

Text File
Small Business Contracting
Emergency Acquisition Procedures
U.S. Small Business Administration
Office of Government Contracting & Business Development

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Slide 1 Small Business Contracting
Emergency Acquisition Procedures

This is about disaster recovery and emergency acquisition procedures.
Welcome to SBA's training module, Small Business Contracting – a guide for contracting officers and others in the procurement community.

Slide 2 Introduction

- This training is intended to help contracting officers and others become more aware of emergency acquisition procedures that support rapid disaster recovery, as well as policies and procedures for maximizing the use of local and other small businesses in the recovery effort

This training is intended to help contracting officers and others become more aware of emergency acquisition procedures that support rapid disaster recovery, as well as the policies and procedures for maximizing the use of local and other small businesses in the recovery effort.

Slide 3 Course Contents

- Federal Response – Disaster Assistance
- Statutory, Regulatory & Executive Guidance
- Importance of Small Business in Disaster Recovery
- Key Small Business Programs
- Emergency Declaration or Major Disaster
- Acquisition Strategies
- FAR Subpart 18.1
- FAR Subpart 18.2
- FAR Subpart 26.2
- OFPP Guidance & Executive Orders

The presentation is short, focused and designed to be a resource for the contracting community. It provides a brief discussion about federal disaster assistance, identifies statutory, regulatory and other emergency acquisition guidance, highlights the importance of small business and describes emergency acquisition strategies outlined in the FAR and other sources available to contracting officers.

Slide 4 Federal Response – Disaster Assistance

- Emergencies are not predictable and can happen at any time
- Federal government plays a significant role in normalizing emergencies and supporting disaster recoveries
- FEMA typically assumes the lead role when disaster declarations are declared at the federal level
- SBA plays a major role in federal and other declared emergencies through its disaster and small business programs

Emergencies are not predictable and can happen at any time. The federal government, in cooperation with state and local governments, plays a significant role in normalizing such emergencies and supporting disaster recoveries.

FEMA typically assumes the lead role when disaster declarations are declared at the federal level. In this role, FEMA coordinates with other federal partners, state and local governments and the private sector to procure life-sustaining goods and services for disaster victims. In state emergency disaster declarations, the federal government typically assumes a support role and works closely with state and local governments.

SBA also plays a major role in federal and other declared emergencies through its disaster assistance and small business programs. For instance, SBA is currently supporting victims of Hurricane Sandy and other disasters with loan, contracting, disaster and counseling programs.

Other federal agencies also play very supportive roles in disaster assistance, as well.

Slide 5 Statutory, Regulatory and Executive Guidance

- Stafford Disaster Relief and Emergency Assistance Act
- FAR Part 18
- FAR Subpart 26.2
- OFPP guidance – emergency acquisitions
- Other guidance
- Executive Orders
- Specific Statutes

The primary guidance for emergency acquisitions is outlined in the Stafford Disaster Relief and Emergency Assistance Act, FAR Part 18, FAR Subpart 26.2 and an OFPP guide, updated in 2011 for emergency acquisitions.

Other guidance is also available in Executive Orders, such as the recent order creating the Hurricane Sandy Rebuilding Task Force and specific statutes, such as The Sandy Recovery Improvement Act of 2013.

Slide 6 Importance of Small Business in Disaster Assistance

- Small firms are the backbone of the economy, providing jobs, innovation and competition
- Local small business can provide a quick and flexible, “boots on the ground” response in a disaster environment and can return disaster funds back to the community
- Stafford Act sets the tone by requiring preferences and set-asides for local small firms

But first, a statement about the importance of small business, specifically local small firms.

Small firms are the backbone of the economy providing jobs, innovation and competition. Local small firms can also provide a quick and flexible response in a disaster environment and can return disaster funds back to the community by providing known and localized employment opportunities and local spending.

The Stafford Act sets the tone, regarding local and small firms. The law requires that “agencies must perform market research on local business capabilities and give preference to those local firms capable of performing the requirement”. In addition, the amended statute adds a local firm set-aside requirement for

debris clearance, distribution of supplies, reconstruction and other major disaster or emergency area assistance activities.

The FAR, OFPP and other policy guidance specifically require that federal agencies provide maximum contracting opportunities for small businesses.

Slide 7 Key Small Business Programs

- 8(a) Business Development Program (*see 19.8*)
- HUBZone Program (*see 19.3*)
- Women Owned Small Business Program (WOSB) (*see 19.15*)
- Veterans Programs (SDVOSB/VOSB) (*see 19.14 for SDVOSB*)

There are a number of programs specific to small business that can assist contracting officers with procuring disaster related goods and services. These programs include the 8(a) Business Development Program, the HUBZone Program, Women Owned Small Business Program and Veterans programs.

Importantly, the 8(a), HUBZone and the Service Disabled Veteran Owned Small Business Program all authorize agencies to acquire goods and services from qualified program participants on a sole source (and competitive) basis. This authority enables agencies to identify and rapidly enter into contracts with capable small business sources.

Slide 8 Acquisition Strategies

Acquisition Strategies.

Slide 9 Acquisition Strategies

- Stafford Disaster Relief and Emergency Assistance Act
- FAR Subpart 18.1 Available Acquisition Flexibilities
- FAR Subpart 18.2 Emergency Acquisition Flexibilities
 - Subpart 18.201 Contingency Operation
 - Subpart 18.202 Defense or Recovery from Certain Attacks
 - Subpart 18.203 Emergency Declaration or Major Disaster Declarations
 - Subpart 18.204 Resources
- FAR Subpart 26.2 Disaster or Emergency Assistance Activities
- General OFPP Guidance & Executive Orders

Emergency acquisition procedures for all federal agencies are primarily defined in the Stafford Act, FAR Part 18 – Emergency Acquisitions, FAR Subpart 26.2 – Disaster or Emergency Assistance Activities and selected OFPP policy guidance and Executive Orders.

The FAR provides many methods and flexibilities for contracting officers to quickly acquire emergency-related goods and services, even if an emergency declaration has not been declared. The FAR also outlines additional streamlined methods that may only be used after an emergency declaration is made.

That said, FAR Part 18 is divided into two main sections, Subpart 18.1, Available Acquisition Flexibilities, which may be used anytime and does not require an emergency declaration and Subpart 18.2, Emergency Acquisition Flexibilities, which may only be used after an emergency declaration or designation has been declared. Subpart 18.2 is further divided into four sub-categories, Contingency

Operation, Defense or Recovery from Certain Attacks, Emergency Declaration or Major Disaster Declarations and Resources.

FAR Subpart 26.2 specifically implements the Stafford Act and provides a clear preference for local organizations, firms and individuals when contracting for major disaster or emergency assistance activities.

In addition, the Office of Federal Procurement Policy published the Emergency Acquisition Guide, updated in 2011 to assist the contracting community with planning and executing emergency acquisition contracts. Each of these FAR parts and OFPP guide is discussed in the following.

Slide 10 FAR Subpart 18.1

FAR Subpart 18.1.

Slide 11 FAR Subpart 18.1 Available Acquisition Strategies

- Stafford Disaster Relief and Emergency Assistance Act
- FAR Subpart 18.1 Available Acquisition Flexibilities
- FAR Subpart 18.2 Emergency Acquisition Flexibilities
- Subpart 18.201 Contingency Operation
- Subpart 18.202 Defense or Recovery from Certain Attacks
- Subpart 18.203 Emergency Declaration or Major Disaster Declarations
- Subpart 18.204 Resources
- FAR Subpart 26.2 Disaster or Emergency Assistance Activities
- General OFPP Guidance & Executive Orders

FAR Part 18 is more of a menu of available flexible acquisition rules than anything else. It directs the contracting community to where existing emergency procedures are located elsewhere in the FAR.

Subpart 18.1, Available Acquisition Procedures, outlines rules and provisions that are available to contracting officers when certain emergency conditions are met. Again, the use of these procedural flexibilities does not require an emergency declaration or designation of contingency operation. This is an important point.

Key provisions in this subpart include: contractors are not required to register in the System for Award Management for contracts awarded to support unusual or compelling needs or emergency acquisitions; contracting officers are not required to provide a synopsis notice when there is an unusual and compelling urgency; and agencies may also limit the number of sources it considers and full and open competition is not required in actions involving urgent requirements.

It is important to note, although this subpart suggests that a firm does not have to register in SAM, the practical side is that any firm that wants to be listed in the Disaster Response Registry must be registered in SAM.

Slide 12 FAR Subpart 18.1 (cont)

- 18.105 -- FSS, BPA's and Multi-Agency Indefinite Delivery Contracts
- Streamlined procedures and a broad range of goods and services may be available under Federal Supply Schedules, multi-agency blanket purchase agreements and multi-agency indefinite delivery contracts (see 8.4, 8.405-3 & 16.505)

- 18.106 – Acquisitions from Federal Prison Industries
- Purchasing from FPI is not mandatory (see 8.605)
- 18.107 – SourceAmerica (formerly AbilityOne) Specification Changes
- CO's are not held to the notification requirements when changes in SourceAmerica specifications or descriptions are required (see 8.712)
- 18.108 – Qualification Requirements
- Agencies may determine not to enforce qualification requirements (see 9.206-1)

Other provisions include: streamlined procedures and a broad range of goods and services may be available under Federal Supply Schedules, multi-agency blanket purchase agreements and multi-agency indefinite delivery contracts; purchasing from Federal Prisons Industries, Inc. is not mandatory; contracting officers are not held to the notification requirements when changes in SourceAmerica specifications or descriptions are required; and, agencies may determine not to enforce qualification requirements.

Slide 13 FAR Subpart 18.1 (cont)

- 18.110 – Soliciting from a Single Source
- For purchases under the SAT, CO's may solicit from one source (see 13.106-1)
- 18.111 -- Oral Requests for Proposals
- Oral requests for proposals are authorized (see 15.203)
- 18.112 -- Letter Contracts
- Letter contracts may be used when contract performance must begin immediately (see 16.603)
- 18.114-18.116 – Sole Source Awards
- Contracts may be awarded to the SBA for performance by eligible 8(a) firms on either a sole source or competitive basis (see 19.8)
- Contracts may be awarded to HUBZone and SDVOSB firms on a sole source basis – limited authority (see 19.1306, 19.1406 & 19.1505)

Still others provisions in the subpart include: contracting officers may solicit from just one source when the purchasing amount is under the Simplified Acquisition Threshold; oral requests for proposals are authorized; letter contracts may be used when contract performance must begin immediately; and contracts can be quickly made on a sole source basis to eligible 8(a) firms, HUBZone firms and service disabled veteran owned small businesses.

Contracts may be awarded to Economically Disadvantaged Women Owned Businesses and eligible WOSBs on a competitive basis.

Slide 14 FAR Subpart 18.1 (cont)

- 18.121 – Bid Guarantees
- Chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions when a performance bond is required (see 28.101-1)
- 18.122 – Advance Payments
- Agencies may authorize advance payments for actions taken under Extraordinary Contractual Actions (see Subpart 50.1)
- 18.124 – Electronic Funds Transfer (ETF)
- Electronic funds transfer may be waived for acquisitions to support unusual and compelling needs or emergency acquisitions (see 32.1103)
- 18.125 – Protest to GAO

- Agency protest override procedures may be authorized (see 33.104)

Slide 15 FAR Subpart 18.2
FAR Subpart 18.2.

Slide 16 FAR Subpart 18.2 Emergency Acquisition Flexibilities

Provisions in FAR Subpart 18.2 can only be applied after an emergency declaration has been declared

- 18.201 – Contingency Operation
- 18.202 – Defense or Recovery from Certain Attacks
- 18.203 – Emergency Declaration or Major Disaster Declaration
- 18.204 – Resources

Provisions in FAR Subpart 18.2, Emergency Acquisition Flexibilities, can only be applied after an emergency declaration or designation has been made.

Further, this FAR Subpart is divided into four sections, Contingency Operation; Defense or Recovery from Certain Attacks; Emergency Declaration or Major Disaster Declaration; and, Resources.

Slide 17 Contingency Operation

- 18.201 – Contingency Operation
- Micro-purchase threshold can be increased
- Simplified acquisition threshold can be increased
- SF 44, Purchase order invoice voucher can be used
- Test program for certain commercial items – threshold limits for the certain commercial items may be increased
- Contingency Operation --- is a military operation that is designated by the Secretary of Defense, or results in the call-up of members of the uniformed services or any other provision of law during a war or national emergency declared by the President or Congress

This subpart provision, 18.201 outlines actions that can be taken when a contingency operation has been declared. A contingency operation means a military operation designated by the Secretary of Defense, or resulting in the call-up of members of the uniformed services or any other provision of law during a war or national emergency declared by the President or Congress.

Under this provision, the micro-purchase and simplified acquisition thresholds may be increased if the head of an agency determines that needed supplies or services will be used to support a contingency operation.

In addition, agencies may establish higher dollar limitations for using Standard Form 44 for purchases made to support a contingency operation. And further, the threshold limits for the use of the test program for certain commercial items may also be increased for acquisitions to support contingency operations.

Slide 18 Defense or Recovery from Certain Attacks

- 18.202 – Defense or Recovery from Certain Attacks
- Micro-purchase threshold increases
- Simplified acquisition threshold increases
- Commercial items -- CO's may treat any acquisition of supplies or services as an acquisition of commercial items

- Test program for certain commercial items – threshold limits for the certain commercial items may be increased

This provision outlines actions that can be taken when the head of an agency determines that supplies or services are needed to facilitate defense against or recovery from a nuclear, biological, chemical or radiological attack.

The micro-purchase and simplified acquisition thresholds may be increased. Commercial items can more readily be procured, as contracting officers can treat any acquisition of supplies or services as an acquisition of commercial items.

And finally, the threshold limits for the use of the test program for certain commercial items can be increased for acquisitions to support the defense or recovery from an attack.

Slide 19 Emergency Declaration or Major Disaster Declaration

- 18.203 – Emergency Declaration or Major Disaster Declaration
- Disaster or emergency assistance activities
- Preference is given to local organizations, firms and individuals when contracting for major disaster or emergency assistance activities
- Ocean transportation
- Provisions of the Cargo Preference Act may be waived

Provision 18.203 echoes the clear sentiment in the Stafford Act to provide preferences for contracting with local firms in situations when an emergency declaration or major disaster declaration has been made. Specifically, the provision in the rule states, “preference is given to local organizations, firms and individuals when contracting for major disaster or emergency assistance activities.”

Slide 20 Resources

- 18.204 – Resources
- National Response Framework
- Review the NRF (updated May 2013)
- OFPP Guidelines
- Review the Emergency Acquisitions Guide

The last provision in this subpart, 18.204 provides reference to the government’s National Response Framework and OFPP’s Emergency Acquisition Guide.

The NRF is a guide to how the nation should conduct an all-hazards, emergency response. The comprehensive guide identifies key response principals, roles, and structures that organize a national disaster response.

OFPP’s Emergency Acquisition Guide is designed to assist and instruct the federal contracting community on planning and executing procurement activities during an emergency or disaster situation.

A link to these important guides is provided in the slide.

Slide 21 FAR Subpart 26.2 FAR Subpart 26.2

Slide 22 FAR 26.2 Disaster or Emergency Assistance

- 26.200 – Scope of Subpart
- 26.201 – Definitions
- 26.202 – Local Area Preference
- Local area set-aside
- Evaluation preference
- 26.203 -- Transition of Work
- 26.204 – Justification for Expenditures to Other than Local Firms
- 26.205 – Disaster Response Registry
- 26.206 – Solicitation Provision and Contract Clauses

This subpart implements the Stafford Disaster Relief and Emergency Act which provides a preference for local organizations, firms and individuals when contracting for major disaster or emergency assistance activities.

These provisions, as discussed previously, favor supporting local businesses, especially local small firms.

Slide 23 Definitions

- Emergency Response Contract
- Local Firm
- Major Disaster or Emergency Area
- Listing of major disaster declarations and emergency declarations is available through FEMA at: www.fema.gov/news/disasters.fema

Several important terms are defined in this subpart provision.

Emergency response contract -- means a contract with private entities that supports assistance activities in a major disaster or emergency area, such as debris clearance, distribution of supplies, or reconstruction.

Local firm - means a private organization, firm, or individual residing or doing business primarily in a major disaster or emergency area.

Major disaster or emergency area - means the area included in the official Presidential declaration or declarations and any additional areas identified by the Department of Homeland Security.

Importantly, major disaster declarations and emergency declarations are published in the Federal Register and are available at the FEMA website, noted in the slide.

Slide 24 Local Area Preference

- When contracts are awarded in response to a major disaster or emergency declared by the President of the United States, preference shall be given, to the extent feasible and practicable, to local firms (including small businesses)
- Preference can be granted through a local area set-aside or an evaluation preference

This subpart again reinforces provisions in the Stafford Act and requires contracting officers to favor local firms.

The rule states, when awarding emergency response contracts during the term of a major disaster or emergency declaration by the President, preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through local area set-asides or an evaluation preference.

Regarding set-asides, the contracting officer may set aside solicitations to allow only local firms within a specific geographic area to compete. The set-aside area need not include all the counties in the declared disaster or emergency areas, but cannot go outside it. The contracting officer shall also determine whether a local area set-aside should be further restricted to small business concerns in the set-aside area.

In addition, the contracting officer may use an evaluation preference, when authorized in agency regulations or procedures to do so.

Slide 25 Transition of Work

- Agencies involved in response planning should consider awarding emergency response contracts before a major disaster occurs to ensure immediate response and relief
- Such contracts should not be structured in any way that may inhibit the transition of emergency response work to local firms
- Agencies shall transition work to local firms as soon as Presidential emergency declaration is made
- Agencies can transition work using the local area set-asides authorized in this subpart

This provision further emphasizes the use of local small firms.

It brings attention to agencies involved in disaster assistance planning and disaster assistance support. It directs that such agencies consider awarding emergency response contracts before a major disaster or emergency occurs to ensure immediate response and relief. These contracts should be structured to respond to immediate emergency response needs, and should not be structured in any way that may inhibit the transition of emergency response work to local firms.

Agencies are encouraged to transition work using the local area set-asides authorized in this subpart

Slide 26 Justification for Expenditure

- Any expenditure of federal funds, under an emergency response contract not awarded to a local firm, subsequent to an emergency declaration, must be justified in writing

Following a Presidential declaration of a major disaster or emergency, this provision requires that any expenditure of federal funds, under an emergency response contract not awarded to a local firm, must be justified in writing and made part of the contract file.

The justification should include consideration for the scope of the major disaster or emergency and the immediate requirements or needs of supplies and services to be acquired.

In addition, the justification may be made on an individual or class basis and the contracting officer can approve the justification.

Slide 27 Disaster Response Registry

- CO's required to consult the Disaster Response Registry in SAM to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities

Required also in this subpart is the requirement that contracting officers consult the Disaster Response Registry – in the System for Award Management -- to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities within the United States.

Slide 28 Solicitation and Contract Clauses

- Key provisions and clauses are required
- Insert provision at 52.226-3, Disaster or Emergency Area Representation, solicitations involving local area set-asides
- Insert the clause at 52.226.4, Notice of Disaster or Emergency Area Set-aside in solicitations and contracts involving local area set-asides
- Insert the clause at 52.226.5, Restrictions on Subcontracting Outside Disaster or Emergency Area in contracts involving local area set-asides

Finally, this subpart requires contracting officers to insert key solicitation provisions and contract clauses in solicitations and contracts involving local area set-asides and certain other circumstances.

Slide 29 General OFPP Guidance & Executive Orders

- Office of Federal Procurement Policy in cooperation with the Emergency Response & Recovery Working Group prepared the Emergency Acquisition Guide
- Supplements FAR Parts 18 and 26 and the National Response Framework document
- Assists CO's with planning and executing emergency acquisitions

OFPP in cooperation with the Emergency Response & Recovery Working Group prepared the Emergency Acquisition Guide, which was updated in 2011.

The guide is designed to supplement FAR Parts 18 and 26 and the National Response Framework document, published by FEMA. The comprehensive guide assists contracting officers with planning and executing emergency acquisitions.

Slide 30 OFPP – Emergency Acquisition Guide

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Slide 31 Executive Orders

- Federal government issues Executive Orders and other agency policies to streamline acquisitions that support disaster recovery

In addition to the FAR and OFPP guidance, the federal government issues Executive Orders and other agency policies to streamline acquisitions that support disaster recovery.

Numerous such Executive Orders and policies exist. A quick refined online search will generate applicable guidance.

Slide 32 Contact Us...

- Thank you for taking the time to review this training module about emergency acquisition procedures
- Please contact your local PCR with any questions you may have
- U.S. Small Business Administration
- Office of Government Contracting and Business Development
- www.sba.gov/gcclassroom

Thank you for taking the time to review this training module about emergency acquisition procedures. SBA is committed to rapid disaster recovery and the use of local small businesses in the recovery process.

Please contact the SBA through one of our Procurement Center Representatives, located in your area, if you have any questions or if we can assist you.

Thank you.

Hyperlinks Contained in the Workbook

- FAR Subpart 18.1
- [https://acquisition.gov/far/current/html/Subpart 18_1.html](https://acquisition.gov/far/current/html/Subpart%2018_1.html)
- FAR Subpart 18.2
- [https://acquisition.gov/far/current/html/Subpart 18_2.html](https://acquisition.gov/far/current/html/Subpart%2018_2.html)
- FAR Subpart 26.2
- [http://www.acquisition.gov/far/html/Subpart 26_2.html](http://www.acquisition.gov/far/html/Subpart%2026_2.html)
- FEMA Disaster Declarations
- <http://www.fema.gov/disasters>
- System for Award Management (SAM)
- <http://www.sam.gov/>
- OFPP Emergency Acquisition Guide
- http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf
- PCR Directory
- <http://www.sba.gov/content/government-contracting-field-staff-directory>
- GC Classroom
- <http://www.sba.gov/gcclassroom>