

EMERGENCY ACQUISITIONS



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Executive Office of the President
Office of Management and Budget
Office of Federal Procurement Policy



EXECUTIVE OFFICE OF THE PRESIDENT
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OFFICE OF FEDERAL
PROCUREMENT POLICY

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MEMORANDUM FOR THE PRESIDENT'S MANAGEMENT COUNCIL

FROM:

Paul A. Denett
Administrator

SUBJECT:

Emergency Acquisitions Guide

The attached guide is designed to help agencies prepare the acquisition workforce for emergencies. The guide describes strategies for effective response planning and provides a list of acquisition reminders when contracting during emergencies. The guide also discusses flexibilities that acquisition personnel deployed to an emergency situation may use to facilitate timely procurements.

This document has been developed jointly by the Office of Federal Procurement Policy (OFPP) and the Chief Acquisition Officers Council's working group on emergency contracting. The guide includes a number of management and operational best practices that agencies developed in response to Hurricane Katrina and other emergency situations. These practices should be considered in planning related to contingency operations, anti-terrorism activities, and national emergencies. For additional information, agencies may refer to the Emergency Response and Recovery Contracting Community of Practice Web site, accessible at <https://acc.dau.mil/emergencyresponse>.

This guide is intended to supplement, not supplant, agency-specific guidance, and should be read in conjunction with Part 18 of the Federal Acquisition Regulation on emergency acquisitions. The 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 *Emergency Procurement Flexibilities* guide, issued in May 2003.

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 through the community of practice Web site.

Attachment

cc: Chief Acquisition Officers Council
Chief Information Officers Council
Chief Financial Officers Council
Chief Human Capital Officers Council

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Introduction

This guide is designed to help ensure the acquisition workforce is prepared for emergencies. Each emergency evolves differently. Contractors play a critical role in providing supplies and services to our citizens during an emergency. 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 policies and practices 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 Hurricane Katrina, the Iraqi reconstruction effort, and other emergency situations. It also reflects a number of lessons documented by the Special Inspector General for Iraq Reconstruction (SIGIR) and the Government Accountability Office (GAO).¹

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 provides a list of reminders for agencies to consider when awarding and administering contracts during emergencies.
- Part III reviews the flexibilities that are available to agencies for use during emergencies.

This guide, developed jointly by the Office of Federal Procurement Policy (OFPP) and the Chief Acquisition Officers Council's working group on emergency contracting is not all-inclusive and is intended to supplement, not supplant, agency-specific guidance. It should be read in conjunction with Part 18 of the Federal Acquisition Regulation (FAR) on emergency acquisitions. This document supersedes OFPP's *Emergency Procurement Flexibilities* guide, issued in May, 2003.

Special thanks are given to OFPP interns Christopher L. McMahon and Melissa Angermeier for their participation in the development of this guidance. Questions may be directed to Lesley Field at (202) 395-4761 (lfield@omb.eop.gov) or to Mathew Blum at (202) 395-4953 (mblum@omb.eop.gov). For additional information, including practices developed by other agencies, see the Emergency Response and Recovery Contracting Community of Practice Web site, accessible at <https://acc.dau.mil/emergencyresponse>.

¹ For a short listing of lessons documented by the SIGIR and the GAO, see the Appendix.

I. Pre-emergency planning

Planning for emergencies allows deployed and other support personnel to meet needs in a timely manner. Timely response saves lives, reduces property loss, enables greater continuity of services, and enhances logistical capability in the wake of disasters. This section describes organizational and individual response planning efforts agencies should undertake to improve responsiveness during an emergency.

A. Initial considerations

Agencies may not know when an emergency or contingency may occur and it is impossible to be perfectly prepared for the devastation associated with an emergency. Generally speaking, however, agencies should have a reasonable idea of where and how responses to a given incident or situation may develop and the types of needs involved. Conveying organizational priorities before an emergency arises and conducting effective planning will help to avoid delays, reduce complexities, and eliminate redundancy of effort when contract action is required.

Both the SIGIR and the GAO identified the importance of clearly defining roles and responsibilities among the various functions that support emergency operations in order to ensure timely and effective decision-making. Contracting specialists should work closely with program and project managers in their agency that may be called on during an emergency and other personnel who support the acquisition process -- including information technology specialists, financial management officials, logistics personnel, and legal counsel -- to develop a common and coordinated understanding of how to meet the government's needs during an emergency. Working together, these personnel should review historical data to identify the products and services that the agency has been called on to provide during past emergencies. (See box on next page.)

Agencies should familiarize themselves with pre-competes contracts to determine if these contracts can meet their needs if an emergency arises. In evaluating vehicles, agencies should be sensitive to whether the vehicle is designed for the type of response effort likely to be required. For example, the pricing and terms and conditions that may be suitable for immediate post-disaster needs will be different from those that would be negotiated for follow-on reconstruction efforts.

The Chief Acquisition Officer's Council (CAOC) has established an Emergency Response and Recovery Working Group to improve access to information that can assist the acquisition workforce in planning for and addressing emergencies. The Working Group created a community of practice Web site, accessible at <https://acc.dau.mil/emergencyresponse>, so that agencies may share information about their policies and procedures, best practices, training resources and other information of interest. For example, the site provides a link to *The Emergency Acquisition Field Guide* developed by the Federal Emergency Management Agency

(FEMA) so other agencies may learn about and adopt, as appropriate, practices employed by FEMA for performing specific assignments or functions in an emergency acquisition environment. The site also provides links to other resources of interest, such as Internet pages managed by the Departments of Health and Human Services and 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 exercises to test processes and familiarize personnel with all phases of an emergency or contingency.

Evaluating How Previous Emergency Needs Were Met

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

- the type of emergency involved and the associated needs with each phase of the emergency (e.g., initial response, recovery);
- the types of acquisition vehicles that were 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;
- how the acquisitions were funded;
- the types of logistical challenges encountered in delivering products and services and steps taken to address these challenges;
- any legal issues that arose; and
- management's overall assessment of agency and contractor performance.

B. Anticipating acquisition workforce needs

Anticipating personnel issues and addressing any gaps in resources before an emergency arises will save valuable time. Training and determining the availability of additional acquisition support are key areas to address.

1. Training.

a. **Emergency-specific acquisition training.** FEMA's Emergency Management Institute, in coordination with the Defense Acquisition University (DAU) and the Federal Acquisition Institute (FAI), offers on-line courses on the National Incident Management System (NIMS) and the Incident Command System (ICS) for all contracting officers (COs) who may be deployed during an

emergency.² These courses, described in Table 1, have been or are being developed to supplement core contracting courses. See <https://acc.dau.mil/communitybrowser.aspx?id=21708> and www.fai.gov for current course offerings and updates to the table below.

Table 1. Emergency-Specific Acquisition Training

<p>Basic: Levels I, II, or III</p>	<p>Training Required: 92 hours</p> <ul style="list-style-type: none"> ○ DAU CON 234 (80 hours in class)* ○ Introduction to the Incident Command System (ICS)-100 (3 hours online) ○ Basic Incident Command System for Disaster Workers (ICS)-200 (3 hours online) ○ National Incident Management System (NIMS), IS-700 (3 hours online) ○ National Response Plan (NRP), IS-800 (3 hours online)
<p>Advanced: Levels II, or III</p>	<p>Training Required: 6 additional hours</p> <ul style="list-style-type: none"> ○ All Basic Level training ○ Intermediate Incident Command System, ICS-300 (3 hours) ○ Advanced Incident Command System, ICS-400 (3 hours online)

*FAI is adapting DAU CON 234 into a civilian agency focused course. Once this course is completed, it will replace DAU CON 234.

b. Non-acquisition specific training. Performing in an emergency environment is challenging and deployed acquisition personnel will be better prepared if they can anticipate the types of conditions that may arise during an emergency. FEMA and the DAU offer disaster preparedness courses for personnel who may be deployed. Courses cover disaster basics, the National Response Plan, Continuity of Operations, and other emergency management issues. More information on available training can be found through their websites at <http://www.training.fema.gov/> and <http://www.dau.mil/>.

2. Acquisition support. Each agency with responsibilities for conducting emergency acquisitions should identify in advance of actual emergencies a pre-established cadre of contracting personnel to function as a rapid deployment force on short notice. Agencies should consider establishing basic ordering agreements (BOAs) or blanket purchasing agreements (BPAs) for additional acquisition professional support with 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, solicitation development, contract documentation, contract

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.

management and contract close out support. Agency officials would retain responsibility for all inherently governmental activities, including the award and modification of contracts. See FAR 7.503(c)(12).

Agencies should also consider establishing service-for-fee agreements with the Defense Contract Management Agency (DCMA) or the General Services Administration (GSA) to evaluate contractor capabilities and support contract administration and the 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 might plan to collocate contracting personnel in the field with contracting officers' representatives (CORs) who have received emergency contract surveillance training. The Department of Homeland Security (DHS) employed this practice to mitigate risk during Katrina-related operations.

3. Deployment readiness. The CAOC recommends that contracting professionals have "To Go Kits" available for use when deployed.

Deployment Kits for Contracting Personnel

Deployment kits for contracting professionals should include:

- a laptop (with wireless capability and solar chargers)
- a cell phone with charger
- a satellite phone
- government identification
- a warrant
- a travel card
- a government purchase card
- a wireless email device
- web access or stand-alone capability (CD back ups) to:
 - the agency's contract writing system
 - current sites needed for sourcing, data collection, guidance & references to agency unique requirements, & points of contact.
- A copy of FAR Part 18 on Emergency Acquisitions

For additional information, see <https://acc.dau.mil/emergencyresponse>.

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 thresholds, and other changes to the acquisition process can be made quickly in the event of an emergency.

Internal Operating Procedures for Emergency Acquisitions

Warranting 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 civilian agencies. Civilian employees who may be deployed to support an emergency situation should obtain a FAC-C at the appropriate level to expedite the warranting process. The Department of Defense (DoD) has similar certification programs that were implemented to support the Defense Acquisition Workforce Improvement Act. More information on the certification programs can be found at: www.dau.mil/catalog/Appendix_B.pdf

Determining purchase card thresholds

The agency 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 their card holders that card thresholds do not automatically increase simply because the micro-purchase threshold has been increased for a particular emergency.*

Contract review procedures

Agencies should examine current contract review procedures, such as justifications and approvals, to determine how these procedures may be modified to accommodate emergency situations. Agencies should also be cognizant of where key-players will be and how to contact them during emergency situations. Contracting officers should be asking themselves, "where will my lawyers be?" and "if I need Head of Contracting Activity (HCA) approval, where is she or he and how can I contact him or her?"

Contract files

Prior to the emergency response or deployment, Agencies should develop model contract files that contain all necessary forms needed during an emergency. This will help ensure consistency in file set up and file documentation and provide a quick reference for contracting professionals.

II. Emergency operations

This section includes a short list of reminders for agencies to consider when awarding and administering contracts during emergencies.

A. Contract formation

1. **Mitigating risk.** Contract pricing and terms and conditions should reflect the type of response effort required. For example, as discussed above, the pricing and terms and conditions that may be suitable for immediate post-disaster needs will be different from those that would be negotiated for follow-on reconstruction efforts. 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 most immediate emergency. This approach will permit the agency to plan for ongoing requirements in a more strategic manner. Options may be included and exercised, if necessary, to allow continuous service.

2. **Sources.**

a. **Small businesses and new entrants.** Where consistent with preferences provided to local businesses (described below), agencies should provide maximum contracting opportunities for small businesses, including new entrants to the market. Use of simplified acquisition procedures (described in Part III.A.1, below) should make it easier for agencies to do business with these sources, especially small businesses, which otherwise might experience difficulty competing in more formal settings where participation costs are higher.

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. Additionally, 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.

c. **Pre-qualified contractors.** Agencies are encouraged to seek out "pre-positioned" contracts either at GSA or other agencies. See Part III.A.2, below.

3. **Contract types.** As a general matter, an agency buyer will gain some level of protection by entering into a firm-fixed price (FFP) contract or fixed-price with economic price adjustment (FP/EPA) contract to the maximum extent practicable. These contract types tie payment to tangible results -- e.g., a completed and delivered product -- and their use is

encouraged to the maximum extent practicable when acquiring commercial items.

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 might be appropriate if it is not possible at the time of placing the contract or order to accurately 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 regarding the use of T&M and LH contracts involving commercial item acquisitions, see FAR 12.207 and FAR 52.212-4, Alternate I.

4. Posting notice of contract actions. As a general matter, the FAR requires that actions over \$25,000 be synopsisized on FedBizOpps at <http://www.fedbizopps.gov>. Notice need not be provided where an exception at FAR 5.202 applies. For example, synopsis is not required if unusual and compelling urgency precludes competition to the maximum extent practicable (applied to simplified acquisitions under FAR Part 13), and the government will be seriously injured if the agency complies with the required wait periods stated in FAR 5.203. For procurements that are synopsisized, 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 where disclosure would compromise national security, where it is not cost effective or practicable to post a particular file on FedBizOpps, or 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).

5. 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 Part 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. See FAR 6.301(d).

b. Limited competition using simplified acquisition procedures. Justifications and approvals (J&As) are required for acquisitions using the simplified acquisition procedures of FAR Subpart 13.5 that are conducted on a sole-source basis (i.e., where the agency solicits and negotiates with only one source). J&As are not required in other circumstances. For example, if an agency limits competition due to unusual and compelling urgency but is still able to negotiate with more than

one source before awarding a contract, a J&A is not required. However, all simplified acquisitions need to be documented, 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 2 shows the various approving officials for certain sole source contracts.

Table 2. Approving Officials for Sole-Source Contracts Awarded under FAR Subpart 13.5

Value of Sole-Source Contract	Approving Official
Over \$100,000 but not exceeding \$550,000	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 \$550,000 but not exceeding \$11.5 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 non-delegable.
Over \$11.5 million but not exceeding \$57 million*	The head of the procuring activity or the official described in FAR 6.304(a)(3) or (a)(4). This authority is non-delegable.
Over \$57 million**	The senior procurement executive. This authority is non-delegable except as provided in FAR 6.304(a)(4).

* Not exceeding \$78.5 million for DOD, NASA, & Coast Guard.

** Over \$78.5 million for DOD, NASA & Coast Guard.

As described in Part I.C, above, review procedures should be evaluated to ensure responsiveness during emergency situations. For example, emergency response plans should address where the HCA, or his delegate, would be in a given situation. Also, if a review requires legal coordination, plans should address where the contracting officer’s legal support will be in an emergency.

6. Fair and reasonable pricing. If adequate price competition is not available, agencies must be prepared to apply other techniques to protect taxpayer interests. For example, if only one offer is received, the CO should perform price analysis supported by market research. 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 is not necessarily fair and reasonable just because the price appears in a catalog, an advertisement, or on a price list. Finally, the CO conducting price analysis should also be cognizant of situational factors directly influencing pricing. For instance, bottled water delivered to a hazardous area may be priced differently

than bottled water available under normal conditions. Contractors might also face difficulties acquiring insurance or financing that could affect pricing.

7. Documentation. Decisions should be appropriately documented to adequately explain the basis for selection. The length of explanation is less important than the cogency of the rationale for actions taken, which may be critical for planning future actions for similar needs within short timeframes. Documentation may also be reviewed by managers or auditors evaluating the agency's performance.

a. Simplified acquisitions. FAR 13.501(b) states that the contract file must include: (a) a brief written description of the procedures used in awarding the contract, (b) the number of offers received, and (c) 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. If possible, agencies should consider developing templates to cover these and other documentation requirements.

b. Sole-source actions. If a price reasonableness determination is difficult because of the emergency, the CO should document the situation. For example, if price analysis and review of uncertified cost data prove ineffective, 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 just 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. It may be necessary, for example, to inspect fewer deliverables. 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.

Agencies should consider the creation of a mitigation board to control 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.

DHS Oversight Board

During Hurricane Katrina recovery efforts, DHS set up an Internal Control/Procurement Oversight Board which included the Inspector General (IG) to provide high level oversight and direction to the Procurement Oversight Team. The board helped monitor schedules, issues, and resources using assessments and reports provided by the team and the IG's office.

Agencies should develop stewardship plans to review the results from an appropriate sampling of their emergency acquisitions. Reviews should give increased attention to:

- transactions that are conducted using emergency acquisition flexibilities, including any increased thresholds;
- sole-source transactions of a high dollar value; and
- any other acquisition considered risky, including those involving complex technical requirements or marketplace solutions.

A good stewardship plan should review:

- requirements identification;
- acquisition execution; and
- contract management.

A sample checklist is provided on the next page.

Types of issues addressed in a good stewardship 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 possess the authority to make the purchase?
- ✓ Was the product or service one that was appropriately acquired by the agency?
- ✓ Were adequate funds available?

Acquisition execution

- ✓ Were prices 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 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 make adjustments to quantity, price and 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, if available?

Contract management

- ✓ 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 and services?
- ✓ Were invoices reviewed to ensure negotiated and/or reasonable prices were charged?
- ✓ Was the file documented adequately?
- ✓ Were process improvements identified and considered for implementation?

III. Acquisition flexibilities for emergencies

A new FAR Part 18, emergency acquisitions, has been established to provide a single reference to acquisition flexibilities that may be used to facilitate and expedite the acquisition of supplies and services during emergency situations. Agencies are encouraged to review Part 18 in conjunction with the discussion below.

A. Generally available acquisition flexibilities

The following authorities are generally available flexibilities that may be particularly beneficial to agencies in emergency situations:³

1. Simplified open market competitions for commercial items.

Agencies are authorized to use simplified procedures, on a test basis through the end of calendar year 2008, for the acquisition of commercial items in amounts above the simplified acquisition threshold (SAT) -- i.e., \$100,000 with certain exceptions -- but not exceeding \$5.5 million.⁴ Contracting officers may use any simplified source selection procedure provided in Part 13 of the FAR, 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 Part 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.

2. Interagency acquisitions. Interagency acquisitions offer important benefits, including efficient access to pre-qualified sources and the ability to leverage resources. Interagency acquisition vehicles include the Multiple Award Schedules (MAS) operated by the General Services Administration (see FAR Subpart 8.4), multi-agency blanket purchase agreements established under MAS (see FAR Subpart 8.405-3(a)(4)), government-wide acquisition contracts (GWACs) established under Section 5112(e) of the Clinger-Cohen Act Act, and multi-agency contracts (MACs) established pursuant to the Economy Act (see FAR 16.505(a)(7)). These contracting vehicles offer agencies access to a broad range of goods and services using streamlined procedures that permit rapid response.

³ See FAR Part 18 for a list of additional authorities that may be considered.

⁴ Use of this authority may be augmented for emergency procurements. See Subsection B below.

Purchases on many interagency contract vehicles, including the MAS, may be made through “direct acquisition” where the requesting agency (i.e., 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 an “assisted acquisition” is conducted, agencies must take extra precautions to ensure there is a clear understanding of roles and responsibilities between the requesting agency and the servicing agency (i.e., the agency placing the order).

Prepositioned Contracts

The emergency response and recovery web site includes a list of interagency contracts that offer the types of supplies and services that were required by agencies to address disaster recovery for Katrina and 9/11 – e.g., communication equipment, fuel and transportation, pharmaceuticals, portable shelters, generators, tarps, bottled water, and emergency meals. See <https://acc.dau.mil/emergencyresponse>.

GSA has established a disaster relief and emergency preparedness category on GSAAAdvantage!®. See <http://apps.fss.gsa.gov/emarketing/disaster100506/>. This site provides a quick-reference guide to MAS offerings that may be suitable for addressing readiness, intervention, counteractive solutions, or post-emergency logistics.

3. Multiple award task and delivery order contracts. Where an agency needs to establish a new contract to meet a repetitive requirement, a multiple award contract offers an efficient vehicle for applying competitive pressures to a small number of capable contractors before placing orders. See FAR 16.504. The fair opportunity process, described at FAR 16.505(b), governs the placement of orders under multiple award task and delivery order contracts awarded pursuant to FAR Subpart 16.5. This process can accommodate situations where the effort required to respond to a potential order may be more resource intensive (e.g., because requirements are complex or need continued development). For these circumstances, FAR 16.505(b)(1)(iii)(A)(5)(ii) describes a multi-phased approach that an agency might use to quickly focus the competition on the contract holders most likely to submit the highest value solutions.

4. HUBZone small business contracts. The Historically Underutilized Business Zone (HUBZone) program authorizes agencies to acquire goods and services from qualified program participants on a sole-source basis up to \$5.5 million for manufacturing and \$3.5 million for other requirements. This authority enables agencies to identify and enter into contracts with capable small business sources rapidly. The program also mandates some set-asides. See FAR Subpart 19.13.

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 (e.g., in order to support emergency situations).

6. Letter contracts. FAR 16.603 authorizes agencies to enter into "letter" contracts (i.e., 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 letter contract must include a definitization schedule. 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. Limited source selections. FAR Part 6 allows source selections to be limited for various reasons, such as when: (1) there is only one responsible source, (2) unusual and compelling urgency exists, (3) disclosure of the agency's needs would compromise the national security, (4) award to a particular source to maintain the supplier in case of a national emergency, (5) other than full and open competition is in the public interest.

8. Use of commercial item procedures for acquisitions of non-commercial items. The CO may use FAR Part 12 for any acquisition of services that does not meet the definition of commercial item if the contract or task order has a value of \$27 million or less, meets the definition of 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)(1).⁵

9. 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 contracting officers seek legal assistance in these circumstances to identify their options.

⁵ The contract or task order must be entered into on or before November 24, 2013.

**Generally Available Acquisition Flexibilities
A Quick Reference**

**Microurchases
(Under \$3000)**

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

**Small Dollar Acquisitions under the Simplified Acquisition Threshold (SAT)
((\$3,000 to \$100,000))**

- ✓ Various flexibilities are provided in connection with publicizing -- e.g., an oral solicitation may be efficient for actions up to \$30,000 & 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 rationale must be documented (FAR 13.106-3, 11.105).

**Acquisitions under the test program for commercial items
((\$100,000 to \$5,500,000))**

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

**Commercial Item Acquisitions
(over \$5,500,000)**

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

**Non-commercial item acquisitions
(over (\$100,000))**

- ✓ Some acquisitions of non-commercial items may qualify to use FAR Part 12 (FAR 12.102(f) & (g)).
- ✓ Offerors may be allowed to give oral presentations (FAR 15.102)
- ✓ If unusual and compelling urgency exists, justification may be executed after award if necessary (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, or
- when the President declares an incident of national significance, emergency, declaration, national emergency, or major disaster.

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

1. Contingency operations. Certain flexibilities are available during a contingency operation. A contingency operation is a military operation that 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 results in the call or order to, or retention on, active duty members of the uniformed services under Section 688, 12301(a), 12302, 12304, 12305, or 12306 of 10 U.S.C., Chapter 15 of 10 U.S.C. or any other provision of law during a war or during a national emergency declared by the President or Congress.

During a contingency operation, the following flexibilities are available:

a. Increased micro-purchase threshold. Purchases under this authority may be awarded without soliciting competitive quotations if the purchaser determines the price to be reasonable. When the head of an agency determines the supplies or services to be procured are to be used to support a contingency operation, the micro-purchase threshold increases from \$3,000 to \$15,000 per transaction within the United States. For purchases outside of the United States, the threshold increases to \$25,000. However, agencies must be mindful of Davis-Bacon and Service Contract Act restrictions. See FAR 2.101.

b. Increased simplified acquisition threshold. An agency head may increase the simplified acquisition threshold from \$100,000 to \$250,000 for purchases inside the United States and \$1,000,000 for purchases outside the United States. 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 use simplified acquisition procedures to support the purchase of commercial items up to \$11,000,000. See FAR 13.500(e).

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

2. Defense or recovery from certain attacks. The following flexibilities are available to support acquisitions that are made to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack.

a. Increased micro-purchase threshold. When the agency determines the supplies or services to be procured are to be used to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack, the micro-purchase 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 \$25,000.

b. Increased simplified acquisition threshold. An agency can increase the simplified acquisition threshold from \$100,000 to \$250,000 for purchases inside the United States and \$1,000,000 for purchases outside the United States. See FAR 2.101.

c. Expanded use of simplified acquisition procedures for commercial items. As mentioned above, the test program for certain commercial items allows the use of simplified acquisition procedures up to the \$5,500,000 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 \$11,000,000. See FAR 13.500(e).

d. Use of commercial item procedures for acquiring non-commercial items. COs may treat any acquisition of supplies or services that are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items under FAR Part 12. This allows non-commercial 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 Subpart 12.5, certain laws are inapplicable to commercial item acquisitions. However, a contract in an amount greater than \$16 million that is 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 shall not be exempt from cost accounting standards or cost or pricing data requirements. See FAR 12.102(f)(2).

3. Incidents of national significance, emergency declaration, or major disaster declaration. The flexibilities below are available when one of the following is declared: (i) incident of national significance, (ii) emergency declaration, (iii) national emergency, or (iv) 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 the Robert T. Stafford Disaster Relief and Emergency Assistance Act. See FAR 6.6 and 26.2.

b. 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. But 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.

Note: 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. See FAR Subpart 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. See FAR 6.602.

4. Additional emergency acquisition flexibilities. The following authorities are available during any of the types of emergency situations described in Subsection III.B:

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

Appendix

The Special Inspector General for Iraq Reconstruction (SIGIR) and the Government Accountability Office (GAO) identified a number of lessons learned and best practices after reviewing the Iraqi reconstruction and Hurricane Katrina efforts respectively. A number of the lessons are listed below. Agencies should consider these lessons as they develop and refine plans for addressing future emergencies.

- Establish a scalable operations plan to adjust the level of capacity required to effectively respond to needs. (GAO)
- Designate a single unified contracting entity to coordinate all contracting activity in theatre. (SIGIR)
- Clearly define, properly allocate, and effectively communicate essential contracting roles and responsibilities to all participating agencies. (SIGIR)
- Provide sufficient numbers of field-level contracting staff with the authority needed to meet mission requirements. (GAO)
- 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. (SIGIR)
- Emphasize contracting methods that support smaller projects in the early phases of a contingency reconstruction effort. (SIGIR)
- Avoid using expensive design-build contracts to execute small scale projects. (SIGIR)
- Generally avoid using sole-source and limited-competition contracting actions. (SIGIR)
- Develop knowledge of contractor capabilities and prices by identifying commodities and services and establishing vendor relationships before they are needed. (GAO)

For additional information, see *Lessons In Contracting and Procurement*, July 2006, available at http://www.sigir.mil/reports/pdf/Lessons_Learned_July21.pdf and *Improving Federal Contracting Practices in Disaster Recovery Operations* (GAO-06-714T, May 4, 2006), available at <http://www.gao.gov/new.items/d06714t.pdf>.