



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION
AND SUSTAINMENT

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Emergency Acquisition Flexibilities – Special Emergency Procurement Authority
and Head of the Contracting Activity Delegated Authority

The purpose of this memorandum is to remind heads of the contracting activity (HCA) that (1) no notification from Defense Pricing and Contracting (DPC) is necessary for HCAs to enact emergency acquisition flexibilities, and (2) HCAs have the delegated authority to authorize emergency acquisition flexibilities. As we are now in the midst of hurricane season, it is an important time to reaffirm to HCAs that once the President issues an emergency or major disaster declaration, no additional authorization, delegation, or announcement from DPC is required to utilize available emergency acquisition flexibilities.

The authority to use emergency acquisition flexibilities is inherent in statute (Section 816 of the National Defense Authorization Act for FY 2017 expanded Special Emergency Procurement Authority (SEPA)) and regulation. HCAs are closest to the mission; have the greatest situational awareness of required contracting support to emergencies, major disasters, or other applicable operations; and are best positioned to determine when emergency acquisition flexibilities should be authorized.

HCAs should refer to the attachment to determine if it is appropriate to authorize the use of emergency acquisition flexibilities. The attachment is not meant to be all-encompassing, but serves as a guide for HCAs and contracting officers who support emergency operations. My point of contact is Lt Col Karen Landale at 703-697-0895 or karen.a.landale.mil@mail.mil.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachment:
As Stated

Considerations and Resources: Contracting Support Using Emergency Acquisition Flexibilities

Applicability

This document has utility when providing contracting support to the following operations: contingency operations; humanitarian or peacekeeping operations; facilitating defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; supporting a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; and responding to a declared emergency or major disaster (42 U.S.C. 5122), (41 U.S.C. 1903). These are referred to herein as “applicable operations.”

- **Contingencies:** It may be helpful to check if there is an execution order (EXORD) available declaring the operation a contingency. Further, if there is a mobilization order associated with your operation, it meets the definition of “contingency” in Federal Acquisition Regulation (FAR) 2.101.
- **Humanitarian Assistance Operations:** The use of Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) funds signify the operation is a humanitarian assistance operation.

HCAAs are encouraged to obtain legal counsel prior to determining that acquisitions support one of the applicable operations listed above, thus authorizing acquisition flexibilities.

1. Considerations when Supporting Applicable Operations

- **Increased Thresholds:** To enable streamlined and timely contracting support during applicable operations, the simplified acquisition threshold (SAT) and/or micro-purchase threshold (MPT) increase and can be leveraged by contracting officers for acquisitions of supplies and services that, as determined by the head of the contracting activity (HCA), are to be used to support applicable operations. Refer to FAR 2.101 for definitions and specific thresholds as they vary by applicable operation supported and location. Point to remember: The definition of United States, for purposes of increased SAT and MPT, is as defined at FAR 2.101 when used in a geographic sense, means the 50 states and the District of Columbia.
- **Treating Certain Items as Commercial:** Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial items if the head of the agency determines the acquisition is to be used to facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack. See FAR 12.102(f)(1) and FAR 13.500(c)(2).
- **Simplified Procedures for Certain Commercial Items:** The threshold limits authorized for use of this authority may be increased when it is determined the acquisition is to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster. See FAR 13.500(c).

- **Governing regulations:**

FAR Part 2 – Definitions of Words & Terms	
FAR 2.101	Definitions
FAR Part 12 – Acquisition of Commercial Items	
FAR 12.102(f)(1)	Treating acquisition of supplies or services as commercial items for certain applicable operations.
FAR 13 & DFARS Part 213 – Simplified Acquisition Procedures	
FAR 13.201(g) DFARS 213.201	Micro-purchase threshold associated with certain applicable operations.
FAR 13.306 DFARS 213.306	SF44, Purchase Order-Invoice-Voucher
FAR 13.500(c)	Simplified Procedures for Certain Commercial Items
FAR Part 18 & DFARS Part 218 – Emergency Acquisitions	
FAR 18.001 FAR 18.2 DFARS 218.2	Definition Emergency Acquisition Flexibilities Emergency Acquisition Flexibilities
FAR Part 26 – Other Socioeconomic Programs	
FAR 26.202	Local Area Preference

- **Tracking Contract Actions and Spend with National Interest Action (NIA) Codes:** NIA Codes are used to track procurement actions made in support of particular efforts to facilitate cost collection and reporting, and do not trigger or otherwise authorize contracting activities to use Emergency Acquisition Flexibilities in FAR 18 and Defense FAR Supplement 218. Upon establishment or extension of an NIA code, DPC's Contracting eBusiness Directorate will notify each service and agency.

2. Available Resources

The following web-based resources are provided to assist HCAs and Contracting Officers when performing duties in support of an applicable operation. While this list is not all-encompassing, it is a starting point of resources to consult during applicable operations.

Declarations	
Presidential Emergency Declarations	https://www.whitehouse.gov/news/
Major Disaster Declarations	https://www.fema.gov/disasters/disaster-declarations
Regulations	
Electronic Code of Federal Regulations	https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title13/13cfr125_main_02.tpl
FAR Part 18 – Emergency Acquisitions	https://www.acquisition.gov/content/part-18-emergency-acquisitions
DFARS Part 218 – Emergency Acquisitions	https://www.acquisition.gov/dfars/part-218-emergency-acquisitions
Defense Acquisition Regulations System	https://www.acq.osd.mil/dpap/dars/
Guides	
Defense Contingency Contracting Handbook (DCCH)	http://www.acq.osd.mil/dpap/ccap/cc/jcchb/index.html

Government Commercial Purchase Card (GCPC) Policies and Guidebook	http://www.acq.osd.mil/dpap/pdi/pc/policy_documents.html
Office of Management and Budget (OMB) Office of Federal Procurement Policy (OFPP) Emergency Acquisitions Guide	https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf
Federal Emergency Management Agency (FEMA) National Response Framework	https://www.fema.gov/emergency-managers/national-preparedness/frameworks/response
Other Pertinent Sites	
Department of Homeland Security	https://www.dhs.gov/topic/disasters
Department of Labor (DoL) Office of Federal Contract Compliance Programs (OFCCP) National Interest Exemptions (NIE)	https://www.dol.gov/agencies/ofccp/national-interest-exemption
Defense Pricing and Contracting Contingency Contracting Page	https://www.acq.osd.mil/dpap/pacc/cc/index.html