

Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

(b) Prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

[70 FR 29642, May 24, 2005, as amended at 74 FR 34270, July 15, 2009]

**217.7801 Definitions.**

As used in this subpart—

*Acquisition official* means—

- (1) A DoD contracting officer; or
- (2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.

*Assisted acquisition* means the type of interagency contracting through which acquisition officials of a non-DoD agency award a contract or a task or delivery order for the acquisition of supplies or services on behalf of DoD.

*Direct acquisition* means the type of interagency contracting through which DoD orders a supply or service from a Governmentwide acquisition contract maintained by a non-DoD agency.

*Non-DoD agency* means any department or agency of the Federal Government other than DoD.

[74 FR 34270, July 15, 2009]

**217.7802 Policy.**

(a) A DoD acquisition official may place an order, make a purchase, or otherwise acquire supplies or services for DoD in excess of the simplified acquisition threshold through a non-DoD agency in any fiscal year only if the head of the non-DoD agency has certified that the non-DoD agency will comply with defense procurement requirements for the fiscal year.

(1) This limitation shall not apply to the acquisition of supplies and services during any fiscal year for which there is in effect a written determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, that it is necessary in the interest of DoD to acquire supplies and services through the non-DoD agency during the fiscal year. A written determination with respect to a non-DoD agency shall apply to any category of acquisitions through the non-DoD agency that is specified in the determination.

(2) Non-DoD agency certifications and additional information are available at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html).

(b) Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—

(1) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—

- (i) Satisfying customer requirements;
- (ii) Schedule;
- (iii) Cost effectiveness (taking into account discounts and fees); and
- (iv) Contract administration (including oversight);

(2) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;

(3) Reviewing funding to ensure that it is used in accordance with appropriation limitations;

(4) Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and

(5) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements in Subpart 204.6.

[74 FR 34270, July 15, 2009]

**PART 218—EMERGENCY ACQUISITIONS**

**Subpart 218.1—Available Acquisition Flexibilities**

Sec.

218.170 Additional acquisition flexibilities.

**Subpart 218.2—Emergency Acquisition Flexibilities**

218.201 Contingency operation.

218.202 Defense or recovery from certain attacks.

## 218.170

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

218.270 Head of contracting activity determinations.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 72 FR 2632, Jan. 22, 2007, unless otherwise noted.

### Subpart 218.1—Available Acquisition Flexibilities

#### 218.170 Additional acquisition flexibilities.

Additional acquisition flexibilities available to DoD are as follows:

(a) *Circumstances permitting other than full and open competition.* Use of the authority at FAR 6.302-2, Unusual and compelling urgency, may be appropriate under certain circumstances. See PGI 206.302-2.

(b) *Use of advance Military Interdepartmental Purchase Request (MIPR).* For urgent requirements, the advance MIPR may be transmitted electronically. See PGI 208.7004-3.

(c) *Use of the Governmentwide commercial purchase card.* Governmentwide commercial purchase cards do not have to be used for purchases valued at or below the micro-purchase threshold if the place of performance is entirely outside the United States. See 213.270(c)(1).

(d) *Master agreement for repair and alteration of vessels.* The contracting officer, without soliciting offers, may issue a written job order for emergency work to a contractor that has previously executed a master agreement, when delay would endanger a vessel, its cargo or stores, or when military necessity requires immediate work on a vessel. See 217.7103-4, 252.217-7010, and PGI 217.7103-4.

(e) *Spare parts breakout program.* An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date. See PGI 217.7506, paragraph 1-105(e).

(f) *Storage and disposal of toxic and hazardous materials.* Under certain emergency situations, exceptions apply with regard to the prohibition on storage or disposal of non-DoD-owned toxic

## 48 CFR Ch. 2 (10-1-09 Edition)

or hazardous materials on DoD installations. See 223.7102(a)(3) and (7).

(g) *Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition.* Acquisitions in the following categories are not subject to the restrictions of 225.7002, Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations; (3) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities; and (6) Acquisitions by vessels in foreign waters. See 225.7002-2.

(h) *Rights in technical data.* The agency head may notify a person asserting a restriction that urgent or compelling circumstances (e.g., emergency repair or overhaul) do not permit the Government to continue to respect the asserted restriction. See 227.7102-2; 227.7103-5; 227.7103-13; 227.7104; 227.7203-13; 252.227-7013; 252.227-7014; 252.227-7015; 252.227-7018; and 252.227-7037.

(i) *Tax exemption in Spain.* If copies of a contract are not available and duty-free import of equipment or materials is urgent, the contracting officer may send the Joint United States Military Group copies of the Letter of Intent or a similar document indicating the pending award. See PGI 229.7001.

(j) *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for awards made to foreign vendors for work performed outside the United States or for purchases to support unusual or compelling needs of the type described in FAR 6.302-2. See 232.7002(a)(2) and (5).

(k) *Mortuary services.* In an epidemic or other emergency, the contracting activity may obtain services beyond

the capacity of the contractor's facilities from other sources. See 237.7003(b) and 252.237-7003.

### Subpart 218.2—Emergency Acquisition Flexibilities

#### 218.201 Contingency operation.

(1) *Selection, appointment, and termination of appointment.* Contracting officer qualification requirements pertaining to a baccalaureate degree and 24 semester credit hours of business related courses do not apply to DoD employees or members of the armed forces who are in a contingency contracting force. See 201.603-2(2).

(2) *Policy for unique item identification.* Contractors will not be required to provide DoD unique item identification if the items, as determined by the head of the agency, are to be used to support a contingency operation. See 211.274-2(b).

(3) *Use of the Governmentwide commercial purchase card.* Governmentwide commercial purchase cards do not have to be used for purchases valued at or below the micro-purchase threshold if the purchase or payment is for an overseas transaction by a contracting officer in support of a contingency operation, or for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations. See 213.270(c)(3) and (5).

(4) *Governmentwide commercial purchase card.* A contracting office supporting a contingency operation or a humanitarian or peacekeeping operation may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold if certain conditions are met. See 213.301(3).

(5) *Imprest funds and third party drafts.* Imprest funds are authorized for use without further approval for overseas transactions at or below the micro-purchase threshold in support of a contingency operation or a humanitarian or peacekeeping operation. See 213.305-3(d)(iii)(A).

(6) *Standard Form (SF) 44, Purchase Order-Invoice-Voucher.* SF 44s may be used for purchases not exceeding the simplified acquisition threshold for overseas transactions by contracting officers in support of a contingency op-

eration or a humanitarian or peacekeeping operation. See 213.306(a)(1)(B).

(7) *Undefinitized contract actions.* The head of the agency may waive certain limitations for undefinitized contract actions if the head of the agency determines that the waiver is necessary to support a contingency operation or a humanitarian or peacekeeping operation. See 217.7404-5(b).

(8) *Prohibited sources.* DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control. See 225.701-70.

(9) *Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition.* Acquisitions in the following categories are not subject to the restrictions of 225.7002, Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations; (3) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities; and (6) Acquisitions by vessels in foreign waters. See 225.7002-2.

(10) *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for contracts awarded by deployed contracting officers in the course of military operations, including contingency operations or humanitarian or peacekeeping operations. See 232.7002(a)(4).

## 218.202

### **218.202 Defense or recovery from certain attacks.**

*Policy for unique item identification.* Contractors will not be required to provide DoD unique item identification if the items, as determined by the head of the agency, are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. See 211.274-2(b).

### **218.203 Incidents of national significance, emergency declaration, or major disaster declaration.**

(1) *Establishing or maintaining alternative sources.* PGI contains a sample format for Determination and Findings citing the authority of FAR 6.202(a), regarding exclusion of a particular source in order to establish or maintain an alternative source or sources. Alternate 2 of the sample format addresses having a supplier available for furnishing supplies or services in case of a national emergency. See PGI 206.202.

(2) *Electronic submission and processing of payment requests.* Contractors do not

## 48 CFR Ch. 2 (10-1-09 Edition)

have to submit payment requests in electronic form for contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies. See 232.7002(a)(4).

### **218.270 Head of contracting activity determinations.**

For contract actions supporting contingency operations or facilitating defense against or recovery from nuclear, biological, chemical, or radiological attack, the term “head of the agency” is replaced with “head of the contracting activity,” as defined in FAR 2.101, in the following locations:

(a) FAR 2.101:

(1) Definition of “Micro-purchase threshold,” paragraph (3).

(2) Definition of “Simplified acquisition threshold.”

(b) FAR 12.102(f).

(c) FAR 13.201(g).

(d) FAR 13.500(e).

(e) FAR 18.2.

[74 FR 2407, Jan. 15, 2009]