



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

SEP 16 2005

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Use of the Increased Micro-purchase Threshold and Governmentwide Commercial Purchase Card for Purchases in Support of Hurricane Katrina Rescue and Relief Operations

The purpose of this memorandum is to update and clarify Department of Defense policy applicable to purchases of property or services made in support of Hurricane Katrina rescue and relief operations. This memorandum supplements my memorandum, "Increased Thresholds for Procurements in Support of Hurricane Katrina Relief Efforts" issued on September 2, 2005 (Attachment 1); supplements Class Deviation 2005-O0005, dated September 2, 2005; implements Section 101 of P.L. 109-62, the "Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the Consequences of Hurricane Katrina," and implements Office of Federal Procurement Policy memorandum dated September 13, 2005.

Thresholds: The micro-purchase threshold and the Simplified Acquisition Threshold are increased to \$250,000, and the Test Program for Commercial Items threshold is \$10 million for procurements in support of Hurricane Katrina rescue and relief. For Hurricane Katrina rescue and relief, DoD Governmentwide Commercial Purchase Card users may use the purchase card for purchases of commercial items up to \$15,000, and DoD Contracting Officers may use the purchase card for purchases of commercial items up to the increased micro-purchase threshold of \$250,000.

Class Deviations: Class Deviation 2005-O0005 is supplemented. The list of laws at Attachment 2 supersedes the list attached to Class Deviation 2005-O0005. Class Deviation 2005-O0006 will be separately distributed, providing Office of Federal Contract Compliance Programs waiver of certain equal opportunity clause requirements in contracts in support of Hurricane Katrina relief efforts.

Statutory Flexibilities: When using the Governmentwide Commercial Purchase Card to support Hurricane Katrina relief efforts in accordance with FAR 13.301(c), authorized users need not comply with section 15(j) of the Small Business Act (15 U.S.C. 644(j)); the Buy American Act (41 U.S.C. 10a-10c); the Davis-Bacon Act (40 U.S.C. 276a-276a-7) or the Berry Amendment (10 U.S.C. 2533a).

Statutory Requirements: Other laws and requirements will continue to apply, such as procurement integrity statutes and laws providing criminal and civil penalties.

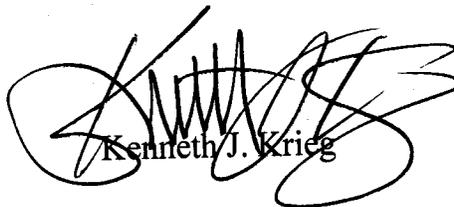


Contracting Officers and Governmentwide Commercial Purchase Card users are responsible for ensuring compliance with applicable laws. The information in Attachment 2 is representative of laws and requirements that may apply to particular purchases, but is not all inclusive. Therefore, other laws may apply to a particular purchase.

Management Controls: It is of critical importance to ensure that these flexibilities are used only for efforts that have a clear and direct relationship to Hurricane Katrina rescue and relief operations, and that they are used in a responsible and effective manner with appropriate management controls. Attachment 3 provides management control guidelines and procedures for the appropriate use of these flexibilities.

The attached guidance applies to micro-purchases authorized by P.L. 109-62, including purchases made with the Governmentwide Commercial Purchase Card. In general, contracting officers are expected to ensure the reasonableness of all prices and to use competitive procedures to the maximum extent practicable.

This memorandum and other related documents are available at <http://www.acq.osd.mil/dpap/>. My point of contact is Ms. Linda Neilson. She can be reached at (703) 697-8334, or via email at linda.neilson@osd.mil.



Kenneth J. Krieg

Attachments:
As stated

DISTRIBUTION:

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SEP - 2 2005

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Increased Thresholds for Procurements in Support of Hurricane Katrina
Relief Efforts

I hereby authorize the use of the special emergency procurement authorities in 41 U.S.C. 428a to increase the micro-purchase, the simplified acquisition, and the test program for commercial items thresholds for the procurements in support of Hurricane Katrina relief efforts. Therefore, procurements made by the DoD in support of this contingency may use the rules specified in the Federal Acquisition Regulation and its Defense supplement for a contingency within the United States. This means that the micro-purchase threshold is increased to \$15,000 (FAR 13.201(g)(1)(i)), the Simplified Acquisition Threshold is increased to \$250,000 (FAR 2.101), and the test program for commercial items threshold is increased to \$10 million (FAR 13.500(e)) for procurements in support of Hurricane Katrina relief efforts.

My point of contact is Ms. Sandi Bennett, DPAP/Policy. She can be reached at (703) 693-0197, or via email at Sandra.Bennett@osd.mil.


Kenneth J. Krieg



Attachment (1)

Checklist of Applicable Laws and Requirements
The contractor agrees to comply with the following list for the acquisition of Commercial Items that do not exceed the
Micro-Purchase Threshold of \$250,000 in Support of Hurricane Katrina

I. Applicable to all Purchases

Statute or Executive Order (EO)	Requirements	For more information see FAR/DFARS	√
31 U.S.C. 1352	Anti-lobbying. Do not use appropriated funds to lobby for award of federal contracts.	FAR Subpart 3.8	
18 U.S.C. 431	Officials not to benefit		
41 U.S.C. 51-58	Anti-Kickback Act of 1986. The requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contract requirement for contractor cooperation in investigations are not applicable.	FAR 3.502	
41 U.S.C. 265, 10 U.S.C. 2409	Whistle-blower protection	FAR Subpart 3.9	
49 U.S.C. 40118	Fly American	FAR Subpart 47.4	
41 U.S.C. 423	Procurement Integrity	FAR 3.104	
31 CFR Chapter 5	The Contractor shall not provide products from Cuba, Iran, Libya, Sudan, or North Korea, or any entity or individual listed by the Office of Foreign Assets Control as Specially Designated Nationals or Blocked Persons.	FAR Subpart 25.7	
10 U.S.C. 2631	Applies to ocean transportation of cargo owned by, or destined for use by, DOD	FAR Part 47 and DFARS Subpart 247.5	

II. More than \$2,500.

Statute or Executive Order (EO)	Requirements	For more information see FAR/DFARS	
41 U.S.C. 351 et seq.	The Contractor agrees to comply with the Service Contract Act of 1965, as amended. If this is a service contract, each service employee shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract. No employee shall be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.	FAR Subpart 22.1006	√

III. More than \$10,000.

Statute or Executive Order (EO)	Requirements	For more information see FAR/DFARS	
E.O. 11246	The Contractor represents that the Contractor complies with Equal Employment Opportunity (EEO) and does not maintain or provide segregated facilities for its employees. The Contractor will not be obligated to develop the affirmative action program, prepare the reports, or provide the notices usually required under the regulations implementing E.O. 11246, as amended. See Department of Labor memorandum, subj: Contracts for Hurricane Katrina Relief Efforts, dated September 9, 2005, for limited exemptions and waiver from some of the requirements.	FAR Subpart 22.8	√
29 U.S.C. 793	The contractor agrees to comply with Affirmative Action for Workers with Disabilities. The Contractor will not be obligated to develop the affirmative action program, prepare the reports, or provide the notices usually required under the regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended.	FAR Subpart 22.14	
42 U.S.C. 6962	Use of recovered material. If this contract is for an EPA designated product, the contractor certifies that the percentage of recovered materials used in the performance of the contract will be at least the amount required by the applicable contract specifications.	FAR Subpart 11.3	

IV. More than \$100,000.

Statute or Executive Order (EO)	Requirements	For more information see FAR/DFARS	
31 U.S.C. 1352	The offeror certifies that no Federal appropriated funds have been paid to any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, on his or her behalf in connection with the award of this contract. Disclosure using OMB Form LLL is required if the contractor makes payments with nonappropriated funds which would be prohibited is paid for with appropriated funds.	FAR Subpart 3.8	√
38 U.S.C. 4212	Application of Labor Laws. The contractor agrees to comply with Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. The Contractor will not be obligated to develop the affirmative action program, prepare the reports, provide the notices, or list the job openings usually required under the regulations implementing section 4212 of the Vietnam Era Veteran Readjustment Assistance Act, as amended.	FAR Part 22.13	
40 U.S.C. 3701 et seq	Contract Work Hours and Safety Standards Act	FAR Subpart 22.3	

V. \$175,000. or more

Statute or Executive Order (EO)	Requirements	For more information see FAR/DFARS	
19 U.S.C. 2501 et seq.	WTO GPA. If buying items listed at DFARS 225.401-70, obtain oral certification that the supplies are U.S.-made, or the products of a designated or qualifying country, unless domestic end products are not available.	FAR 25.4, DFARS 225.4, 252.225-7020	√

Department of Defense Management Control Guidelines and Procedures

These management control guidelines and procedures implement section 101 of P.L. 109-62, the "Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the Consequences of Hurricane Katrina" and the guidance in OFPP Memorandum dated September 13, 2005.

A. Program management responsibilities.

1. There will be no blanket increase of cardholder authority. The head of each contracting activity must identify in writing those individuals who are authorized to use the higher threshold; these individuals must be working directly on Hurricane Katrina-related acquisitions. Appropriate DoD contracting officers may use the purchase card for Hurricane Katrina-related procurements up to \$250,000 in value; other cardholders may use the card for such procurements up to \$15,000 in value.
2. Each contracting activity must modify contracting officer and other warrants, as appropriate, and ensure that cardholders have sufficient training appropriate for the increased authority.
3. Contracting activities shall work with card issuing banks to raise monthly and single transaction limits accordingly.
4. Contracting activities must establish and communicate policies and procedures for determining whether a transaction is "in support of Hurricane Katrina rescue and relief operations" and therefore allowable under section 101 of the Act.
5. All open market transactions (those not placed under existing contracts) that exceed \$15,000 must be pre-approved by a warranted contracting officer (other than the buyer or cardholder) or a senior manager at the GS-14 level or above.
6. The head of the contracting activity must designate officials to conduct follow-up reviews of transactions made pursuant to section 101 of the Act. These follow-up reviews should take place as soon as practicable, but no later than 60 days after any given transaction. The officials shall evaluate whether the transaction: (a) was consistent with agency's policies and procedures identified in paragraph A.4, above, and was otherwise reasonable and appropriate; (b) provided the maximum

Attachment (3)

practicable opportunity for small business participation under the circumstances (see paragraph B.2, below), and (c) was appropriately documented by the cardholder. Based on these reviews, the official shall make recommendations to the head of the agency on changes to the policies and procedures identified in paragraph A.4 above, and any administrative or disciplinary actions required.

7. Contracting activities should increase management controls to mitigate risk under the new micro-purchase authority. OMB Circular A-123, Appendix B, Improving the Management of Government Charge Card Programs, provides guidance on implementing strong internal controls. Examples include, but are not limited to the following, as may be appropriate:

- Increasing the frequency and scope of reviews of spending and transaction limits to ensure appropriateness;
- Limiting the number of individuals authorized to use the increased micro-purchase threshold and the length of time this authority can be used;
- Evaluating the span of control for approving officials;
- Blocking card use for high risk merchant category codes; and
- Establishing a control to ensure that card accounts are canceled when the employee returns from temporary duty or leaves the agency.

Contracting activities should review OMB Circular A-123, Appendix B for additional guidance on appropriate controls for charge card programs, with special emphasis on Sections 2.3 (planning), 3.4 - 3.5 (training), 4.3 - 4.7 (disciplinary actions, use of data, key personnel, etc.), 6.3 - 6.4 (creditworthiness), and Attachment 5 (best practices).

8. When initiating administrative or disciplinary actions for card misuse, charge card managers should, in addition to consultation with agency human resources professionals, where appropriate:

- Communicate clearly the penalties for fraud and misuse of the purchase card;
- Initiate verbal counseling and warning;
- Provide written warning;
- Suspend or revoke charge card privileges;
- Suspend or revoke employee security clearance;
- Include misuse occurrence in employee performance evaluations;
- Suspend or terminate employment;
- Ensure consistent enforcement of penalties; and
- Publish actions taken by the agency for misuse of charge cards.

9. Responsibilities identified in this Attachment may not be delegated to a level lower than the Head of the Contracting Activity.

B. Additional acquisition responsibilities.

1. Cardholders and ordering officials are reminded to ensure that prices are reasonable. These common sense determinations may take into consideration the extraordinary circumstances of the rescue and recovery operations.
2. Contracting officers are expected to use competitive procedures to the maximum extent practicable
3. Although there is no absolute requirement to award micro-purchases to small businesses, contracting activities using this authority are expected to provide small businesses maximum practicable opportunity under the circumstances to participate in federal acquisitions as prime contractors and subcontractors. Where possible and consistent with efficient acquisition of needed supplies and services, local small businesses should be given priority.
4. Section 307 of the Stafford Act (P.L. 93-288) establishes a preference, to the extent feasible and practicable, for contracting with local organizations, firms, or individuals for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities.
5. If making a purchase on behalf of another agency, the agency making the purchase will ensure the requesting agency has the authority to make the purchase and fully document the purchase card transaction, including the date and time of the request, the name and contact information of the requesting official, and funding authorization.
6. The purchase card may only be used as a method of payment (see FAR 13.301(c)(3) for construction contracts.