions in writing from the appointing authority (see FAR 1.603-1) regarding the limits of their authority (see FAR 1.602-1). If a commitment is made by someone lacking the proper authority , which should only occur rarely or in exceptional circumstances, the action *may* be corrected through the ratification process.

2. Minimizing risk. If time does not permit adequate acquisition planning and market research, an agency should carefully consider limiting the value and length of a contract to address only the immediate needs. This approach allows the agency to plan strategically for ongoing requirements. Options may be included and exercised, if necessary, to allow continuous service.

3. Situational terms, conditions, and pricing. Contract pricing and terms and conditions will vary depending on the emergency environment. For example, the pricing, terms, and conditions that may be suitable for immediate post-disaster needs will be different from those negotiated for follow-on reconstruction efforts. COs should be aware of the opportunities for terms and conditions and pricing to change through different phases of an emergency response.

4. Proper business practices. Before they begin their duties, contracting personnel, in addition to CORs and requiring activity personnel, must be familiar with issues related to improper business practices and personal conflicts of interest, as well as any agency-specific guidance. See FAR 3, Improper Business Practices and Personal Conflicts of Interest, at https://www.acquisition.gov/far/html/FARTOCP03.html.

a. ***Ethical considerations in emergency acquisitions.*** The pressure to meet the demands of customers can be intense in an emergency or contingency environment. If COs are not alert, the strains of the environment can make it difficult to identify the proper way to conduct themselves. Maintaining the highest ethical standards and integrity is paramount, but it is particularly challenging in an emergency acquisition environment in which the expectations and business habits of the suppliers with whom they will be dealing are affected by varying cultural, political, and economic conditions.

The overarching guidance in the FAR provides standards to which all contingency contracting and emergency acquisition personnel are held, no matter the response effort. Violation of these standards of conduct can be punishable with fines and prison terms. Ethics counselors as well as legal offices can serve as excellent references when personnel have concerns or questions regarding proper business practices.

b. ***Conflicts of interest.*** Ethics rules on personal conflicts of interest, which are based in statute, prohibit an employee from participating personally and substantially in an official capacity in any matter in which he or she has a financial interest if the matter would have

a direct and predictable effect on that financial interest. This prohibition extends not only to employees' own financial interests, but also to those of people they are related to or closely associated with. In cases of a conflict of interest, personnel must remove themselves from acting on that matter in an official capacity. This is especially true with respect to procurement: if an individual's official involvement in a procurement creates even the appearance of a conflict of interest, they should remove themselves from that matter and seek legal advice.

Figure 3 contains guidance on fraud.

Figure 3. Fraud

Contracting officers play a crucial role in identifying, preventing, and reporting fraud. Some common fraud instances are accepting bribery, kickbacks, or gratuities; falsifying or altering documents; rigging bids; and delivering or offering counterfeit or unapproved source parts.

Contracting officers should be familiar with some common fraud indicators. Fraud indicators include frequent customer complaints of poor quality of supplies or services, which could indicate that contractors are delivering something less than what was paid for; an abnormal increase in supply items such as automotive parts, tools, and individual equipment, which could indicate that the items may have been diverted for personal use or resale.

Contracting officers should minimize situations that could enable fraud by, for example, ensuring that contract performance is monitored and that proper checks and balances are in place (for example, ensuring that different individuals are responsible for ordering and confirming receipt of or accepting the goods or services). Finally, contracting officers should train CORs and COTRs, quality assurance evaluators, and government purchase card holders on basic fraud awareness, identification, prevention, and reporting.

5. Sources.

a. ***Small businesses.*** When consistent with preferences provided to local businesses (described below), agencies should provide maximum contracting opportunities for small businesses. Use of simplified acquisition procedures should make it easier for agencies to do business with these sources.

b. ***Local businesses.*** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 (the Stafford Act), as amended, was enacted to support local economies adversely affected by emergencies. Agencies must perform market research on local business capabilities and give preference to those local firms capable of performing the requirement. In addition, the Local Community Recovery Act of 2006, P.L. 109-218, which amended the Stafford Act, adds a local firm set-aside requirement for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency area assistance activities. According to FAR 26.202-1(c), the CO must also determine

whether a local area set-aside should be further restricted to small businesses in the local set-aside area. (See FAR 6.207 and 26.2 for implementation of those disaster or emergency assistance activities and the provisions to include in applicable contracts when using those preferences or set-asides.)

c. ***Pre-positioned contractors***. Agencies are encouraged to seek out pre-positioned contractors to facilitate a timely emergency response. The pre-positioned contractors with products and services often needed for emergency response are available at sites such as the following:

- GSA Disaster Relief and Emergency Preparedness Aisle, at https://www.gsaadvantage.gov/advgsa/advantage/search/specialCategory.do?BV_SessionID=@@@@1098471824.1288644885@@@@&BV_EngineID=ccdhadellffmdikcflgcefmdgfhdgjn.0&cat=ADV.DR
- GSA Wildland Fire and Equipment Aisle, https://www.gsaadvantage.gov/advgsa/advantage/search/specialCategory.do?BV_SessionID=@@@@0266677814.1288645062@@@@&BV_EngineID=ccddadelldmlddkcflgcefmdgfhdfgl.0&cat=ADV.FIRE
- Interagency Contract Resource List, at https://contractdirectory.gov/contractdirectory/.

d. ***Pre-identified contractors***. When contractors complete the Central Contractor Registration (CCR), at www.ccr.gov, they can designate their potential availability to provide disaster response products and services. COs and agency personnel planning acquisitions should consult the Disaster Response Registry at www.ccr.gov for information on these firms. (Disaster response contractors can be located using the Advanced Search in CCR.)

7. Contract types. As a general matter, the government assumes less risk by entering into some variation of a fixed-price contract. Fixed-price contracts place the maximum risk and full responsibility for profit or loss on the contractor. These contract types tie payment to tangible results—for example, a completed and delivered product—and their use is required when acquiring commercial items. FAR 16.101 contains general guidance on selecting contract types. The use of letter contracts is discussed in Part III of this guide.

Agencies may use time-and-materials (T&M) and labor-hour (LH) contracts for commercial services under specified conditions. For example, a T&M or LH contract may be appropriate if it is not possible, when placing the contract or order, to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty. These circumstances must be established and should not be assumed simply because an emergency exists. FAR 16.601 addresses the use of T&M and LH contracts. For guidance on the use of T&M and LH contracts involving commercial item acquisitions, see FAR 12.207 and FAR 52.212-4, Alternate I.

8. Posting notice of contract actions. As a general matter, the FAR requires that actions over $25,000 be synopsized on FedBizOpps at https://www.fbo.gov. Notice need not be provided when an exception at FAR 5.202 applies. For example, a synopsis is not required if unusual and compelling urgency precludes competition to the maximum extent practicable (applied to

simplified acquisitions under FAR 13), and if the government will be seriously injured if the agency complies with the required wait periods stated in FAR 5.203. For synopsized procurements, FAR 5.102 requires that agencies also make available, through FedBizOpps, solicitations and other information pertinent to the acquisition. However, this requirement does not apply when disclosure would compromise national security, when it is not cost effective or practicable to post a particular file on FedBizOpps, or when the agency's senior procurement executive makes a written determination that access through FedBizOpps is not in the government's interest. See FAR 5.102(a)(5).

9. Contractor responsibility determinations. Contracts may be awarded only to responsible prospective contractors that meet the requirements of FAR 9.104. The requirement for determinations of contractor responsibility is not waived during emergency operations. The specific requirements for determining a prospective contractor's responsibility may vary by agency and dollar value of the acquisition. See FAR 9.105-2 and agency supplements.

10. National Interest Action (NIA) code. An NIA code may be created by GSA in the Federal Procurement Data System–Next Generation (FPDS-NG) to consistently collect data on contract actions related to emergency or contingency responses or other nationally significant events. An NIA also can be created and used for situations other than emergencies. COs are advised to determine whether an NIA applies to the subject procurement and the NIA beginning and end date (if one is available) as they enter procurement actions into FPDS-NG.

11. Competition exceptions.

a. ***Exceptions to full and open competition***. FAR 6.302 allows several exemptions from providing for full and open competition that can be utilized during an emergency, including only one responsible source, unusual and compelling urgency, national security, award to a particular source to maintain the supplier in case of a national emergency, or the public interest. COs should keep in mind that, although the competition requirements of FAR 6 can be waived for acquisitions that present an unusual and compelling urgency, the FAR requires the CO to solicit from as many potential sources as practicable under the circumstances (FAR 6.301(d)). Further, COs must limit the duration of the contracts to 1 year unless the head of the agency determines that exceptional circumstances apply (FAR 6.302-2(d)).

b. ***Test program for certain commercial items.*** Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in FAR 6 unless the test program for certain commercial items is conducted on a sole-source or brand-name basis (when the agency solicits and negotiates with only one source. All simplified acquisitions need to be documented, including techniques used to document a fair and reasonable price, and appropriate reviews should be made in accordance with applicable agency procedures. Each justification must include enough information to provide a clear understanding of why the action was taken. Table 1 identifies the various approving officials for certain sole-source contracts.

Table 1. Approving Officials for Sole-Source Contracts Awarded under FAR 13.5	
Value of sole-source contract	**Approving official**
Over $150,000 but not exceeding $650,000	Contracting officer unless a higher approval level is established in accordance with agency procedures. See FAR 6.304(a)(1) and 13.501(a)(2)(i).
Over $650,000 but not exceeding $13 million	Competition advocate for the procuring activity designated pursuant to FAR 6.501 or an official described in FAR 6.304(a)(3) or (a)(4). This authority is nondelegable.
Over $13 million but not exceeding $64 million ($87 million for DoD, NASA, and Coast Guard)	Head of the procuring activity or the official described in FAR 6.304(a)(3) or (a)(4). This authority is nondelegable.
Over $64 million ($87 million for DoD, NASA, and Coast Guard)	Senior procurement executive. This authority is nondelegable except as provided in FAR 6.304(a)(4).

12. Fair and reasonable pricing. If adequate price competition is not available, agencies must be prepared to apply other techniques to determine price reasonableness. For example, if only one offer is received, the CO should analyze the price using market research (FAR 15.404-1). Specifically, COs should compare the proposed price with prices found reasonable on previous purchases or for similar items in a related industry. An independent government cost estimate can also be used to determine price reasonableness. COs should remember that an offered price in and of itself does not establish fairness and reasonableness just because the price appears in a catalog, an advertisement, or on a price list. (See FAR 13.106-3(a)(2).) Finally, the CO analyzing price reasonableness should be cognizant of situational factors directly influencing pricing inclusive of the challenges with FOB destination pricing for delivery to a disaster area. For instance, bottled water delivered to a hazardous area may be priced differently than bottled water available under normal conditions. High-demand items, such as lumber, generators, or tents, may command a higher price as well. Contractors may also face difficulties acquiring insurance or financing if operating in a disaster recovery area, which could affect pricing.

13. Documentation. Decisions should be appropriately documented to adequately explain the basis for actions taken. The length of explanation is less important than the clarity of the rationale for actions taken, which may be critical for planning future actions for similar needs within short time frames. Managers, auditors, or other oversight officials evaluating the agency's performance may also review documentation.

Contract files are created and maintained to serve as a background on the informed decisions at each step of the acquisition process, provide information for internal reviews and investigations, and furnish essential facts in the event of litigation or congressional inquiries.

a. ***Test program for commercial items***. When using the test program for commercial items, FAR 13.501(b) requires the contract file to include (1) a brief written description of the

procedures used in awarding the contract, (2) the number of offers received, and (3) an explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision. Files should note any FAR 13.500(e) flexibility used. Agencies that use this authority frequently should consider developing templates to address these documentation requirements.

b. ***Price reasonableness***. If price reasonableness is difficult to adequately determine because of the nature of the emergency, the CO should document the situation, including efforts to determine price reasonableness. For example, if price analysis and review of uncertified cost data are inconclusive but the agency moves forward in the government's best interest, this business decision should be described in the file. This information will enable subsequent buyers to understand the circumstances surrounding the prices paid and consider appropriate alternatives to prevent or mitigate this situation when meeting future needs.

B. Contract Administration and Management Oversight

Effective contract administration is as critical to the achievement of results during an emergency as it is in any other situation. Appropriate surveillance is needed to ensure timely and satisfactory contract performance. Agencies may need to adjust their practices to the circumstances at hand, because there are no raised administration thresholds for awards made using emergency procurement flexibilities. It may be necessary, for example, to use risk management in inspecting fewer deliverables or significantly streamline COR/COTR appointment practices. Alternatively, the agency may consider establishing an agreement with personnel from another agency in the area where delivery is to occur to conduct inspections. GSA and DCMA offer contract administration services and DCAA performs contract audits.

CORs/COTRs are essential partners in contract administration. Although the CO will not usually appoint a COR/COTR under the simplified acquisition threshold (SAT), the unique characteristics of the emergency or the use of emergency flexibilities may lead to situations in which such an appointment is in the best interest of the government. In general, CORs/COTRs should

- be appointed in writing,
- be given specific responsibilities,
- be trained commensurate with their responsibilities,
- document their actions fulfilling the appointment,
- monitor contractor performance, and
- notify the CO of any concerns.

CORs/COTRs will often need to coordinate with other acquisition support personnel to fulfill their appointment and should be aware of how to contact those individuals in the emergency environment.

Agencies should consider creating a risk mitigation board to manage the increased risks during an emergency. Such boards allow for increased communication, clear policy direction, and effective resource utilization. The board is most effective when integrated in the agency's management structure and when composed of key agency stakeholders. In a multiagency emergency, the lead agency should consider bringing in key players from the other entities involved—both government and nongovernmental organizations—to, for example, gain visibility

into what the other entities are doing, reduce the competition for the same resources, and eliminate duplication of purchases.

Agencies should develop emergency assessment plans to review the results from sampling their emergency acquisitions. They should pay particular attention to transactions conducted using emergency acquisition flexibilities, including any increased thresholds, sole-source transactions of a high-dollar value, and any other acquisitions considered risky, including those involving complex technical requirements or marketplace solutions. A good assessment plan may include elements addressing requirements identification, acquisition execution, and contract management. Figure 4 is checklist of the types of issues to be addressed.

Figure 4. Types of Issues Addressed in a Good Assessment Plan

Requirements identification:

- ✓ Did the agency order the correct quantity of supplies?
- ✓ Was the scope of work appropriate for the emergency?
- ✓ Did the description of the requirement accurately reflect what the government needed?
- ✓ Did the agency have the authority to make the purchase?
- ✓ Was the product or service appropriately acquired by the agency?
- ✓ Were adequate funds available?
- ✓ Did the agency use existing contract vehicles?

Acquisition execution:

- ✓ Were prices documented as fair and reasonable?
- ✓ Was the contract type appropriate for the acquisition?
- ✓ Was competition maximized?
- ✓ If award was made on a sole-source basis, were efforts taken to limit the value and length of the contract or order?
- ✓ Were local businesses given preference in accordance with the requirements of the Stafford Act?
- ✓ Were maximum opportunities provided to small businesses?
- ✓ Did the agency adjust the quantity, price, or delivery terms at reasonable cost?
- ✓ Did the person buying the goods and services have the authority to enter into the transaction?
- ✓ Were interagency contracts considered?

Contract management:

- ✓ Were CORs/COTRs appointed to oversee performance?
- ✓ Did the COR/COTR document performance?
- ✓ Did the contractor deliver the amount the government ordered?
- ✓ Did the contractor deliver to the appropriate location?
- ✓ Were the performance requirements met?
- ✓ Did someone with the appropriate authority accept the goods or services?
- ✓ Were invoices reviewed to ensure accuracy and conformance to the contract?
- ✓ Was the file documented adequately?
- ✓ Were process improvements identified and considered for implementation?

III. Acquisition Flexibilities for Emergencies

FAR 18 addresses acquisition flexibilities that may be used to facilitate and expedite the acquisition of supplies and services during emergency situations. FAR 26.2 contains recent regulations for implementing other socioeconomic programs as part of disaster or emergency assistance activities.

A. Generally Available Acquisition Flexibilities

The following authorities are generally available flexibilities that may be particularly beneficial to agencies in emergency situations.[5] This is not an exhaustive list; see FAR 18.1 for additional flexibilities.

1. Test program for certain commercial items. Agencies are authorized to use simplified procedures, on a test basis through the end of calendar year 2012, for the acquisition of commercial items in amounts above the SAT.[6] Contracting officers may use any simplified acquisition procedure provided in FAR 13, subject to specific dollar limitations applicable to the particular procedure selected. This means, among other things, that agencies are

- exempt from the competition requirements in FAR 6;
- not required to establish a formal evaluation plan or competitive range, conduct discussions with vendors, or score quotations from offerors; and
- permitted to limit documentation required in justifying contract award decisions. (See FAR 13.501 for special documentation requirements.)

2. Interagency acquisitions. Interagency acquisitions offer important benefits, including efficient access to prequalified sources and the ability to leverage resources. Interagency contracts include the Federal Supply Schedules operated by GSA (see FAR 8.4), multiagency BPAs established under a Multiple Award Schedule (see FAR 8.405-3(a)(4)), government-wide acquisition contracts established under Section 5112(e) of the Clinger-Cohen Act, and multiagency contracts established pursuant to the Economy Act (see FAR 16.505(a)(7)). These contracts offer agencies access to a broad range of goods and services using streamlined procedures that permit rapid response.

Purchases on many interagency contracts, including the Federal Supply Schedules, may be made through "direct acquisition" where the requesting agency (the agency with the requirement) places an order directly against another agency's contract. A number of agencies also offer acquisition assistance to place orders on another agency's behalf. When conducting an assisted acquisition, agencies must take extra precautions to ensure a clear understanding of roles and responsibilities between the requesting agency and the servicing agency (the agency placing the order). Interagency acquisitions under the Economy Act must be supported by a determination and finding (see FAR 17.503).

3. Multiple award task and delivery order contracts. When an agency needs to establish a new contract to meet a repetitive requirement, a multiple award contract offers an efficient means of identifying a small number of capable contractors before placing orders. (See FAR 16.504.) The fair opportunity process, described in FAR 16.505(b), governs the placement

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[5] See FAR 18 for a list of additional authorities that may be considered.

[6] Use of this authority may be augmented for emergency procurements. See Subsection B of Part III.

of orders under multiple award task and delivery order contracts awarded pursuant to FAR 16.5. This process can accommodate situations in which the effort required to respond to a potential order may be more resource intensive (for example, because requirements are complex or need continued development). For these circumstances, FAR 16.505(b)(1)(iii)(A)(5)(ii) describes a multiphase approach that an agency may use to quickly focus the competition on the contract holders most likely to submit the highest value solutions.

4. **Small business set-asides**. The Historically Underutilized Business Zone (HUBZone) small business, Service-Disabled Veteran-Owned Small Business , and Small Business Administration's 8(a) Business Development programs authorize agencies to acquire goods and services from qualified program participants on sole-source and competitive basis. This authority enables agencies to identify and rapidly enter into contracts with capable small business sources. See FAR 19.13, 19.14, and 19.8 for applicable dollar thresholds and additional requirements.

Agencies will soon be able to consider set-asides for woman-owned small businesses (WOSBs) in industries where women have been identified as underepresented. At the time this document was published, a FAR case was under development to establish a regulatory framework for WOSB set-asides, based on regulations promulgated by the Small Business Administration, available at http://edocket.access.gpo.gov/2010/pdf/2010-25179.pdf.

5. **Oral solicitations.** FAR 15.203(f) authorizes the use of oral solicitations when processing a written solicitation would delay the acquisition of supplies and services to the detriment of the government and a synopsis is not required (for example, to support contingency operations or emergency situations). Oral solicitations should be used to the maximum extent practicable for acquisitions described in FAR 13.106-1(c) and (d).

6. **Letter contracts.** FAR 16.603 authorizes agencies to enter into a "letter" contract (a written preliminary contractual instrument) when the government's interests demand that work on a requirement start immediately and negotiating a definitive contract is not possible in sufficient time to meet this demand. The undefinitized contract action must include a definitization schedule, and agencies may have additional limitations on their use or approval. Agencies should strive for definitization as soon as possible. Except in extreme cases, the schedule must provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first.

7. **Other than full and open competition.** FAR 6 allows circumstances permitting other than full and open competition for various reasons, such as when (1) there is only one responsible source, (2) unusual and compelling urgency exists, (3) industrial mobilization or expert services are required, (4) disclosure of the agency's needs would compromise the national security, (5) award to a particular source is required to maintain the supplier in case of a national emergency, (6) other than full and open competition is in the public interest, or (7) full and open competition is precluded by international agreement.

8. **Use of commercial item procedures for acquisitions of noncommercial items.** The CO may use FAR 12.102(g) for any acquisition of services that does not meet the definition of a commercial item if the contract or task order has a value of $30 million or less, meets the definition of a performance-based acquisition (at FAR 2.101), uses a quality assurance surveillance plan, includes performance incentives where appropriate, specifies a firm-fixed price for specific tasks to be performed or outcomes to be achieved, and is awarded to an entity

that provides similar services to the general public under terms and conditions similar to those in the contract or task order. See FAR 12.102(g).[7]

9. Waiver of bid guarantees. Bid guarantees may be waived on a transactional basis by the chief of the contracting office or as a class waiver by the agency head or designee when it is determined that bid guarantees are not in the best interest of the government. See FAR 28.101-1.

10. Innovative contracting. Agencies are fully authorized to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority. Agencies should not assume that a new approach is prohibited simply because the FAR does not specifically recognize it. As FAR 1.102-4(e) states, the fact that the FAR does not endorse a particular strategy or practice does not necessarily mean that it is prohibited by law, executive order, or other regulation. Agencies are encouraged to have emergency COs seek legal assistance in these circumstances to identify their options for innovative contracting.

Figure 5 summarizes some of the key provisions in FAR 18.1.

[7] The contract or task order must be entered into on or before November 24, 2013.

Figure 5. Generally Available Acquisition Flexibilities: A Quick Reference to FAR 18.1

Micropurchases (less than or equal to $3,000):

- ✓ The purchase card may be used as an acquisition method (FAR 13.2).
- ✓ A written contract is not needed.
- ✓ The Service Contract Act does not apply to purchases of $2,500 or less, and the Davis-Bacon Act does not apply to purchases of $2,000 or less.

Acquisitions under the SAT (over $3,000 to $150,000):

- ✓ Various flexibilities are provided in connection with publicizing. For example, an oral solicitation may be efficient for actions up to $30,000 and other actions for which there is an exception to notice; response time may be less than 30 days provided a response time is reasonable (FAR 5.101, 5.202, 5.203, 13.106-1).
- ✓ Limited competition is authorized, including soliciting from a single source or use of a brand name specification, but the rationale must be documented (FAR 13.106-3, 11.105).

Acquisitions using the test program for commercial items (over $150,000 to $6.5 million):

- ✓ Acquisition generally may be treated like a purchase under the SAT with certain exceptions. For example, contracting officers must prepare justification for sole-source (including brand name) acquisitions in accordance with FAR 13.501.

Commercial item acquisitions (over $6.5 million):

- ✓ FAR 12 policies and procedures apply, including optional streamlined procedures for evaluation and solicitation.
- ✓ The wait period after notice and before issuance of a solicitation may be reduced (FAR 5.203(a)).
- ✓ Based on circumstances, the contracting officer may allow for less than a 30-day response time for receipt of offers (FAR 12.205, 5.203(b)).
- ✓ In cases of unusual and compelling urgency, justification may be executed after award (FAR 6.302-2 and 6.303-1(d)).

B. Emergency Acquisition Flexibilities

Acquisition flexibilities intended specifically for emergencies are available

- in support of a contingency operation;
- to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; and
- when the President issues an emergency declaration or a major disaster declaration.

The flexibilities described in this subsection are in addition to the generally available flexibilities discussed above.

1. All event emergency acquisition flexibilities. The following authorities are available during any of the types of emergency situations described below:

a. ***Relief from registration in Central Contractor Registration.*** FAR 4.1102(a)(3) exempts contractors from required registration with the CCR when the contract is an emergency

acquisition. Though CCR registration is not required prior to award, if practicable, the CO is required to modify the contract or agreement to require registration after award. See FAR 4.1102(b).

b. ***Relief from use of electronic funds transfer (EFT).*** FAR 32.1103(e) exempts contract payments through EFT when the award is in support of emergency operations if EFT is not known to be possible or an EFT payment would not support the objectives of the operation.

2. Contingency operations. Certain flexibilities are available during a contingency operation. See FAR 18.201. (Figure 6 summarizes some of the key provisions.) A contingency operation is a military operation 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 results in the call or order to, or retention on, active duty members of the uniformed services under Title 10 of the United States Code (Section 688, 12301(a), 12302, 12304, 12305, or 12306), Title 10 Chapter 15, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Figure 6. Emergency Acquisition Flexibilities: A Quick Reference to FAR 18.2

All event emergency acquisition flexibilities:
- ✓ Relief from registration in Central Contractor Registration (FAR 4.1102(a)(3)).
- ✓ Relief from use of electronic funds transfer for contract payments under certain conditions (FAR 32.1103(e)).

Contingency operations:
- ✓ Increased micropurchase threshold (FAR 18.201(b)).
- ✓ Increased simplified acquisition threshold (FAR 18.201(c)).
- ✓ Higher dollar limitations for purchase orders, invoices, and vouchers (SF 44s) (FAR 18.201(d)).
- ✓ Expanded use of simplified acquisition procedures for commercial items (FAR 18.201(e)).

Defense or recovery from certain attacks:
- ✓ Increased micropurchase threshold (FAR 18.201(a)).
- ✓ Increased simplified acquisition threshold (FAR 18.202(b)).
- ✓ Expanded use of simplified acquisition procedures for commercial items (FAR 13.500(e) and 18.202(c)).
- ✓ Use of commercial item procedures for acquiring noncommercial items (FAR 12.102(f)(1) and (2) and FAR 18.202(d)).

Incidents of national significance, emergency declaration, or major disaster declaration:
- ✓ Limited use of full and open competition (FAR 6.6 and 26.2).
- ✓ Local firm or area evaluation preference (FAR 26.202-2).
- ✓ Temporary waiver of Cargo Preference Act requirements (FAR 47.502(c)).

During a contingency operation, the following flexibilities are available:

a. ***Increased micropurchase threshold.*** Purchases under this authority may be awarded without soliciting competitive quotations if the purchaser determines the price to be reasonable. The micropurchase threshold increases from $3,000 to $15,000 per transaction within the United States when the head of an agency determines the supplies or services are to be used to support a contingency operation. For purchases outside of the United States, the threshold increases to $30,000. (See FAR 13.201(g).) However, agencies must be mindful of lower Davis-Bacon and Service Contract Act thresholds. (See FAR 2.101.)

b. ***Increased simplified acquisition threshold.*** Once a contingency operation has been declared, an agency head may increase the SAT from $150,000 to $300,000 for purchases inside the United States and $1 million for purchases outside the United States, when those supplies or services are used to support the contingency operation. Increasing this threshold will also raise the small business set-aside thresholds. (See FAR 2.101.)

c. ***Expanded use of simplified acquisition procedures for commercial items.*** When the purchase is in support of a contingency operation, the head of the agency may authorize the use of simplified acquisition procedures to support the purchase of commercial items up to $12million. (See FAR 13.500(e).)

d. ***Higher dollar limitations for purchase order-invoice-vouchers (SF 44s).*** The normal threshold for the SF 44 is at or below the micropurchase threshold. Agencies may, however, establish higher dollar limitations for certain purchases made to support a contingency operation. (See FAR 13.306.)

3. Defense or recovery from certain attacks. As indicated in FAR 18.202, the following flexibilities are available to support acquisitions to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

a. ***Increased micropurchase threshold.*** When the agency determines that the supplies or services are to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the micropurchase threshold increases from $3,000 to $15,000 per transaction. (See FAR 2.101 and 13.201(g)(1)(i).) For purchases outside of the United States, the threshold increases to $30,000.

b. ***Increased simplified acquisition threshold.*** The head of an agency can increase the SAT from $150,000 to $300,000 for purchases inside the United States and $1 million for purchases outside the United States. (See FAR 2.101.)

c. ***Expanded use of simplified acquisition procedures for commercial items.*** As above, the test program for certain commercial items allows the use of simplified acquisition procedures up to the $6.5 million limit. When the purchase is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the limit can be increased by the agency to $12 million. (See FAR 13.500(e).)

d. ***Use of commercial item procedures for acquiring noncommercial items.*** Any acquisition of supplies or services that are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack may be treated as an

acquisition of commercial items under FAR 12. This allows noncommercial items to be purchased using the policies and practices applicable to commercial items. (See FAR 12.102(f)(1).)

e. ***Cost accounting standards.*** As described in FAR 12.5, certain laws cannot be applied to commercial item acquisitions. However, a contract in an amount greater than $18 million that is awarded on a sole-source basis for an item or service treated as a commercial item, but does not otherwise meet the definition of a commercial item, is not exempt from cost accounting standards or cost or pricing data requirements. (See FAR 12.102(f)(2).)

4. Incidents of national significance, emergency declaration, or major disaster declaration. the flexibilities below are available when one of the following is declared: (1) incident of national significance, (2) emergency declaration, (3) national emergency, or (4) a major disaster.

a. ***Limited use of full and open competition.*** Agencies may limit the use of full and open competition when authorized or required by statute that the acquisition be made through another agency or from a specified source. This includes awards made pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.(See FAR 6.6 and 26.2.)

b. ***Evaluation preference.*** The CO may use a local area or local firm preference when contracting for major disaster or emergency assistance activities and when the use of that preference is authorized in agency regulations or procedures. (See FAR 26.202-2.)

c. ***Temporary waiver of Cargo Preference Act requirements.*** FAR 47.502(c) allows waiver of the Cargo Preference Act requirements when the Congress, the President, or the Secretary of Defense declares that an emergency justifying a temporary waiver exists and so notifies the appropriate agency or agencies. However, for this exemption, the Cargo Preference Act of 1954 requires that preference be given to U.S.-flag vessels when transportation of supplies by ocean vessel is necessary.

Agencies 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 or must document consideration of potential negative impact. (See FAR 18.203 and 26.2.) The Local Community Recovery Act of 2006, P.L. 109-218, amended the Stafford Act to add a local area set-aside for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities. A local firm set-aside allows only offerors residing or doing business primarily in the area affected by a major disaster or emergency to compete for that work. (See FAR 6.602.)

Appendix. Disaster and Contingency Contracting Lessons

Although the goal of the acquisition team, and the CO in particular, should be the right agreement for the right services or supplies the first time an order is placed, many lessons can be learned from previous emergency or contingency response efforts. Agencies should consider these lessons as they develop and refine plans for addressing future emergencies.

- The Government Accountability Office (GAO) has a Topic Collection on *Disaster Preparedness, Response and Reconstruction Products*, with reports and testimony related to disaster preparedness, response, and reconstruction issued since October 2006. The collection is available at http://www.gao.gov/docsearch/featured/dprr2.html. The GAO has consistently recommended the following actions from its review of emergency or contingency contracting activities:
    - Provide sufficient numbers of field-level contracting personnel with the authority needed to meet mission requirements
    - Establish a scalable operations plan to adjust the level of capacity required to effectively respond to needs
    - Plan for the use of contractors and determine the extent of their involvement in work reserved for federal employees or work that is closely associated with inherently governmental activities.

- The Special Inspector General for Iraq Reconstruction (SIGIR) identified a number of lessons learned and best practices after reviewing the Iraq reconstruction efforts. The SIGIR *Lessons in Contracting and Procurement* and *Lessons in Program and Project Management* are available at http://www.sigir.mil/publications/lessonsLearned.html. Lessons highlighted by the SIGIR include the following:
    - Develop deployable contracting and procurement systems before mobilizing for post-conflict efforts and test them to ensure that they can be effectively implemented in contingency situations
    - Designate a single unified contracting entity to coordinate all contracting activity in theater
    - Cleary define, properly allocate, and effectively communicate essential contracting roles and responsibilities to all participating agencies
    - Emphasize contracting methods that support smaller projects in the early phases of a contingency reconstruction effort
    - Generally avoid using sole-source and limited-competition contracting actions.

- Reports from the DHS Office of Inspector General on FEMA Disaster or Emergency Response are available at http://www.dhs.gov/xoig/rpts/.