PREDECISIONAL

ATTACHMENT 8

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

JUN 15 2006

PROCURMENT MEMORANDUM 2006- 07

INFORMATION

MEMORANDUM FOR: Heads of Contracting Offices

FROM: Michael S. Sade
Director for Acquisition Management
and Procurement Executive

SUBJECT: Emergency Acquisition Flexibilities

Background
Acquisition flexibilities may be required to meet contracting needs during emergency situations. Emergency situations may include contingency operations, actions to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attacks against the United States, or Presidential declarations of national emergency or major disasters. During emergency situations it is important to look for methods to expedite responses to contracting needs. Current statutory and regulatory frameworks that govern federal acquisition provide a myriad of flexibilities that can be used to help meet critical demands during emergency situations.

Purpose
The purpose of this Procurement Memorandum (PM) is to provide a reference tool to help facilitate and expedite acquisitions of supplies and services during all types of emergency situations. This Procurement Memorandum supersedes PM 2003-02, Emergency Procurement Flexibilities.

Acquisition Flexibilities
There are two broad categories of acquisition flexibilities that can be used during emergency situations they include generally available acquisition flexibilities and emergency acquisition flexibilities as described below:

- **Generally Available Acquisition Flexibilities**
  The Federal Acquisition Regulation (FAR) includes many acquisition flexibilities that are available to the contracting officer when certain conditions are met. These generally available acquisition flexibilities do not require an emergency declaration or designation of contingency operation (i.e., letter contracts and oral requests for proposals). A list of generally available acquisition flexibilities is provided in Attachment A.

- **Emergency Acquisition Flexibilities**
  A FAR case is currently pending that will define emergency acquisition flexibilities in FAR Subpart 2.101 as flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used- - (1) In support of a contingency operation as defined in FAR Subpart 2.101; (2) To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; or (3) When the President declares an incident of national significant, emergency declaration, national emergency, or major disaster. A list of emergency procurement flexibilities are provided in Attachment B. It is important to note that a written determination by the appropriate official is required before emergency acquisition flexibilities can be used.

Authorizing Emergency Acquisition Flexibilities

The process for authorizing the use of emergency procurement flexibilities within the Department of Commerce may vary depending on the nature and type of the emergency situation. However, generally, if a Bureau Procurement Official (BPO) determines that emergency acquisition flexibilities are required to meeting contracting needs during an emergency situation, the BPO must submit a request to the Procurement Executive that identifies the individuals who will need the expanded authorities, specific authorities that will be required, how each individual will support the emergency situation, and a plan for managing the use of the authorities that will ensure appropriate use of the expanded flexibilities. The Office of Acquisition Management (OAM) will review the request to ensure that there is appropriate justification for the use of the authorities and that individuals identified have the appropriate training, warrant levels, and experience as required by Commerce Acquisition Manual (CAM) Chapter 1301.6. If there is sufficient justification to support use of the emergency acquisition flexibilities, a Determination and Findings for use of authorities will be signed by the Chief Acquisition Officer. If the authority is granted, Individuals will be notified in writing of the authorities granted and any limitations that are imposed.

Management Controls

Bureau Procurement Officials must take affirmative steps to ensure that emergency flexibilities are used solely for efforts that have a clear and direct relationship to the emergency situation, and that appropriate management controls are established and maintained to support the use of the increased thresholds. The Office of Acquisition Management will conduct periodic reviews of transactions made pursuant to the expanded authorities to evaluate whether the transaction: (a) was in support of the emergency situation; (b) was made by an authorized individual; (c) was appropriately documented; and (d) provided the maximum practicable opportunity for small business participation.

During emergency situations it is important to look for methods to expedite responses to contracting needs. To ensure timely contracting support, during emergency situations, Contracting Officer(s) should be aware of their options and apply flexibilities that are most appropriate for meeting a given requirement. Keeping this guidance available for ready reference will help Contracting Officer be better prepared in the case of an emergency.

If you have any questions regarding this memorandum, please contact Virna Evans at vevans@doc.gov or (202) 482-3483.

Attachments

cc: Acquisition Council

GENERALLY AVAILABLE ACQUISITION FLEXIBILITIES

Generally Available Acquisition Flexibilities

The Federal Acquisition Regulation (FAR) includes many acquisition flexibilities that are available to the contracting officer when certain conditions are met. Theses generally available acquisition flexibilities do not require an emergency declaration or designation of contingency operation. The following is a list of generally available acquisition flexibilities that may be used when certain conditions are met.

- Synopsis of proposed contract actions. Contracting officers need not submit a synopsis notice when there is an unusual and compelling urgency and the Government would be seriously injured if the agency complied with the notice time periods. See FAR Subpart 5.202(a)(2).

- Unusual and Compelling Urgency. Agencies may limit the number of sources and full and open competition need not be provided for contracting actions involving urgent requirements. See FAR Subpart 6.302-2.

- Soliciting from a single source. For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source under certain circumstances. See FAR Subpart 13.106-1(b).

- Oral requests for proposals. Oral requests for proposals are authorized under certain conditions. See FAR Subpart 15.203(f).

- Letter contracts. Letter contracts may be used when contract performance must begin immediately. See FAR Subpart 16.603.

- Interagency acquisition under the Economy Act. Interagency acquisitions are authorized under certain conditions. See FAR Subpart 17.5.

- Contracting with the Small Business Administration (The 8(a) Program). Contracts may be awarded to the Small Business Administration (SBA) for performance by eligible 8(a) firms on either a sole source or competitive basis. See FAR Subpart 19.8.

- HUBZone sole source awards. Contracts may be awarded to Historically Underutilized Business Zone (HUBZone) small business concerns on a sole source basis. See FAR Subpart 19.1306.

- SDBVOSB sole source awards. Contracts may be awarded to service-disabled verteran-owned small business concerns on a sole source basis. See FAR Subpart 19.1406.

- Federal Supply Schedules (FSSs), multi-agency blanket purchase agreements (BPAs), and multi-agency indefinite delivery contracts. Streamlined procedures and a broad range of goods and services may be available under Federal Supply Schedule contract (see FAR Subpart 8.4), multi-agency BPAs (see FAR Subpart 8.405-3(a)(4)), or multi-agency indefinite delivery contracts (see FAR Subpart 16.505(a)(7)). These contracting methods may offer agency advance planning, pre-negotiated line items, and special terms and conditions that permit rapid response.

- Wage Determination Notices. Contracting Officers may contact the Wage and Hour Division by telephone in an emergency situation. See FAR Subpart 22.1008-7(d).

- Bid guarantees. Contracting officers may waive the requirement for a performance bond or a performance and payment bond for emergency acquisitions. See FAR Subpart 28.101-1.

- Central contractor registration. Contracts awarded to support unusual and compelling needs or emergency situations are exempt from the requirements pertaining to Central Contractor Registration. See FAR Subpart 4.1102.

- Electronic funds transfer. Electronic funds transfer payments may be waived for acquisitions to support unusual and compelling needs or emergency acquisitions. See FAR Subpart 32.1103(e).

- Use of patented technology under the North American Free Trade Agreement. Requirement to obtain authorization prior to use of patented technology may be waived in circumstances of extreme urgency or national emergency. See FAR Subpart 27.208.

- Advance Payments. Agencies may authorize advance payments to facilitate the national defense for actions taken under Public Law 85-804 (see FAR Part 50, Extraordinary Contractual Actions). These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts. See FAR Subpart 32.405.

- Assignment of claims. The use of the no-setoff provision may be appropriate to facilitate the national defense in the event of a national emergency or natural disaster. See FAR Subpart 32.803(d).

- Protest to GAO. When urgent and compelling circumstances exist, agency protest override procedures allow the head of the contracting activity to determine that the contracting process may continue after GAO has received a protest. See FAR Subpart 33.104(b) and (c).

- JWOD specification changes. Contracting officers are not held to the notification required when changes in JWOD specifications or descriptions are required to meet emergency needs. See FAR Subpart 8.712(d).

- Qualification requirements. Agencies may determine not to enforce qualification requirements when an emergency exists. See FAR Subpart 9.206-1.

- Priorities and Allocations. The Defense Priorities and Allocation System (DPAS) supports authorized national defense programs and was established to facilitate the rapid industrial mobilization in case of a national emergency. See FAR Subpart 11.6.

- Overtime approvals. Overtime approvals may be retroactive if justified by emergency circumstances. See FAR Subpart 22.103-4(i).

- Contractor rent-free use of Government property. Rental requirements do not apply to items of equipment that are part of a general program approved by the Federal Emergency Management Agency and meet certain criteria. See FAR Subpart 45.404(a)(3) and (4).

- Extraordinary contractual actions. FAR Part 50 prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (50 U.S.C. 143-1434). This includes: (1) amending contracts without consideration (see 50.302-1); (2) correcting or mitigating mistakes in a contract (see 50.302-2); and (3) formalizing informal commitments (see 50.302-3).

EMERGENCY ACQUISITION FLEXIBILITIES

Emergency Acquisition Flexibilities

Emergency acquisition flexibilities are flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used- - (1) In support of a contingency operation as defined in FAR Subpart 2.101; (2) To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; or (3) When the President declares an incident of national significant, emergency declaration, national emergency, or major disaster. The following is a list of flexibilities that may be used only after an emergency declaration or designation has been made by the appropriate official. The emergency acquisition flexibilities are divided into three subgroups: contingency operation; defense or recovery from certain attacks; and incidents of national significance, emergency declaration, or major disaster declarations.

A. Contingency Operation. Emergency acquisition flexibilities available during contingency operations, as defined in FAR Subpart 2.101, include the following:

- Micro-purchase threshold. The micro-purchase threshold increases to $15,000 when the head of the agency determines the supplies or services are to be used to support a contingency operation. ($2,000 for construction subject to the Davis-Bacon Act). See FAR Subpart 2.101 and 13.201(g) and 41 U.S.C. 428a.

- Simplified acquisition threshold. The simplified acquisition threshold increases to $250,000 when the head of the agency determines the supplies or services are to be used to support a contingency operation. The threshold increases to $1 million for contracts to be awarded and performed, or purchases to be made, outside the United States. See FAR Subpart 2.101 and 41 U.S.C. 428a.

- SF 44, Purchase Order-Invoice-Voucher. The normal threshold for the use of the 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 Subpart 13.306.

- Test program for certain commercial items. The threshold limits authorized for use of the test program may be increased to $10 million for acquisitions to support a contingency operation. See FAR Subpart 13.500(e) and 41 U.S.C. 428a.

- Ocean transportation by U.S. flag vessels. The provisions of the Cargo preference act of 1954 may be waived in a contingency operation. See FAR Subpart 47.5.

B. Defense or recovery from certain attacks. Emergency acquisition flexibilities available during defense or recovery from certain attacks include:

- Micro-purchase Threshold. The micro-purchase threshold increases to $15,000 when the head of the agency determined the supplies or services are to be used to facilitate defense against or recovery from nuclear biological, chemical, or radiological attack. See FAR Subpart 2.101 and 41 U.S.C. 428a.

- Simplified Acquisition Threshold. The simplified acquisition threshold increases to $250,000 when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. The threshold increases to $1 million for contracts to be awarded and performed, or purchases to be made, outside the United States. See FAR Subpart 2.101 and 41 U.S.C. 428a.

- Commercial items to facilitate defense and recover. 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 nuclear, biological, chemical or radiological attack. See FAR Subpart 12.102(f)(1) and 13.500(e).

- Test program for certain commercial items. The threshold limits authorized for use of the test program may be increased to $10 million when it is determined the acquisition is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. See FAR Subpart 13.500(e).

C. Incidents of National significance, emergency declaration, or major disaster declaration.

- Authorized or required by statute. Agencies may limit the use of full and open competition when statutes authorize or require 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 Subparts 6.302-5 and 26.2.

- Disaster or emergency assistance activities. Preference will be given 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 Subparts 26.2 and 6.302-5(b)(5).

- Ocean transportation by U.S. flag vessels. The provisions off the Cargo Preference Act of 1954 may be waived in emergency situations. See FAR Subpart 47.5.