

under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with 17.602(a).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

PART 18—EMERGENCY ACQUISITIONS

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AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 71 FR 38248, July 5, 2006, unless otherwise noted.

18.000 Scope of part.

(a) This part identifies acquisition flexibilities that are available for emergency acquisitions. These flexibilities are specific techniques or procedures that may be used to streamline the standard acquisition process. This part includes—

(1) Generally available flexibilities; and

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(2) Emergency acquisition flexibilities that are available only under prescribed circumstances.

(b) The acquisition flexibilities in this part are not exempt from the requirements and limitations set forth in FAR Part 3, Improper Business Practices and Personal Conflicts of Interest.

(c) Additional flexibilities may be authorized in an executive agency supplement to the FAR.

[71 FR 38248, July 5, 2006, as amended at 72 FR 46344, Aug. 17, 2007]

18.001 Definition.

Emergency acquisition flexibilities, as used in this part, means 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—

(a) In support of a contingency operation as defined in 2.101;

(b) To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; or

(c) When the President declares an incident of national significance, emergency declaration, or a major disaster declaration.

Subpart 18.1— Available Acquisition Flexibilities

18.101 General.

The FAR includes many acquisition flexibilities that are available to the contracting officer when certain conditions are met. These acquisition flexibilities do not require an emergency declaration or designation of contingency operation.

18.102 Central contractor registration.

Contracts awarded to support unusual and compelling needs or emergency acquisitions are exempt from the requirements pertaining to Central Contractor Registration. (See 4.1102.)

18.103 Synopses 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 5.202(a)(2).)

18.104 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 6.302-2.)

18.105 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 contracts (see Subpart 8.4), multi-agency BPAs (See 8.405-3(a)(4)), or multi-agency, indefinite-delivery contracts (see 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.

18.106 Acquisitions from Federal Prison Industries, Inc. (FPI).

Purchase from FPI is not mandatory and a waiver is not required if public exigency requires immediate delivery or performance (see 8.605(b)).

[72 FR 46344, Aug. 17, 2007]

18.107 Javits-Wagner-O'Day (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 8.712(d).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.108 Qualifications requirements.

Agencies may determine not to enforce qualification requirements when an emergency exists. (See 9.206-1.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.109 Priorities and allocations.

The Defense Priorities and Allocations System (DPAS) supports authorized national defense programs and was

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established to facilitate rapid industrial mobilization in case of a national emergency. (See 11.6.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.110 Soliciting from a single source.

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

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.111 Oral requests for proposals.

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

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.112 Letter contracts.

Letter contracts may be used when contract performance must begin immediately. (See 16.603.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.113 Interagency acquisitions under the Economy Act.

Interagency acquisitions are authorized under certain conditions. (See Subpart 17.5.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.114 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 Subpart 19.8.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.115 HUBZone sole source awards.

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

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

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18.116 Service-disabled Veteran-owned Small Business (SDVOSB) sole source awards.

Contracts may be awarded to Service-disabled Veteran-owned Small Business (SDVOSB) concerns on a sole source basis. (See 19.1406.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.117 Overtime approvals.

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

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.118 Trade agreements.

The policies and procedures of FAR 25.4 may not apply to acquisitions not awarded under full and open competition (see 25.401(a)(5)).

[72 FR 46344, Aug. 17, 2007]

18.119 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 27.208.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.120 Bid guarantees.

The chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions when a performance bond or a performance bond and payment bond is required. (See 28.101-1(c).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.121 Advance payments.

Agencies may authorize advance payments to facilitate the national defense for actions taken under Public Law 85-804 (see 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 32.405.)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

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18.122 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 32.803(d).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.123 Electronic funds transfer.

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

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.124 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 33.104(b) and (c).)

[71 FR 38248, July 5, 2006. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.125 Contractor rent-free use of Government property.

Rental requirements do not apply to items of Government production and research property that are part of a general program approved by the Federal Emergency Management Agency and meet certain criteria. (See 45.301.)

[71 FR 38248, July 5, 2006, as amended at 72 FR 27384, May 15, 2007. Redesignated at 72 FR 46344, Aug. 17, 2007]

18.126 Extraordinary contractual actions.

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. 1431-1434). This includes—

(a) Amending contracts without consideration (see 50.302-1);

(b) Correcting or mitigating mistakes in a contract (see 50.302-2); and

(c) Formalizing informal commitments (See 50.302-3).

[71 FR 38248, July 5, 2006, as amended at 72 FR 46344, Aug. 17, 2007]

Subpart 18.2—Emergency Acquisition Flexibilities

18.201 Contingency operation.

(a) *Contingency operation* is defined in 2.101.

(b) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See 2.101 and 13.201(g).)

(c) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See 2.101.)

(d) *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 13.306.)

(e) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased for acquisitions to support a contingency operation. (See 13.500(e).)

18.202 Defense or recovery from certain attacks.

(a) *Micro-purchase threshold*. The threshold increases 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. (See 2.101.)

(b) *Simplified acquisition threshold*. The threshold increases 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. (See 2.101.)

(c) *Commercial items to facilitate defense and recovery*. 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

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used to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack. (See 12.102(f)(1) and 13.500(e).)

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

18.203 Incidents of national significance, emergency declaration, or major disaster declaration.

(a) *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 6.302-5 and Subpart 26.2.)

(b) *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. In addition, contracting officers may set aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete. (See Subparts 6.6 and 26.2.)

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(c) *Ocean transportation by U.S. flag vessels.* The provisions of the Cargo Preference Act of 1954 may be waived in emergency situations. (See 47.502(c).)

[71 FR 38248, July 5, 2006, as amended at 72 FR 46344, Aug. 17, 2007]

18.204 Resources.

(a) *National Response Plan.* The National Response Plan (NRP) provides a single, comprehensive framework for the management of domestic incidents where Federal involvement is necessary as required by the Homeland Security Act of 2002 (Public Law 107-296). The NRP only applies to incidents of national significance, defined as an actual or potential high-impact event that requires a coordinated and effective response by an appropriate combination of Federal, State, local, tribal, nongovernmental, and/or private-sector entities in order to save lives, minimize damage, and provide for long-term community recovery and mitigation activities. The Department of Homeland Security is responsible for the NRP. The NRP is available at http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0566.xml.

(b) *OFPP Guidelines.* The Office of Federal Procurement Policy (OFPP) "Emergency Acquisitions Guide" is available at http://www.whitehouse.gov/omb/procurement/guides/emergency_acquisitions_guide.pdf.

[71 FR 38248, July 5, 2006, as amended at 72 FR 46344, Aug. 17, 2007]