



Defense Contingency Contracting Handbook



Essential Tools, Information, and Training to Meet
Contingency Contracting Needs for the 21st Century

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Throughout this handbook you will find various icons which indicate additional resources on the DVD/Web site for particular topics. In the DVD/Web site versions, these icons will be linked so as to allow quick access to those resources. The legend to the right denotes various types of additional resources.

Legend			
	Scenarios		Training
	Games		Tools
	Checklists		Guides
	Policy		Samples
	Forms		Additional Information

In addition to the icons, other text is italicized and underlined to denote active links in a Web-enabled environment. To reduce the amount of printed text, and to focus on key information the majority of

readers would need, this year's version has streamlined some of the chapters, and in some cases, reduced or removed content. The removed or reduced information is available on the DVD where the reader can access the information via hotlink.

A complete list of the acronyms used in each chapter can be found in the notes pages that follow each chapter.

An online version of the handbook and attached DVD can be found at the *Defense Contingency Contracting Handbook* Web site at <http://www.acq.osd.mil/dpap/pacc/cc/jcchb/>.

Questions concerning the use, update, request for, or replacement of this handbook or the attached DVD should be sent to:

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Introduction and Foreword

This handbook provides a pocket-sized guide to help you meet the needs of those whom you are supporting. This is crucial to your success and that of the overall mission. It is by no means a stand-alone document and must be read together with the *Federal Acquisition Regulation*, the *Defense Federal Acquisition Regulation Supplement*, and *Operational Contract Support in Joint Operations* (Joint Publication 4-10).

A Foreword for Contingency Contracting Officers

During a deployment, contingency operation, or response to natural disasters things can change in a hurry. One minute you find yourself operating in a sustained operational environment and



Mr Shay Assad, Director of Defense Procurement and Acquisition Policy

the next deployed to a bare base or in the field supporting disaster relief operations. The challenges you face may be very familiar or unprecedented. There may be little or no time to prepare and you may have nothing but your own wits to guide you. The success of your mission may be completely or partly dependent upon your ability to solve problems and think quickly.

Your job as a contingency contracting officer (CCO) is to locally acquire the items needed to support the mission. In doing so, you should be conscious of the fact that many foreign business cultures expect kickbacks, finder's fees, exchange of gifts, or other gratuities that are illegal for US personnel to provide or accept. You should always ensure ethics regulations are closely observed. As a CCO, you must



be vigilant in advising US commanders, requirements personnel, and CCO-appointed representatives about practices that may violate standards of conduct. In order to enhance your ability to successfully operate in a variety of mission environments, we've produced the *Defense Contingency Contracting Handbook*. This pocket-sized handbook and its accompanying DVD provide the essential information, tools, and training for you to meet the challenges you will face, regardless of the mission or environment.

Purpose

Our goal in producing this handbook is to provide a pocket-sized guide to help you meet the needs of those whom you are supporting. This is crucial to your success and that of the overall mission. No one can remember verbatim all the training he or she has received, and that is where this handbook will, hopefully, fill in the gaps. It is by no means a stand-alone document and must be read together with the *Federal Acquisition Regulation*, the *Defense Federal Acquisition Regulation Supplement*, and *Operational Contract Support in Joint Operations* (Joint Publication 4-10). The *Defense Contingency Contracting Handbook* provides a consolidated source of information for CCOs conducting contingency contracting operations in a Joint environment. The hard-copy book is intended to be used in conjunction with the attached DVD and is available at the Defense Procurement and Acquisition Policy (DPAP) Web site at <http://www.acq.osd.mil/dpap/pacc/cc/jcchb/>, under the contingency contracting tab. Both the handbook and DVD shall be used to train at home station, for reference and to train while deployed. The handbook and attached DVD provide useful tools, templates, and training which enable the CCO to be effective in any contracting environment.

Authority

The Defense Contingency Contracting Handbook is authorized by the Director, Defense Procurement and Acquisition Policy. It was prepared

by OUSD (AT&L), Defense Acquisition, Technology, and Logistics contingency contracting staff; Defense Acquisition University; representatives from the United States Army, Navy, Marine Corps, Air Force, Defense Contract Management Agency, Defense Contract Audit Agency; and the Air Force Logistics Management Agency. These organizations will maintain the handbook and provide future updates.

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A man in a dark blue judge's robe stands behind a desk. He has a serious expression and is looking directly at the camera. On the desk in front of him are several books and a wooden gavel. The background is a warm, brownish-gold color.

Chapter 1

Ethics, Fraud Indicators, Standards of Conduct, and Procurement Integrity

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Ethics, Fraud Indicators, Standards of Conduct, and Procurement Integrity¹



Key Points

- Ethics are vitally important, particularly in the contingency environment because of the cultural differences.
- Strictly avoid any conflict of interest or apparent conflict of interest.
- You must not forget your duty is to the United States (US) government, Department of Defense (DoD), and your customer.
- You may not accept any gift because of your official position and you may not accept any gift from a contractor, a potential contractor, or a partnering contractor.
- There are very limited exceptions to the gift prohibition. Unavoidable violations must be documented and reported to counsel immediately.
- DoD will not tolerate any form of human trafficking or forced labor by any of its contractors or contractor personnel.
- If you are ever in doubt, contact your legal advisor and notify your chain of command.

Introduction

The need to maintain high ethical standards and procurement integrity is always important for DoD contracting officers. However, this requirement can be even more challenging in a deployed environment where the expectations and business habits of the suppliers with whom you will be dealing may be affected by varying cultural, political, and economic conditions.

Chapter 1 Ethics, Fraud Indicators, Standards of Conduct, and Procurement Integrity

The pressures to meet mission requirements can be even more intense in a contingency contracting environment. If you are not vigilant, these pressures can cloud your judgment as to the *right* way to conduct yourself and represent the US and DoD. Two of your biggest responsibilities as a contingency contracting officer (CCO) are as follows:

- Effectively communicate your customer's need to the supplier.
- Establish a solid working relationship with your customer.
Remember that CCOs and contractors may not be able to work as one team. In many respects, the US government's interests may be directly opposed to a contractor's interests. Therefore, as a protector of US government interests, you must not forget that your duty is to the US government and the DoD.

Most suppliers in the contingency environment, particularly where American forces have an established presence, understand the ethics- and integrity-related restrictions placed on DoD contracting officers; however, you may encounter situations in which you are offered souvenirs to take home with you after your tour, or even a welcome gift upon your arrival, in a possible attempt to gain favor. In these cases, you need to clearly understand what you can and cannot accept.

Tenets of Government Service²

The 14 tenets of government service are as follows:

- You must place loyalty to the US Constitution and the law above your private gain.
- You shall not hold financial interests that conflict with your official duties.

- You shall not engage in financial transactions using nonpublic information or permit the release of such information for any other improper use.
- You shall not solicit or accept any gift from any person or entity seeking official action or doing business with the DoD or elements within the DoD.
- You must put forth honest efforts in the performance of your duties.
- You shall not knowingly make unauthorized commitments or promises that bind the government without authority.
- You shall not use public office for private gain.
- You shall act impartially and not give preferential treatment to any person or entity.
- You must protect and conserve government property and use it only for authorized purposes.
- You shall not engage in or seek outside employment or activities that conflict with your official duties.
- You shall disclose fraud, waste, abuse, and corruption to appropriate authorities.
- You must act in good faith in satisfying the obligations of citizenship, including paying just financial obligations and taxes.
- You shall adhere to all laws that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or disability.
- You shall endeavor to avoid any actions that create the appearance of unethical conduct, as seen from the perspective of a reasonable person.

Conflict of Interest



One of the most basic ethical principles is that you may not take official action on a matter that may impact your personal interests. Thus, the ethics rule provides that an employee is prohibited (by statute) from participating personally and substantially in an official capacity in any particular matter in which he or she (or any person whose interests are imputed to him or her) has a financial interest if the matter will have a direct and predictable effect on that interest. In other words:

- If you are officially involved in a matter that could affect your own financial interests, or those of someone you are related to or associated with, you must remove yourself from acting on that matter in your official capacity.
- If your official involvement creates even the appearance of a conflict of interest to a reasonable person, you should remove yourself from that matter or, at a minimum, seek legal advice.
- It is one of the very few areas of the law where you do not have to be *guilty* to find yourself in trouble—even looking guilty can land you in trouble—appearances count.
- When conflicts of interest arise, there are conventional ways to handle them, with advice from your ethics counselor.
 - Disqualification or recusal (stepping aside from decisions that could affect your financial interests)
 - Waivers of disqualification (continuing your involvement, but only with full disclosure and permission from agency officials)
 - Divestiture (removing the financial interest that creates the conflict, which often involves selling the financial interest at issue)

Gift Prohibition



The overarching rule about accepting gifts from contractor employees is provided via the *Federal Acquisition Regulation (FAR) 3.101-2*. CCOs are reminded that “the general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in government-contractor relationships.” (*FAR 3.101-1*)

Federal employees are prohibited from soliciting or accepting gifts offered *because of the employee’s official position* or gifts offered by a *prohibited source*. A gift or gratuity may be anything of monetary value and includes things such as discounts, favors, entertainment, hospitality, loans, and so forth. (*5 Code of Federal Regulations [CFR] 2635.203(b) and FAR 3.101-2*) A prohibited source can be a company doing business or seeking to do business with the federal government. This includes contractors, even partnering contractors. (*5 CFR 2635.203(d)*)

There are exceptions to the above rules regarding gift acceptance that are relevant for you as a CCO (others exist but these will be most applicable):

- You may accept gifts from a prohibited source with a face value up to a total of \$50 per calendar year, but any gifts on a single occasion must not exceed \$20 in value. Additional details and hypothetical scenarios can be found in *5 CFR 2635.204(a)*. Further restrictions may be implemented by deployed commanders.
- When in a foreign area you “may accept food, refreshments, or entertainment in the course of a breakfast, luncheon, dinner, or other meeting or event” if all of the following conditions are met: (*5 CFR 2635.204(i)(1)-(4)*)
 - The market value, converted to US dollars, does not exceed the per diem rate for the foreign area specified in the Department of State’s maximum per diem allowances for foreign areas. (http://aoprals.state.gov/web920/per_diem.asp)

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- There is participation in the meeting or event by non-US citizens or by representatives of foreign governments or other foreign entities.
- Attendance at the meeting or event is part of the employee's official duties.
- The gift of meals, refreshments, or entertainment is from a person other than a foreign government.

The *Anti-Kickback Act of 1986* “prohibits actual or attempted kickback payments or offers to provide kickbacks, which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind, to include obtaining or rewarding favorable treatment. “Any person who knowingly and willfully engages in conduct prohibited [by the *Anti-Kickback Act*] shall be imprisoned for not more than 10 years or shall be subject to a fine ... or both.” (*41 United States Code [USC] §54; Article 92, 134* of the Uniform Code of Military Justice [UCMJ]; US Department of Justice *Criminal Resource Manual*)

You must never solicit gifts of any type, regardless of their nature or dollar value. You must understand that a bribe occurs when someone “directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official.” Giving or accepting a bribe is a crime that is punishable by a fine, imprisonment, or both. (*18 USC §201; Article 92, 134 UCMJ*)

Reporting of Gifts



If a gratuity is delivered to you (for example, left on your desk or car), then you must make every attempt to return it. If a contractor insists on giving you a gratuity, you must do one of the following:

- Attempt to persuade them to take back the gratuity. Explain to the contractor your inability to accept gratuities as a US procurement official, and the repercussions you could face if you did accept the gratuity.
- Pay the fair market value of the item.
- As a last resort, if the contractor appears to be offended, accept the gratuity, and contact legal counsel immediately.
 - Once accepted, safeguard the gratuity. If necessary, notify the finance officer to put it in a safe. Ask for a receipt from the finance officer.
 - Turn the gratuity over to counsel.
 - Write a memorandum for the record (MFR)—include circumstances and approximate value of item. Also, mention in the MFR that legal advice was obtained.
- If perishable (for example, food or flowers), give the gift to a charity or share it within the office.

If ever in any doubt about what you should or should not accept, consult your organization's legal office or ethics advisor and your chain of command.

Combat Trafficking in Persons (CTIP)



As a CCO, you may encounter situations in which local vendors are willing to supply *escorts* as a form of gratuity, kickback, bribery, or compensation. Sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” (*48 CFR 22.1702*)

There are specific implications for the CCO. *FAR Subpart 22.17, Defense Federal Acquisition Regulation Supplement (DFARS) Subpart*

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222.17, and *DFARS Procedures Guidance and Information (PGI) 222.17*, provide policy and guidance applicable to all contracts. If faced with a situation involving sex trafficking, CCOs should immediately inform his or her chain of command and legal counsel. CCOs should take immediate action to impose suitable remedies, including termination, on contractors that support or promote trafficking or fail to monitor the conduct of their employees and subcontractors with regard to trafficking in persons.

The US government does not tolerate any form of trafficking in persons or forced labor. DoD *PGI 222.1703(ii)* states, “trafficking includes involuntary servitude and debt bondage. These trafficking practices will not be tolerated in DoD contractor organizations or their subcontractors in supporting DoD operations.”

It is the contractor’s responsibility to know of its employees’ activities, and to comply with CTIP US policy. *FAR 52.222-50, Combat Trafficking in Persons*, is required in all solicitations and contracts.

Identifying Fraud Indicators³



Fraud is the misrepresentation of a material fact with the intent to deceive. Fraud includes:

- Deliberate omission of material facts.
- False or misleading representation.

Fraud can be a single act or combination of circumstances, can be the suppression of truth or the suggestion of what is false, or may occur by direct falsehood, by innuendo, by speech, by silence, by word of mouth, or by look or gesture.

Contracting officers play a vital role in the identification, prevention, and reporting of fraud. Contracting officers have an obligation to report any suspected violations or wrongdoing. Contracting officers should

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provide basic fraud awareness, identification, prevention, and reporting training to contracting officer's representatives (COR), quality assurance evaluators (QAE), field ordering officers, and governmentwide commercial



purchase card holders during their initial and refresher training classes. Training our representatives on the front lines will increase the number of trained *sensors* to detect and prevent fraud.

Common Fraud Offenses

- Bribery, kickbacks, and gratuities.
- Making or using a false statement.
- Falsely making or altering a document.
- Making or presenting a false claim.
- Companies conducting business under several names.
- Collusive bidding (bid rigging).
- Conflicts of interest.
- Conspiracy to defraud.
- Disclosure of proprietary data or source selection sensitive information.
- Insufficient delivery of contracted items.
- Intentional failure to meet specifications. Note that not all failures to meet contract specifications constitute a crime. A CCO should discuss any suspected contract fraud with legal support. For example, a contractor uses one coat of paint instead of two; uses watered loads of concrete; installs inferior memory chips in computers; uses inferior automobile replacement parts.

Common Fraud Schemes

- Rigged specifications.

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- The requesting organization tailors specifications to meet the qualifications of one particular company, supplier, or product.
- Unvarying patterns in small purchases.
 - Unvarying patterns in small purchases may indicate that a buyer is awarding contracts to favored vendors without soliciting competitive offers from additional firms. The buyer may also be entering fictitious competitive quotations and consistently awarding to a favored vendor at inflated prices.
- Splitting large requirements.
 - Contracting or requiring activity personnel may be splitting requirements into small purchase orders to avoid the scrutiny required for larger dollar value contracts.
- Duplicate payment.
 - A vendor submits the original voucher for payment, while the purchaser, acting alone or in collusion with the vendor, collects for the same item from the cash fund.
- Overstatement of shipment weights.
 - Carriers may be defrauding the government by artificially inflating the weight of a shipment. Possible methods include:
 - Fuel Bumping. Getting the tare weight with less than a full tank of gas and the gross weight with a full tank.
 - Double Billing on Small Shipments (500 to 3,000 pounds). Getting two tare weight tickets for the truck, picking up the two small shipments, getting two gross weight tickets for the combined weight of both shipments, and then submitting both tickets for payment.
 - False Weights. Paying the weight master to provide a false weight ticket or having a supply of blank or false weight tickets. If blank tickets are used, the weight will usually be handwritten rather than printed.

- Emotional bribery.
 - A government contracting specialist and a vendor representative become friends. The vendor uses his friendship to unduly influence the CCO.

Situations Enabling Fraud

- Failure to properly monitor contract performance.
- No acquisition checks and balances.
 - Persons controlling both the ordering and receiving functions can arrange for diversion of supplies or services for their own benefit.
- Poorly defined specifications.
- Poor physical security.
- Receipt of items that cannot be traced to a valid requisition could have been ordered for personal use or resale with the resulting paperwork destroyed.

Common Fraud Indicators

- Frequent complaints by users of supplies or services.
- Government estimates and contract award prices are consistently very close.



- Contractor complaints of late payment by the agency.
- Abnormal increase in consumption of fuel or supply items.
- Failure to deobligate cancelled purchase orders.
- Excessive number of photocopies of invoices in file.
 - Alter approved invoices with *whiteout* or similar correction fluid and copy the invoice, destroying the original. The attempt may be to manipulate the audit trail or commit the fraud via the alteration. Secure external and internal copies for comparison.

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- Duplicate copies of supplier invoices could also indicate the possibility of multiple payments of the same invoice with the checks diverted.
- Less than adequate consideration.
 - If assets are sold or transferred for what appears to be less than adequate consideration this may indicate a sham transaction with no economic reality. Businesses exist to make a profit and anything in contravention of this goal should be questioned.

Your deployed office must have a list of contractors and vendors that have been identified as companies not to do business with due to fraudulent or performance discrepancies. Make an effort to keep this list updated.

You have an obligation to report any suspected violations or wrongdoing. You should report your suspicions to your chain of command. Some of the lead investigators or sources for reported fraud situations are Air Force Office of Special Investigations (AFOSI), Navy Criminal Investigation Service (NCIS), US Army Criminal Investigation Command (CID), Defense Contract Audit Agency (DCAA), Defense Criminal Investigative Service (DCIS), or US Army Audit Agency. You should report your suspicions through your chain of command and nearest investigative agency.

AFOSI: <http://www.osi.andrews.af.mil/units/>

NCIS: <http://www.ncis.navy.mil/locations.asp>

CID: http://www.cid.army.mil/unit_directory.html

DCAA: <http://www.dcaa.mil/>

DCIS: <http://www.dodig.mil>

DoD Fraud, Waste and Abuse Hotline:

Phone: 1-800-424-9098

E-mail: hotline@dodig.mil

Web address: www.dodig.mil/HOTLINE

Interacting with Contractor Employees

A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

As a CCO or COR who may interact with contractor employees on a daily basis, you must keep in mind that they are not government employees. The terms and conditions of the contract define the obligations of each party and the contractor's performance requirements. It is important to understand that federal and DoD standards of conduct do not apply to contractor employees. With this in mind, you must not:

- Interfere in contractor-employee relations
- Allow work outside the scope of the performance work statement
- Allow work prior to the obligation of funding
- Establish specific hours of duty or grant and deny leave requests

Additionally, CCOs may not mandate any contractor personnel actions, without specific contractual authority to do so, such as the following:

- Tell contractors who to hire or promote
- Reassign contractor employees
- Discipline contractor employees

However, DFARS 237.104, referencing 10 USC §129b, provides limited authority to acquire the personal services of expert consultants if the following conditions are met and documented in a determination and findings:

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- The duties are of a temporary or intermittent nature.
- Acquisition of the services is advantageous to the national defense.
- DoD personnel with necessary skills are not available.
- Excepted appointment cannot be obtained.
- A nonpersonal services contract is not practicable.
- Statutory authority, *5 USC 3109* and other legislation, apply.
- Any other determination required by statutes has been made.

Professional friendships are not prohibited; however, you must act impartially and show no favoritism or preferential treatment. While personal friendships are not prohibited, they may cause the appearance of a conflict of interest. Government employees cannot personally make recommendations and references for contractors, except when providing past performance information to other agencies.

Other ethical considerations with regard to contract administration are discussed in Chapter 6.

Checks and Balances

It is of paramount importance that a system to ensure checks and balances is implemented in your daily routine to fulfill your CCO obligations and to prevent an opportunity for fraudulent activity. The following are some examples of checks and balances systems to consider:

- CCOs should not be tasked by commanders to perform these duties (reference below) unless no other option is available.
 - Ordering and Receiving Goods. It is common practice to be the person who both orders and receives goods. This is not the ideal scenario, but it is the common scenario in a deployed location. Take steps to ensure that documentation, along with customer signatures and contact information, is obtained once you turn

possession over of received goods and immediately add this document to the contract file.

- **Paying Agents.** In some situations you, as a CCO, may be required to be both the CCO and the paying agent. If this becomes part of your function, make sure you track every cent spent in a logical manner (spreadsheet or log). Do this as soon as possible so that you don't waste time relying on your memory of purchased items—and file all your receipts of transactions. Ensure you reconcile your PIIN [procurement instrument identification number] log with your finance counterpart on a daily basis to avoid discrepancies.
- **QAE and COR.** You are responsible for many of the QAEs' and CORs' actions. It is important that a reporting system is in place to ensure fair and proper evaluation, and that direction is being conducted by your contract representative.

There are many other checks and balances that could be named, but the purpose of these examples is to show common sense scenarios. You have an obligation to protect the taxpayer, the warrior, and yourself. You protect the taxpayer by ensuring you use sound judgment in the spending of taxpayer dollars. You protect the warrior by providing goods, services, or awards that are sufficient for their needs. You protect yourself by having all the documentation to back up your sound judgment and acquisitions.

Notes

1. Most of the information in this chapter was taken from the Defense Acquisition University (DAU) "Contingency Contracting Refresher Module" and DAU CLM 049, "Procurement Fraud Indicators." It has been supplemented with information provided by the Office of Counsel for the Commandant of the Marine Corps and the Air Force Logistics Management Agency.
2. Information was taken from the Air Force Center of Environmental Excellence "Contracting Officer Representative's Ethics Briefing."
3. Information was taken from information produced by the Fraud Integrated Process Team and the *DoD Fraud, Waste, and Abuse Hotline* trifold brochure.

Chapter Acronyms

AFOSI – Air Force Office of Special Investigations
CCO – Contingency Contracting Officer
CID – US Army Criminal Investigation Command
COR – Contracting Officer Representative
CFR – Code of Federal Regulations
CTIP – Combat Trafficking in Persons
DAU – Defense Acquisition University
DCAA – Defense Contract Audit Agency
DCIS – Defense Criminal Investigative Service
DFARS – Defense Federal Acquisition Regulation Supplement
DoD – Department of Defense
FAR – Federal Acquisition Regulation
MFR – Memorandum for Record
NCIS – Navy Criminal Investigation Service
PIIN – Procurement Instrument Identification Number
PGI – Procedures, Guidance, and Information
QAE – Quality Assurance Evaluator
UCMJ – Uniform Code of Military Justice
US – United States
USC – United States Code

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Chapter 2 Authorities and Structure



Authorities and Structure

Key Points

- Contracting officers (CO), pursuant to Federal Acquisition Regulation [*FAR*] 1.602, are the only personnel authorized to enter into, administer, or terminate contracts and make related determinations and findings.
- COs may bind the government only to the extent of the authority delegated to them. COs shall receive from the appointing authority clear instructions in writing regarding the limits of their authority.
- COs must understand the difference between command and contracting lines of authority.

Introduction

Contingency contracting officers (CCO) must know and understand their contracting authority and the organizational construct that they are working in. This chapter discusses the CCO's legal authorities while distinguishing between command and contracting authority. It further provides a general overview of contracting structure, support organizational options, and the typical structure and staffing of a Joint Theater Support Contracting Command. Some aspects of the structure and staffing described could also be used in humanitarian and disaster relief situations. (See also Chapter 9)

Contracting and Command Authority



Contracting Authority. Contracting authority is the legal authority to enter into binding contracts and obligate funds for the United States (US) government. Command authority includes the authority and responsibility for effectively using available resources and for planning the employment of, organizing, directing, coordinating, and controlling

military forces for the accomplishment of assigned missions. CCOs receive their contracting warrants from a source of contracting authority, not command authority. Pursuant to *FAR 1.602*, contracting officers are the only personnel authorized to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the government only to the extent of the authority delegated to them.

Command Authority. Figure 1 illustrates command and contracting lines of authority. Command authority does not include creating or

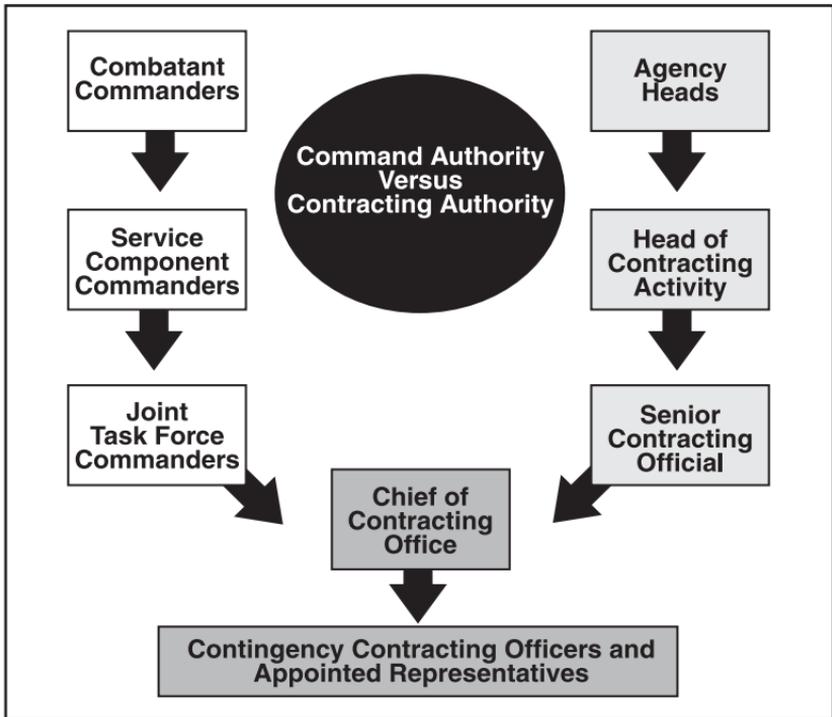


Figure 1. Lines of Authority

implementing acquisition policy, guidance, procedures, directing, or authorizing deviations. Commanders at all levels must avoid improper command influence, or its appearance, on the contracting process. The contracting officer must be able to independently exercise sound, unbiased business judgment and contract oversight in the accomplishment of the contracting mission.

Contingency Contracting Officer's Authority



Contracting Officers. Contracting officers shall receive from the appointing authority clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officer's authority should be readily available to the public and agency personnel.

Contracting Authority. Contracting authority in the operational area flows from Congress to the President, then to the Secretary of Defense, through the Service or Agency head, to the head of the contracting activity (HCA), then to the senior contracting official (SCO) (also known as the principal assistant responsible for contracting), and, finally, to the contracting officer. This contracting authority is explicitly documented via the contracting officer's warrant.

Selection and Appointment of Contracting Officers. The HCA appoints SCOs, by name and in writing, and delegates certain authorities to the SCOs to include the appointment of CCOs under their control. If the HCA has allowed for further redelegation, SCOs may further delegate certain authorities to regional contracting centers (RCC), to include appointment of CCOs under control of the RCC chief.

Contracting warrant authority includes selecting, appointing, and terminating contracting officer warrants. The SCO shall only appoint individuals assigned to, attached to, or operating under the HCA. Contracting appointment will be accomplished based on experience, education, knowledge of acquisition policies and procedures, and training

in accordance with the *Defense Acquisition Workforce Improvement Act* minimum standards.

Contingency Contracting. CCOs can support contingencies within the continental United States or outside the continental United States (OCONUS) to include major accidents, natural disasters, enemy attacks, and the use of weapons of mass destruction. When CCOs are deployed to declared contingencies, the flow of contracting authority may change based on the maturity of the location, theater of operation, and established command and control.

Contracting Structure

This section provides guidance for establishing a Joint, large-scale, deployed OCONUS organization. The proposed structure should not be considered as the only organizational structure, but rather viewed as a template or example.

Head of Contracting Activity. The HCA, or SCO if delegated, is responsible for oversight of contracting to ensure that it is compliant with statute, regulation, and sound business practices. For a small scale contingency in which the Service components are providing their own contracting support, the HCA assignment will remain within the Service channels. In large-scale contingencies in which a lead Service or Joint theater support contracting command structure is required, DoD will assign an agency as the DoD executive agent in accordance with *Department of Defense Directive 5101.1, DoD Executive Agent*. The executive agent assignment will generally be in conjunction with the designation of a lead Service for common user logistics in accordance with *Joint Publication 4-07, Joint Tactics, Techniques, and Procedures for Common-User Logistics During Joint Operations*.

Senior Contracting Official. The SCO establishes policies and procedures for developing, reviewing, and managing the contingency contracting process. This includes:

- Administrative plans to control documents, maintain records, and conduct audit trails of procurement actions for simplified acquisitions (imprest funds, Standard Form 44, and governmentwide commercial purchase cards) as well as large contracts.
- Overseeing and assessing the effectiveness of contracting programs.
- Issuing warrants and determining delegated warrant authorities.
- Participating in the Joint Acquisition Review Board (primarily the SCO for forces support).
- Chairing the Joint Contracting Support Board as directed.
- Managing and executing procurement management reviews.
- Developing and providing oversight management control programs.
- Conducting special reviews as required.
- Managing the Contract Audit Followup Program.
- Coordinate Defense Contract Audit Agency (DCAA) audit and financial advisory support with appropriate DCAA point of contact (POC), dependent upon locale of contingency or humanitarian operations taking place.
- Managing suspension and debarment actions.
- Coordinating intercommand agreements detailing contracting support relationships between United States (US) military services.
- Coordinating operational plans or requirements originating with the Joint Staff and providing host nation support, status of forces agreement, assistance in kind agreements, or any treaties for CCO review.

Regional Contracting Center (RCC) Chief. The RCC chief (or chief of contracting office [COCO]) plans, directs, and supervises purchasing and contracting for supplies, services, and construction for assigned customers. The RCC chief will typically approve actions that exceed the CCO's authority and will review internal and external contractual actions

to ensure statutory, regulatory, and procedural compliance. The RCC chief develops and executes programs to ensure maximum competition.

The following are some additional key responsibilities of the RCC chief:

- Maintain the highest degree of integrity; set the tone for the rest of the office
- Know the mission (RCC Mission Brief)
 - Tie effects of the contracts to the mission
- Engage with your customer
- Set priorities for requirements (per internal and external customers)
- Educate your customer
- Business advisor
- Develop vendor base
- Encourage contracting innovation while using sound business judgment
- Manage continuity of your office

Note: See Defense Acquisition University offers CON 234, “Advanced Contingency Contracting Course for the COCO.”

CCO Responsibilities. The purpose of the CCO is to acquire supplies and services needed by the warfighter to support essential missions in response to a crisis, contingency, or declaration of war.

To read more about CCO responsibilities consult the DVD. 

The CCO has the following duties and responsibilities:

- Ensure contract files are documented, prepared, and maintained.
- Maintain contract oversight with respect to contract performance by the contractor.

- Provide training and monitor performance of CCO appointed representatives.
- Ensure contingency contracting is accomplished in accordance with area of responsibility procedures.
- Develop an accountability plan with the commander and appropriate supply office for contracted property (leased and purchased) brought into the theater via a contract in accordance with *Department of Defense Instruction 5000.64, Accountability and Management of Department of Defense (DoD)-Owned Equipment and Other Accountable Property*. Request the Joint force commander (JFC) establish policy, guidance, and a FRAGO [fragmentation order] on how government-furnished property and government-furnished equipment will be tracked to ensure accountability of assets.
- Ensure contracts are competed and awarded to the local populace to the fullest extent possible in order to aid the development of the local economy while ensuring fair and reasonable prices.
- Engage DCAA auditors to provide audit support to assist CCOs in awarding contracts to responsible bidders with acceptable business systems to deliver goods or services and sufficient capital to carry out contractual obligations.
- Abide by any host nation, interservice, status of forces, or other authoritative agreements that are applicable within the appropriate theater of operation.
- Ensure CCO efforts are synchronized with the guidance provided by the commander and contingency mission.

Contracting Officer's Representative (COR). CORs are the eyes and ears of the CCO. CORs are instrumental in ensuring products and services provided to the warfighters comply with contractual requirements. The COR is a Service member assigned to the supported unit with specialized

knowledge of a piece of equipment, service, or civil construction that the contractor is required to provide or support. The supported units are responsible for identifying and providing CORs. COR duties are defined in writing by the CCO in a letter of appointment. The COR conducts quality assurance inspections on the services and support the contractor provides. CORs make recommendations to the quality assurance representative, who then provides inspection results to the CCO and the contractor. To summarize, the COR is an assigned member of the supported unit appointed by the CCO to provide quality inspections on contractors, whose technical expertise and contributions ensure the safety and well-being of our Service members.

To read more about the support organizations consult the DVD. 

Joint Staff

The Joint Staff assists the Chairman of the Joint Chiefs of Staff (subject to the authority, direction, and control of the Chairman of the Joint Chiefs of Staff) and the other members of the Joint Chiefs of Staff in carrying out their responsibilities.

J1—Manpower and Personnel Directorate of a Joint Staff. The Joint theater support contracting command J1 performs personnel actions to include working personnel assignments, Joint manning document-related actions, awards, and ratings. The J1 generally would be a personnel officer with no specific rank or contracting-related experience.

J2—Intelligence Directorate, J3—Operations Directorate, and J5—Plans Directorate. A Joint theater support contracting command would not normally need a separate J2 or J5 office. The J2/3/5 officer, normally an O-5 with contracting experience, is responsible to assist the commander and SCOs with synchronizing support to ongoing operations and planned future operations. The J2/3/5 focus is on supporting the JFC commander's intent with effective and efficient contracting actions. If needed, the J2/3/5 could also contain separate policy and contract compliance divisions.

J4—Logistics Directorate. The Joint theater support contracting command J4 would perform logistics actions to include general office supply actions, coordinating facility support, and other similar actions. The J4 normally would be a logistics officer with no specific rank or contracting-related experience.

J6—Communications System Directorate. The Joint theater support contracting command J6 would perform communications support-related actions to include coordinating communications support, Web-site management, and related functions. The J6 is a communications or signal officer with no specific rank or contracting-related experience.

Joint Subordinate Organization Overview

Regional Contracting Centers. The specific makeup of these RCCs is dependent on the specific mission support requirement, however, a typical RCC could consist of 10 to 25 warranted contracting officers, noncommissioned officers (NCO), and DoD civilians. It is also common practice to align these RCCs to a major land force (division, corps, or Marine Expeditionary Force) headquarters or air expeditionary wing or group. The key to the proper manning of these RCCs and their subordinate regional contracting offices RCOs is not the rank of the contracting officers on staff, but the warrant and experience level of the staff.

Regional Contracting Offices. RCOs are Joint-staffed contracting organizations under the command and control of an RCC. RCOs normally are led by a contracting officer and are made up of between two and eight warranted contracting officers, NCOs, and DoD civilians. The size and makeup of an RCO is based on actual mission support requirements. RCOs normally provide area support to specific forward operating bases and designated areas within the Joint operations area.

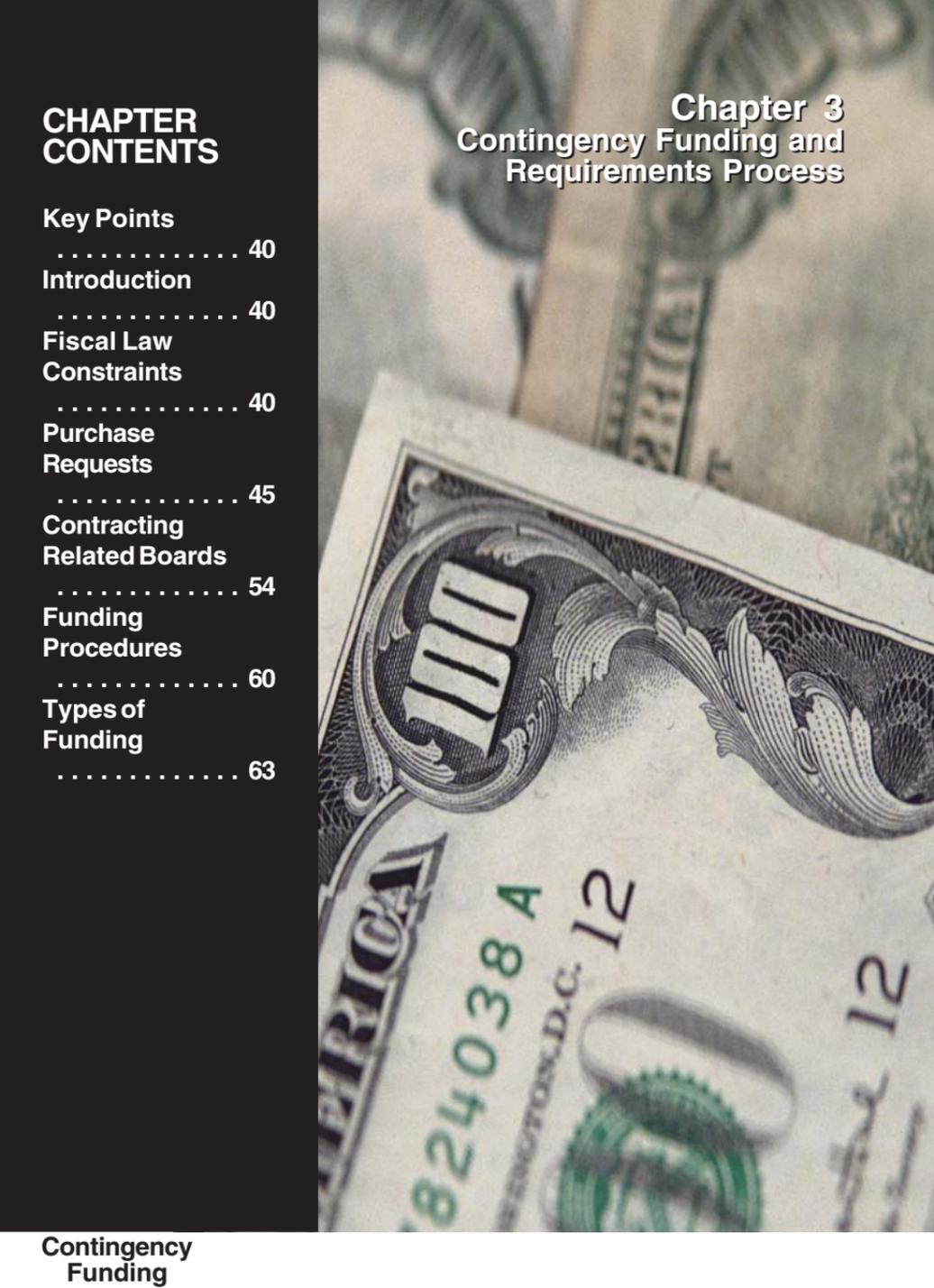
To read more about JTSCC and subordinate organizations consult the

DVD.



Chapter Acronyms

CCO – Contingency Contracting Officer
CO – Contracting Officer
COCO – Chief of Contracting Office
COR – Contracting Officer’s Representative
DCAA – Defense Contract Audit Agency
DoD – Department of Defense
FAR – Federal Acquisition Regulation
FRAGO – Fragmentation Order
HCA – Head of Contracting Activity
JFC – Joint Force Commander
NCO – Noncommissioned Officer
OCONUS – Outside the Continental United States
POC – Point of Contact
RCC – Regional Contracting Center
RCO – Regional Contracting Office
SCO – Senior Contracting Official
US – United States

The background of the page is a close-up, slightly blurred photograph of several US dollar bills. The focus is on the corner of a bill, showing the large, ornate number '100' in a dark ink. Below the number, the word 'AMERICA' is partially visible in a stylized font. Further down, the serial number '824038 A' is printed in green ink. To the right of the serial number, the text 'WASHINGTON, D.C. 12' is visible. The lighting is soft, highlighting the texture of the paper and the intricate details of the currency's design.

Chapter 3 Contingency Funding and Requirements Process

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Contingency Funding and Requirements Process

Key Points

- Appropriated funds are subject to three basic fiscal constraints:
 - Time. A current fiscal year's (FY) funds must be used for current needs.
 - Purpose. Funds must be expended for the purpose established by Congress.
 - Amount. The *Antideficiency Act (ADA)* prohibits obligating or spending money before it is appropriated.
- Contingency contracting officers (CCO) should consult with the finance office to ensure proper use of each type of funding under their control. The customer is responsible for requirements generation, from definition through approval.
- The commander, or his or her designee, is responsible for the validation and approval of requirements.
- A funded purchase request (PR) must have a complete description and the appropriate certified funds.

Introduction

Congress limits the authority of the Department of Defense (DoD) and other executive agencies to use appropriated funds. This chapter begins by discussing these limitations and types of contingency contracting funding. It further discusses procedures on how requirements are generated through the use of purchase requests and contracting related boards.

Fiscal Law Constraints



Appropriated funds are subject to three basic fiscal constraints: time, purpose, and amount. The following Web site will allow you to search

and review appropriate United States Codes (USC): <http://www.gpoaccess.gov/uscode/>.

Time

The time control includes two major elements. First, appropriations have a definite life span. Second, appropriations normally must be used for the needs that arise during their period of availability. The general rule is that current funds must be used for current needs.

Period of Availability. Most appropriations are available for obligation purposes for a finite period of time. Operation and maintenance funds are available for 1 year; procurement appropriations for 3 years; and construction funds have a 5-year period of availability. If funds are not obligated during their period of availability, they expire and are unavailable for new obligations (new contracts or changes outside the scope of an existing contract). Expired funds may be used to adjust existing obligations, such as pay for a price increase following an in-scope change to an existing contract. (*31 USC §1552*) However, OAR [Obligation Adjustment Reporting] approval is required before contracting action can be executed.

The Bona Fide Needs Rule.



The Bona Fide Needs Rule is an appropriations and fiscal law. (*31 USC §1502(a)*) It provides that a fiscal year's (FY) appropriations only be obligated to meet a genuine need (bona fide need) arising in (or sometimes before) the fiscal year for which the appropriation was made. It restricts the use of existing fiscal year's appropriated funds on the next fiscal year's requirements. For example, annual funds appropriated for FY09 are to be used to fund a legitimate FY09 need. The funds are not to be used to fund a need the customer would not genuinely have until FY10. However, the application of the rule may differ when it comes to supplies and services overlapping fiscal years. The bona fide needs rule also justifies the use of prior year funding when a contract has been terminated.

Supplies.    

The bona fide need for supplies normally exists when the government actually will be able to use the items. Thus, a command would use a currently available appropriation for computers needed and purchased in the current FY. Conversely, commands may not use current year funds for computers that are not needed until the next FY. Year-end spending for computers that will be delivered within a reasonable time after the new FY begins is proper; however, as long as a current need is documented. Note that there are lead time and stock level exceptions to the general rule governing purchases of supplies.

Services.      

How does the application of the Bona Fide Needs Rule differ when services cross FYs? The difference is based on whether the services are considered severable or nonseverable. Severable services are services that are continuing and recurring in nature such as lawn maintenance, janitorial services, or security services. The benefit of the service is realized at the time that services are provided, even if the contract has not been performed to completion. Most base operations support services provided by a contractor supporting a deployed unit would be considered severable. Services are considered severable if they can be separated into components that independently provide value to meet a customer's needs. 10 USC §2410a permits funding a contract (or other agreement) for severable services for up to 12 months using current appropriation when the contract is executed, even if some services will be performed in the subsequent fiscal year. Conversely, nonseverable services represent a single undertaking that cannot be feasibly subdivided. If the services produce a single or unified outcome, product, or report, the services are considered nonseverable. Some examples include studies culminating in the delivery of a final report, the overhaul of an engine, and painting a building. Note that lead time exception can apply to start date of service type contracts.

Construction.

Construction contracts obligated and awarded late in a FY (September) must have a performance start within 90 days of award. For example, if a contract was awarded on 15 September with that given FY funds, performance must commence and invoices must be submitted by 13 December of the new FY as derived from DoD fiscal law. Typically, commencement of work can be in the form of the contractor ordering materials and delivering them to the government and the government taking receipt (possession) of materials that will remain in the government's possession (contractors cannot store at their businesses), surveying land, breaking ground, and other such functions. The key in determining what is considered performance of work is to have the elements of work included on a progress schedule that will serve as means to allocate a percentage of work performed and invoiced.

Purpose

31 USC §1301(a), commonly referred to as the purpose statute, prohibits spending money on objects other than those for which appropriations were made. Funds must be expended for the purpose established by Congress. There is a three-pronged test known as the Necessary Expense Doctrine which states that expenditures must:

- Be Logically Related to the Appropriation. The expenditure must be for a particular statutory purpose, or necessary and incident to proper execution of the general purpose of the appropriation. A necessary expense will contribute materially to the effective accomplishment of an authorized function.
- Not be Prohibited by Law. The rationale that a certain expenditure is necessary to carry out the mission of the agency is insufficient to overcome a statutory prohibition. Also, agencies may presume that restrictions in an appropriations act are effective only for the FY covered unless the legislation clearly indicates its permanent character.

- Not be Otherwise Provided. Regardless of a logical relationship between the appropriation and the expense, if another specific appropriation exists for a given purpose, it must be used. For example, the Comptroller General ruled that the Navy could not use its shipbuilding appropriation to deepen a river channel allowing the submarines under construction to move to deeper water, because the Army Corps of Engineers is specifically funded for that function. Running out of money is not sufficient excuse to use another appropriation. If there are two appropriations reasonably equal for expenditures, then the agency may choose either appropriation. However, once the election is made, the agency must continue to use the selected appropriation to the exclusion of any other.

Amount

Of paramount concern is ensuring that the DoD complies with the ADA, 31 USC §1341(a), which prohibits obligating or spending money before it is appropriated or in amounts in excess of the amount appropriated. It is a criminal act to knowingly enter into or authorize government contracts in the absence of sufficient government funds to pay for such contracts. A knowing and willful violation of 31 USC §1341(a) is punishable by a fine of up to \$5K, 2 years in prison, or both. In addition, if someone violates this law, the matter must be investigated and a written report must be filed with Congress. Common problems that have triggered ADA violations include:

- Without statutory authority, obligating (awarding a contract) current year funds for the bona fide needs of a subsequent FY. For example, this may occur when activities stockpile supply items in excess of those required to maintain normal inventory levels.
- Exceeding a statutory limit (funding a construction project in excess of established thresholds).

- Obligating funds for purposes prohibited by annual or permanent legislation.
- Obligating funds for a purpose for which Congress has not appropriated funds (for example, improper funding of personal expenses).

Purchase Requests



Requirements from Customers. There are two main questions involved with customer requirements during a contingency situation:

- How do customers submit requirements?
- What information is needed from customers in order to obtain goods and services for them?

Initially, the contracting office will be inundated with requests for goods and services from several different sources. Most requests will be legitimate and allowed to proceed to contracting without a prioritization status. However, at some point requirements will need to be prioritized. Your mechanism to prioritize may be a readiness center on a contingency support staff where senior base officials coordinate base recovery efforts. The readiness center or support staff is usually comprised of the combatant commander, comptroller, and appropriate customer commands. If left unaddressed, the prioritization process will be performed by the responsible contracting office.

What is considered an acceptable purchase request at the beginning of the contingency operation will, and should be, different once the contingency stabilizes. Initially, verbal requests can be accepted; however you should give the customer a suspense for receipt of backup paperwork. If you do receive verbal requests, make sure you get an adequate description of the requirement. Generic noun descriptions usually will not be adequate. At some point during the contingency, verbal requests

should be replaced by written requests with all the required documentation. If you allow verbal requests to continue too long, tracking requirements will become extremely difficult.

Purchase Request (PR) Documents. Without a properly prepared purchase request, it is almost impossible to make an authorized purchase. During the initial deployment, any format may be used for submission of a PR. However, the following requirements must be fulfilled even with a verbal request.

- Request has been approved by the deployed commander or his or her designee
- Funds have been certified through the appropriate budget office
- Purchase request has a fund cite
- Purchase request has sufficient funds to cover purchase

During sustainment an appropriate requisition document must be utilized to request supplies and services or construction. Further guidance and procedures will be provided to each organization once the deployed commander, in conjunction with the CCO, has established them.



PR documents can be submitted on many forms to include the following:

- Air Force (AF) Form 9   
- Department of the Army (DA) Form 3953 
- Navy Supplement Form (NAVSUP) Form 1250-2 
- Department of Defense (DD) Form 448 (*Military Interdepartmental Purchase Request* [MIPR]) and DD Form 448-2 (*Acceptance of MIPR*)
- Air Force Form 4009 
- DD Form 1348 
- DD Form 1149 

As mentioned earlier, all purchase requests (PR) must have a good description of required services or supplies and certification of funding. For a small dollar supply purchase, a good description might include a noun, part number, picture of the item if possible, or a sample of what is needed so the CCO can show it to potential vendors. Also required is the name and organization of the customer and a point of contact. For services and construction requirements, the contracting officer will need a complete statement of work (SOW), statement of objectives (SOO) or performance-based work statement (PWS), and the name of customer's contracting officer's representative (COR) who will be providing technical support. A good PWS or what is probably more familiar, a SOW, would include a detailed description of what is expected from the contractor. In other words, it should be as *performance oriented* as possible. This will make it easier for the contractor to understand and easier for the CCO to point out deficiencies when performance does not measure up to standards.

Lines of Approval. The first step in any requirement is to determine which activity is the office of primary responsibility (OPR) for the need and see if that office has a mechanism to support the requirement. For example, if the requirement is for a vehicle, contact the transportation OPR to see if they can fill the need. If not, prepare the appropriate documentation to lease or purchase the requirement locally. In most cases a senior official will be designated as the approving authority for all local PRs. This authority may be retained by the deployment commander or may be delegated to his staff. Where this authority rests depends primarily on the size of the deployed force. Either way, you will have to obtain approval from the designated approval authority for anything bought locally (see Department of Defense Federal Acquisition Regulation Supplement [DFARS] [225.70](#)).

Who May Submit Purchase Requests. The deployed commander and the contracting officer should establish the local lines of authority for requestors and approving officials. In most cases specific individuals from each functional area will be designated in writing by the deputy chief of staff to approve PRs for that area and to submit PRs to contracting.

Who Can Obligate the Government. When spending public funds, DoD must substantiate its requirements and strictly control its contracting function. Officially appointed individuals who have express written authority to bind the US government to a contractual agreement accomplish this control. The contracting officer is the only agent who represents the government in this capacity.

This unique personal responsibility means supervisors, commanders, and others having administrative control over contracting officers must avoid directing contracting officers to take action that might violate laws or contracting regulations. See also Chapter 5.

Purchase Descriptions and Statements of Work.



This is the most important area for the customer. Investing the time to provide contracting with an adequate purchase description can ensure that contracting fulfills the customer's needs in a timely manner.

Contracting activities and their customers will consider both technical needs and business strategies when defining and specifying requirements. CCOs must ensure specifications reflect only what is needed to meet the requirements of the mission and the SOW, SOO, or PWS will not unnecessarily restrict competition or innovation. Additionally, commercial item descriptions will be used as much as practicable and functional specifications will be used instead of detailed design specifications whenever reasonable.

Purchase Descriptions. Purchase descriptions serve two purposes: allows the buyer to determine what to buy and where; and allows the vendor to quote properly and deliver the correct item. Adequate item descriptions ensure that customers get what they need at the best value possible. Keep in mind, commonly accepted stateside standards and commercial practices are not the same as in contingency locations.

Item descriptions, specifications, and technical requirements should always be clear and concise. Describe the requirement in sufficient detail to leave no room for doubt. Ambiguous descriptions delay contracting action and may lead to the purchase of the wrong product or service.

Correcting discrepancies is expensive, and wastes the customer's valuable time as well as that of the CCO. Item descriptions set forth the essential physical and functional characteristics of the supplies or services required. The minimum requirements of the government should be expressed in the description. However, do not confuse minimum requirements with minimum descriptive data. Include as much information as possible to describe exactly what you need. The principal features of a purchase description may be determined by answering the following questions:

- What is it?
- What is it made of? (paper, wood, and so forth)
- What are its principal descriptive characteristics? (size, color, and shape)
- What does it do? (holds, drives, connects, and so forth)
- What is it used for? (indicate its purpose)
- How is it used? (by itself, with other equipment, and so forth)
- Where is it used? (component part or a complete assembly)

Preparing a Purchase Description. A generic purchase description is written in simple language, such as would be used in private purchases, with one exception. Brand names are prohibited without separate written justification. A generic description is the most desired, in that it clearly identifies what is required, yet provides for the maximum competition among available sources. The purchase description should clearly describe the essential physical and functional characteristics of the item required. It should include as many of the following characteristics as necessary to express the minimum requirements of the government:

- Kind of material
- Electrical data, if any
- Dimensions

- Principles of operation
- Restrictive or significant environmental conditions
- If part of an assembly, the location within the assembly
- Essential operating conditions
- Special features, if any
- Intended use
- Operation to be performed
- Equipment with which the item is to be used
- Other requirements, as appropriate

If the customer cannot write an adequate purchase description, a less desirable alternative exists by identifying a specific product followed by the words “brand name” or “equal.”

Overly Restrictive Characteristics. A description that is too strict can be just as undesirable as the opposite extreme. Whenever possible, a description should allow tolerance. For example, if an item is required to be painted, the color should allow for variances unless only one color is acceptable. Likewise, tolerances should be allowed with other characteristics such as weight, and size if possible.

Inadequate Specifications and Descriptions. Inadequate descriptions are normally returned to the originator for clarification. Specifically, the challenge is to determine the minimum needs of the government and then write an item description that contains only those salient physical, functional, and other characteristics that are essential to meet those needs. Restrictive descriptions can sometimes lead to protests on the part of the contractors and further complicate and delay the acquisition of the supplies or services. Poor descriptions contribute to misunderstanding between the government and the contractors, and may lead to inferior products, unnecessarily high prices, or both. One common problem is abbreviations. Keep abbreviations to a minimum and only use them when

they are universally understood and are not otherwise confusing. Careful screening of the purchase request item description by approving authorities will preclude delays in procurement action.

Performance-Based Requirements.

A performance-based work statement (PWS) defines the requirements in terms of results, rather than the method of performing the work. The PWS should be developed by a multifunctional team. References (such as publications, regulations, and instructions) should be cited by specific process or procedure (such as paragraph or chapter) rather than the entire publication.

- At a minimum a PWS should include:
 - Description of services and general information (definitions and so forth).
 - Government-furnished property and services, if applicable.
- For PWS training, see *Seven Steps to Performance-Based Service Acquisition Guide*, located at https://www.acquisition.gov/comp/seven_steps/home.html and see Defense Acquisition University (DAU) CLC013, “Performance-Based Services Acquisition,” located at <http://learn.dau.mil>.

The resulting performance-based contract will also include measurable performance standards (in terms of quality, timeliness, and quantity) and the method of assessing contractor performance against performance standards and performance incentives where appropriate. For example, consider including a quality assurance surveillance plan (QASP) and a service delivery summary (SDS).

A QASP will at a minimum include:  

- The objective of the service.
- The desired results (such as cost savings, efficiencies, or improved customer service).
- A methodology to assess contractor performance.

- A methodology to validate when and if the objectives are met. An SDS is a summary provided as a tool for identifying major requirements of a contract, where they can be found in the SOW, and the performance standard that must be attained.

The CCO will include Federal Acquisition Regulation (FAR) clauses 52.246-1 through 52.246-16 in performance-based contracts as appropriate.

Services, Contract Repair, and Construction Buying. Unlike the straightforward nature of cash-and-carry supply buying, purchasing is somewhat more complicated for services, contract repair, and construction. The ongoing nature of services and construction complicates the writing of a purchase description for these types of services.

- A SOW, SOO, or PWS must be prepared. In some cases, this will have to be done bilingually in order for the contractor to fully understand requirements.
- A COR or contracting officer's technical representative must be available from the requesting activity to answer questions from potential contractors.
- Some of these requirements will be more than the simplified acquisition threshold, which can limit the CCO's options.

Documentation That May Accompany Purchase Requests. The following documentation is submitted as required for:

- Construction Projects
 - Cost breakdown
 - Drawings and specifications (required to be submitted to the contracting officer for review prior to finalizing a contract)
 - Itemized cost breakdown supporting liquidated damages

- Schedule of material submittals
- Accurate quantities, conversions, and units of issue
- Government-furnished property schedule
- Government estimate of completion costs and bidding schedule
- Services Requests.
- The contracting officer will need a complete SOW, SOO, or PWS and contract information for the customer's COR who will be providing technical support. The SOW, SOO, or PWS should include a detailed, performance-oriented description of what is expected of the contractor to meet the government needs, not how it should be accomplished. Examples of SOWs, SOOs, and PWSs can be found at the AFCESA Web site: <https://www.my.af.mil/afknprod/ASPs/CoP/EntryCoP.asp?Filter=OO-EN-CE-A1> or <https://afkm.wpafb.af.mil/ASPs/CoP/EntryCoP.asp?Filter=OO-EN-CE-A1>.

It is important to note that, per Deputy Secretary of Defense (DEPSECDEF) memo dated 22 August 2008, “where practicable, the requiring activity shall provide the COR nomination package to the contracting office as part of the purchase request.” Additionally, CORs must be designated and trained prior to contract award.” See <http://www.acq.osd.mil/dpap/policy/policyvault/USA005569-09-DPAP.pdf> for additional information.

- Contract Repair Service Requirements. The following should either accompany or appear on the purchase request:
 - Whether a serviceable like item is available within the supply system.
 - Whether in-house repair capability is available.
 - Nature of the equipment malfunction that indicates a need for repair.

- Whether on-site repair is required. If so, state building number, room number, name, and telephone number of contact point at the equipment location.
- Brand name and sole source requirements.  
- If the item is less than \$25K, the using activity must furnish a detailed, written justification in official letter format, signed by the technical personnel and officer-in-charge of the activity for which the item is being requested. If the item is \$25K or greater, market research must be done by the requester.



- For all requirements, ensure the point of contact, organization, and delivery location is identified.

Finance and Contracting Relationship. The contracting and accounting and finance relationship is extremely important when it comes to obtaining documentation to support commitments or payments made by the paying agent. This relationship continues to be important when it comes time for the accounting and finance agent to scrub the funding document. Close coordination between the contracting officer and the funding agent is necessary to determine actual obligations so the funding document will be accurately reported to the supporting accounting and finance personnel.

Contracting Related Boards

At some point in time, requirements will require prioritization from the commanders in the field. Depending on the requirement and the source of funding, PRs will need to be approved and prioritized by the appropriate commander. If the requirement is a Joint controlled support item or service, or includes Joint funding; the originating Service component organization will hold a Service-unique requirements board to validate and prioritize the Service's requests. Once approved by the Service process, the requirement will be sent to the Joint Acquisition Review Board (JARB) as depicted in Figure 2.

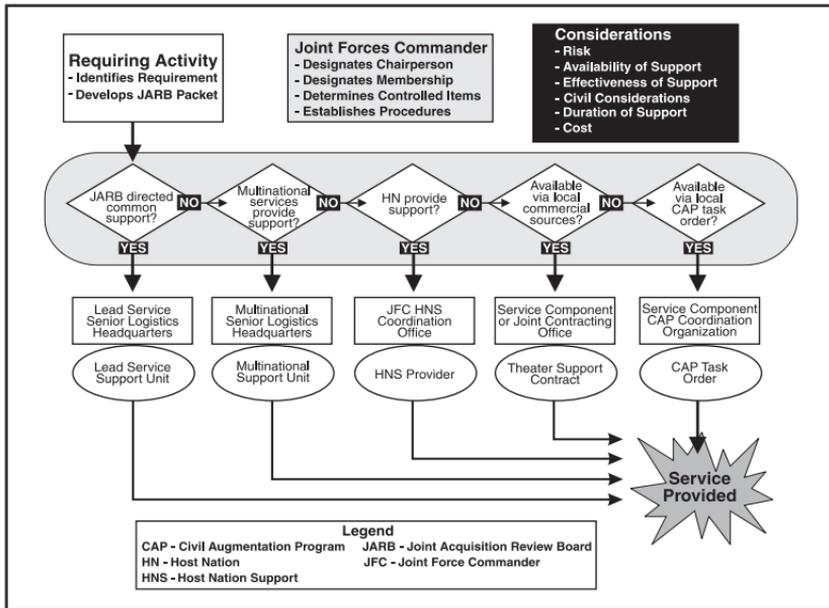


Figure 2. Joint Acquisition Review Board Process

Acquisition Process and Contracting Related Boards. It is very important that all common user logistics (CUL) support be properly coordinated by the supported geographic combatant commander (GCC) and subordinate Joint force commander (JFC) to include contracting; however, determining the appropriate source of CUL support and establishing priorities of this support are not contracting functions. The supported GCCs have directive authority for logistics, which includes the authority to issue directives to subordinate commanders, including peacetime measures necessary to ensure the following:

- Effective execution of approved operation plans
- Effectiveness and economy of operation

- Prevention or elimination of unnecessary duplication of facilities
- Overlapping of functions among the Service component commands

In order to provide the subordinate JFC the ability to enforce priorities and control CUL support efforts, the supported GCC should strongly consider directing the establishment of three critically important contracting related review boards:

- The Combatant Commander Logistic Procurement Support Board (CLPSB)
- The JARB
- The Joint Contracting Support Board (JCSB)

The establishment and membership of these boards will be dependent on the size and duration of the operation as well as other operational factors. In some instances, these boards may be combined.

Combatant Commander Logistics Procurement Support Board. The CLPSB is established to ensure that contracting and other related logistics efforts are properly coordinated across the entire area of responsibility (AOR). This board is normally chaired by a GCC J4 representative and includes representatives from each Service component command, combat support agency, as well as other military and United States government agencies or organizations concerned with contracting matters. The CLPSB functions are outlined in Table 1.

Joint Acquisition Review Board. The JARB is a review board, not a contracting board. The JARB is utilized to coordinate and control the requirements generation and prioritization of Joint CUL supplies and services that are needed in support of the operational mission and is normally chaired by the subordinate JFC (either subunified command or Joint task force level) deputy commander, or J4. The JARB's main role is to make specific approval and prioritization recommendations for all GCC directed, subordinate JFC controlled, high-value, high-visibility CUL

Chapter 3

Contingency Funding and Requirements Process

requirements and to include recommendations on the proper source of support for these requirements. The normal priority of CUL source of support includes lead Service organic military sources, multinational support, host nation support (HNS), multinational military support, theater

CLPSB	JARB	JCSB
Focus on general policies and area of responsibility-wide issues related to contracting support (combatant commander level).	Focus on <i>what</i> are requirements priorities and source of support (subordinate Joint force commander level).	Focus on <i>how</i> contracting will procure support within the Joint operations area (subordinate Joint force commander level).
<ul style="list-style-type: none"> –Identify contracting and other related issues that may require Joint Staff Office of Primary Responsibility, J4, or Office of the Secretary of Defense action. –Establish area of responsibility-wide contracting and contractor management policies and procedures. –Determine theater support contracting organizational structure. –Coordinate with US embassies and host nations on contracting support issues and actions (host nation support, status of forces agreements, visa requirements, and others). 	<ul style="list-style-type: none"> –Determine what common user logistics support needs to be controlled. –Review requirements. –Recommend priority of support requests. –Recommend an acquisition methodology to be used to meet the requirements (such as organic military, host nation support, multinational support, or contracted support) 	<ul style="list-style-type: none"> –Eliminate duplication of effort by coordinating theater support and external support contracting actions. –Determine appropriate external or theater support contracting mechanism. –Provide an exchange of information among contracting activities covering such matters as sources of supply, prices, and contractor performance. –Provide guidance on consolidation of purchases.

Table 1. Contracting Related Boards, Part 1

CLPSB	JARB	JCSB
–Coordinate with DoD and military departments on potential loss of contract support and risk management of same in accordance with DoD Instruction 1100.22, <i>Manpower Mix Instruction</i> .		–Establish theater support contracting procedures. –Prescribe payment procedures consistent with currency control requirements and international agreement. –Establish contract visibility procedures and reports. –Coordinate the enforcement of contractor management policies for external support and theater support contracts.

Table 1. Contracting Related Boards, Part 2

support contracts along with external support contracts such as the military department, civil augmentation programs, and Defense Logistics Agency (DLA) prime vendor contracts. The JARB is normally made up of representatives of the Service component logistic staffs, special operations forces (SOF), component staff, DLA, Defense Contract Management Agency (DCMA), Joint force engineer, J6, Joint force comptroller, staff judge advocate, and other JFC staff members as directed. It also should include representatives from designated theater support and external support contracting organizations. The theater support and external support contracting members' main role in the JARB process is to inform the other JARB members which contracting mechanisms are readily available for their particular acquisition, to include limits of the local vendor base for each type of support. This would facilitate the decision

to use either external support contracts or theater support contracting assets. Specific JARB functions are outlined in Table 1.

Joint Contracting Support Board. The JCSB is established in order to coordinate and deconflict contracting actions within the Joint operations area (JOA). The JCSB reviews contract support requirements forwarded by the JARB and makes recommendations on which specific contracting organizations and contract venues are best suited to fulfill the requirements. The JCSB is normally chaired by the subordinate J4 acquisition officer or senior contracting official. It is made up of representatives from the Service theater and external support contracting organizations (to include engineering and contracting), DCMA, DLA (to include the Joint Contingency Acquisition Support Center when called into theater at the request of the combatant commander), and SOF component contracting representatives. This process requires adequate visibility of CUL related contracting capabilities within the operational area, which can be a significant challenge. It is through this JCSB that the J4 ensures a coordinated contracting support effort across the entire operational area. The goal of the JCSB is to maximize the contracting capabilities of the JOA while minimizing the competition for limited vendor capabilities. It also establishes specific theater and external support contracting procedures and reporting requirements. While the CLPSB and JCSB perform similar functions, the CLPSB coordinates general acquisition policy and addresses major contracting related issues across the AOR, while the JCSB is more focused on coordinating day-to-day contracting support within a specific JOA. See Joint Publication 4-10 Appendix G, “Requirements Development and Acquisition Review Processes,” for more details on the acquisition process. Specific JCSB functions are outlined in Table 1.

Funding Procedures



Bulk Funding. If the contracting office is issued a bulk funded PR, the contracting office is responsible for maintaining a record of obligations and the remaining balance of funds. The bulk funding concept is the system whereby the CCO receives authorization from the certifying officer to obligate funds on purchase documents against a specified lump sum reserved for that purpose over a specified period of time. Rather than obtaining individual obligation authority on each purchase document, funds are precommitted. Strict control of the bulk funds is necessary to preclude the misuse of funds.

Request and Authority to Cite Funds. When approved by the accounting and finance officer or official designee, the bulk funding document (*AF Form 616*, *DA Form 3953*, *DD Form 1348*, or *NAVSUP Form 1250-2*) certifies funds are available and records them as commitments in the accounting records. The amount approved is an estimate of the amount that may be obligated by the recipient. Funds are available for a specific period of time and for a designated purpose. Bulk funding documents may be issued to the contracting office to permit certain types of local requirements to be funded without having the budget officer or certifying officer certify funds are available for each requisition. If contracting is issued a bulk funding document, the CCO will be responsible for keeping a record of obligations and the remaining balance of funds (on the reverse of the form). Lastly, since the accounting classifications for supplies and services are different, separate bulk funding documents are required.

Other Funding Procedures. The CCO or the customer should contact the budget office for procedures to fund:

- Vehicle rentals for recreational activities (such as trips and tours) and recreational supplies (such as balls, bats, and so forth), which

will use morale, welfare, and recreation (MWR) or nonappropriated funds (NAF) (go to NAF fund manager, if available).

- Medical supplies and services (such as medicine, doctor services, and hospitalization).
- Food (such as fresh fruits, vegetables, and bread) which requires a subsistence fund cite.
- Legal claims payable to host government, foreign companies and citizens, and other US government agencies.
- Host government provided equipment, services, and facilities. Normally an HNS agreement contains the methods of payment. If an HNS is not in effect with the country in which the CCO is deployed, the disbursing office will still be the agency the CCO will contact to determine the method or procedures for payment.
- Goods and services needed to support requirements for aircraft accidents and related incidents not previously covered.

Funds Certification Officer. The funds certification officer certifies on the PR that funds are available prior to processing by the contracting office under peacetime conditions. The approved funds are an estimate of the amount that may be obligated by the requesting activity for a specific period of time and designated purpose. During contingencies, the issue of funding becomes more involved because of the urgency and source of the requirements. Funds certification is designated by comptroller personnel and cannot be further delegated. The total amount of funds certified and the final obligated amount must be designated in US dollars. Conversion rates at the time of funds certification should also be noted.

Fund Cites. Accounting classification codes, which are also referred to as fund cites, are required on all purchase requests. One important aspect of appropriations is understanding how to read a fund cite. The first seven digits of a fund cite are the most important for CCOs. The first two digits

reveal the federal agency or military department—57 represents Air Force. The third digit states the period of availability or FY. The next four digits state the type of appropriation. For example, a fund cite beginning with 5710 3400 would represent Air Force Operation and Maintenance funds for FY10. All funds citations should be validated and certified by the deployed finance office before a contract is awarded.

How to Read a Fund Cite:

57 10 3400 310 67A2 231010 01 59290 503300 ESP 8Z

Agency (57). 57 = Air Force, 17 = Navy and Marine Corps, 21 = Army, 97 = DoD

FY (10). 10= FY10 money, X = no year \$, two numbers, that is 3/8 = funds appropriated in FY03 and available until FY08

Type of Appropriation (3400). Active duty O&M: 3400 = Air Force, 3500=Air Force Military Personnel, 3700 =Air Force Reserve Military Personnel, 3740 = Air Force Reserve, 3840 = Air National Guard, 3850 = Air National Guard Military Personnel, 1804 = Navy, 1806 = Navy Reserve, 1106 = Marine Corps, 1107= Marine Corps Reserve, 2010 =Army Military Personnel, 2020 = Army, 2080=Army Reserve, 2065=National Guard, and 0100 = DoD, OSD, and DLA)

Element of Expense Identification Code (EEIC) (59290). Tells what you are buying. Some of the common EEICs you will see during a contingency are as follows: 409 – travel, 59290 – miscellaneous contractual services, 61950 – governmentwide commercial purchase card, 61990 – miscellaneous commercial supplies.

Emergency and Special Project (ESP) 8Z. Tracks expenses for specific contingency operations. The alpha numeric code is assigned by the DoD. All contingency expenses should include an ESP code.

See the DVD for more information on reading a fund cite.



Types of Funding



The following paragraphs contain general descriptions of the typical types of funding that are used during contingencies. In any contingency, CCOs should consult with the finance office to ensure proper use of each type of funding under their control. Certain rules apply to each type of funding to prevent misuse.

Military Construction (MILCON).

Congress appropriates *10 USC* funds for MILCON of permanent improvements separately in annual appropriation acts. The term *military construction* includes “any construction, development, conversion, or extension of any kind carried out with respect to a military installation whether to satisfy temporary or permanent requirements.” (*10 USC §2801(a)*) The definition of a military installation is very broad and includes foreign real estate under the operational control of the United States (US) military. Military construction includes all work necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility. (*10 USC §2801(b)*) Construction projects in excess of \$1.5M require specific approval by Congress (include each Service type of appropriation).

Operation and Maintenance (O&M). O&M funds are 10 USC funds used for the day-to-day expenses incurred during training exercises, deployments, and operating and maintaining installations. Commands may use O&M appropriations for all necessary and incidental operational expenses.

- **Maintenance and Repair.** Maintenance and repair is not MILCON. Maintenance is recurring work to prevent deterioration—work required to preserve or maintain a facility in such condition that it is usable for its designated purpose. Repair is restoration of a facility so it may be used for its designated purpose by overhauling, reprocessing, or replacing parts or materials that have deteriorated

by action of the elements or by wear and tear in use, and which have not been corrected through maintenance. Maintenance and repair work would be paid for via O&M funds, not MILCON. When construction and maintenance or repair are performed together as an integrated project, each type of work is funded separately, unless the work is so integrated that separation of construction from maintenance or repair is not possible. In the latter case, fund all work as construction.

Special Rules Applicable to Construction. There are several sources for funding military construction in a contingency:

- One source is contingency construction up to an amount appropriated for that purpose when authorized by the Secretary of Defense (SecDef) to carry out a military construction project that is not otherwise authorized by law. The SecDef may delegate the authority to the secretary of a military department to execute a project if SecDef determines that deferral of the project for inclusion in the next *Military Construction Authorization Act* would be inconsistent with national security or national interest. To do this, SecDef must submit a report in writing to the appropriate committees of Congress to include justification, current estimate of cost, and justification for using the contingency construction section. The project can begin only after the end of the fourteenth day from the time notification is received by Congress. (*10 USC §2804*)
- SecDef may carry out emergency construction projects not otherwise authorized by law in the *Military Construction Authorization Act* using unobligated funds. (Purpose: protection of health, safety, or environment; must notify Congress; 21-day waiting period.) (*10 USC §2803*)
- O&M funds may be used to carry out an unspecified minor military construction project costing \$750K or less. If the project is to

correct conditions that present a threat to life, health, or safety, then up to \$1.5M in O&M funds are available. These limitations do not apply if the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies. These are referred to as deployment and mobility funds, or mobility enhancement funds to enhance deployment and mobility up to \$1.5M. **Note:** O&M funds are not available for exercise-related unspecified minor construction projects. (*10 USC §2805*)

- In accordance with the *2008 National Defense Authorization Act*, Section 2801, the Department of Defense can fund temporary facilities in excess of \$750K during declared contingency operations under O&M funds by identifying a clear, affirmative legislative authority. The current authority is provided in the FY04 Emergency Supplemental Appropriation and provides SecDef with temporary authority to use O&M funds for combat or contingency construction projects outside the US, subject to certification of certain requirements and notification to Congress. The amount for this temporary O&M authority is \$200M for each project. The \$200M cap provided by the temporary O&M authority may be exceeded, if SecDef determines the project vital to national security. In FY05, Congress continued the temporary O&M authority at the same funding level, but made the use of O&M funds contingent on the submission of quarterly reports by the SecDef. To use the Temporary O&M Authority, the SecDef must certify the following:
- The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under Section 201 of the *National Emergencies Act (50 USC §1621)*, or a contingency operation.

- The construction is not carried out at a military installation where the US is reasonably expected to have a long-term presence.
- The US has no intention of using the construction after the operational requirements have been satisfied.
- Facilities supporting MWR activities cannot use these O&M funds.

Nonappropriated Funds (NAF).

Because NAF purchase procedures and guidance differ based on Service, applicable Service procedures and guidance should be followed closely. Most Service procedures and guidance point out mandatory FAR clauses and outline other clauses that must be inserted in these purchases. The sale of goods and services by nonappropriated funds instrumentalities (NAFI) to appropriated fund government activities is outside the scope of NAFI functions. However, certain circumstances justify the purchase of supplies or services by appropriated fund activities from NAFIs. In these instances, a sole-source justification is required.

Funding Issues Using NAF. If NAFs are available, they can be used to purchase plaques, mementos, coins, organizational mugs, and t-shirts (items that may not generally be purchased with appropriated funds).

However, coins, mementos, and unauthorized personal gifts are a recurring challenge. If the coins are merely mementos to build goodwill with local officials, they cannot be purchased with O&M funds. Generally, an agency may not use appropriated funds to purchase *mementos* such as coins for distribution. Such mementos would be unauthorized personal gifts. Nevertheless, Congress has provided specific statutory authority for the SecDef to “award medals, trophies, badges, and similar items” for “excellence in accomplishments or competitions.” (*10 USC §1125*) These awards could be made in the form of a coin, trophy, plaque, or other similar device. The authority to purchase awards for excellence in competitions does not extend to the purchase of coins or other mementos merely to enhance esprit de corps, improve service members’ morale, or other unauthorized purposes. Commanders should seek to differentiate between tokens of appreciation and mementos (personal gifts), that cannot be

purchased with appropriated funds, and awards, that may be funded by appropriated funds. Additionally, coins purchased with appropriated funds must not contain a specific commander's name on them.

Bottom Line. Commanders may use O&M funds to purchase unit coins for the purpose of recognizing outstanding contributions and not for mementos or creating goodwill with the local community.

Mixed Funding. For construction and A&E [Architecture and Engineer] contracts that cite both appropriated and NAF funds, write these contracts as appropriated fund contracts with all appropriated fund requirements. More information on mixed funding can be found in Air Force Manual 64-302, paragraph 4.2.1 or OPNAVINST [Chief of Naval Operations Instruction] 11010.20G. The OPNAVINST document is available at <http://doni.daps.dla.mil/OPNAV.aspx>.

Official Representation Funds (ORF).

Another funding option is the commander's ORF, which has its legal basis in 10 USC §127, *Emergency and Extraordinary Expenses*. Commanders have some discretion to use these funds without the normal statutory controls, but there are strict regulatory controls on their use. (Department of Defense Directive 7250.13, *Official Representation Funds*; Air Force Instruction [AFI] 65-603, *Official Representation Funds: Guidance and Procedures*; Army Regulation 37-47, *Representation Funds of the Secretary of the Army*; and Secretary of the Navy 7042.7, *Guidelines for Use of Official Representation Funds*) Basically, they may only be used for providing official courtesies to authorized guests, which may include foreign dignitaries. The courtesies may include gifts, mementos, or tokens. Therefore, this use of ORF for unit coins for foreign dignitaries is permissible. However, the strict prohibition against placing an individual's name on the coin also applies to using ORF to purchase the coin. In addition, ORF may not be used to provide gifts, mementos, or tokens to DoD personnel, so these coins could not be presented to *outstanding contributors* in the command. (Navy Support Instruction

[NAVSUPINST] 4200.85D, accessed within the Naval Logistics Library at <https://nll1.ahf.nmci.navy.mil/nll/getdata.cfm>.)

Combatant Commander Initiative Fund (CCIF). These funds are controlled by the Chairman of the Joint Chiefs of Staff, who is authorized to provide funds to the combatant commanders from O&M appropriations for emergencies and extraordinary expenses. CCIF funds are used to enhance warfighting capability, readiness, and sustainability of the forces.

Emergency and Extraordinary Expenses (E&EE). These funds may be used by Service secretaries for unanticipated emergencies or extraordinary expenses. They can be spent for unanticipated, short-notice construction, but typically are not. The amount appropriated for E&EE is fairly small, and if the cost exceeds \$500K the SecDef must notify appropriate committees of Congress.

Procurement Appropriation.



These funds are used for new obligations only for the 3 fiscal years designated in the appropriation act and identified in the Treasury Department's official symbols and titles for federal accounts. For example, the appropriation is available for obligation from 1 October 2008 through 30 September 2011, after which it expires for new obligations. When the appropriation expires, use it only to liquidate obligations and make authorized obligation adjustments for 5 more years under its original Treasury symbol. If you cannot obligate specific programs within the period for which funds were justified and approved, you must budget any additional funding required to complete them in future years as new requirements. See DoD Financial Management Regulation 7000.14-R, located at <http://www.defenselink.mil/comptroller/fmr/>).

Note: the rules on use of procurement funds are complicated, especially with regard to purchasing any kind of system. Whenever an item of equipment or a system has a unit cost of more than \$250K, legal counsel should be consulted to determine whether procurement funds may be used.

Overseas Humanitarian, Disaster, and Civic Aid (OHDACA). 

OHDACA funding is used to provide humanitarian, disaster, and civic aid to foreign countries. The use of OHDACA funds requires DoD to provide 15 days prior notice to Congress before transferring any defense articles or services to another nation or an international organization for use in United Nations peace-related operations or any other international peacekeeping, peace enforcement, or humanitarian assistance operation. For further guidance see: <http://www.dsca.osd.mil/programs/HA/OVERSEAS%20HUMANITARIAN%20DISASTER%20AND%20CIVIC%20AID.pdf>.

Humanitarian and Civic Assistance. Humanitarian and civic assistance is the Defense Department's term for relief and development activities that take place in the context of an overseas military exercise, training, or operation. Under the Humanitarian and Civic Assistance program, US military personnel participating in overseas deployments carry out humanitarian activities such as road and school construction, vaccination of children and animals, and well digging. Humanitarian and civic assistance programs are often executed with the involvement of host-country civilian and military personnel. US National Guard or reserve units are involved in many humanitarian and civic assistance activities. For additional information on humanitarian and civic assistance funds see: <http://www.ciponline.org/facts/hca.htm>.

Foreign Disaster Assistance. 

In an effort to prevent loss of life, the President may direct SecDef to provide disaster assistance (including transportation, supplies, services, and equipment) outside the US in response to man-made or natural disasters.

Commanders' Emergency Response Program (CERP).  

The CERP is designed to enable local commanders in Iraq and Afghanistan to respond to urgent humanitarian relief and reconstruction requirements

within their areas of responsibility by carrying out programs that will immediately assist the indigenous population. The CERP must be used to assist the Iraqi and Afghan people without direct or indirect benefit to US, coalition, or other supporting military personnel. (*DoD Financial Management Regulation, Volume 12, Chapter 27*). Table 2 illustrates where CERP may not be used.

For examples of authorized uses of CERP consult the DVD. 

CERP funds are typically used for projects that are small-scale, low-dollar, short-term, employment-oriented, emergency, and high visibility for the benefits of the Iraqi and Afghan people. CERP funds shall not be commingled with nonappropriated funds, and shall be separately executed, managed, recorded, and reported. The Army shall separately notify Office of the Under Secretary of Defense (Comptroller) and United States Central Command (USCENTCOM) J8 of all individual CERP projects of \$500K or greater during the normal monthly reporting process. Notification of these projects shall include a description of the project, an estimated length of completion, and justification of how the project supports the purpose of the CERP.

For more information on the CERP process consult the DVD. 

CERP projects are inherently high risk for corruption. Be vigilant!

Common contracting fraud schemes in a deployed environment:

Product substitution	Price fixing
Defective pricing	Cost mischarging
Fabrication of records	Bribes, gratuities and kickbacks
Government employee collusion	Individual fraud

Table 2. Where CERP May Not be Used

Chapter Acronyms

ADA – Antideficiency Act
A&E – Architecture and Engineer
AFI – Air Force Instruction
AOR – Area of Responsibility
CCIF – Combatant Commander Initiative Fund
CCO – Contingency Contracting Officer
CERP – Commanders’ Emergency Response Program
CLPSB – Combatant Commander Logistic Procurement Support Board
COR – Contracting Officer’s Representative
CUL – Common User Logistics
DA – Department of the Army
DAU – Defense Acquisition University
DCMA – Defense Contract Management Agency
DD – Department of Defense Form
DFARS – Defense Federal Acquisition Regulation Supplement
DLA – Defense Logistics Agency
DoD – Department of Defense
E&EE – Emergency and Extraordinary Expenses
EEIC – Element of Expense Identification Code
ESP – Emergency and Special Project
FAR – Federal Acquisition Regulation
FY – Fiscal Year
GCC – Geographic Combatant Commander
HNS – Host Nation Support
JARB – Joint Acquisition Review Board
JCSB – Joint Contracting Support Board
JFC – Joint Force Commander
JOA – Joint Operations Area
MILCON – Military Construction

MIPR – Military Interdepartmental Purchase Request
MWR – Morale, Welfare, and Recreation
NAF – Nonappropriated Funds
NAFI – Nonappropriated Funds Instrumentalities
NAVINST – Navy Support Instruction
OAR – Obligation Adjustment Reporting
O&M – Operations and Maintenance
OHDACA – Overseas Humanitarian, Disaster, and Civic Assistance
OPNAVINST – Chief of Naval Operations Instruction
OPR – Office of Primary Responsibility
ORF – Official Representation Funds
PR – Purchase Request
PWS – Performance Work Statement/Performance-based Work Statement
QASP—Quality Assurance Surveillance Plan
SecDef – Secretary of Defense
SDS – Service Delivery Summary
SOF – Special Operations Forces
SOO – Statement of Objectives
SOW – Statement of Work/Scope of Work
US – United States
USC – United States Code
USCENTCOM – United States Central Command

Chapter 3 Notes
Contingency Funding and Requirements Process

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Chapter 4 Planning and Guidance



Planning and Guidance

Key Points

- Advance planning and preparation are critical to effective contracting support.
- Along with the J4, you as a contingency contracting officer (CCO) have the ability to influence and affect the tactical or operational outcome.
- There are four phases of contracting support a CCO needs to be familiar with.
- Always be prepared to forward deploy should the mission change.
- Get as much information about the country or domestic disaster area as possible before you deploy.
- Part of a CCO's job is to locate sources, become familiar with local conditions, security, and force protection matters.
- Within 30 days after redeployment, CCOs submit an electronic after action report (AAR).
- CCOs must be familiar with the statutes, directives, treaties, and agreements that will affect contracting operations when deployed.
- Seek guidance from the host nation support team, Command J4, and the United States (US) embassy.

Introduction

Joint force commanders (JFC) use the Joint operation planning process (JOPP) in developing plans for the employment of military power to shape events, meet contingencies, and respond to unforeseen crises. The JOPP is an adaptive, collaborative process to provide actionable direction to commanders and their staffs across multiple echelons of command. It underpins planning at all levels and for missions across the

full range of military operations. It applies to both supported and supporting JFCs and to Joint force component commands (to include the Joint contracting command) in a process that is designed to facilitate interaction between the commander, staff, and subordinate headquarters throughout planning. The JOPP includes all activities that must be accomplished to plan for an anticipated operation—mobilization, deployment, employment, and sustainment of forces. The contingency contracting support phases covered in this chapter are closely aligned to those in the JOPP.

The JOPP helps commanders, their staffs, and the CCO organize their planning activities, share a common understanding of the mission and commander's intent, and develop effective plans, orders and contracts. See Joint Publication (JP) 5-0, *Joint Operation Planning* for more information.

This chapter discusses types of contingencies, predeployment, and the phases of deployment. It also discusses the different types of contingencies, how to *plug in downrange*, and provides relevant information from JP 4-10, covering support phases, types of support, contract organizations, and capabilities and support agencies.

Types of Contingencies

Contingency contracting is defined as direct contracting support to tactical and operational forces engaged in the full spectrum of armed conflict and noncombat contingency operations, both domestic and overseas. There are two types of contingencies: declared and nondeclared. Examples of contingency operation support are major theater wars, smaller-scale contingencies, noncombat contingency operations, and domestic disasters or emergency relief. It may also include military training exercises, routine installation and base operations, and systems or inventory control point contracting in the continental United States (CONUS) and outside the continental United States (OCONUS). Refer to JP 3-0 for more information on types of operations.

Declared Contingency. (10 United States Code [USC] §101(a)(13))

The formal declaration of a contingency operation is very significant for the CCO (see Figure 3). It triggers 10 USC §2302(7), which raises the simplified acquisition threshold (SAT) in accordance with (IAW) Figure 3. IAW 10 USC §101(a)(13), a declared contingency operation of the Department of Defense (DoD) may be:

- Designated by the Secretary of Defense when members of the armed forces become involved in military actions against an enemy of the United States.
- Declared by the President or the Congress when members of the uniformed forces are called to active duty (a reserve component mobilization) under Title 10 USC, or any provision of law during a declared war or national emergency.

Nondeclared Contingency. Nondeclared contingency operations include all contingency operations not previously described. In a nondeclared contingency operation, the SAT threshold is \$100K¹, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (Public Law 108-136, Title XIV, Section 1443). When 10 USC §2302(7) is invoked, SAT is in accordance with Figure 3.

Contingency contracting may be performed in support of humanitarian or peacekeeping operations as defined in 10 USC §2302(7). The term *humanitarian* or *peacekeeping operation* is defined as a military operation in support of the provision of humanitarian, foreign disaster assistance, or in support of a peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

Major Theater War. These are conflicts where hostilities are ongoing, imminent, or likely, and where there is a substantial commitment of US military forces. Operation Desert Shield, Operation Desert Storm,

Chapter 4 Planning and Guidance

Summary Contingency Threshold Requirements

Threshold	Small Business	Sole Source Justification	Contractor/Source Review	Sole Source Negotiation	Competitive Source Just.	Pricing	Solicitations	Contracts	Comm. Contracts	Labor Standards	Notice
Micro Purchase \$3,000	No requirement						Request for Quote Document (RFQ)	Simplified Acquisition/Purchase order		\$2,000	\$10,000
\$15,000 ² Contingency Inside US							use "C" in solicitation #	Non-commercial ("M" Informal)	Simplified Acquisition		
\$25,000 ² Contingency Outside US	SB Coord. required on Solic./KT.	J&A or equivalent required			Abstract (comparison of offers) If competitive	May request pricing assistance if needed			commercial ("M" Informal)		
\$3,000 to \$100,000 ²	SB Coord. required on Solic./KT. E-ACQUIS. FAR 43.103 set aside (may be waived)	J&A or equivalent required	Synopses (FAR 5.2) (D&F req. to waive synopsis due to urgency)	Price Negotiation Memorandum (PNM) If sole source						\$2,500 Service Contract Award & FAR 22.1003	\$3.5M Public announcement of award. (FAR 5.303)
SAT \$100,000 ²			IO18 Contractor review Post-selection & pre-award				Request for Proposal Document (RFP)	Formal contract		\$10,000 Walsh Healy Supply Contracts (FAR 22.603)	
\$250,000 ² Contingency Inside US				Price Competition Memorandum (PCM) If competitive			Use "R" in solicitation #	Non-commercial ("C" formal)		\$100K Miller Act 28.102	
\$1,000,000 ² Contingency Outside US	Open competition (Can set aside if 2+ set aside strategies)	J&A required If sole source			D Form 350	>\$650,000 Certified cost & pricing data required		Formal Contract	Formal Contract		
Test Program											
Commercial description in FAR 13.500 (e)											

Termination for Convenience: Contracts under \$5,000 normally be allowed to run to completion. (FAR 49.101) Fast Pay: Limit \$30,000 (FAR 13.402) Claims: Must be certified over \$100K (FAR 33.207)

Sub-Contract Plans: Required \$550 (Comptons=14)(FAR 19.702) Note: A formal contract cannot accept proposals

Rent/Lease->60 days= Lease vs Buy Decision: Competition Required > Micro-purchase

Figure 3. Summary Contingency Threshold Requirements?

Operation Enduring Freedom, and Operation Iraqi Freedom are examples of major theater war. During these operations, contracting usually supplements robust combat support (CS) and combat service support (CSS) infrastructures.

Smaller-Scale Contingencies. These are also conflicts involving ongoing, imminent, or likely hostilities with the US military, however, smaller-scale contingencies involve fewer places and usually a more restricted time schedule, as with Operation Just Cause (Panama). Contracting often supplements CS and CSS capabilities limited by location, strategic lift, or manpower ceilings.

Contingency Operations (Combat and Noncombat). Per JP 3-0, contingency operations encompass a wide range of activities where the military instrument of national power is used for purposes other than the large-scale combat operations usually associated with war. JP 3-0 lists the following categories of contingency operations.

- Arms control
- Combating terrorism
- Counter-drug operations
- Peace operations
- Support to insurgents

Operation Joint Endeavor (Bosnia) is an example of the dozens of contingency operations conducted in recent years.

Military Operations Other Than War (MOOTW). Operations that encompass the use of military capabilities across the range of military operations short of war. These military actions can be applied to complement any combination of the other instruments of national power. MOOTW can occur before, during, and after war.

Domestic Disaster and Emergency Relief. Per *JP 3-28*, domestic disaster and emergency relief operations can range from domestic natural and man-made disasters, to civil disturbances, to terrorist incidents within

the US. DoD missions in the area of disaster relief include efforts to mitigate the results of natural or man-made disasters such as hurricanes, earthquakes, floods, oil spills, riots, and air, rail, or highway accidents. Examples of domestic disaster and emergency relief are DoD support to relief efforts following Hurricanes Isabel, Floyd, Hugo, and Katrina. See Chapter 9 for additional information on domestic disaster and emergency relief.

Military Exercises. Routine military exercises may feel anything but routine to the CCO supporting them. Anyone who has participated in Foal Eagle, Cobra Gold, Bright Star, Key Resolve, National Training Center rotation, or similar types of exercises will attest that there is a very definite sense of urgency, pressure, or risk of life or national interest associated with them. Moreover, they do not qualify as *declared contingencies* or as a major contingency type and generally receive no special consideration for other forms of relief. CCOs must be fully cognizant of the distinction between what is contractually permitted in an actual contingency and what is permitted in an exercise preparing for such a contingency.

Predeployment Planning



Personnel and Administrative Preparations. The following is a generic list of documents and equipment a CCO may need in order to initiate a contingency contracting operation. The requesting unit should reference the need for the following information in the line remarks of an individual's deployment tasking letter or tasking order. The requesting unit may modify this listing as necessary to meet deployment location mission support requirements.

- Official passport plus 6 to 10 extra photos for visas. Visas may be required in order to move from country to country. Official passports are required for each CCO designated to support no-notice deployments that require immediate departure to countries requiring a passport for entry. Each unit shall determine if a CCO

needs to obtain an official passport when initially designated as a CCO.

- Blanket travel orders stamped with applicable security clearance certification, authorization to carry excess baggage, and authorization to transport a firearm in checked baggage with variations and foreign flag carrier authorized.
- Standard Form *(SF) 1402, Certificate of Appointment as a Contracting Officer*, with authority equal to potential responsibilities.
- Prepacked kit of regulatory guidance, forms, supplies, and equipment.
- International driver's license.
- Civilian clothes. In some instances, military uniforms may not be advisable. The regional contracting center (RCC) chief will provide further instructions regarding the wearing of uniforms.
- Governmentwide commercial purchase card (GCPC) bulk funded to the level possible to enable immediate expenditure upon arrival.
- List of unit-assigned procurement instrument identification numbers (PIIN) IAW Defense Federal Acquisition Regulation Supplement *(DFARS) 204.7003* and uniform PIIN issued by the senior contracting official (SCO).
- Department of Defense (DD) Form 1833, *Isolated Personnel Report (ISOPREP)*. The ISOPREP contains data elements that have personal data, photographs, and other information to aid in the recovery of US military, civilians, or DoD contractor personnel, who are isolated, missing, detained, or captured. The ISOPREP and the evasion plan of action are the most important tools to execute timely rescue and recovery. Once *Department of Defense (DD) Form 1833* is completed, it becomes classified confidential; therefore, it should be submitted electronically, not carried on the person. See Army GTA 80-01-001 for more information on personnel recovery.

Mature versus Immature Contracting Environments. CCOs must consider the *maturity factor* in planning for contingency operations. They will need to bring different contracting tools based on maturity and contingency phase.

- **Mature.** A mature contracting environment is one characterized by a sophisticated distribution system that can rapidly respond to changing requirements and priorities; sufficient vendors who can comply with Federal Acquisition Regulation (FAR) requirements in order to meet contingency contracting demands and have previous experience contracting with the US government; and, in the best case, where there is an existing DoD contracting office or structure in place. Examples of mature contracting environments include Kuwait, Saudi Arabia, Qatar, Korea, and Western Europe.
- **Immature.** An immature contracting environment is an area with little or no built-up infrastructure and few vendors. Of the available vendors few, if any, have previous experience contracting with the US. An example of an immature contracting environment is the Horn of Africa.

Contracting During Hostilities. Hostilities may break out during any phase of a contingency operation. The more rapidly the CCO *matures* the contracting operation, the better support he or she will be capable of providing when hostilities do occur. However, some problems are unavoidable.

- Contractor employees may not report for work, or may abandon the job site, or refuse to drive vehicles in certain areas.
- Vendors and shops may close during hours of darkness or cease operations.
- The threat of snipers, terrorists, and enemy action against the CCO while traveling in the local community increases significantly.

As a CCO you will have much opportunity to see what is happening in the local community. It is your responsibility to interface with the intelligence unit to determine the threat, and report any suspicious activity. In the event that you, as a CCO, cannot perform your contracting mission, you must advise supported units so they can plan to perform essential contracted tasks with military manpower. If you are in a situation where the contractor refuses to perform, you need to find another contractor to prevent lapse in service, seek alternate arrangements, or do without the service. Keep your customers informed on contracting activities so they can plan accordingly.

Research Is Key. If you know that you are going to deploy, get as much information about the country, or domestic disaster area, beforehand as possible. One thing you must do is to review site surveys that other advance echelon (ADVON) teams have performed in the past. Use this information to develop a site survey checklist. Read the acquisition guidance (for example acquisition instruction for JCC I-A) for the area of responsibility (AOR) that you will be supporting. Familiarize yourself with the currency and conversion rate. Find out what the local business customs are. Good sources for investigating a country include:

- AARs (unclassified reports: <https://acc.dau.mil/contingency>)
- The Central Intelligence Agency's *World Factbook* at <http://www.cia.gov/cia/publications/factbook/index.html>.
- Web sites of US embassies, consulates, and diplomatic missions, <http://usembassy.state.gov/>
- The State Department Web site (<https://www.state.gov/www/regions.html>) is a permanent archive of information released prior to 20 January 2001. See www.state.gov for information released after 20 January 2001.
- The United States Agency for International Development (USAID) at <http://www.usaid.gov/>. Besides being an excellent source of

country-specific information, one of the missions of USAID is to support economic growth and trade (for example, the USAID Trade for African Development and Enterprise and USAID economic opportunity projects in Jordan), so it is an excellent source for locating vendors and contractors. USAID offices typically are located in each US embassy.

- The US Navy has husbanding contracts to support fleet port visits. The contracts may be able to support an initial response for humanitarian assistance or disaster response to assist the CCO at the very beginning. Contact the regional Fleet and Industrial Supply Center (FISC) to determine if a contracting vehicle is in place to support critical needs for an emergency response. Orders must be placed by the applicable FISC contracting officer.

FISC Yokosuka Det Singapore: Far East Australia

Chief of Contracting: 011-65-6750-2550

Duty Officer Cell: 011-65-6750-2307 DSN 315-243-7733

online: <https://www.navsup.navy.mil/navsup/ourteam/comfiscs/fiscy>

FISC Sigonella (United States European Command [USEUCOM] and United States Central Command [USCENTCOM] AOR):

DSN: 314 626-3703, Commercial: 757-443-1601, Phone: +39-081-568-3703, online:

<http://www.navsup.navy.mil/navsup/ourteam/comfiscs/fiscsi>

FISC Norfolk (United States Southern Command [USSOUTHCOM] and United States Northern Command [USNORTHCOM] AORs):

DSN 646-1601, online:

<https://www.navsup.navy.mil/navsup/ourteam/comfiscs/fiscn>

After Action Reports (AAR).    

Lessons learned, or AARs, should be forwarded through the responsible SCO within 30 days of redeployment to home station. AARs should include follow-on plans for contracts issued in support of the contingency mission. It is recommended for CCOs to start writing their AAR as soon as they arrive, and leave a copy of the AAR in the continuity book prior to departure from the area. To access sample AARs:

- **Step 1.** To join the acquisition community connection go to <https://acc.dau.mil/join>. After you have received your membership notification, you must request access to AARs.
- **Step 2.** Send a message to msc@dau.mil with the reason for access and upon approval you will receive a confirmation message: AAR lessons learned: <https://acc.dau.mil/contingency>.

Contracting Support Integration Plan (CSIP). 

Whenever possible, the CCO should become part of the Joint contingency planning staff that produces the CSIP. Advance planning and preparation are critical to effective contracting support. A CSIP is the mechanism for planning the contracting support for the operation. The CSIP ensures that contracting personnel conduct advance planning, preparation, and coordination to support deployed forces, and that contracting plans and procedures are known and included in overall plans for an operation. A CSIP is an integral part of both the contingency and crisis action planning process, and should be included in all plans within the contracting annex. Generally, a CCO will need to review the CSIP before deploying into the contingency location.

In the development of the CSIP, the CCO must be aware of the dynamic nature of the threat and develop his own threat risk assessment plan. This should include requirements for any predeployment force protection and personnel recovery training. Preliminary contact should be established with the in-theater Joint personnel recovery center (JPRC) for an exchange

of information relevant to contractor activities, locations, and personnel recovery requirements and capabilities in the area.

CCO Continuity Book. Once you arrive at the deployed location, review information contained in the CCO continuity book. The CCO will maintain and continuously update the CCO continuity book for follow-on CCOs. Upon termination of a deployment, the last CCO will forward the continuity book to the applicable J4 supporting the AOR. The book should include as a minimum:

- A current vendor or contractor source listing to include vendor names, addresses, telephone numbers, points of contact (POC), and type of supplies or services provided.
- A current list of vendors and contractors willing to provide 24-hour per day emergency support.
- Copies of all headquarters policy letters, acquisition instructions, and messages of guidance received to date.
- Minutes of all meetings attended by CCO personnel to include open action items impacting the contracting function
- A listing of all ratification actions to date.
- Contractor delivery information and gate security.
- Copies of all customer education handouts developed to date.
- Key POCs at the deployed site to include name, grade, duty title unit, telephone number, and after-hours POC, if available.
- Lessons learned during the deployment to date.
- Copies of weekly reports of actions and dollars spent to date.
- Reconciliation reports.
- Disposition of purchase records.
- After Action Report. Within 30 days after redeployment, each CCO shall submit an electronic AAR to his or her parent command who will in turn forward the report to the theater command supporting

the AOR. Selected AARs will be forwarded to Defense Acquisition University for inclusion in the contingency contracting community of practice.

- Current list of enduring contract vehicles with contingency clauses.

Advanced Echelon Teams (ADVON).

Within the first 30 days of a contingency declaration, a CCO will deploy with the ADVON team. At a minimum, the team should consist of a CCO, engineering representative, finance representative, logistics personnel, comptroller representative or funds certifier, and a legal representative. The size and number of teams will be dependent on the contingency, humanitarian assistance or peacekeeping operational requirements, and the operational requirements of the mission as determined by the head of contracting activity (HCA) and SCO. The CCO in charge of the procurement function needs to arrive with the ADVON team. This experienced CCO should locate sources, become familiar with local conditions, and consult with the Army Criminal Investigation Division (CID), Air Force Office of Special Investigations (OSI), and Naval Criminal Investigative Service (NCIS) concerning security and force protection, and personnel recovery matters before arrival of unit personnel. Additionally, the CCO should consult with the embassy regional security officer for interface with any interagency or host nation recovery mechanisms that might exist. Plans should provide for adequate security arrangements and disbursing officer support during advanced deployments. Bulk funds and a means to replenish the funds should also be provided. The CCO or ordering officer (OO) should also carry an approved GCPC to facilitate the procurement process whenever and wherever possible.

Additionally, the Joint contingency acquisition support office (JCASO) provides expeditionary support in the initial phases of a declared contingency through its Joint operational contract support teams (JOCST). These JOCSTs are intended to be used as an intact staff augmentation element, and not as individual augmentees (IA).

For more information on JCASO and JOCSTs, see Concept for the Joint contingency acquisition support office (JCASO).

Site Surveys. 

Generally, the ADVON team will conduct the site survey. It should include sources, business customs, maps, interpreter sources, and other important information. Take a camera on the site survey and get everything on film. Pictures of runways, water pumps, generators, control towers, and perimeter fencing will greatly aid engineering, operations, and security forces personnel who could not make it to the site survey. Pictures will also refresh your memory for requirements later on. Make sure you check with the US embassy or host nation to see if you need to seek permission to take pictures.

Plugging In Downrange

Once your feet hit the ground, your next task is to learn how to plug in! You must quickly find your support structure (J4) and meet with the on-site commander to discuss the following:

- Purchase request control procedures, to include funds accountability, purchase request validation and approval, inspection, acceptance, quality assurance procedures, and disposition of purchased assets.
- Inform the on-site commander that additional duties may impede contracting responsibilities or create a conflict of interest.
- Advise the on-site commander that only the CCO is authorized to obligate the US government for local purchases. Offer to brief this at the first commander's call.
- Have the on-site commander put into policy that no one place undue pressure or command influence on CCOs to purchase any goods and services that violate laws or regulations.

Locate your customers, obtain finance support, and obtain point of contacts at the local embassy. As part of an early deployment, one of your first actions should be to contact the US embassy located in the respective host nation. Specifically, two embassy offices are of major importance from a contingency contracting perspective—the government services officer (GSO) and executive coordinating agency (ECA). The GSO is essentially a contracting office within the embassy who would know what support agreements are in place. It is important to know, if an embassy is called upon to assist with contracting actions, an international cooperative and administrative support service cost is charged. You will also want to know if the country hosting the deployment has an acquisition and cross-servicing agreement (ACSA). If one is in place, it could provide the force with logistics support, supplies and services. You can also get a list of all countries with which the US has an ACSA by checking the SIPRNET [Secret Internet Protocol Router Network] at: <http://www.centcom.smil.mil/CCJ4/Programs/master/ccj4/index.htm>.

It is quite possible food, water, fuel, transportation, and facilities may be provided, which will eliminate many problems. Embassies have important country specific knowledge and can help guide you in what to do and what not to do, not to mention being an excellent resource for locating vendors and contractors. They should also know if the Surface Deployment and Distribution Command or the Navy has port contracts. An ECA is located in some embassies and may provide greater support than the GSO. A list of ECAs can be found at: <http://www.allstays.com/Resources/usa-missions.htm>. Like other organizations, embassies differ in how much and how well they can support you, depending upon location and the attitudes of their staff. A list of US embassies can be found at: <http://usembassy.state.gov/>.

Acquisition and Cross-Servicing Agreements (ACSA). (*Department of Defense Directive (DoDD) 2010.9*) ACSAs are bilateral international agreements that allow for the provision of cooperative logistics support under the authority granted in *10 USC §2341-2350*. The ACSA statute

was enacted to simplify exchanges of logistic support, supplies, and services between the US and other North Atlantic Treaty Organization (NATO) forces. The act was subsequently amended in 1994 to permit ACSAs with the governments of eligible non-NATO countries to require equal value exchanges, to allow ACSAs with United Nations organizations, and to authorize the loan or lease of equipment. Key elements of an ACSA include:

- Transactions may be cash reimbursement, equal value exchanges, or replacement in kind of logistic support, supplies, and services.
- The kinds of logistics support that may be exchanged are food; billeting; transportation; petroleum, oil, and lubricants (POL); communications services; nonaccredited training; ammunition; emergency medical services; and base operations.
- Categories of support which may never be exchanged are guided missiles and kits, major end items, chemical or nuclear munitions, formal accredited course training, official uniforms, or major construction projects.

For ACSA information, go to <https://ca.dtic.mil/jcs/j4/projects/acsa/>.

Under ACSAs, host nation support agreements, and international agreement arrangements, the US government and the Allied force supply sources agree to acquire and reimburse for logistics support, supplies and services to include food, water, ice, billeting, transportation (except cooperative airlift), ground fuel, POL, utilities (for example, electricity), clothing, communication services, medical services, base operations support (and minor construction incident thereto), storage services, use of facilities, operational training services, spare parts and components, repair and maintenance services, and airport and seaport services. Consult your servicing legal office when there are questions on ACSAs or other international agreements.

Host Nation Support (HNS).

It is essential to establish a link with the HNS teams and obtain cooperation from HNS authorities and personnel to enhance the contracting officer's ability to fulfill the contingency contracting obligation. It is also important to understand what can be obtained through HNS. Contact with local US authorities and higher headquarters will help determine whether HNS is available. Before deployment, coordination with legal assistance, civil affairs units, intelligence, and the US embassy will also be useful as possible sources for identifying contractor information in the area. A liaison officer should have knowledge of the HNS laws, regulations, and military command structure and be able to coordinate with the host nation to initiate site surveys. Reconnaissance visits to proposed contingency, humanitarian assistance, or peacekeeping operation sites will help identify what support can be provided by the host nation.

Status of Forces Agreement (SOFA). The SOFA is intended to clarify the terms under which the foreign military is allowed to operate. Typically, purely military issues such as the locations of bases and access to facilities are covered by separate agreements. The SOFA is more concerned with the legal issues associated with military individuals and property. This may include issues like entry and exit into the country, tax liabilities, postal services, or employment terms for host-country nationals, but the most contentious issues are civil and criminal jurisdiction over the bases. For civil matters, SOFAs provide for how civil damages caused by the forces will be determined and paid.

NATO Tasking

There are two situations when a CCO might get deployed for NATO. One situation is a national tasking (US troop contribution), when the FAR and normal warrant would be used. Second, there is the NATO tasking against

a crisis establishment manning document, normally supporting a NATO headquarters. This is when the NATO rules apply. For example, CCOs stationed at Camp Bondsteel in Kosovo use US rules, while CCOs stationed at KFOR HQ in Pristina use NATO rules. It comes down to funding: if US funds are used, then US rules and US warrants apply; if NATO funds are used, then NATO rules and NATO warrants apply. If you are tasked to support a NATO operation, be aware that the contracting rules are vastly different from those you are used to. You will work as a procurement and contracting (P&C) officer and be assigned to a regional Allied contracting office. You will not follow the FAR, but Bi-SC Directive 60-70, located at http://www.nato.int/shape/community/budfin/ifib/dir60_70.pdf

The Headquarters Chief, Procurement and Contracting, nominates P&C officers, and the NATO headquarters commander or chief of staff appoints them. Your P&C officer authority, provided in the form of a written warrant, is only valid for contracts issued on behalf of the NATO Headquarters or agencies to which you are assigned or designated to support. No other warrant will be considered valid authority for Bi-SC P&C officers.

Special Requirements for Acquisition Planning



- Consider the impacts of agreements and operation plans that may affect how work may be performed under the contract such as:
 - The applicability of any international agreements to the acquisition such as SOFAs. See <http://www.afsc.army.mil/gc/sofas.htm> for a list of these agreements.
 - Security requirements applicable to the AOR.
 - All contractor personnel authorized to be armed must be fully briefed on the US, host nation laws, SOFAs, and JFC policies regarding the circumstances in which they may use force.

- The standards of conduct for the prospective contractor and its employees and any consequences for violation of the standards of conduct.
- Requirements for use of foreign currencies, including applicability of US holdings of excess foreign currencies.
- Availability of government-furnished logistical support for contractor employees (such as lodging, meals, medical, and office supplies). The contractor shall periodically perform a physical inventory of all government-furnished property IAW *FAR 52.245.1*.
- Information on taxes and duties from which the government may be exempt (check with the local embassy).
- The applicability of ACSAs (*DoDD 2010.9, Acquisition and Cross-Servicing Agreements*), can be found at <http://www.dtic.mil/whs/directives/corres/pdf/201009p.pdf>.
- Consider the impacts of SOFAs and other international agreements and treaties. For example:
 - For work performed in Japan, US-Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. United States Forces Japan, and component policy, as well as US-Japan bilateral agreements govern logistic support and base privileges of contractor employees.
 - For work performed in Korea, US-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. United States Forces Korea, and component policy, as well as US-Korea bilateral agreements govern logistic support and base privileges of contractor employees.
- Consider the state of the local banking system and its impact on the contract's business arrangement.

Referrals and Reachback. There may be purchase requests which cannot be fulfilled from the local market. The CCO should not overlook or underestimate the usefulness of the referral system to fulfill requirements. Requirements may be referred to another contracting activity for action or sent back to a CONUS location for reachback support. There are usually many sources of contracting expertise geographically separated from the deployed CCO that could be used, such as:

- The American embassy or consulate.
- The nearest permanent military installation contracting office.
- The theater J4.
- CONUS Contracting Offices. At times CONUS contracting offices may be asked to support OCONUS contingencies. This may be done for several reasons. In some cases the forward-deployed assets may not be able to process the deluge of requirements for large scale contingencies. In other cases, the conditions in the contingency area of operations may be so dangerous that a large contracting footprint cannot be maintained. In other cases, the complexity of the contract requirement may lead it to be assigned to a contracting center of excellence for the pre-award and contract award phase, and then transferred back to the CONUS activity for contract administration. No matter what has driven your current situation, a few ground rules exist for supporting an OCONUS contingency from CONUS:
 - It is important that the OCONUS CCO who will be administering the contract be involved in the contract award process and be kept informed on the development of the acquisition strategy. He or she is the person who understands the environment in which the contract must be executed. The requiring activity may not understand all the ins and outs of getting supplies or people to the AOR or the basic facts of

contracting life *over there*. An unexecutable contract is not helpful to anyone. Contact the CCO early and often.

- Be aware of any established memorandum of understanding or memorandum of agreement with your OCONUS partner to ensure the operation-specific issues are clearly ironed out and that you know which SOFAs and other international agreements apply.
- Defense Logistics Agency.

The CCO should not arbitrarily limit the potential markets available to satisfy a customer's needs. For example, in the Pacific theater, there is a program called the PACOM Contingency Acquisition Program, which has pre-identified redundant sources of supply in more than 10 countries who are willing and able to satisfy many of United States Pacific Command's known requirements.

For those CCOs using reachback buying units, the following information concerning funding and shipments is provided. In most cases, the vendor will be requested to make delivery to a specified AOR buying office—the normal free on board (FOB) destination point. Also include up to \$100 for shipping and handling per item (depending on the size and weight of an item) in case the CONUS vendor's FOB point is at origin, not destination. If the items are critical and require expedited delivery to the CCO's deployed location, more funds may be needed. An accurate estimate of required funding will help the reachback buying unit complete the CCO's order without having to go back to the CCO for additional funds. Since it will normally take 3 to 6 weeks from the time the CCO forwards a request to the reachback buying unit to the time the CCO receives the items, delays for requesting additional funds will only frustrate the customer who requires the item. It is important for the CCO to know that the more preferred purchasing method is through the local AOR to prevent customs and delivery nightmares. Check the local market before you attempt reaching back or purchasing via the Internet.

Civil Augmentation Programs (CAP)

CAP plans for the use of civilian contractors during contingencies or in wartime to augment the logistics support of selected forces. Typically these programs could apply in all phases of contingency operations. The Army, Navy, and Air Force each have a CAP contract. A CCO needs to understand the capabilities each contract provides. All three of these civilian augmentation programs support US joint operations worldwide. They prevent the dilution of military forces that would occur if the military had to provide the required services and support. However, these contracts are expensive. They should be used only when it is not appropriate for military personnel to provide needed services and functions. Commanders must be vigilant in the use of civilian augmentation because contract costs can get out of control easily, particularly when changes or additions are made late in the execution phase. However, these civilian augmentation contracts often are the only means of getting skilled people and services needed to construct and repair buildings and equipment quickly.

Logistics Civil Augmentation Program (LOGCAP). LOGCAP is designed to provide general logistics and minor construction support to deployed Army, Joint, multinational, and interagency forces. The LOGCAP has been routinely used with significant success in supporting full spectrum operations for over a decade. The Army is currently on its fourth contract iteration of LOGCAP. LOGCAP IV differs from LOGCAP I through III in that, instead of just one contractor, it now has separate support and performance contractors. More specifically, the Army has selected one support contract and multiple separate performance contractors. Under the LOGCAP IV program, the support contractor conducts the planning and program support. Once the Army has identified a LOGCAP need, the support contractor will provide the plan to the performance contractors, receive the bids from the performance contractors for the task order, evaluate the bids, and recommend a contractor to execute the plan.

- **Capabilities.** In general, LOGCAP can be utilized to provide logistic services and minor construction support for any scale operation. Assuming that the support contractor has received sufficient time in advance to coordinate rough order of magnitude and the technical evaluation plan, and appropriate lift into the Joint operations area, LOGCAP task orders can be utilized to provide basic life support for up to 77,000 personnel within 30 days of the announced C-date.



It is Headquarters, Department of the Army (HQDA) policy that all of the LOGCAP task orders be designed to be readily converted to competitively-bid theater support contracts.

- **Planning.** The LOGCAP IV planning requirement calls for three LOGCAP support contractors, in coordination with the supporting LOGCAP forward, to prepare a variety of Army component and Joint force-level support plans. The support contractor will prepare and maintain two types of plans. Worldwide plans are the deliberate plans that generate generic and regional LOGCAP plans for the supported commander, normally at the Army component level. These generic plans provide the baseline for contractor support and differentiate between support in a developed country and that required to support a deployment in a nondeveloped area. Focused planning begins with the identification of a specific mission in the crisis action planning process. These specific plans provide a detailed description of equipment, material, personnel, and supporting services, facilities, and potential suppliers required to support the customer-identified augmentation requirements. The planning contractor also maintains database support for five broad categories: facilities, supplies, services, maintenance, and transportation. Support for actual operations is tailored based on the concept of support developed for the operation.

- **Management.** The Army LOGCAP is an HQDA program. The HQDA G4 is the LOGCAP policy and program manager while the US Army Materiel Command, through its subordinate Army sustainment command, is responsible for program planning and execution. The Army components supporting field support brigade, augmented with the LOGCAP deputy program manager, planning team, and a LOGCAP support unit (LSU), provide the Joint force commander and Army forces commander a single focal point for centrally managing LOGCAP planning and execution. Within the operational area, the LSU is responsible for incorporating LOGCAP requirements into operation plans and fragmentary orders for providing assistance to requiring activities with validated LOGCAP requirements. Once delegated by the Army Sustainment Command (ASC) procuring contracting officer, the Defense Contract Management Agency (DCMA) will provide administrative contracting officers to administer the task orders in accordance with the base contract and guidance from the LOGCAP deputy program manager. DCMA will also provide quality assurance representatives and property administrators as needed. Units may be required to provide limited COR [contracting officer's representative] support depending on the scope and scale of the operation.

Air Force Contract Augmentation Program (AFCAP). See <http://www.afcesa.af.mil/>. The AFCAP is a worldwide contingency contract tool available to support the Air Force, and Joint force, along with any US government agency in need of urgent logistic assistance in support of contingency operations. AFCAP, like all CAP programs, is designed to rapidly leverage private industry capabilities as a force multiplier in supplying highly responsive solutions to meet global mission objectives across the full range of military operations. AFCAP contractors have a worldwide capability, coupled to an existing breadth and depth of commercial business interests aligned to be able to meet contingency

operations requirements. Unlike the other Service CAPs, AFCAP can be utilized to procure and expeditiously ship just-in-time commodities. Depending on urgency, degree of requirements definition or task stability, contracts can be tailored into firm-fixed-price, cost-plus fixed-fee, or cost-plus award-fee task orders as necessary to best match the government's needs.

- **Capabilities.** AFCAP is able to provide, as a minimum, 72 core general engineering and other logistic services along with commodity procurement and shipment capabilities. The scope of the AFCAP contract requires that the contractors provide the personnel, equipment, materials, services, travel, and all other means necessary to provide a quick response, worldwide planning, and deployment capability. The contract provides additional capabilities to allow military missions to continue when there are facility or service support constraints. AFCAP contractors can provide manpower to complete or augment tasks, a full range of just-in-time logistics (acquisitions, deliveries, procurement of commercial off-the-shelf items, heavy equipment leases, bulk materials, war reserve materiel augmentation, and so forth) and expedient design and build construction. Whenever possible, the AFCAP contractor draws upon significant in-place expertise and worldwide commercial vendors with readily available assets. A major contributing effort for AFCAP is in the area of sustainment and maintenance of the deployed forces and initial force projection effort. AFCAP can also be utilized to provide initial force beddown of non-Air Force personnel (the Air Force has organic military capability for its own life support). AFCAP may be utilized to help transition and upgrade bare bases from initial austere support to temporary, standard facilities and utilities. This allows for the recovery and reconstitution of critical war reserve materiel resources for use at other locations or to support additional expansion for a

specific mission. Finally, AFCAP also can be utilized for general equipment support, but is not intended to be used for in-depth equipment maintenance or depot-level overhaul at contingency locations since the Air Force already has other provisions for these requirements.

- **Planning.** AFCAP contractors can be asked to provide rough order of magnitude (ROM) estimates; however, most ROM estimates are accomplished by Headquarters (HQ) Air Force Civil Engineering Support Agency (AFCESA) staff. Task orders for planning by AFCAP contractors can be awarded to assist customers with their requirements.
- **Management.** HQ AFCESA provides program management functions and Air Force Education and Training Command (AETC) provide contracting support for AFCAP requiring activities. HQ AFCESA is located at Tyndall Air Force Base, Florida, with program management deployed forward as required. The AFCAP procuring contracting officer (PCO) normally delegates all appropriate contract administration and audit services functions to DCMA IAW the specific needs of that task order. DCMA will provide administrative contracting officer (ACO) support, and, in consultation with the auditor, monitor, review, and approve the contractor's business systems (such as accounting, purchasing, and estimating systems). DCMA will also provide property administration and quality assurance support as required. DCMA ACOs also have the authority to execute no-cost change orders to task orders. Should DCMA experience a shortfall for field support during the execution of AFCAP, AFCESA will provide field assessment surveillance teams (FAST). The AFCESA FASTs are based on a tailorable, multifunctional deployable team concept, as needed by task order, location, and region—first-class *boots on the ground* oversight ensuring cost, schedule, and quality task order

performance by the AFCAP contractors. AETC contracting will retain all contracting functions not delegated to DCMA, to include all PCO functions (issuance of all task orders), execution of modifications resulting in price changes to task orders, and execution of modifications to the basic contract (exercise of options).

US Navy Global Contingency Contracts. The Navy Facilities and Engineering Command (NAVFAC) have awarded two worldwide contingency theater support contracts: the Global Construction Capability Contract (GCCC) and the Global Contingency Service Contract (GCSC). The GCCC is focused on construction while the GCSC is focused on facilities support. They are both described in more detail in the following paragraphs. Any orders for the GCCC or the GCSC must be coordinated through a NAVFAC coordinating officer.

- **GCCC.** The GCCC is a competitively solicited multiple award, cost reimbursable contract with award fee. This acquisition vehicle provides three prequalified sources to provide a maximum of \$1B of construction over 5 years. The contract provides construction, design and build construction, and related engineering services in response to natural disasters, humanitarian assistance, conflict, or situations with similar characteristics. This includes occasional projects to ensure readiness to perform during emergency situations and military exercises. GCCC is also an acquisition tool that NAVFAC utilizes to support DoDD 4270.5, *Military Construction*.
 - **Capabilities.** The GCCC will provide the Navy, and the Navy on behalf of DoD or other federal agencies when authorized, an immediate response for civilian construction capability. The scope includes the capability to provide general mobilization services for personnel, equipment, and material in support of Naval construction forces (NCF) mobilization efforts and similar mobilization efforts, and to set up and operate material liaison

offices at a deployed site in support of NCF operations. Work is predominately construction; however, services incidental to the construction may also be included. Construction critical response during an emergency will primarily support aid for natural disasters, military conflict, or humanitarian aide.

- **Planning.** Each contractor is required to maintain by contract an in-place contingency response plan available to facilitate response to emerging requirements. The plan identifies prepositioned resources, suppliers, and procedures for rapidly developing detailed execution plans tailored to the specific requirements of the emergency situation.
- **Management.** The GCCC is managed by the NAVFAC, Atlantic in Norfolk, Virginia. Other NAVFAC components also may be given ordering office authority under this contract.
- **GCSC.** The Navy's GCSC is an indefinite delivery, indefinite quantity cost-plus award fee contract designed to quickly provide short-term facilities support services with incidental construction at various locations (including remote locations) throughout the world.
- **Capability.** This performance-based contract is designed to respond to natural disasters, humanitarian efforts, contingencies, or other requirements such as nonperformance by an incumbent contractor or instances where there is an unanticipated lapse in service. The contract has a ceiling of \$450M over 5 years.
- **Planning.** The contractor is required to maintain by contract an in-place contingency response plan available to facilitate response to emerging requirements. The plan identifies prepositioned resources, suppliers, and procedures for rapidly developing detailed execution plans tailored to the specific requirements of the emergency situation.
- **Management.** The GCSC is managed by the NAVFAC, Pacific. Other NAVFAC components may also be given ordering office authority under this contract.

Administrative Requirements for Referrals. Referral packages should be tracked until completed. This will help the CCO know the status of referrals and help the finance officer keep track of outstanding commitments. Before sending a requirement to another location, usually via e-mail or facsimile, the CCO should ensure the acquisition package is complete. The package should include, as appropriate, a purchase request (PR), full item description, commitment of funds (to include stock funds), brand name or sole source justification, depot waivers, customs clearances (if required), transportation control number, transportation account codes, and so forth. Additionally, the complete mailing address and telephone number or a single point of contact (preferably the customer/requester) must be provided. For contract repair items, a *Department of Defense Form 1149*, or other hand receipt should be included with the item for repairs as well. Transfer funds in accordance with Department of Defense Instruction (*DoDI*) 4000.19, *Interservice and Intergovernmental Support*.

Other Contracting Offices in the AOR. DoD has contracting offices around the world. No matter where CCOs deploy, there is always a contracting office in the geographic vicinity. A few of the unified commands have contract representation on the J4 staffs, but most delegate theater contracting to an SCO. Below is a list of commands and contact information:

US Army Contracting Support Brigade (CSB), online: <http://www.amc.army.mil/pa/Fact%20sheets/ASC,%20May%202007.doc>

JCC I/A - BTA-SERVICE DESK GBTA.MIL, 703-607-3922, online: <https://ishare.bta.mil/default.aspx> (password protected)

USCENTCOM – Contracting Office, 813-827-6420, online: <http://www2.centcom.mil/sites/contracts/Pages/Default.aspx>

USPACOM – Defaults to Pacific Air Forces A7K, DSN 315-4498566/5516, online: <http://www.pacom.mil/>

US FORCES KOREA – Army Contracting Agency Principal Assistant Responsible for Contracting (PARC), DSN 315-724-6082, online: <http://www.usfk.mil/USFK/index.html>

USEUCOM – Defaults to the United States Air Forces in Europe A7K, DSN 314-480-5910, online: <http://www.eucom.mil/english/index.asp>

USSOUTHCOM – Defaults to the US Army South PARC, 210-2956120, online: <http://www.southcom.mil/appssc/index.php>

USNORTHCOM, online: <http://www.northcom.mil/home.html>

USSOCOM [United States Special Operations Command], online: <http://www.socom.mil/>

USAFRICOM [United States Africa Command], online: <http://www.africom.mil/interactiveMap.asp?target= self>

Fleet and Industrial Supply Centers (FISC). The regional FISC structure provides contracting support for Navy units. Contact the regional FISC for potential existing contract support for noncombative contingency operations. FISC Norfolk is the lead for 2^d and 4th Fleets (US East Coast and USSOUTHCOM), FISC San Diego is the lead for 3rd Fleet (US West Coast), FISC Sigonella is the lead for 5th and 6th Fleets (USCENTCOM, USEUCOM and USAFRICOM), and FISC Yokosuka is the lead for 7th Fleet (Far East).

Defense Contractors Outside of the United States. Contractor support is an option available to field commanders to augment available military support resources and host nation support (HNS). DoDI 1100.22, *Policy and Procedures for Determining Workforce Mix*, sets restrictions on functions provided by contractors. Functions that may be provided by private security contractors (PSC) include the protection of fixed facilities, assets, personnel, and use of mobile convoy security to protect personnel and materiel movements in the insecure areas outside US bases. Private security contractors must be employed cautiously where major combat

operations are ongoing or imminent. Several factors should be weighed when considering specific security contracts: where the contract security personnel will operate; the anticipated threat; what property or personnel is to be protected; the manner in which the contractor will be operating in areas of increased risk, including command and control, the sharing of threat information, and communication with forces; and the training and qualifications of the contract security personnel. DoDI 3020.50, *Private Security Contractors (PSCs) Operating in Contingency Operations*, establishes policy for the use of PSCs in contingency operations. Policies and procedures already implemented require that PSCs have been subject to official background checks and are trained, qualified, and authorized by the combatant commander to be armed. PSCs operate under strict rules for the use of force that are defensive in nature, carefully supervised, and only allow the use of deadly force as a last resort in response to imminent threats and in the inherent individual right of self defense. All DoD and Department of State private security companies and their personnel are also regulated, as required, by the appropriate host country. These regulations must be considered when contracting for PSC services. For example, in most cases, PSCs must be licensed by the host country. In the initial stages of an operation, supplies, services, and construction provided by local contractors can improve response time and free military resources for combat operations. As the operation progresses, contractors provide traditional logistics support and other nonlogistics-related support. Contractors may also provide things such as interpreters, communications, or infrastructure support. Contractor support allows the commander to minimize the number of combat personnel and maximize the number focused on combat operations. At the conclusion of operations, contractors can also facilitate early redeployment of military personnel. DoD provides overarching guidance in *DoDI 3020.41, Contractor Personnel Authorized to Accompany the US Armed Forces*. The instruction applies to all DoD components, combatant commanders, and contingency contractor personnel. The instruction does not apply to contracts performed within the US or at any location not designated as a

declared contingency. Follow requirements at *DFARS 225.7402-4* to include ensuring the incorporation of *DFARS clause 252.225-7040* when the contract authorizes that contractor personnel accompany US armed forces deployed outside the United States. In addition, follow requirements at *FAR 28.305, Overseas Workers Compensation and War Hazard Insurance*, and *FAR 28.309, Contract Clauses for Workers Compensation Insurance*, for incorporation of *FAR clause 52.228-5, Insurance – Work on a Government Installation*, and *52.228-3 Defense Base Act (DBA)*. (See <http://www.dol.gov/owcp/dlhwc/DBAFaqs.htm> for more information on DBA).

General Deployment Procedures. 

All contractors authorized to accompany the forces (CAAF) shall report to the deployment center designated in the contract before departing for a contingency operation to:

- Validate entry of accountability information in the Synchronized Predeployment and Operational Tracker (SPOT) database
- Issue or validate possession of proper identification cards
- Receive applicable government-furnished equipment
- Receive medical and dental screening including required military-specific vaccinations and immunizations (such as anthrax, smallpox, and typhoid)
- Validate or complete any required training (such as Geneva Conventions; Law of Armed Conflict; general orders; standards of conduct; force protection; personnel recovery; medical; operational security; antiterrorism; nuclear, biological, and chemical protective gear; country brief and cultural awareness; and other training as appropriate)

Upon completion of deployment processing, certified by annotating the letter of authorization or providing a separate deployment processing certification letter, CAAF receives deployment process certification to bring with them to the Joint reception center (JRC). The CAAF deploying

as part of a specific unit will have their contractor certification documentation included in the appropriate unit manifest. Any CAAF deploying individually are required to carry this certification with them at all times.

In-Theater Contractor Personnel Management. In-theater contract and contractor management challenges discussed in this section include accountability, reception, onward movement and restrictions on contractor support (by area, phase of operation, or other measures as appropriate). Other key in-theater contractor personnel management considerations such as discipline, force protection, and security are discussed in other sections of this chapter.

- **Personnel Accountability.** Properly establishing and having accountability of all CAAF personnel is extremely important to the JFC. Without such information, it is impossible to properly plan for and integrate contingency contractor personnel into the overall operation. Personnel accountability is critically important in determining and resourcing government support requirements such as facilities, life support, force protection, and force health protection in hostile or austere operational environments. Because of the difficulty in incorporating contractor personnel information into existing personnel accountability systems, the Office of Under Secretary of Defense for Acquisition, Technology, and Logistics OUSD (AT&L) has recently designated SPOT as a DoD enterprise system to manage and maintain accountability, by name, of contractor personnel when deployed into an operational area. SPOT is a Web-based application that allows authorized users to view, input, and manage contractor personnel predeployment, accountability, and location data. Additionally, SPOT is designed to issue automated letters of authorization as part of the contractor accountability process. Specific SPOT related policies and procedures are currently in development.

- **Reception.** All CAAF personnel will be processed in and out of the operational area through a JRC or other personnel centers designated by the JFC. The JRC will verify that the contractor personnel are included in the SPOT database and that the contractor personnel have met all theater entrance requirements. Contractor personnel who do not meet established theater entrance requirements may be sent back to their point of origin or placed in a holding area until these requirements are met. Geographic combatant commanders (GCC) and their subordinate JFCs need to set and enforce specific policies for handling CAAF personnel who do not meet all established theater entrance requirements.
- **Onward Movement.** 

Once the JRC fully verifies that the contractor is included in the SPOT database and that all theater entrance requirements are met, contractor personnel should be issued any required operational specific identification documents. The JRC will arrange for transportation of the contractor and his equipment to the point of performance. Arrangement of intratheater transportation of CAAF personnel will include the appropriate force protection and security measures commensurate to force protection and security measures taken for DoD civilians.
- **Location and Movement Considerations.** Contractors can be expected to perform virtually anywhere in the operational area, subject to the terms of the contract and the JFC's risk assessment of the local threat level. Based on this risk assessment, the JFC or subordinate area commanders may place specific restrictions on locations and timing of contract support; however, care must be taken to coordinate any restrictions with component commanders, applicable DoD agencies, and contracting officers. Additionally, contractor personnel location reporting and equipment movement must be incorporated into the JFC movement control, personnel accountability, and force protection plans.

- Registration is required to access SPOT at <https://spot.altess.army.mil>. Registration cannot be completed until a designated organizational sponsor sends an approval mail to spot.registration@us.army.mil.

For information on SPOT registration and contractor personnel letters of authorization, please visit <https://www.us.army.mil/suite/kc/12559209>. You must have an Army Knowledge Online logon to visit this Web site.

CCOs, their designated representatives, and contractors need to be aware of the personnel recovery architecture that exists to support their recovery. Isolated personnel training provides information on processes and actions required should one become isolated from friendly control. This training includes individual survival, evasion, resistance, and escape (SERE) training as determined by the requiring activity and supported JFC and Service component. SERE 100 is a universal, basic requirement for all theaters.

Contingency Contracting Support Phases

The four phases of contracting support that typically occur during contingencies are mobilization and initial deployment, buildup, sustainment, and termination and redeployment (See Figure 4).

Phase I: Mobilization and Initial Deployment. This is normally the first 30-45 days of a deployment and is characterized by an extremely high operations tempo, confusion, and controlled chaos. *Take care of yourself first!* CCOs should be prepared to procure and request items needed to set up contracting operations immediately upon arrival. CCOs should take the following actions immediately upon entry into theater as they are essential in supporting an effective contingency contracting organization:

- Obtain a low profile security vehicle (assigned or rented) for the CCO's dedicated use for making purchases, establishing supply sources, and picking up supplies in the local market.

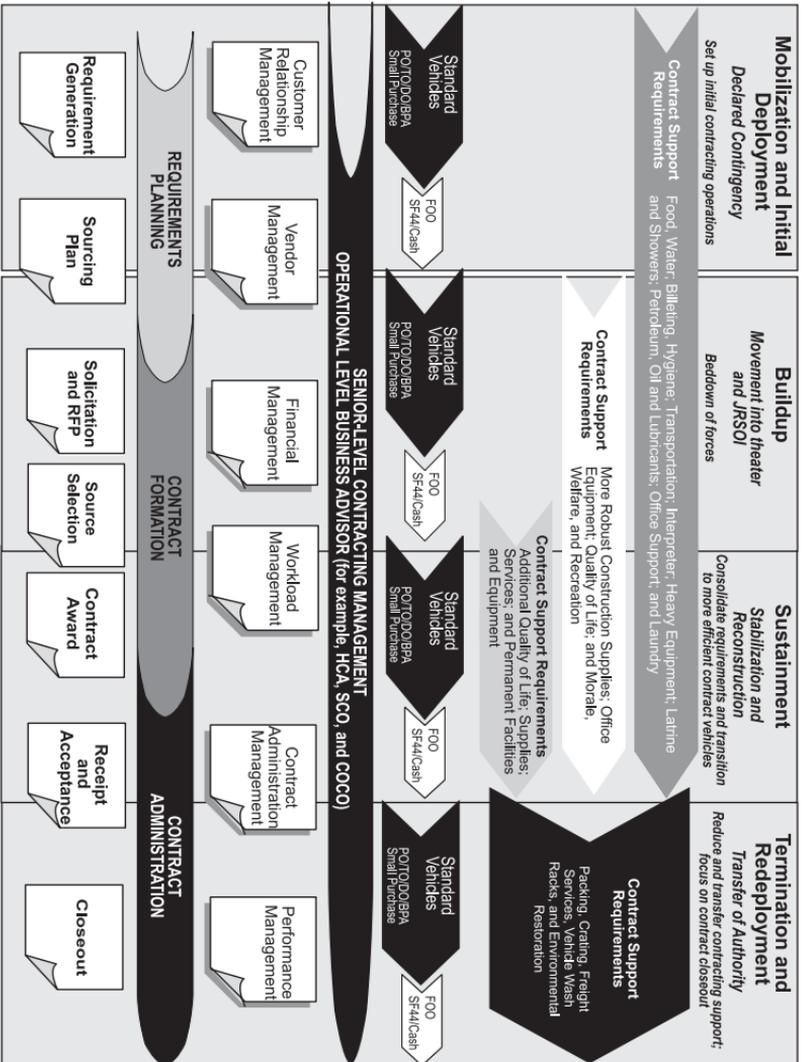


Figure 4. Phases of a Contingency

- Obtain an interpreter or guide, if necessary, at the earliest opportunity. This person should not only be bilingual, but familiar with the local culture and market area as well. Contact the local US embassy, if possible, for assistance. In addition contact the local CID, OSI, and NCIS to conduct a brief background check or interview the interpreter candidate to increase antiterrorism protection and see if there are any risks associated with the local interpreter and his or her ties to the community. Host nation business schools are an excellent source of translators.
- Identify an approved medical authority (veterinarians, public health office, and medical doctors) for all ice, water, and food purchases. See the *Approved Food Sources* link on the US Army Veterinarian Web site for locations by theater at <http://www.veterinaryservice.army.mil/>.
- Establish contact with the nearest component personnel recovery coordination center (PRCC) or the Joint Task Force's JPRC. Fill out *DD Form 1833, Isolated Personnel Report (ISOPREP)*, and submit electronically to PRCC or Joint Personnel Recovery Center (JPRC).
- Establish suitable communications, such as mobile radios and telephones for the office and mobile unit, to include at least one Class A telephone with Defense Switched Network [DSN] and off-base access, to ensure customers and vendors can contact the CCO.
- Identify a paying agent to accompany the CCO with currency for local purchases when necessary.
- Review applicable combatant command (COCOM) policies and procedures.
- Contact the HCA designee, existing military installations within the deployment area, or, in the absence of these, the US embassy or consulate in the host nation for guidance on contracting information or HNS agreements.

- Obtain a central, but separate, location with adequate and secure floor space that is near customers, other contracting support functions, staff judge advocate, and logistics activities. Consideration should be given to location of contracting offices with respect to vendor accessibility. The main contracting office should be separate from individual billeting and located near the J4 or G4 from whom you typically get the majority of your requirements and planning guidance. If this is not possible, a consideration is to establish the contracting office in a local hotel with appropriate business amenities. This facilitates access to FAX, typing, translators, telephones, copiers, and Internet access, and provides a certain degree of security. It will also help contractors locate the office for business purposes. The location of the contracting office depends on the tactical situation and logistical scheme of operations.
- Obtain maps of adjacent towns or settlements and conduct personal visits to learn availability of necessary items of supplies or services. Mark maps and prepare source lists (see <http://www.jptra.jfcom.mil/>).
- Secure telephone books of the local area, if available. Maps and source lists should be updated as new information becomes available. Source lists should be annotated to reflect which contractors will provide 24-hour emergency response.
- Work with the JFC to establish good working relations with local officials and keep the JFC informed of contracting matters.
- Identify individuals, by name or position, who are authorized to approve PRs and the name of the individual (or office) providing the funding source.
- Work with the subordinate JFC, SCO, and RCC chief to establish a combatant commander logistic procurement support board or some type of system for customers to submit PRs for local acquisitions:

- Update customer training to orient them to the purchasing system as soon as practical.
- Adapt the system to suit local conditions.
- Appoint CCO representatives and provide applicable training.
- Appoint decentralized OOs within functional areas, as necessary, with CCO supervised purchasing authority up to the maximum order limit of the indefinite delivery, requirements contract, or blanket purchase agreement.
- Train OOs, field ordering officers, and GCPC holders in the use of simplified acquisition procedures and funds accountability.
- Train procurement purchasing officers when using commanders' emergency response program [CERP] funds.
- Identify functional personnel who deployed with a GCPC and home station funding.
- Coordinate and control purchase card activity according to PR approval procedures to achieve economical purchases and avoid duplication of purchased resources.
- Advise deployed cardholders on local market conditions, limitations, and statement reconciliation procedures.
- Contact DCMA, CAP liaison, Army Corps of Engineers, and JCASO forward deployed team.

Initial Requirements. You should be able to determine your initial requirements without any great effort. One of the CCO's first priorities will be basic life support requirements as you will be providing contracting support for the arrival of initial forces. The forces will require the following supplies and services for the initial beddown: food, potable water, shelter, transportation, communication, office supplies, computer and fax equipment, power adapters, ground fuel, heavy equipment rental, laundry and bath services, refuse and sanitation services, utilities, interpreters, force protection measures, quality of life issues, and so forth. During this phase, CCOs may find themselves in the undesirable position of being the requestor, approving official, certifying officer and transportation

office for deliveries since the CCO must be prepared to award contracts immediately upon arrival at the deployment site. This is why it is important to have access to boiler plate statements of work, procurement instrument identification number logs, various contracting forms, and other documents as required. Boiler plate items should be preloaded onto the CCO's laptop and in hard copy in the Contingency Contracting Kit. SF 44s, purchase orders, GCPC, and blanket purchase agreements (BPA) will be the primary contracting methods you will use in this phase. Below are definitions of contracting statements that are incorporated in a solicitation and award.

- **Statement of Work.** This document is provided by the customer explaining the work to be accomplished on a requested project. Details might include the general scope of work, complexity, purpose of the supplies or services the government will acquire under the contract, where it is to be performed, what standards are to be followed, how the results will be evaluated, and other pertinent requirements.
- **Performance Work Statement.** This document is a statement of work for performance-based acquisitions that describes the required results in clear, specific, and objective terms with measurable outcomes.
- **Statement of Objectives.** This document is a government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the government intends to provide the maximum flexibility to each offeror to propose an innovative approach.

Phase II: Joint Reception, Staging, Onward Movement, and Integration (JRSOI) (Formally Known as Buildup). The JRSOI phase is characterized by a reception and beddown of the main body of deploying forces. In this phase, additional contracting personnel, contract support personnel, and Defense Contract Audit Agency [DCAA] audit

support, generally will arrive with their units, though not necessarily at a rate commensurate with the number of troops to be supported. The CCO's priorities during this phase will continue to be responsiveness to life support requirements, but attention must also be given to the following actions:

- Gain effective command and control over contracting and contracting support personnel.
- Coordinate with the unit commander and the JPRC or PRCC for inclusion in force protection and personnel recovery plans.
- Develop procedures that will best support the customer's needs. This will entail establishing a set of rules for customers to follow when submitting requirements. The rules will include instructions on purchase descriptions, funding, approval channels, contract processing, finance and supply coordination, pickup and delivery procedures, and quality control responsibilities. The rules will also discuss consolidating requirements, where possible, to avoid unnecessary trips to the contracting office when the deployed units are located at remote sites. The main thrust of the plan is to familiarize customers with the location, mission, and procedures to expedite purchasing and service contracting.
- The deployed unit commander will identify individuals, by name or position, who are authorized to approve PRs and the name of the individual, or office, providing the funding source. Additionally, the unit commander should advise all personnel that only the CCO and duly appointed representatives are authorized to obligate the US government for purchases and direct that no undue pressure or command influence be placed upon CCOs or appointed representatives to purchase any goods and services that violate laws and regulations.
- Implement procedures with the finance staff to ensure that funds are available to pay for purchases and that transactions are properly

recorded. Instructions should identify any restrictions on equipment or services that are not properly chargeable to the appropriations cited.

- CCOs should not be assigned as paying agents of the disbursing office. This policy improves internal controls over the distribution of funds to the contractor, avoids a potential conflict of interest for the CCO, and makes the CCO less susceptible to personal risk.
- Security personnel shall be notified when a significant amount of cash (\$10K or more) is to be moved (*DoD Financial Management Regulation, Volume 5, Chapter 3*).
- Continue to work with the JFC to establish good working relationships with local officials and local vendors and keep the JFC informed of contracting matters.
- Continue to appoint and train CCO appointed representatives.
- Attend all logistics and engineering key meetings and establish communications with liaison officers and commanders. Attend daily intelligence and operations meetings. Provide early and frequent briefings to the commander, his subordinate commanders, logisticians, and engineers.
- Establish contact and coordination with finance, comptroller, host nation liaison, civil affairs, legal, logistics organizations, contract support personnel, and audit support.
- Establish nonappropriated funds (NAF) contracting procedures to support quality of life programs. Implement procedures acceptable to the assigned commander and chief of morale, welfare, recreation, and services that address:
 - Formats for NAF contracting, nonappropriated fund orders for supplies or services.
 - Approval and signature authority for NAF contracting.

- Use of SF 44s or cash to make local purchases of supplies and resale merchandise.
- Use of BPAs and concession contracts.
- Establishing BPAs consolidates requirements into purchase orders and contracts, rather than using the high-volume, and physically time consuming cash transactions.
- Assist in establishing property books and accountability.

Phase III: Sustainment. This phase provides contracting support from the completion of the buildup phase until redeployment of the force begins. This phase includes *stability and reconstruction operations*, which is now a core DoD mission elevated to the same priority as combat missions and sustainment operations.

Sustainment. The contracting activity during sustainment phase will expand into contracts for additional quality of life, more permanent facilities and equipment, additional office supplies, tools, equipment, and discretionary services. Contingency contracting operations will focus on the business advisor role, file documentation, cost reduction, and other efficiencies. The CCO's priorities during the sustainment phase will be to:

- Establish long-term contracts (indefinite delivery and indefinite quantity requirements contracts and additional BPAs) and consolidate requirements wherever possible to achieve economies of scale, reduce costs, and mitigate risks. Emphasis should be on using performance-based statements of work to avoid unnecessary costs and on contracting with reliable sources at reasonable prices.
- Improve file documentation of contracting actions and internal controls.
- Increase competition and depth of vendor base.

- Establish agreements with the other Services and agencies to share contract arrangements such as transportation, laundry, and other functions.
- Establish procedures to acquire local purchase items that are not available in the AOR. Alternatives to consider are as follows:
 - Stateside support from the unit home base.
 - Contracting offices in the vicinity of the deployment, but outside the AOR.
 - A stateside location to receive, process, and forward items to the deployment site.
 - Army Air Force Exchange Service or Navy Exchange Service if available at the deployment site.
 - Defense Logistics Agency (DLA).
- Minimize the use of letter contracts and undefinitized contract actions. Verify documentation is sufficient from purchases made during initial buildup. Document all contracting actions in sufficient detail to provide an audit trail of the acquisition. Include the PR, award document, justification of fair and reasonable price (if required), receiving reports, invoices, and final payment vouchers.
- Verify documentation is sufficient from purchases made during initial buildup. Document all contracting actions in sufficient detail to provide an audit trail of the acquisition. Include the PR, award document, justification of fair and reasonable price (if required), receiving reports, invoices, and final payment vouchers.
- Plan for transition to follow-on forces or termination and redeployment.
- Minimize claim backlogs.
- Minimize cash payments and use electronic funds transfer as much as possible.

Stability and Reconstruction Operations. Stability and reconstruction is defined as contingency contracting performed during peacekeeping operations, combat operations, and post-conflict operations, including stabilization and reconstruction operations involving interagency operations, if required. Stability and reconstruction actions include contract oversight and ensure US commanders deployed in foreign countries are able to secure contract support rapidly. Oversight may be needed to ensure jointness and cross-service coordination. Contracting support to stability operations can be a tremendous challenge to the JFC, especially when the JFC mission requires significant contracting support to major reconstruction actions and restoration of essential government services. Normally, this reconstruction related contracting effort will be done in support of the chief of mission, but in some cases may be done in direct support to the JFC. More information can be found in *DoDD 3000.05, Stability Operations*.

Phase IV: Termination and Redeployment. This phase is characterized by significant pressure and urgency to send the troops home. Typical new requirements include packing, crating and freight services; construction and operation of wash racks for vehicles; and commercial air passenger services if United States Transportation Command (USTRANSCOM) is not providing this service. The CCO will be required to terminate and closeout existing contracts and orders. Ratifications and claims must be processed to completion. Contracting for life support services must continue until the last troop leaves. When a follow-on force is required, the CCO must prepare contracts and files for delegation or assignment to the incoming contracting agency such as the DCMA and the United Nations. Often, the CCO can expect to be one of the last persons to leave the area.

On being notified of contingency termination or redeployment, the CCO should:

- Coordinate with contractors and user activities the timing and procedures for return of all rental items.

- Determine which contracts require formal termination for convenience actions and initiate settlement negotiations with those contractors. This could include no-cost settlements if appropriate. (FAR 49, Termination of Contracts)
- Immediately negotiate a reduction of services and terminate base support agreements to coincide with the unit redeployment schedule. As unit assets are redeployed, interim replacement support may be required from the host base or contractor sources, if available. Contracts awarded throughout the deployment should be tailored to minimize formal termination requirements wherever possible.
- Ensure receiving reports and invoices for all purchases pending payment are processed.
- Utilize DCAA to assist in closeout and evaluation of claims and equitable adjustment.
- Coordinate with the disbursing agent to ensure that final payments are processed.
- Settle all contractor claims prior to the final CCO redeployment and coordinate the disposition of all purchased assets to include site restoration if necessary.
- Report all contract actions and dollar amounts to the contracting activity that issued the PIINs used during the deployment. Total actions and dollars will be reported by RCC chiefs to the supported COCOM or HCA prior to departure.
- Assess contractor acquired/government owned and government-furnished equipment, and forward to dispositioning organization.

Exhaustion of Logistics Supply and Required Sources of Supply

Many supplies and services for any contingency operation will be obtainable through the logistics supply pipeline established for the

operation. A listing of the basic supply classes is provided in Table 3. Therefore, before initiating any local acquisition for supplies and services, a CCO must ensure that requiring officials have exhausted the established logistics supply pipeline and that the supply pipeline cannot provide the required supplies or services to meet mission needs (in a timely manner).

In any contingency operation, quality acquisition support to the commander is critical to mission accomplishment. As stated before, virtually all services, supplies, and construction requested will be of an urgent, high priority nature. Local procurement actions should only be initiated when the following have been exhausted:

- Basic Deployment Kits and Prepositioned Items. CCOs should check with their J4 network to see if basic deployment kits and prepositioned items are readily available prior to local purchase. Below are a few examples of the basic deployment kits sometimes used in a Joint bare-base environment.
 - Basic Expeditionary Airfield Resources (BEAR). Harvest Eagle and Harvest Falcon combined are known as the Air Force BEAR Program which is designed and sized to support simultaneous major theater wars. The equipment provided within these two kits provide the theater warfighters the capability to support a total of 68,200 combat troops and 822 aircraft at austere locations, building complete bases from the ground up.
- Exhaustion of Other Required Government Sources. CCOs must comply with *FAR Part 8* and *DFARS Part 208*, which establish required sources for supplies and services throughout the government, DoD, General Services Administration federal supply schedules, and others. Legal advisors to an operation also must become familiar with *FAR Part 8* and *DFARS Part 208* to ensure that these sources are fully utilized by contracting officials in any operation.

Class	Item
I	Subsistence (food) and gratuitous (free) health and comfort items
II	Clothing, individual equipment, tentage, organizational tool sets and kits, hand tools, unclassified maps, administrative and housekeeping supplies, and equipment
III	Petroleum, oil and lubricants (package and bulk): petroleum, fuels, lubricants, hydraulic and insulating oils, preservatives, liquids and gases, bulk chemical products, coolants, deicer, antifreeze compounds, components, additives of petroleum and chemical products, and coal
IV	Construction materials, including installed equipment and all fortification and barrier materials
V	Ammunition of all types: bombs, explosives, mines, fuzes, detonators, pyrotechnics, missiles, rockets, propellants, and associated items
VI	Personal demand items (such as health and hygiene products, soaps and toothpaste, writing material, snack food, beverages, cigarettes, batteries, and cameras—nonmilitary sales items)
VII	Major end items such as launchers, tanks, mobile machine shops, and vehicles
VIII	Medical materiel including repair parts peculiar to medical equipment
IX	Repair parts and components to include kits, assemblies, and subassemblies (repairable or nonrepairable) required for maintenance support of all equipment
X	Material to support nonmilitary programs such as agriculture and economic development (not included in Classes I through IX)
Misc	Water, salvage, and captured material

Table 3. Supply Classes

- Exhaustion of Host Nation and Allied Forces Supply Sources. CCOs must also become familiar with the supplies and services the host nation has agreed to supply under any applicable HNS agreements for the operation. Allied forces who are contingency partners may have agreed to provide supplies or services pursuant to an implementing arrangement to an ACSA. A memorandum of understanding (MOU) or protocol to the implementing arrangement may have been executed for the contingency. Note, if the host nation has agreed to supply an item, contracting for such an item may be considered fraud, waste, and abuse.
- Interservice Support Agreements. These are actions by one military Service or element to provide logistic or administrative support to another military Service or element. Such actions can be recurring or nonrecurring in character on an installation, area, or worldwide basis.
- Contingency (Coalition) Partners. Allied forces who are contingency partners may have agreed to provide supplies or services pursuant to an implementing arrangement to an ACSA. An MOU or protocol to the implementing arrangement may have been executed for the contingency.

Types of Contract Support

Types of Contracted Support. It is important to understand the different types of contracts that are commonly used in support of contingency operations. This construct breaks support contracts into three categories: theater support contracts, systems support contracts, and external support contracts. The three categories are key to adequately describing the numerous contracting and contract administration authorities that provide support within the operational area, and to outline the limits on the JFC's ability to control or influence these different types of contracted support. (See also Chapter 5 and Chapter 8)

- Theater Support Contracts. Theater support contracts are contracts that are awarded by contracting officers in the operational area serving under the direct contracting authority of the Service component, special operations force command, or designated Joint HCA for the designated contingency operation. During a contingency, these contracts are normally executed under expedited contracting authority and provide supplies, services, and construction from commercial sources generally within the operational area. Theater support contracts are the type of contract typically associated with the term contingency contracting. Also of importance from the contractor management perspective is that local national personnel make up the bulk of the theater support contract employees.
- Theater support contracts are those contracts that are most commonly referred to as contingency contracts. Theater support contracting can be used to acquire support from commercial sources similar to external support contract services. Additionally, theater support contracting can be used to acquire commercially available supply items from both local and global sources.
- See *JP 4-10 Appendix C, “Services’ Theater Support Contracting Organizations and Capabilities,”* for more details on the Service theater support contracting organizations and capabilities.
- Systems Support Contracts. Systems support contracts are contracts awarded by a military department acquisition program management office that provide technical support, maintenance, and in some cases, repair parts for selected military weapon and support systems. Systems support contracts are routinely put in place to provide support to newly fielded weapons systems, including aircraft, land combat vehicles, and automated command and control systems. Systems support contracting authority, contract management, and

program management authority resides with the military department systems materiel acquisition program offices. Systems support contractor employees, made up mostly of US citizens, provide support in garrison and often deploy with the force in both training and contingency operations.

- Much of a Service component's equipment will be maintained either partially or fully through contracted logistic support. Often there is no military or other support alternative for the support provided by the original equipment manufacturer through field service representatives, also sometimes referred to as tech-reps. These support contracts are generally issued when the military department systems contracting activities award the original systems contracts. Because such support is generally awarded long before a particular deployment requirement, the GCC and subordinate JFC must be cognizant of the impact of overly restrictive CAAF theater entrance requirements. The JFC's main concern with the use of systems support contracts in military operations is contractor personnel management related issues.
- Individual Services need to ensure their systems support contracts contain appropriate deployment clauses IAW the FAR, DFARS, and adhere to DoD and Service policies. Prior to deploying contractor personnel into the operational area, systems support contracting officers, in coordination with the supported units, must ensure that contractor personnel have met specific theater entrance requirements. Additionally, the supported GCC and subordinate JFC must ensure that the theater entrance requirements and other operational specific contractor management directives are published, updated, and readily available to ensure systems support contractor personnel, the contracting officer, and supported units are aware of these requirements. This logistic support requirement

and accountability of contractor personnel in the operational area are the main focus of the supported GCC and subordinate JFC in regard to planning and execution of systems support contracts.

- *DODI 3020.41, Contractor Personnel Authorized to Accompany the US Armed Forces*, is the primary DoD policy document that covers contractor personnel deployment and other contractor personnel integration policy. Additionally, an overview of the Service systems support contracts and management capabilities can be found in *JP 4-10, Appendix A, “Services’ Systems Support Contract Overview.”*
- External Support Contracts. External support contracts are contracts awarded by contracting organizations whose contracting authority does not derive directly from the theater support contracting HCAs or from systems support contracting authorities. External support contracts provide a variety of logistic and other noncombat related services and supply support. Some examples of external support contracts are the Services’ civil augmentation program (CAP) contracts including the Army’s Logistics Civil Augmentation Program (LOGCAP), the Air Force’s Contract Augmentation Program (AFCAP), the Navy’s global contingency construction contract (GCCC) and global contingency service contract (GCSC), the DLA’s prime vendor contracts, and the Navy’s fleet husbanding contracts. External support contracts normally include a mix of US citizens, third country nationals, and local national contractor employees.
- External support contracts are often used to provide significant logistic support and selected nonlogistic support to the Joint Force. The type and scope of this support varies between operations, but can be very extensive depending on a variety of operational factors. Additionally, in some operations DLA may utilize existing or award new prime vendor contracts to provide selected supply support (primarily subsistence and bulk fuel) during contingency

operations. Other examples of external support contracts include fuel contracts awarded by Defense Energy Support Center, construction contracts awarded by US Army Corps of Engineers, the Air Force Center for Engineering and the Environment, and translator contracts awarded by Army Intelligence and Security Command.

- As with systems support contracts, external support contracting authority does not come as a direct result of the contingency operation. Generally, these contracts are issued during peacetime for use during contingencies. The Army's LOGCAP requirements are managed by the Army Sustainment Command (ASC) and the contracts are awarded and managed by the Army Contracting Command (ACC). ASC and ACC are major subordinate commands of the US Army Materiel Command (USAMC). What this means to the GCC is that contracting authority, and therefore the ability to modify the LOGCAP task orders, resides with USAMC (or designated DCMA administrative contracting officers), not with the theater support contracting HCA. It is important to understand that these CAP and other external support contracts remain under the control of the Service components and do not normally fall under the authority of the GCC operational contract support.
- The JFC should be aware that CAP support contracts are generally more expensive than theater support contracts due to overhead, management, general, and administrative charges associated with external support contracts. Although logistic planners must make allowances for CAP contracts early in the contingency, every effort should be made to transition the individual CAP task orders to theater support contracts as soon as practical. Of course, operation specific factors such as security considerations, availability of local sources of support, and on-hand theater support contracting management capabilities will be the actual drivers of how many of,

and how fast, these CAP task orders can be transferred to theater support contracts. See *JP 4-10, Appendix B, “Services’ External Support Contract Overview,”* for more details on the Service CAP organizations and capabilities.

Coordinating Theater Support and External Support Contracting Effort. It is very important that the J4 staff ensure that the CSIP synchronizes the theater support, Service CAP, and any DLA contracting efforts to ensure that there is not undue competition for the same locally available supplies, equipment, and subcontractor employees. Without proper coordination, this competition between CAP and theater support contracts will inevitably drive up the prices of local goods and services and could create shortages.

Interagency Support. Similar to multinational support, US forces may be required to provide common user logistics support to both governmental and nongovernmental organizations. In many operations, interagency support may be limited in scope and may not pose a significant challenge to the JFC; however, in some stability operations this support can be much more significant as discussed in the section below. In most cases, a lead Service will provide this support through theater support contracts, CAP task orders, or a combination of both. The key to success of interagency support is the establishment of clear communication channels to the supported organization and collecting their requirements as early as possible in the planning cycle.

Service Theater Support Contracting Organizations and Capabilities

Theater support contracting organizations capabilities differ among military Services. Based on their individual mission and organization, each Service has its own approach to developing, training, and deploying contracting personnel. Although differing in organization, training, and

experience, each Service is required to have its contracting personnel meet the *Defense Acquisition Workforce Improvement Act* certification requirements. However, knowing the individual Services' organizational approaches, capabilities, strengths, and weaknesses can help the JFC maximize the capabilities provided by each Service.

Air Force. The Air Force has a large theater support contracting capability. The Air Force meets its theater support contracting needs by the following:

- Developing military contracting professionals, enlisted and officer, who are anticipated to spend the majority of their career in the contracting field
- Augmenting their home-base contracting experience with contingency training and exercises
- Organizing all military for potential deployment using flexible, modular skills packages, called unit type codes (UTC)
- Employing members in a predictable, structured, managed aerospace expeditionary force deployment process

It is Air Force policy that military contracting officers spend the majority of their careers gaining expertise through a progression of home-based contracting assignments. These include acquisition and administration of operational support services, construction, and commodities. Many contracting officers gain experience in logistics and weapon system acquisition as well. All of these are skills applicable to the contracting requirements they will face during contingencies.

The Air Force organizes and deploys CCOs via skill and capability mixes called UTCs. Each UTC specifies a package of capabilities based on the supported population, completion of requisite acquisition professional development program levels, needed equipment, number of contracting personnel required, and grade restrictions, if any. UTCs

provide combatant commanders a highly modular, flexible contracting force. The Air Force deployment packages are generally skill based, not rank dependent. Due to the Air Force's rigorous training requirements, the Air Force maintains a large and experienced group of enlisted contracting officers.

Army. The Army has recently moved to a modular approach in its contingency contracting structure. The Army's core of military commissioned and noncommissioned officers (NCO) trained as contingency contracting officers is now part of separate, O-6-level CSB. These CSBs are assigned to the Expeditionary Contracting Command, a major subordinate command of Army Contracting Command, but are regionally aligned to the existing Army Service component command headquarters. The Army's CSBs are made up of contingency contracting battalions and contingency contracting teams. CSB commanders are responsible for training and readiness of their subordinate units. The CSB is the primary contracting support planner, advisor, and contingency contracting command commander to the theater Army. SCCT [senior contingency contracting teams] fall under the CSB commander's acquisition authority.

The Army's modular contracting units train and deploy as a unit and provide general support in order to better meet and address contingency operation requirements.

In addition to its uniformed contingency contracting officers and NCOs, the Army has two other methods to supplement the Army's formal contingency contracting force structure: by deploying Department of the Army civilian contracting specialists, and through its Emergency Essential Department of the Army Civilian (EEDAC) program. EEDAC (1102) contract specialists volunteer to deploy via the Army G3 Worldwide Individual Augmentation System. EEDAC contracting officers deploy as required based on the level of support required, phase of operation, and local security conditions.

Navy. The Navy contingency contracting capability is based on two principles:

- The Navy does not maintain a dedicated contingency contracting force. Instead, Naval officers and civilians, assigned to field contracting and systems acquisitions commands performing contracting functions, are deployed as contingency contracting officers as operations dictate.
- The Navy leverages a network that provides global logistics support to maritime and expeditionary forces.

When a combatant commander identifies a long-term requirement and obtains the necessary contingency contracting manning via the Joint manning document process, contracting officer billets sourced by the Navy would result in a uniformed contracting officer being assigned as an individual augmentee (IA) or Global War on Terrorism support assignment (GSA). IA and GSA personnel assignments are currently managed at the Navy-wide level by Fleet Forces Command with recommendations by the Navy Personnel Command. Civilian contracting officers are not utilized in the IA or GSA program.

Marine Corps. The Marine Corps has a limited number of uniformed contingency contracting personnel who deploy as part of a Marine air-ground task force (MAGTF). The MAGTF contracting section develops a contract support plan as part of the overall logistic support plan that includes the number of personnel to be deployed. Generally, the Marine Corps does not deploy civilian contracting professionals in support of contingency operations. Additionally Marine Corps contracting officers do not contract for construction nor do they possess the necessary skill sets to support major reconstruction efforts. The Marine Corps Institute *Contingency Contracting Manual* can be found at: <http://www.hqmc.usmc.mil/CMPG/>

DoD Combat Support Agencies

Defense Logistics Agency. The DLA is the agency responsible for providing effective and efficient worldwide logistics support to military departments and the combatant commands under conditions of peace and war, as well as to other DoD components and federal agencies, and when authorized by law, state and local government organizations, foreign governments, and intergovernmental organizations. The DLA Director reports to the OUSD (AT&L) through the Deputy Under Secretary of Defense for Logistics and Materiel Readiness. DLA also has its own contracting authority and can provide supply and service contracting during contingency operations. The Joint Contingency Acquisition Support Office (DLA- JCASO) was established by DoD to advance acquisition management of operational contract support (OCS) and, when requested by the combatant commander (CCDR), deploys as an enabling Joint staff organization to augment the CCDR staff for OCS support.

JP 4-10, Appendix B, “Services External Support Contract Overview.” provides more details on the capabilities and deployed organizational structure of DLA.

Defense Contract Management Agency. The DCMA is the agency responsible for ensuring major DoD acquisition programs (systems, supplies, and services) are delivered on time, within projected cost or price, and meet performance requirements. DCMA’s major role and responsibilities in contingency operations is to provide contingency contract administration services (CCAS) for delegated external support contracts and for selected weapons systems support contracts with place of performance in the operational area and theater support contracts when CCAS is delegated by the procuring contracting officer.

JP 4-10 Appendix D, “Defense Contract Management Agency Contingency Functions and Capabilities.” provides more details on the capabilities and deployed organizational structure of DCMA.

Defense Contract Audit Agency. Though not a combat support agency, DCAA provides invaluable in-theater support. The DCAA is a defense agency under the authority, direction, and control of the Under Secretary of Defense (Comptroller). The DCAA shall perform all necessary contract audits for the DoD and provide accounting and financial advisory services regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration. These services shall be provided in connection with negotiation, administration, and settlement of contracts and subcontracts to ensure taxpayer dollars are spent on fair and reasonable contract prices. DCAA shall provide contract audit services to other federal agencies as appropriate.

To read more about other combat support agencies consult the DVD.
(See also DoDD 3000.06. 

Notes

1. It is anticipated that this threshold will increase. Please check FAR 13.003 for changes in the SAT.
2. *Ibid.*

Chapter Acronyms

AAR – After Action Report
ACC – Army Contracting Command
ACO – Administrative Contracting Officer
ACSA – Acquisition and Cross-Servicing Agreement
ADVON – Advanced Echelon
AETC – Air Education and Training Command
AFCAP – Air Force Contract Augmentation Program
AFCESA – Air Force Civil Engineering Support Agency
AOR – Area of Responsibility
ASC – Army Sustainment Command
BEAR – Basic Expeditionary Airfield Resources
BPA – Blanket Purchase Agreement
CAAF – Contractors Authorized to Accompany the Forces
CAP – Civil Augmentation Program
CCAS – Contingency Contract Administration Services
CCDR – Combatant Commander
CCO – Contingency Contracting Officer
CERP – Commanders' Emergency Response Program
CID – Criminal Investigation Division (Army)
COCOM – Combatant Command
CONUS – Continental United States
COR – Contracting Officer's Representative
CS – Combat Support
CSB – Contracting Support Brigade
CSIP – Contracting Support Integration Plan
CSS – Combat Service Support
DBA – Defense Base Act
DCAA – Defense Contract Audit Agency
DCMA – Defense Contract Management Agency
DD – Department of Defense (Forms)

DFARS – Defense Federal Acquisition Regulation Supplement
DLA – Defense Logistics Agency
DoD – Department of Defense
DoDD – Department of Defense Directive
DoDI – Department of Defense Instruction
DSN – Defense Switched Network
ECA – Executive Coordinating Agency
EEDAC – Emergency Essential Department of the Army Civilian
FAR – Federal Acquisition Regulation
FAST – Field Assessment Surveillance Team
FISC – Fleet and Industrial Supply Center
FOB – Free on Board
GCC – Geographic Combatant Commander
GCCC- Global Contingency Construction Contract/Global
Construction Capability Contract
GCPC – Governmentwide Commercial Purchase Card
GCSC- Global Contingency Service Contract
GSA – General Services Administration
GSO – Government Services Officer
GTA – Army (Publication GTA 80-01-001)
HCA – Head of Contracting Activity
HNS – Host Nation Support
HQ – Headquarters
HQDA – Headquarters Department of the Army
IA – Individual Augmentee
IAW – In Accordance With
ISOPREP – Isolated Personnel Report
JCASO – Joint Contingency Acquisition Support Board
JFC – Joint Force Commander
JOCST – Joint Operational Contract Support Team
JOPP – Joint Operation Planning Process
JP – Joint Publication

JPRC – Joint Personnel Recovery Center
JRC – Joint Reception Center
JRSOI – Joint Reception, Staging, Onward Movement, and Integration
LOGCAP – Logistics Civil Augmentation Program
LSU – LOGCAP Support unit
MAGTF – Marine Air-Ground Task Force
MOOTW – Military Operations Other Than War
MOU – Memorandum of Understanding
NAF – Nonappropriated Funds
NATO – North Atlantic Treaty Organization
NAVFAC – Navy Facilities and Engineering Command
NCF – Naval Construction Forces
NCIS – Navy Criminal Investigation Service
NCO – Noncommissioned Officer
OCONUS – Outside Continental United States
OCS – Operational Contract Support
OO – Ordering Officer
OSI – Office of Special Investigation
OUSD (AT&L) – Office of Under Secretary of Defense for Acquisition, Technology, and Logistics
P&C – Procurement and Contracting
PARC – Principal Assistant Responsible for Contracting
PCO – Procuring Contracting Officer
PIIN – Procurement Instrument Identification Number
POC – Point of Contact
POL – Petroleum, Oil, and Lubricants
PR – Purchase Request
PRCC – Personnel Recovery Coordination Cell
PSC – Private Security Contractor
RCC – Regional Contracting Center
ROM – Rough Order of Magnitude

SAT – Simplified Acquisition Threshold
SCCT – Senior Contingency Contracting Team
SCO – Senior Contracting Official
SERE – Survival, Evasion, Resistance, and Escape
SF – Standard Form
SIPRNET – Secret Internet Protocol Network
SOFA – Status of Forces Agreement
SPOT – Synchronized Predeployment and Operational Tracker
US – United States
USAFCENT – United States Air Force Central Command
USAFRICOM – United States Africa Command
USAID – United States Agency for International Development
USAMC – United States Army Material Command
USC – United States Code
USCENTCOM – United States Central Command
USEUCOM – United States European Command
USNORTHCOM – United States Northern Command
USPACOM – United States Pacific Command
USSOCOM – United States Special Operation Command
USSOUTHCOM – United States Southern Command
USTRANSCOM – United States Transportation Command
UTC – Unit Type Code

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Chapter 5 Contracting Processes



Contracting Processes

Key Points

- In any contingency operation, quality acquisition support to the commander is critical to mission accomplishment.
- The absence of direction should be interpreted as permitting innovation and the use of sound business judgment.
- A wide selection of contract types is available in order to provide needed flexibility in acquiring the supplies and services required. Most contingency purchases can be accomplished through simplified acquisition procedures (SAP).
- Contingency contracting officers (CCO) should emphasize price negotiations, even if they have competition, at sustained or established locations.
- The type of contract selected determines both the clauses to be included and the degree of risk accepted by the government.
- The objective is to select the contract type that places a reasonable degree of risk upon the contractor and provides the contractor with the greatest incentive to perform efficiently and economically.
- Figures 5 and 6 outline and review basic contracting processes and contract formats.

Introduction

We have an ethical obligation to abide by laws and regulations. However, in an instance where there is an absence of clear-cut directions, remember, *Federal Acquisition Regulation (FAR) 1.102 (4)(e)* encourages us to think outside of the box.

This chapter provides a quick reference to limitations and exceptions to contracting operating procedures in a contingency environment. Specific augmentation programs that are common to the contingency

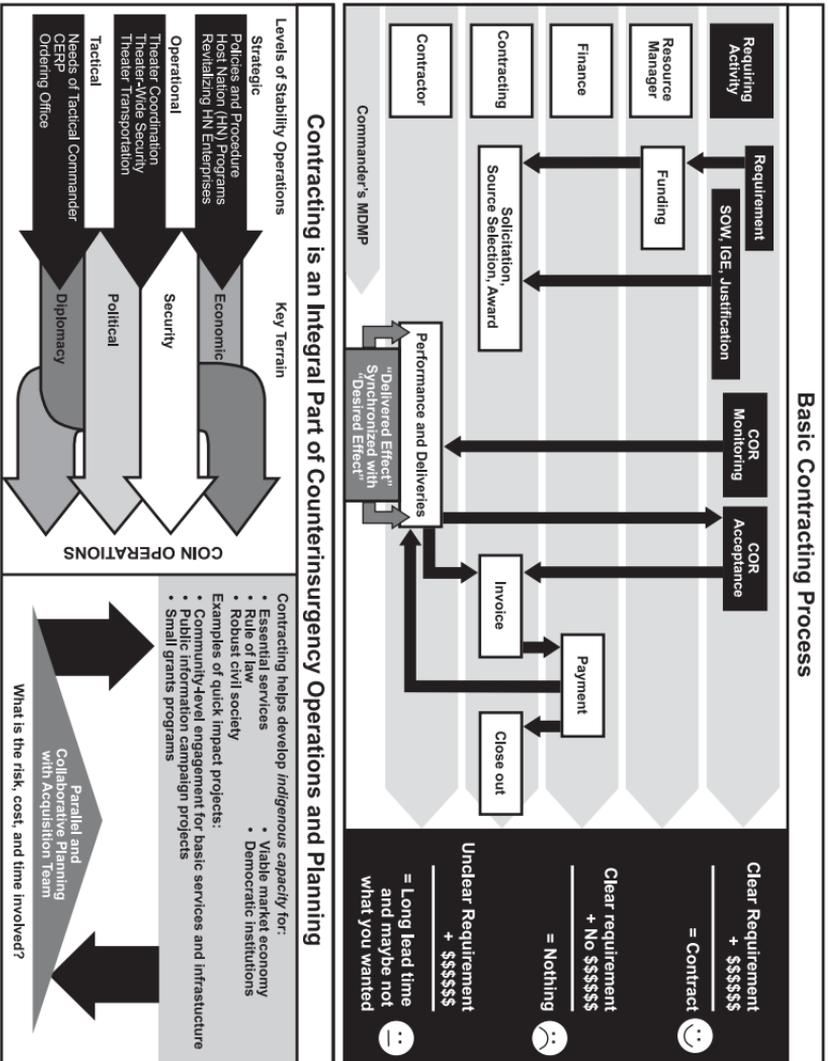


Figure 5. Basic Contracting Processes

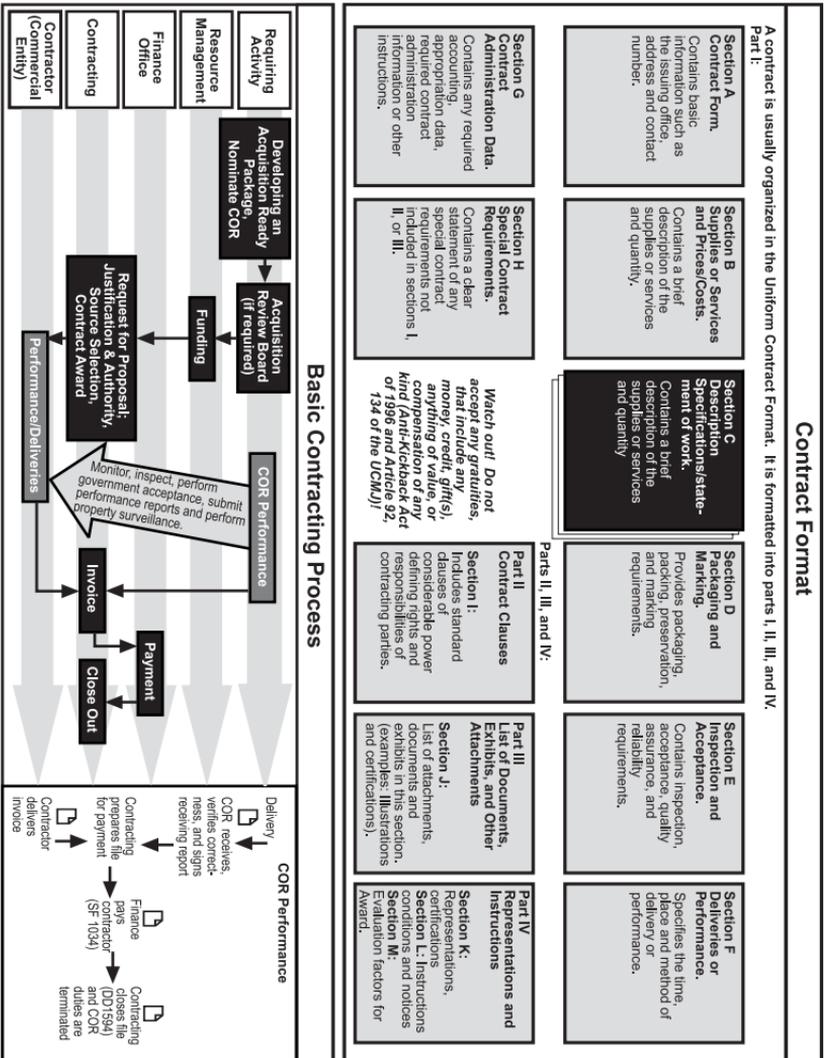


Figure 6. Contract Format

environment are covered and explained, along with SAP. Frequently used contract types, instruments, and appointed personnel (such as ordering officers) are also covered. This chapter provides the CCO with a discussion of determinations and findings, justification and approvals, and equipment lease or purchase decisions that may apply to the contracting process. The chapter further discusses the tools to organize and track contracts and the means of providing oversight through the contracting officer's representatives (COR) in order to ensure accountability. It is the CCO's job to facilitate the purchasing needs of our customers. This chapter concludes by explaining the duties of a paying agent and the execution of ratification procedures when unauthorized commitments are made.

Simplified Acquisition Procedures



Once it is determined that contingency contracting is the chosen method, you will find that most purchases can be accomplished through simplified acquisition procedures (SAP) procedures. (*FAR Part 13*) SAP includes procedures for the acquisition of supplies and services (including MILCON [military construction]), the aggregate amount of which does not exceed the simplified acquisition threshold (SAT) for declared contingency or peacekeeping operations and *FAR Part 13.5, Test Program for Certain Commercial Items*.

Competition Requirements Under SAP. The CCO must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is fair and reasonable and most advantageous to the government. Maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to *FAR 5.101* and an exception under *FAR 5.202* is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable,

request quotations or offers from two sources not included in the previous solicitation. Note that the competition requirements are not waived by using simplified acquisition procedures. In other words, for micro-purchases to be made outside the United States (US) in support of a contingency operation *under* \$25K, a CCO needs to support price reasonableness. To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers and micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with FAR 1.603-3(b) considers the price to be reasonable.

Oral Solicitations.

Oral solicitations or request for proposals (RFP) are authorized when a written solicitation would delay the acquisition of supplies and services to the detriment of the government and a solicitation notice is not required under FAR 5.202 (such as perishable items, support of contingency operations, or other emergency situations). This technique does not excuse the CCO from complying with all other statutory and regulatory requirements. Oral solicitations are typically used as a last resort due to potential problems associated with them and they must immediately be followed up in writing. The CCO's documentation also must provide sufficient rationale for the use of oral solicitations. The contract file includes:

- A justification for use of an oral solicitation
- Item description, quantity, and delivery schedule
- Sources solicited, including the date, time, name of individual contacted, and prices quoted
- The solicitation number provided to the prospective offerors

Once the CCO completes the oral solicitation and selects a successful offeror, a contract will be prepared for the contractor's signature as quickly

as possible. Delay may require a further explanation in the contract file describing the rationale for failing to take prompt action. Sample contract formats, electronic prepopulated forms, and electronic copies of the required clauses in the contingency contracting support kit will accelerate the contracting documentation process.

Micro-purchases

Governmentwide Commercial Purchase Card (GCPC).



A GCPC is the preferred method of purchasing supplies and services within the micro-purchase threshold. All purchases that are made or paid for using GCPC are subject to all applicable provisions of *FAR 13.2* and *Defense Federal Acquisition Regulation Supplement (DFARS) Part 213.2.2*, and must be authorized and documented accordingly. While the benefits associated with the use of the GCPC are well known, the card may not be readily accepted in many locations in a contingency situation. CCOs may use the GCPC to support a contingency, humanitarian, or peacekeeping mission to buy immediately available supplies or services for a single delivery up to CCO's single purchase limit. The GCPC can be used for over the counter purchases (when the local banking infrastructure permits). It also is frequently used (when local infrastructure supports the technology) over the phone and over the Internet. See <https://wbt.access.usbank.com>. When GCPC is not accepted, a Standard Form (SF) 44 may be used.

Use of the GCPC by Contracting Officers. Contracting officers may use the GCPC to support a contingency, humanitarian, or peacekeeping mission to buy immediately available supplies or services that will be delivered at one time up to the applicable SAT. (*DFARS 213.301*)

Imprest Fund and Third Party Drafts. (*FAR 13.305* and *DFARS 213.305*)



These instruments are cash funds of a fixed amount established by an advance of funds to a duly appointed cashier for the purpose of making immediate cash payments of relatively small amounts for authorized supplies and nonpersonal services. Imprest funds and third party drafts are no longer standard instruments in the Department of Defense (DoD). However, they can be established for contingencies when a waiver has been received. These instruments should be used as a last resort, given the significant security requirements for securing the money. SF 44s and purchase cards have generally eliminated the need for imprest funds. However, in the rare event that an imprest fund or third party draft is the only way to address certain categories of requirements, the CCO will provide the customer with more information and the procedures as outlined at *FAR 13.305*.

Contract Types

Selecting Contract Types. (*FAR 16.101*) A wide selection of contract types is available to the government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. Contract types vary according to:

- The degree and timing of the responsibility assumed by the contractor for the costs of performance
- The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals

The contract types are grouped into two broad categories: fixed-price contracts (*FAR 16.2*) and cost-reimbursement contracts (*FAR 16.3*). 

The specific contract types range from firm-fixed price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is

fixed. In between are the various incentive contracts (*FAR 16.4*), in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

Fixed-Price Contracts. (*FAR 16.2*) 

Under a fixed-price contract the government must be able to describe exactly the required contract results and allow the contractor the flexibility to plan, manage, and execute the work to achieve those results. This type of contract has tremendous advantages, as the performance and cost risk lie with the contractor. Contract types commonly seen in a contingency environment are:

- Firm-fixed-price (FFP) contracts
- Fixed-price contracts with economic price adjustment
- Fixed-price incentive contracts—determination and findings (D&F) required

Firm-Fixed-Price Contracts. (*FAR 16.202-1*) An FFP contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively, and imposes a minimum administrative burden upon the government. An FFP contract may include an award fee incentive (*FAR 16.404*) or performance or delivery incentives (*FAR 16.402-2* and *16.402-3*) when the award fee or incentive is based solely on factors other than cost. The contract type remains FFP when used with these incentives. FFP contracts are suitable when:

- There is adequate price competition.
- There are reasonable price comparisons with prior purchases of the

same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data.

- Available cost or pricing information permits realistic estimates of the probable costs of performance.
- Performance uncertainties can be identified, and reasonable estimates of their cost impact can be made, and the contractor is willing to accept an FFP contract representing assumption of the risks involved.

Cost-Reimbursement Contracts. (*FAR 16.3*) Under a cost-reimbursement contract, the contractor agrees to provide its best effort to complete the required contract effort. Cost-reimbursement contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts include an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor cannot exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts are generally labor intensive and require additional scrutiny in regards to the contractor's cost accounting system. These types of contracts should be used when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract. As such, these types of contracts are generally large dollar, external support type contracts. Generally the CCO will not be involved in cost-type efforts, unless deployed as an administrative contracting officer with Defense Contract Management Agency or deployed into security, sustainment, transition, and reconstruction activities. When awarding cost-reimbursable contracts, CCOs should ensure that the Allowable Cost and Payment Clause (FAR 52.216-7) is included and flows down to cost-type subcontracts. Defense Contract Audit Agency is part of the deployed support personnel in a contingency operation and is available to assist the CCO in the award and administering of cost-type contracts.

To read more about incentive type contracts consult the DVD.



Indefinite Delivery Contracts.   

The three types of indefinite delivery contracts are definite quantity, indefinite quantity, and requirements contracts. (FAR 16.5 and DFARS 216.5)

Definite Quantity Contracts. (FAR 16.502)   

A definite quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at a designated location, time, and date upon placement of the order. A definite quantity contract may be used when it can be determined in advance that:

- A definite quantity of supplies or services will be required during the contract period.
- The supplies or services are regularly available or will be available after a short lead time.

Indefinite Quantity Contract. (FAR 16.5 and DFARS 216.5) An indefinite quantity contract may be used when the government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the government will require during a fixed contract period, and it is inadvisable for the government to commit itself for more than a minimum quantity. Quantity limits may be stated as number of units or as dollar values. The contracting officer should use an indefinite quantity contract only when a recurring need is anticipated. The following pertains to the indefinite quantity contract.

- The contract must require the government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. If ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum.
- The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for

similar supplies or services, survey of potential users, or any other rational basis.

- To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the government is fairly certain to order.
- The contract may also specify maximum or minimum quantities that the government may order under each task or delivery order, and the maximum that it may order during a specific period of time.
- A solicitation and contract for an indefinite quantity must:
 - Specify the period of the contract, including the number of options and the period for which the government may extend the contract under each option.
 - Specify the total minimum and maximum quantity of supplies or services the government will acquire under the contract.
 - Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer.
 - State the procedures that the government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the government will use to provide awardees a fair opportunity to be considered for each order. (*FAR 16.505(b)(1)*)
 - Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (*FAR 16.505(b)(5)*) if multiple awards may be made.
 - Include a description of the activities authorized to issue orders.
 - Include authorization for placing oral orders, if appropriate, provided that the government has established procedures for obligating funds and that oral orders are confirmed in writing.

- Because quantities are not fixed, variable units or amounts (such as the number of meals served beyond the minimum guaranteed) require subsequent verification and audit by the COR.

Requirements Contract. (*FAR 16.503*) A requirements contract is an indefinite delivery type contract that provides for filling all actual purchase requirements of specific supplies or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor. It has several advantages.

- Requirements contracts have the flexibility needed to support deployment without the financial risk and administrative burden that an indefinite delivery contract would pose. Under a requirements contract, one only orders what is needed, when it is needed, and only pays upon acceptance. Funds are obligated only when the government issues a delivery order against the contract. Delivery orders are prepared on *Department of Defense Form (DD) 1155*  and contain information similar to a purchase order with some minor differences.
- The contract price can be based on a firm-fixed-price or cost-reimbursement. The prices agreed to can be derived from either catalog or market prices.
- If the government no longer has a requirement for the supplies or services on the contract, the contractor has the burden to prove if additional compensation is warranted.
- The maximum and minimum order quantity limitations are included in the original contract. These limitations allow the contractor to propose reasonable prices, as they allow the contractor to provide economic quantities in keeping with local market conditions. Orders outside the applicable range will be treated as separate

purchases. The better the customer defines its needs up front, the better the competition and prices that will be realized.

- The CCO should do a spend analysis of known requirements to determine which categories of supplies and services might be suitable for a centralized contract. One way to determine this is to review the number of simplified acquisition actions being made for the same items.

Letter Contracts and Undefinitized Contract Actions (UCA). (*DFARS*

217.74)       

UCA means any contract action for which the contract terms, specifications, or price are not agreed upon before performance begins. Examples include letter contracts, basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun. A UCA shall be approved by the HCA prior to award. The regional contracting center (RCC) chief will forward a request for approval to award a UCA through the senior contracting official to the HCA. UCAs shall be accomplished IAW *DFARS 217.74*. UCA approval authorities shall establish procedures for RCC chiefs to track UCAs and submit a written report to them for any UCA that is not definitized within 180 days after the contractor submits a qualifying proposal. The report shall list each UCA, explain why it was not definitized within the allotted time frame, and provide a new definitization date. CCOs shall document the contract file with the justification for the delay, and prepare a new milestone schedule if the *DFARS* definitization schedule milestones are bettered. UCAs that exceed 180 days substantially elevate the overall financial risk to the government. Every effort should be made to definitize contract actions before that time. Requests for approval to issue a UCA shall include a written statement of urgency. (*DFARS 217-7404*) The urgency statement for UCAs must cite why the government would be seriously injured if the action was delayed to permit negotiation of a price. A UCA (including an undefinitized task order or

delivery order under a civil augmentation program [CAP] contract or other external support contracts) of a flexibly priced nature should include the clause at *FAR 52.216-24, Limitation of Government Liability*, DFARS *252.217-7027, Contract Definitization* and DFARS *217.7404-4, Limitations on Obligations* which limit obligations to 50 percent of the not-to-exceed (NTE) price before definitization. If a qualifying proposal is submitted before 50 percent of the NTE price has been obligated, then obligations before definitization may be increased to no more than 75 percent of the NTE price.

Considerations for Contract Type Selection and Risk Assessment

The CCO makes the decision on the type of contract to use depending upon the facts surrounding the individual acquisition. The objective is to select the contract type that places a reasonable degree of risk upon the contractor and provides the contractor with the greatest incentive to perform efficiently and economically. Consider the factors in *FAR 16.104*, as well as the stability and predictability of the requirement, the specificity of the description of work, the known track records of the available contractors, and the general acquisition environment. Document the rationale for the contract type selected in the contract file.

Consider Commerciality of the Requirement. (*FAR 12.207*) When acquiring a commercial item:

- You normally should use a firm-fixed-price contract.
- You may use a fixed-price contract with economic price adjustment if the contracting officer determines (in writing) that this type of contract is necessary to protect the contractor and the government against significant fluctuations in labor or material costs or to provide for contract price adjustments in the event of changes in the contractor's established prices.

Consider Acquisition Method. (*FAR 16.102*, and *DFARS 216.104.70*)

The acquisition method selected for a particular acquisition may limit the available choice of contract type.

- **Simplified Acquisition.** When using simplified acquisition procedures, purchase orders are normally firm-fixed-price.
 - **Unpriced Orders:** You may use an unpriced order in certain situations when it is impossible to obtain firm pricing prior to issuing the purchase order. Whenever you use an unpriced order, the order must include a dollar limit on the government's obligation and the contracting officer must follow up to assure timely pricing.
- **Test Program for Commercial Items.** (*FAR Subpart 13.5*) Use simplified procedures for supplies or services up to \$5.5M¹ (or \$11M for acquisitions which are for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack if the CCO reasonably expects that offers will include only commercial items). Ensure verbiage is in contract award and business clearance that states "this acquisition is IAW *FAR Part 13.5, Test Program for Commercial Items.*"
- **Negotiation.** When using the negotiation procedures prescribed in *FAR Part 15* you may use any contract type or combination of contract types that will promote the best interests of the government, as long as you meet the specific limitations in *FAR Part 16*. You must not use any contract type not prescribed in the FAR unless authorized by agency regulation or a FAR deviation.

Consider Cost Risk. (*FAR 16.103(a)*) Encourage contractors to accept reasonable cost risks of contract performance. However, requiring contractors to accept unknown or uncontrollable cost risk can endanger

contract performance, substantially reduce competition, or substantially increase contract price. To realistically choose the proper contract type to meet a specific contract situation, you must consider the proper allocation of cost risk.

As a minimum, your appraisal of cost risk should consider two areas of particular concern, contract performance risk and market risk.

- **Performance Risk.** Most contract cost risk is related to contract requirements and the uncertainty surrounding contract performance—the lower the uncertainty, the lower the risk. Therefore, your appraisal of cost risk should begin with an appraisal of performance risk. For larger, more complex contracts, you will likely need assistance from other members of the government acquisition team (representatives from the requiring activity, engineering staff, contracting, and program or project management). Areas that you consider should include:
 - Stability or clarity of the contract specifications or statement of work
 - Type and complexity of the item or service being purchased
 - Availability of historical pricing data
 - Prior experience in providing required supplies or services
 - Urgency of the requirement
 - Contractor technical capability and financial responsibility
 - Extent and nature of proposed subcontracting
 - **Market Risk.** Changes in the marketplace will also affect contract costs. Preferred acquisition practice calls for forward pricing of contract efforts, because forward pricing provides a baseline which you and the contractor can use to measure cost or price performance against contract effort.

- Forward pricing requires the contracting parties to make assumptions about future changes in the marketplace. A volatile market will increase the cost risk involved in contract pricing, particularly when the contract period will extend several years. What will material and labor cost 2 years from now? Will material shortages occur 2 years from now? In cases where these unknown costs are significant, the length of the contract becomes an important consideration in selection of contract type.

Fixed-price contracts with economic price adjustment are designed specifically to reduce this risk for contractors.

Determinations and Findings



Definition. (*FAR 1.701*) A determination and findings (D&F) means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions. The determination is a conclusion or decision supported by findings. The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

General. (*FAR 1.702*) A D&F shall ordinarily be for an individual contract action. Unless otherwise prohibited, class D&Fs may be executed for classes of contract actions. (*FAR 1.703*) The approval granted by a D&F is restricted to the proposed contract action reasonably described in that D&F. D&Fs may provide for a reasonable degree of flexibility. Furthermore, in their application, reasonable variations in estimated quantities or prices are permitted, unless the D&F specifies otherwise.

When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

Some of the more common general D&Fs are as follows: type of contracting action, exercising option, period of performance extension, ratification, and so forth.



Class Determinations and Findings. (*FAR 1.703*) The CCO shall be aware of any class D&Fs for their area of responsibility (AOR). A class D&F provides authority for a class of contract actions. A class may consist of contract actions for the same or related supplies or services or other contract actions that require essentially identical justification.

- The findings in a class D&F shall fully support the proposed action either for the class as a whole or for each action. A class D&F shall be for a specified period, with the expiration date stated in the document.
- The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F are within the scope of the D&F.
- Expiration dates are required for class D&Fs and are optional for individual D&Fs. (*FAR 1.706*)

Content. (*FAR 1.704*) Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the specific determination made. As a minimum, each D&F shall include, in the prescribed agency format, the following information:

- Specific identification of the document as a D&F.
- Identification of the agency and of the contracting activity.
- Nature and description of the action being approved.
- Citation of the appropriate statute or regulation upon which the D&F is based.

- Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.
- A determination based on the findings, that the proposed action is justified under the applicable statute or regulation.
- Expiration date of the D&F, if required. (*FAR 1.706*)
- The signature of the official authorized to sign the D&F (*FAR 1.707*) and the date signed.

Supersession and Modification. (*FAR 1.705*)

- If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F prior to the date of its supersession.
- The contracting officer need not cancel a solicitation if the D&F, as modified, supports the contract action.

Signatory Authority. (*FAR 1.707*) When a D&F is required, it shall be signed by the appropriate official in accordance with agency regulations. Authority to sign or delegate signature authority for the various D&Fs is as shown in the applicable parts of the FAR.

Justifications and Approvals



Justification and Approval (J&A) for Other than Full and Open Competition. In using other than full and open competition procedures, the contracting officer must complete a thorough written justification in accordance with (IAW) *FAR 6.303*, explaining the reasons for proceeding with the award of a contract without full and open competition. The CCO should ensure that a fair and reasonable price is achieved. This justification

must be approved by the approval authorities as set forth at FAR 6.304. Also, be familiar with your deployed agency's thresholds as to when legal must review the J&A. When unusual and compelling urgency is the basis for other than full and open competition, the written J&A may be made after contract award when preparation and approval of the J&A prior to award would unreasonably delay the acquisition. (FAR 6.302-2(c)(1)) Contracts awarded under this circumstance should include an appropriately limited period of performance, with follow-on contracts awarded based on full and open competition or the submission of cost or pricing data for sole-source awards. A complete list of the seven FAR exceptions for other than full and open competition is provided in the section entitled "Limitations and Exceptions." (FAR 6.302-1)

Full and open competition is required for all new contracts and modifications except:

- Acquisitions made under the SAP of FAR Part 13.
- Contracts awarded under procedures expressly authorized by statute (other than those specifically addressed under the authority of 10 United States Code (USC) §2304(c)(5).
- Contract modifications that are within the scope and under the terms of an existing contract.
- Orders placed under requirements contracts or definite quantity contracts. (FAR Part 16.5)
- Orders placed under indefinite quantity contracts when the contract was awarded under the procedures of FAR Parts 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements in the order or when the contract was awarded under FAR 6.3 and the contract's J&A adequately covered the requirements in the order.

Although the most commonly used exception in a deployed environment is unusual and compelling urgency, the following is a complete list of FAR exceptions:

- Only one responsible source (sole source) and no other supplies or services will satisfy agency requirements. (*FAR 6.302-1*)



- Unusual and Compelling Urgency. (*FAR 6.302-2*) This authority to utilize other than full and open competition procedures applies in those situations where an unusual and compelling urgency precludes full and open competition, and delay in award of a contract would result in serious injury, financial or other, to the government. (D&F urgent and compelling). **Note:** (1) unusual and compelling requirements are not to be confused with sole source requirements. *FAR 6.301 (c)(1)* and (2) warns against contracting without providing for full and open competition justification on the basis of a lack of advance planning by the requiring activity and concerns related to the amount of funds available (that is, funds will expire).
- Industrial mobilization, engineering, developmental or research capability, or expert services (*FAR 6.302-3*)
- International agreement. (*FAR 6.302-4*)
- Authorized or required by statute. (*FAR 6.302-5*)
- National security. (*FAR 6.302-6*)
- Public interest. (*FAR 6.302-7*)

Class J&As. Class justifications and international agreement competitive restrictions (IACR) documents may be used in certain circumstances. For example, they may be used when citing similar justification authority for a group of related contract actions for the same or related supplies or services. Information that is the same for multiple contracts need not be restated for each. CCOs shall be aware of class J&As and IACRs for their AOR.

Equipment Lease or Purchase. 

Pursuant to *FAR Subpart 7.4*, consideration of whether to lease or purchase equipment should be based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that should be considered. In addition, see 10 USC §2401 and 10 USC §2401a for statutory authorization requirements for the lease of a vessel, aircraft, and combat vehicle or commercial vehicle and associated equipment.

- Estimated length of the period the equipment is to be used and the extent of use within that period.
- Financial and operating advantages of alternative types and makes of equipment.
- Cumulative rental payments for the estimated period of use.
- Net purchase price.
- Transportation and installation costs.
- Maintenance and other service costs.
- Potential obsolescence of the equipment because of imminent technological improvements.

The following additional factors should be considered, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment.

- Availability of purchase options.
- Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.
- Trade-in or salvage value.
- Imputed interest.
- Availability of a servicing capability, especially for highly complex equipment (can the equipment be serviced by the government or other sources if it is purchased).

Leases should be funded in accordance with *DoD Financial Management Regulation (FMR) 7000.14-R* (<http://comptroller.defense.gov/fmr>). Leases are either capital leases or operating leases (see *FMR 7000.14-R*, Volume 4, *Accounting Policy and Procedures*, Chapter 6, “Investments and Other Assets,” Section 060207). Procurement funds are used for capital leases, as these are essentially installment purchases of property. **Note:** If a lease is justified, a lease with option to purchase is the preferred acquisition method. (*FAR 7.402(b)(2)*)

Nontactical Vehicle (NTV) Lease or Purchase. Lease or purchase is an especially important decision in the acquisition of the NTVs. A recent DoD inspector general report on the management of NTVs (<http://www.dodig.mil/audit/reports/fy10/10-022.pdf>) discusses the cost trade-offs in different acquisition methods. Figure 7 is a chart from the report illustrating the average cost over time on different acquisition approaches. The chart is an example of what the required analyses can reveal with

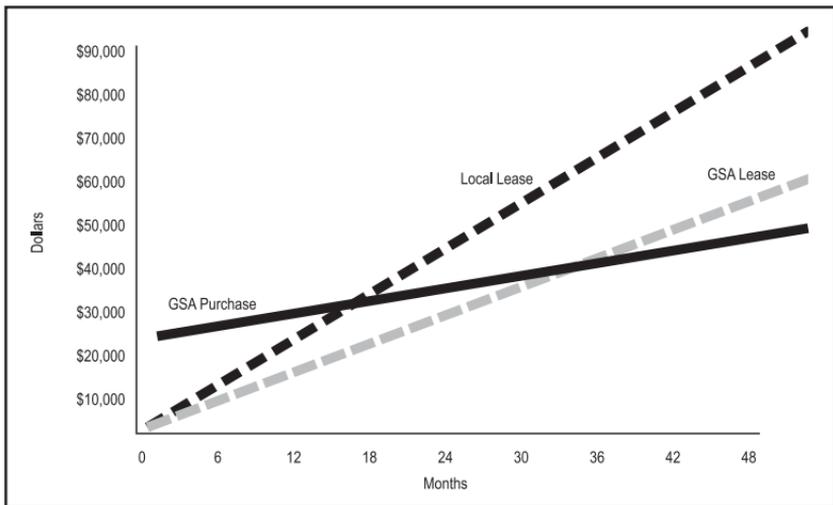


Figure 7. Average Cost of NTVs Over Time Using Different Acquisition Approaches

regard to the lease versus purchase decision. The report also identifies another important issue—the management of NTVs and the problems associated with not properly managing them and not centralizing their purchase. This could lead to unnecessary and more expensive leases and purchases. If the requirement is for procuring or leasing vehicles vice transportation services, CCOs should review procurement restrictions with the General Services Administration.

Publicizing Contract Actions

Publication of Contract Actions. Pursuant to *FAR 5.002*, contracting officers are required to publicize contract actions to increase competition. To publicize contract actions, contracting officers should at least post in a public place a notice of all unclassified solicitations for goods and services in support of the contingency operation. (*FAR 5.101(a)(2)(iii)*) In addition, contracting officers should advise potential vendors of all unclassified solicitations that have been released for the receipt of proposals and encourage vendors to submit proposals.

Synopsis of Requirements in FedBizOps. Whenever a contract action will be made and performed outside the US, its possessions, or Puerto Rico, and only local sources will be solicited, then CCOs are generally not required to synopsise requirements if the contracting officer determines an exception applies IAW *FAR 5.202*. However, your local contracting office may require the use of a synopsis. (D&F waiving synopsis) **Note:** FedBizOps requires CCOs to apply for access as a buyer and the gaining command needs to be willing to approve the request on behalf of the CCO.

Domestic Source Restrictions

Foreign Acquisitions. *FAR 25.000* and DFARS 225, *Foreign Acquisition*, establish regulations implementing the *Buy American Act*, the Balance of Payments Program, and the *Trade Agreements Act*.

Buy American Act. The *Buy American Act* restricts the purchase of supplies that are not domestic end products for use within the US. The

Buy American Act does not apply to articles, materials, and supplies to be used outside the US, its possessions, Puerto Rico, and any other place subject to its jurisdiction. (*FAR 25.001(a)(1)*) A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable. In view of this exception, most acquisitions conducted overseas in support of a foreign contingency operation will not be subject to the *Buy American Act* and the implementing regulations at *FAR Subpart 25.1 and 25.2*.

Balance of Payments Program. This program applies to purchases of supplies, services, or construction for use outside the US. The program applies a preference for domestic products by requiring upward adjustment of foreign end product offers by 50 percent for evaluation purposes. Exceptions to the program (*FAR 25.303*) are as follows:

- A foreign end product may be acquired for use outside the United States, or a foreign construction material may be used in construction outside the United States, without regard to the restrictions of the Balance of Payments Program if:
 - The estimated cost of the end product does not exceed the simplified acquisition threshold.
 - The end product or construction material is listed at *FAR 25.104*, or the head of the contracting activity determines that a requirement (1) can only be filled by a foreign end product or construction material (see *FAR 25.103(b)*), (2) is for end products or construction materials that, by their nature or as a practical matter, can only be acquired in the geographic area concerned (ice or bulk material such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick), or (3) is for perishable subsistence products and delivery from the United States would significantly impair their quality at the point of consumption.
 - The acquisition of foreign end products is required by a treaty or executive agreement between governments.

- The end products are (1) petroleum products or (2) for commissary resale.
- The end products are eligible products subject to the *Trade Agreements Act*, *North American Free Trade Agreement* (NAFTA) or the *Israeli Trade Act*, or the construction material is subject to the *Trade Agreements Act* or NAFTA.
- The cost of the domestic end product or construction material (including transportation and handling costs) exceeds the cost of the foreign end product or construction material by more than 50 percent, or a higher percentage specifically authorized by the head of the agency.
- The head of the agency has determined that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material or that it is impracticable to apply the restrictions of the Balance of Payments Program to the construction material.

Trade Agreements Act. The *Trade Agreements Act* (19 USC 2501, et seq) does not apply to:

- Purchases of supplies below the dollar threshold established by the US trade representative.
- Purchases of arms, ammunition, or war materiel.
- Construction contracts below established dollar threshold.
- Some service contracts per *FAR 25.403(c)*.
- Where purchase from foreign sources is restricted by the *Department of Defense (DoD) Annual Appropriations or Authorization Act*. *DFARS 225.401-70* identifies all products to which the act applies. In addition, *FAR 25.401* lists all designated countries to which the *Trade Agreements Act* will apply. See *FAR 25.402(b)* for a list of current dollar thresholds.

The *Trade Agreements Act* provides the authority for the President to waive the *Buy American Act* and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as least developed nation status. The President has delegated this waiver authority to the US trade representative.

Berry Amendment. CCOs must comply with the *Berry Amendment*. Unless a specific exception in law applies, the products, components, or materials listed below must be grown, reprocessed, reused, or produced wholly in the US if they are purchased with funds made available (not necessarily appropriated) to DoD.

Item, Component, or Material. (*DFARS 252.225-7012*)

- Food
- Clothing, and the materials and components thereof, other than sensors, electronics (this exception for electronics only applies to clothing with electronics), or other items added to, and not normally associated with, clothing (and the materials and components thereof)
- Tents
- Tarpaulins
- Covers
- Natural fibers or yarns
- Cotton and natural fiber products
- Natural fabrics (including all fibers and yarns therein)
- Synthetic fabrics (including all fibers and yarns therein)
- Fabric blends (including all fibers and yarns therein)
- Items of individual equipment (items in federal supply class 8465) made from or containing fibers, yarns, fabrics, or materials (including all fibers, yarns, fabrics, or materials therein)

- Hand tools
- Measuring tools

DFARS 225.7002-2 explains various *Berry Amendment* exceptions. Several exceptions, which may be applicable in a deployed environment, are listed below:

- Acquisition at or below the simplified acquisition threshold.
- Acquisition of any of the items in DFARS 225.7002-1 (a) or (b), if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired when needed in a satisfactory quality and sufficient quantity at US market prices.
- Acquisition of items listed in FAR 25.104(a), unless the items are hand or measuring tools.
- Acquisition outside the US in support of combat operations.
- Acquisition of perishable foods by or for activities located outside the US for personnel of those activities.
- 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.
- Emergency acquisition by activities located outside the US for personnel of those activities.
- Acquisition of foods manufactured or processed in the US, regardless of where the foods (and any component if applicable) were grown or produced. Acquisitions of specialty metals when the acquisition furthers an agreement with a qualifying country (see DFARS 225.872).
- Acquisition of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country. (See DFARS 225.872 and the requirement in DFARS 205.301 for

synopsis within 7 days after contract award when using this exception.)

- Acquisition of commercially available off-the-shelf items containing specialty metals. This exception does not apply when the specialty metal (raw stock) is acquired directly by the government or by a prime contractor for delivery to the government as the end item.
- *DFARS 252.225-7014, Preference for Domestic Specialty Metals*, applies to solicitations, acquisitions, and contracts exceeding the simplified acquisition threshold that require delivery of an article containing specialty metals. It requires certain specialty metals incorporated in articles delivered under DoD contracts be melted in the US or a qualifying country, unless specific exceptions apply or a Secretarial exception of restrictions is granted.

Remember to include the DFARS clauses pertaining to the *Berry Amendment* in DoD solicitations (invitations for bids or requests for proposals) and DoD contracts. If the cited clause is included in a solicitation or contract, the *Berry Amendment* restrictions apply to that procurement. Table 4 shows the applicability of the subparts.

Other Unique Contracting Considerations

Synchronized Predeployment and Operational Tracker (SPOT). SPOT is the US government system of record for contractor and contractor personnel accountability and visibility. SPOT is mandated per FAR 52.225-19 (g) and DFARS 252.225-7040 (g) for all contractors authorized to accompany the forces (CAAF) serving in a declared contingency operation. (<http://www.bta.mil/products/spot.html>)

Theater Business Clearance (TBC). Theater business clearance (TBC)/contract administration delegation (CAD) refers to Office of the Secretary of Defense policies that allows United States Central Command (USCENTCOM) to have both visibility and a level of control over all

Subpart	Supplies for Use		Construction		Services Performed	
	Inside US	Outside US	Inside US	Outside US	Inside US	Outside US
25.1 <i>Buy American Act—Supplies</i>	X	—	—	—	—	—
25.2 <i>Buy American Act—Construction Materials</i>	—	—	X	—	—	—
25.3 <i>Contracts Performed Outside the United States</i>	—	X	—	X	—	X
25.4 <i>Trade Agreements</i>	X	X	X	X	X	X
25.5 <i>Evaluating Foreign Offers—Supply Contracts</i>	X	X	—	—	—	—
25.6 <i>American Recovery and Reinvestment Act—Buy American Act—Construction Materials</i>			X			

Table 4. FAR Subpart 25.5 Provides Comprehensive Procedures for Offer Evaluation and Examples, Part 1

Subpart	Supplies for Use		Construction		Services Performed	
	Inside US	Outside US	Inside US	Outside US	Inside US	Outside US
25.7 Prohibited Sources	X	X	X	X	X	X
25.8 Other International Agreements and Coordination	X	X	—	X	—	X
25.9 Customs and Duties	X	—	—	—	—	—
25.10 Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11 Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

Table 4. FAR Subpart 25.5 Provides Comprehensive Procedures for Offer Evaluation and Examples, Part 2

contracts (external support, systems support, and theater support) executing or delivering contracted support to Iraq and Afghanistan. (<http://www2.centcom.mil/layouts/accessagreement.aspx>)

Defense Base Act (DBA) Insurance. DBA insurance information is a prerequisite for employment when working outside the continental US. As such, before an employee can deploy, the DBA Insurance Information block must be filled in with a valid account. This DBA requirement is applicable to US, third country nationals, and local nationals who have

CAAF status. (<http://www.dol.gov/compliance/guide/defense.htm> and <http://www.dol.gov/owcp/dlhwc/DBAFaqs.htm>)

Payment Information

Wide Area Workflow (WAWF).

The WAWF (<https://wawf.eb.mil/>) system is a secure, Web-based system for government contractors and authorized DoD users to generate, capture, and process receipt and payment documents. It enables electronic submission of contractor invoices and of government inspection and acceptance documents. (DFARS 232.7002) Contractors shall submit payment requests and receiving reports in electronic form, except for: (1) Purchases paid for with a governmentwide commercial purchase card, (2) Awards made to foreign vendors for work performed outside the United States, (3) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security, (4) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 USC §101(a)(13) or humanitarian or peacekeeping operations as defined in 10 USC §2302(8), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies, (5) Purchases to support unusual or compelling needs of the type described in FAR 6.302-2, (6) Cases in which DoD is unable to receive payment requests or provide acceptance in electronic form, or (7) Cases in which the contracting officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the contractor.

Payment in Local Currency. (*FAR Subpart 25.1002*) The preferred payment method for contracts entered into and performed outside the US with local foreign firms is to pay in local currency, unless an international agreement provides for payment in dollars or the contracting officer

determines the use of local currency to be inequitable or inappropriate (see <http://fxtop.com/>). It is a preferred practice to utilize EFT [electronic funds transfer] when making payments to vendors and contractors. See your local finance office for currency exchange rates or <http://www.fms.treas.gov/>.

CCO's Currency Declaration. (*FAR 25.1002, Use of Foreign Currency; DoD FMR 7000.14-R, paragraph 120104.A*) "... the contracting officer has the authority to make a determination as to whether the contract will be priced in US dollars or the local currency." It is important to remember, CCOs must include in the contract the exchange rate to be used for calculating the contract price from US dollar to local currency (<http://www.xe.com>).

One of the functions we serve as contingency contracting officers is to help stabilize the local economy. An influx of US dollars often works against this goal by further devaluing the local currency. Prior to placing overseas contracts in US dollars, discuss the subject with the embassy, host nation liaison office, staff judge advocate, and accounting and finance office.

Choice of Law. Each contract awarded in a foreign country in support of a contingency operation should contain a contract clause stating that the laws of the US apply to the contract, that the contract will be interpreted in accordance with the laws of the US, and that all disputes under the contract will be handled in accordance with the disputes clause of the contract.

Pre-award Determinations and Memorandums

Negotiating Practices. Much of the business conducted by contractors overseas is by negotiation. When setting the price of an item, keep in mind the first price quoted is usually only a starting position for negotiations. Be advised most of the foreign contractors with whom you will be dealing can be shrewd negotiators. Negotiating for lower prices should be considered a normal business practice. Two or three rounds of

exchange may be the most prudent and effective way to reduce prices proposed. For supplies, services, and construction, experience in the USCENTCOM theater has shown that the price drops dramatically whenever discussions are opened up with an offeror. The CCO's bargaining position is enhanced when the product or service is available elsewhere, or the requirement is not urgently needed. If these two factors are reversed and the contractor is aware of that, the CCO may be hard pressed to negotiate a better deal.

Price Negotiation Memorandum (PNM).    

The business culture in most deployed locations is to negotiate pricing. CCOs should put more emphasis on price negotiations, even if you have competition, at sustained or established locations. In awarding negotiated contracts, contracting officers should always engage in aggressive negotiations based on prenegotiation objectives. (*FAR 15.405*) All negotiation results must be documented in a PNM. (*FAR 15.406-3*)

Fair and Reasonable Prices.    

A CCO's memorandum, explaining how fair and reasonable prices were obtained by the government and the basis for the price reasonableness determination, should be included in the contract file (fair and reasonable price).

Certified Cost or Pricing Data.   

The award of any negotiated contract or modification of any contract in excess of \$650K will require the contractor to submit certified cost or pricing data, unless one of the exemptions to the requirement for certified cost or pricing data applies. (*FAR 15.403-4(a)(1)*) A waiver can be sought by the CCO if there exists a reasonable basis for it. When the certificate of cost or pricing data is required, then offerors will complete the certificate form at *FAR 15.403-4(b)(2)*.

Exemptions to Certified Cost or Pricing Data. (*FAR 15.403-1(b)*) Contracting officers are not required to obtain certified cost or pricing data from offerors when:

- Acquisition is at or below the simplified acquisition threshold
- Prices are based on adequate price competition (two or more responsible offerors)
- Commercial items are being acquired
- Modifying a contract or subcontract for commercial items
- Prices are set by law or regulation
- A waiver has been obtained (contracts in excess of \$650K only)

Responsible Prospective Contractor. (*FAR 9.103(a)*) Contracts may be awarded only to responsible prospective contractors. A responsible contractor is an entity that meets the criteria in *FAR 9.104-1*. A CCO is responsible for researching and determining if a contractor is deemed responsible. To aid the CCO in contractor's responsibility research, a listing of already annotated responsible contractors in the AOR can be found at the following Web site: <https://ishare.bta.mil/default.aspx> (password required). The general standards include:

- Adequate financial resources, or the ability to obtain the resources, needed to perform. (*FAR 9.104-1(a)*)
- The ability to comply with the delivery schedule. (*FAR 9.104-1(b)*)
- A satisfactory performance record. (*FAR 9.104-1(c)*) In construction contracts, the agency is specifically required to review performance evaluation reports. (*DFARS 236.201*)
- A satisfactory record of integrity and business ethics. (*FAR 9.1041(d)*)
- The necessary organization, experience, accounting, operational controls, and technical skill required to perform. (*FAR 9.104-1(e)*)

- The necessary production, construction, and technical equipment or the ability to obtain them. (*FAR 9.104-1(f)*)
- Eligibility to receive the award. (*FAR 9.104-1(g)*)

Excluded/Debarred/Restricted Sources Check. CCOs shall check the Excluded Parties List System, and should check Embassy Business Restrictions List, Department of Treasury Web site (<https://www.epls.gov/eplsjsp/FAQ.jsp>). Checks should be made prior to opening proposals or bids and again prior to award.

As a CCO, you are responsible for safeguarding contractor information. In some cases the safety of the contractor's personnel depends upon you and your vigilance to keep their information safe. In certain deployed locations it is necessary to not advertise contractors that have won awards, which includes their e-mail address, physical address, name of employees, and so forth. You will be informed, upon AOR arrival, if this type of strict information safeguarding applies to your deployed location.

Iraqi First/Afghanistan First Programs. The Iraqi First and Afghanistan First programs seek to leverage contracting resources for the creation of economic expansion, employment and skills development for the people of Iraq. Contracting agencies are encouraged to partner with Iraqi vendors to help them develop effective production and distribution systems that will help obtain quality products and supplies. The *National Defense Authorization Act* [NDAA] Section 886 provides enhanced authority to acquire products and services produced in Iraq and Afghanistan (*DFARS 225.77, Acquisition Support of Operations in Iraq and Afghanistan*).

Contingency Approval Thresholds

See Table 5 for a summary of contingency approval thresholds

Subject	Dollar Level	Approval Level
Justification and approval (FAR 6.304) (Legal review over \$100K)	< \$1M No Justification and approval/just memo for record >\$1M, to \$11.5M >\$11.5M to \$78.5M >\$78.5M	-Contracting Officer -Senior Contracting Official -Head of Contracting Activity -Senior Procurement Executive
Legal Review		Refer to local policy
Source Selection	<\$30M >\$30M to \$100M (Services or Construction) >\$100M	-Contracting Officer -Senior Contracting Official/Head of Contracting Activity -Senior Procurement Executive
Solicitation Reviews (Competitive)	<\$1M >1M to \$11.5M >\$11.5M to \$78.5M >\$78.5M	-Contracting Official -Senior Contracting Official -Head of Contracting Activity -Senior Procurement Executive
Undefined Contractual Action	All dollar levels	-Head of Contracting Activity
Ratification	<\$10K >\$10K to \$100K >\$100K	-Regional Contracting Center or Chief of Contracting Office -Senior Contracting Official -Head of Contracting Activity
Clearance	<\$500K <\$1M <\$5M	Refer to local policy
Termination	Termination for Default Termination for Convenience/Cause	Refer to local policy
Non-DoD Contractors and Delivery Orders	\$1M to \$100M >\$100M to \$500M	-Contracting Officer -Head of Contracting Activity

Table 5. Summary Contingency Approval Authority²

Contractual Forms



Contractual Instruments for Contingency. Most contingency requirements can be met by using SAP such as manual or electronic SF 44 (*Purchase Order-Invoice-Voucher*), DD Form 1155 (*Order for Supplies and Services*), SF 1449 (*Solicitation/Contract/Order for Commercial Items*), blanket purchase agreements (BPA), and GCPC (*DFARS 253.213*).



The SF 44 (*DFARS 253.213*) is a pocket-sized purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services. It can be used as a purchase order, receiving report, invoice, and public voucher. Since the SF 44 contains no written terms and conditions, its use is authorized only when no other simplified acquisition method is considered more economical or efficient and all of the conditions listed below are met:

- The supplies or services are immediately available.
- One delivery and one payment are to be made.
- The amount of the purchase is at or below the micro-purchase threshold.
- If an item is below the micro-purchase threshold for a contingency operation, it does not have to be competed.

Warranted CCOs may use the SF 44 for overseas transactions in support of declared contingencies and undeclared contingencies, such as humanitarian assistance or peacekeeping operations (*10 USC §2302(7)*) and purchase of aviation fuel and oil. When using an SF 44, a purchase cannot exceed the SAT.

The buyer is responsible for ensuring that funds are available, that the form is properly processed, and that only authorized items are purchased.

Care should be exercised to maintain physical control and accountability of the forms. In addition, there must be a separation of functions when using the SF 44. Four separate signatures should be resident on the SF 44: individual receiving supplies or nonpersonal services, CCO or field ordering officer (FOO), contractor or supplier receiving payment, and the paying agent.

DD Form 1155, Order for Supplies or Services. Purchase orders (*FAR 13.302*) are self-contained, onetime contracts that typically result in one delivery and one payment. *DD Form 1155, Order for Supplies or Services*, when used as a purchase order, is authorized for purchases not to exceed the SAT. Vendors are solicited orally or in writing. The *DD Form 1155* is filled in with appropriate information such as shipping, prompt payment discounts, financial data, vendor, quantities, price, and additional data. The form is then mailed, hand carried, or picked up by the vendor, who will either perform the order or sign the back and return it, thereby promising to perform the order. When the item requested has been received or the service requested has been performed, the bottom of the front page may be used as a receiving report for the government.

- **Clauses.** Use of alternative I to subparagraph (l) of the disputes clause at *FAR 52.233-1* is recommended.
- **Modification of Purchase Orders.** The SF 30, *Amendment of Solicitation/Modification of Contract*, is used to modify *DD Form 1155* purchase orders. If the contract is bilateral, both parties must agree to the modification unless it falls within the changes clause. In addition, a unilateral contract may be changed to a bilateral contract by using the SF 30. See *DFARS Procedures, Guidance, and Information, PGI 213.302-3, Obtaining Contractor Acceptance and Modifying Purchase Orders* for additional guidance on the use of unilateral modifications.
- **Unilateral Action.** A unilateral agreement is defined as a promise in return for performance (service or supply), while a bilateral contract

is defined as a promise in return for a promise. Most DD Form 1155 actions are unilateral; that is, the government simply sends the contractor the form which authorizes it to perform immediately on a specific time and date. Once the contractor performs, the government is obligated to pay. However, the contractor is under no duty to perform, since the government's DD Form 1155 is merely an offer which the contractor may accept by performance or refuse to accept by failing to perform. If the contractor fails to perform by the specified time and date, no contract has been breached or defaulted since no contract existed.

- **Bilateral Action.** Once the contractor has signed the acceptance, a bilateral contract exists and the government has the right under the termination for default clause to terminate the contract if the contractor fails to perform according to its terms and to charge the defaulted contractor with the excess costs of reprocurring the requirement. The form is used as a bilateral contract when there is a relatively long lead time, when a more complex contract calls for a greater amount of contract administration or when previous experience with a supplier indicates that the government could obtain better contractor performance if it included the termination for default clause in its business arrangement with the contractor.
- **Withdrawal of Purchase Order.** Unilateral and bilateral purchase orders shall include provisions to allow termination for convenience or default. (*FAR 49.102*) The CCO shall terminate contracts for convenience or default only by a written notice to the contractor. (*FAR 49.601*) When the CCO arranges for hand delivery of the notice, a written acknowledgment shall be obtained from the contractor. The notice shall state:
 - The contract is being terminated for the convenience of the government (or for default) under the contract clause authorizing the termination.

- The effective date of termination.
- The extent of termination.
- Any special instructions.
- The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force. (*FAR 49.601-2(g)*) If the termination notice is by telegram, include these steps in the confirming letter or modification.

Once the contractor has begun performance on an order, the government has lost its absolute right to withdraw without cost or liability. To terminate such an order, the contractor should be asked to agree to a cancellation of the order without cost or liability. If the contractor refuses to agree to a no-cost settlement, a stop work order is executed which prevents the incurrence of additional costs. The case is then referred to the legal office and action is withheld pending legal advice. If costs were incurred in reliance on the order, an agreement will be negotiated to reimburse the contractor for those costs.

SF 1449, Solicitation/Contract/Order for Commercial Items.



For commercial items and services up to \$5.5M³ purchased under simplified acquisition procedures or up to \$11M if to be used in support of a contingency operation, include in solicitations appropriate instructions on what the offeror must submit with offers to be fairly evaluated for award. Acquisitions of commercial services, particularly those in excess of SAT but less than \$5.5M or up to \$11M if to be used in support of a contingency operation, should use simplified acquisition trade-off source selection techniques described in *FAR Part 15.000*.

To protect the government's interests, each purchase of commercial items and services should be assessed to determine whether it should be a unilateral or bilateral contractual instrument. Factors to consider are provided below.

- **Business and Cultural Environment.** Commercial practices vary among countries. Market research will determine the risk associated with local commercial practices and the level of protection required maintaining the government's interests. (*FAR 10.002(b)*)
- **Nature of the Requirement and Impact on the Mission.** A unilateral purchase order is an offer by the government to a contractor. The contractor is not obligated to perform. A binding agreement is created when the contractor begins performance. Obtaining a bilateral signature makes it binding on both parties. (*FAR 13.004(b)*)
- **Amount of the order, contractor's financial capability, and potential impact on the mission if the order is not filled.**

Purchase Orders. Standard Form 1449 is authorized for the purchase of commercial items exceeding the SAT, but not exceeding \$5.5M⁴ or up to \$11M if to be used in support of a contingency operation. Only firm-fixed-price instruments may be used.

DD Form 1155 or SF 1449 as a Task or Delivery Order. These forms can also be used as a task or delivery order against requirements-type contract. Delivery orders are orders for supplies and task orders are orders for services placed against an established requirements contract. As exact requirements become known, a DD Form 1155 or SF 1449 is sent to the supplier and this initiates the delivery of supplies or services specified in the delivery order, subject to the terms and conditions of the existing requirements contract.

See Table 6 for basic contract forms.

Contract Instrument	Threshold/ Transaction Limit	Use	Limitations
Governmentwide commercial purchase card	\$3,000 ⁶ /Up to simplified acquisition threshold in a contingency operation if conditions from Defense Federal Acquisition Regulation Supplement 213.301(3) are met.	<ul style="list-style-type: none"> -Up to simplified acquisition threshold as payment in conjunction with other purchase methods -No cash advance -No rental/lease or real estate 	<ul style="list-style-type: none"> - No clauses - Up to simplified acquisition threshold for General Services Administration - No incrementation - No telecommunications
Convenience checks	\$2,500 ⁶	<ul style="list-style-type: none"> -(Federal Acquisition Regulation [FAR] 13.3) Commercial items without technical specifications -Simultaneous order placement and item delivery 	<ul style="list-style-type: none"> -Check transactions -No clauses
Standard Form (SF) 44 -White= Seller Invoice/ Accounting and Finance -Blue= Seller's copy -Pink= Receiving copy -Green= Keep in book	\$3,000 ⁶ Contingency up to simplified acquisition threshold	<ul style="list-style-type: none"> -Purchase Order/receiving report/invoice/public voucher -Supplies immediately available and nonpersonal services -Purchases under \$3,000 do not require competition (except: first time buys, price exceeds government estimate, suspect price may not be reasonable) -Multipurpose form 	<ul style="list-style-type: none"> -No clauses -Commercial items without technical specs -FAR Part 12 does not apply -One delivery, one payment -Can decentralize ordering officer
DD Form 1155	>\$100K ⁶	<ul style="list-style-type: none"> - Order supplies or services - Purchase order/delivery order 	<ul style="list-style-type: none"> -Commercial purchase only

Table 6. Basic Contract Forms, Part 1⁶

Contract Instrument	Threshold/ Transaction Limit	Use	Limitations
DD Form 250		-Material inspection and receiving reports	
SF Form 1449		-Solicitation/Contract/ Order of commercial items	
SF Form 1442		-Solicitation/Contract/ Order of construction	
SF Form 26		-Award contract	
SF Form 33		-Solicitation offer and award (3 in 1)	
SF Form 30		-Amend Solicitation/Modification of Contract	

Table 6. Basic Contract Forms, Part 2

Blanket Purchase Agreements



Blanket Purchase Agreements (BPA). (*FAR 13.303*) A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing *charge accounts* with qualified sources of supply. BPAs are designed to reduce administrative costs and time in accomplishing simplified acquisition purchases. Individual purchases using BPAs shall not exceed the SAT. However, the limitation for individual purchases for commercial item acquisitions conducted under *FAR Part 13.5* is \$5.5M or up to \$11M⁵ if used in support of a contingency operation. BPAs shall contain all clauses required in accordance with *FAR 13.303-4 and 13.303-8*, statutes, and executive orders. Follow procedures for preparing BPAs IAW *FAR 13.303-3*. CCOs may establish BPAs when there is a wide variety of items in a broad class of goods or services (for example, hardware or consultant services) that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

- BPAs should be prepared without a purchase requisition.
- A BPA shall not cite accounting and appropriation data.
- BPAs should be made with firms from which numerous individual purchases will likely be made during a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous simplified acquisitions are usually made from such suppliers, it would be advantageous to establish BPAs with those firms.
- To the extent practicable, BPAs for items of the same type should be placed concurrently with more than one supplier. In that instance, all capable contractors within the portfolio of BPAs for that service or supply must be given a fair opportunity to respond to the government's requirement.
- If it is determined that BPAs would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, obtaining the best prices and delivery terms, obtaining advantageous business arrangements such as packaging ancillary services together for a cheaper price, documenting the individual purchase transactions, periodic billing, and other necessary details.
- A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.
- BPAs shall be prepared and issued on DD Form 1155s, *Order for Supplies and Services*, or SF 1449, *Solicitation/Contract/Order for Commercial Items*.
- BPAs are not contracts, per se. As the contingency operation moves toward sustainment operations, the CCO should consider if

transitioning long-standing BPAs to contracts is in the best interest of the government.

- The strategy of using a BPA, versus a contract, should be reviewed and documented by the CCO on an annual basis. Additionally the CCO should ensure all BPA vendors receive a fair share of award opportunities and verify that the prices are fair and reasonable.

See the field ordering officer and ordering officer sections in this chapter for procedures on placing orders against BPAs.

Delivery Tickets. BPAs shall include a requirement for all shipments under the agreement to be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- Name of supplier.
- BPA number.
- Date of purchase.
- Purchase number.
- Itemized list of supplies or services furnished.
- Quantity, unit price, and extension of each item less applicable discounts.
- Date of delivery or shipment.
- Invoicing method options are as follows:
 - A summary invoice shall be submitted at least monthly or upon expiration of the BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. The summary invoice shall also identify the delivery tickets covered therein, stating their total dollar value and supported by receipted copies of the delivery tickets. The CCO in coordination with the COR will validate the invoice.
 - An itemized invoice shall be submitted at least monthly or upon expiration of the BPA, whichever occurs first, for all deliveries

made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets. The CCO in coordination with the COR will verify accuracy of the invoices.

- When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated by the CCO or the assigned COR, provided that a consolidated payment will be made for each specified period, and the period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period.

BPA Authorized Caller.

Responsibility for placing calls under BPAs rests with the CCO who may authorize individuals assigned to the contracting office to place calls in any dollar amount within the limitation under established BPAs. CCOs who authorize callers to place calls under BPAs shall:

- Instruct the BPA authorized caller in the proper use of BPAs.
- Furnish copies of BPAs to each BPA caller authorized to place calls.
- Ensure that BPA authorized callers have ready access to price lists or catalogs incorporated in or attached to BPAs, and that they understand they may only order the prepriced items or services.
- Ensure that BPA authorized callers equitably distribute calls among suppliers with whom BPAs have been established.
- Ensure that BPA authorized callers do not split purchase transactions to evade monetary limitations.
- Require that BPA authorized callers refer all cases when prices are not considered reasonable to the contracting officer for determination.
- If appropriate, obtain from BPA authorized callers at the end of each billing period copies of delivery tickets or sales slips so that suppliers' invoices may be promptly paid.

- Maintain continuing surveillance over BPA authorized callers to ensure compliance with acquisition regulations and to validate the need for retention of BPA call authorization of each BPA caller.
- Ensure that suppliers are informed of the names of BPA callers authorized to place calls.
- Ensure sufficient funding is available.
- Inform BPA callers authorized to place calls that the authority may not be redelegated.

Source Selection Process



See Figure 8 for summary of the acquisition process.

Source Selection Processes and Techniques (Competitive). Per *FAR 15.302*, the objective of a source selection is to select the proposal that represents the best value to the government. For competitive contract actions not using SAP, source selection procedures per *FAR 15.3* must be followed. Likewise, applicable Service guidance and procedures on source selection also must be followed. For competitive contract actions using SAP, the procedures at *FAR 13.106* apply. *FAR 13.106* provides broad contracting officer discretion in fashioning evaluation procedures. It is important to know the various review thresholds at your deployed location (for example, acquisition plan, acquisition strategy, source selection plan, source selection authority, solicitation/contract review, other than full and open competition, ratification, undefinitized contract actions, and non-DoD contracts and delivery orders).

- **Source Selection Plan.** A source selection plan, written IAW the requirements of *DFARS 215.303* shall be prepared for each source selection and approved by the assigned source selection authority for all contract actions over \$1M that utilize *FAR 15.3* source

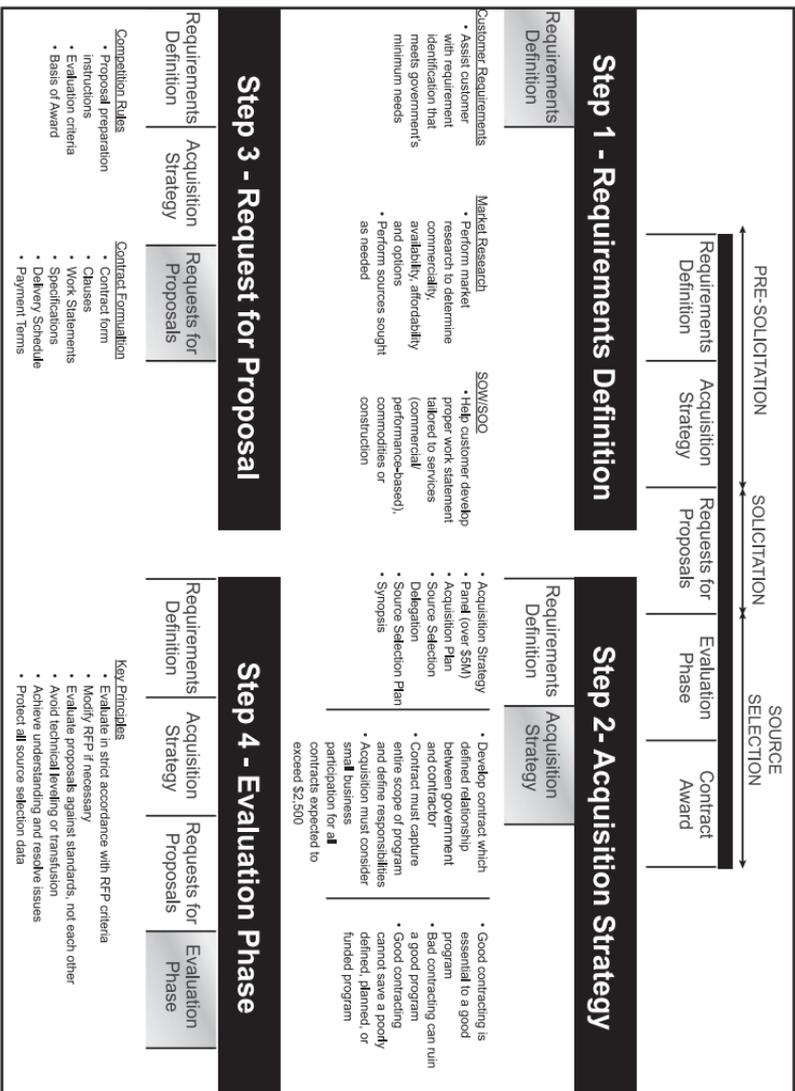


Figure 8. Acquisition Process, Part 1

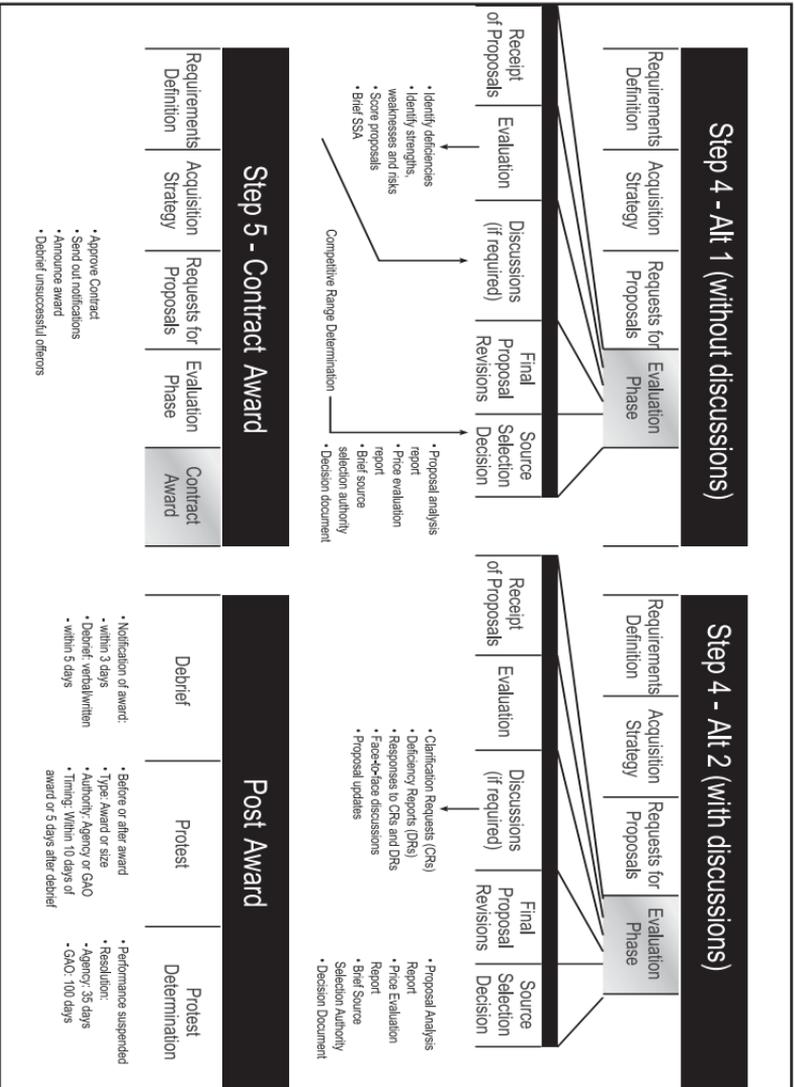


Figure 8. Acquisition Process, Part 2

selection procedures. Tailor the content and extent of the plan consistent with the dollar value and complexity of the proposed acquisition. A source selection plan is not required for commercial actions which are less than \$11M using *FAR 13* simplified acquisitions.⁷

- **Best Value and Trade-Off.** Best value can be obtained by using any one or a combination of source selection approaches. The relative importance of price may vary depending on the acquisition. Therefore, the evaluation factors and their relative importance (when not using SAP) must be clearly stated in the solicitation and otherwise comply with the requirements of *FAR 15.101-1*. The perceived benefits of a higher priced proposal must be demonstrated to merit the additional cost.
 - The LPTA [lowest price technically acceptable] source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.
 - The PPT [performance price trade-off] source selection process allows for performance being the only trade-off for price.
- **Source Selection and Commercial Items.** (*FAR 12.203*) To the maximum extent practicable, contracting officers shall use the policies and procedures for solicitation, evaluation, and award described in *FAR Part 13, Simplified Acquisition Procedures*, for procurements under \$11M.⁸ Otherwise, contracting officers should use *FAR 15.3*.
- **Evaluation Factors for Award.** *FAR 15.304* enumerates the principles associated with crafting sound evaluation factors. While it permits latitude in methodology, it clearly states that evaluation factors be qualitative in nature (adjectival, colors, or other indicators, but not numbers) and represent the key areas of importance to be considered in the source selection process,

including past performance. Commercial requirements may derive evaluation criteria from the clause at *FAR 52.212-2, Evaluation—Commercial Items*, established by the contracting officer.

Additionally, past performance price trade-off methodologies may be appropriate. When using SAP, the inclusion of these elements in the RFP is optional (*FAR 13.106-1(a)(2)*) but may be included based on the complexity of the requirement. The contracting officer shall always include a statement regarding the relative importance of cost or price and non-cost or price factors. (*FAR 15.304(e)*) Conversely, when not using SAP contracting, authorities may require the use of these elements.

- **Proposal Evaluation and Discussions.** Pursuant to *FAR 15.305*, proposals shall be evaluated solely on the evaluation factors specified in the solicitation. All solicitations shall state that the government intends to make award without discussions, unless the contracting officer determines that discussions are necessary. If the contracting officer determines discussions are necessary, the contracting officer shall document the file and conduct discussions in accordance with *FAR 15.306* and all applicable Service guidance and procedures. This language is included in the instructions provisions of *FAR 52.215-1*.
- **Source Selection Decision and Documentation.** A source selection decision (SSD) which adheres to *FAR 15.3* must be prepared for all source selections when not using SAP. It will be comprised of the background of the acquisition, the evaluation criteria, a summary of the technical and past performance evaluations, and a summary of the proposed prices. The source selection authority (SSA) will document his or her independent, integrated assessment and make the source selection decision. The SSA shall not receive a recommendation from any individual or body as to who shall receive the award, nor shall the SSA receive a rank order or order of

merit list of the offerors. The completed SSD shall be submitted to the SSA for the required approval.

Responsibilities of the SSA (formal source selection) are as follows:

- Establish or appoint a source selection evaluation board (SSEB). Appoint source selection advisory council, as necessary. (*FAR 15.303(b)(1)*)
- Approve strategy and acquisition plan before solicitation release. (*FAR 15.303(b)(2)*)
- Approve source selection plan. (*DFARS 215.303(b)(2)*)
- Approve RFP prior to release. The SSA will ensure consistency between solicitation requirements, notices to offerors (amendments), proposal preparation instructions (Section L), evaluation factors and subfactors (Section M), solicitation provisions and clauses, and data requirements. (*FAR 15.303(b)(3)*)
- Ensure that conflicts of interest, or the appearance thereof, are avoided.
- Ensure that premature or unauthorized disclosure of source selection information is avoided.
- Ensure evaluation of proposals is based solely on factors and subfactors in the RFP. (*FAR 15.303(b)(4)*)
- Review SSEB evaluation results. (*FAR 15.303(b)(5)*)
- Approve competitive range determination. (Army Federal Acquisition Regulation Supplement *5115.306(c)*)
- Perform an integrated assessment of the evaluation results and select the source whose proposal represents the best value to the government. (*FAR 15.303(b)(6)*)

Source Selection Procedure—Sealed Bidding. (*FAR 14.101*) Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. The following steps are involved:

- **Preparation of Invitations for Bids.** Invitations must describe the requirements of the government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.
- **Publicizing the Invitation for Bids.** Invitations must be publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing must be given sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.
- **Submission of Bids.** Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.
- **Evaluation of Bids.** Bids shall be evaluated without discussions.
- **Awarding the Contract.** After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the government, considering only price and the price-related factors included in the invitation.

Advance and Partial Payments. The full spectrum of government financing should be considered to facilitate business partnerships in any contingency, to include progress payments, payments for partial deliveries, performance-based payments, and commercial interim payments. Advance payments present the highest risk and are the most regulated financing option. However, their use should not be ruled out. An advance payment business strategy (commercial and noncommercial), will consider: (1) conditions that warrant the request (such as lack of an established or robust banking system, an unstable commercial

environment, or hostilities), (2) consideration of other financing options (progress payments or partial payments), (3) tangible risks and mitigation plan, and (4) adequate security to protect the government's interest. Such payments can be used for:

- Experimental and research and development with nonprofit institutions
- Operation of government-owned plants
- Acquisition at cost of facilities for government ownership
- Classified items and national security
- A financially weak contractor
- A vendor when a private loan is not practicable
- Other exceptional circumstances

Paying Agent Duties



See *DoD FMR*, Volume 5, paragraph 020604.

Paying agents are appointed in writing by the commander to make payments for purchases using cash or other negotiable instruments. Ideally, a CCO should not be designated as a paying agent, as this violates the concept of checks and balances. However, in extreme circumstances a CCO can find himself or herself dual-hatted, as the CCO and the paying agent. CCOs cannot make cash payments unless they are designated as paying agents. If appointed as a paying agent, the individual should be thoroughly briefed on his or her duties and responsibilities by the financial services officer or local deputy disbursing officer. Paying agent appointment will include a description of the type of payments to be made, amount of funds to be advanced, the period of time the appointment covers, and an acknowledgment of acceptance of said appointment to

include a statement that the member has been counseled as to the pecuniary liability of the duty.

Cash Advances. The amount of cash given to the paying agent by the disbursing office is governed by:

- Facilities available for replenishment of funds
- Anticipated mission requirements
- The capability to safeguard funds

The maximum amount to be advanced to the paying agent will be specified in the appointing order. It may be necessary for the CCO to advance cash to others for payment of orders. When advancing cash, the CCO should obtain a receipt on the SF 1165, *Receipt for Cash Subvoucher*. The name of the person paying for goods and services will be used in the place of imprest fund cashier and the person receiving the cash will sign, date, and annotate the time on the form. The rest of the SF 1165 will not be used. The paying agent must account for all cash; therefore, interim payments to others must be made carefully. The disbursing officer should be told of any losses or shortages as soon as possible.

Noncommercial Advance and Partial Payments. (*FAR Subpart 32.4*)
These payments can be used when:

- The contractor gives adequate security
- The payment does not exceed the unpaid contract price
- The Agency head or designee determines in the public interest or facilitates national defense
- The payment does not exceed interim cash needs
- The CCO submits request to higher headquarters

Ensure findings, determinations, and authorizations are provided.

Commercial Advance and Interim Payments. (*FAR Subpart 32.2*)
These payments can be used when:

- The head of contracting activity determines whether terms and conditions are appropriate.
- The commercial practice in the local market is buyer's financing.
- The purchase is for commercial supply or service.
- The price exceeds SAT.
- The CCO determines advance payments are appropriate for the market.
- Advance payments are determined to be in the best interest of government.
- Adequate security is obtained.
- Advance payment does not exceed 15 percent of price, prior to performance.
- Competitive or normal financing is not available.
- The CCO obtains a concurrence from finance.

Ensure determination and findings is completed for advanced payments.

Options Instead of Advance Payments.

- Request disbursing officer pay cash to vendor
- Request disbursing officer pay vendor for subcontractor work (progress payment)

Considerations.

- Advance payments are used as a last resort and are the least preferred contracting payment arrangement.
- Use SF 44 or DD 1155 and explain to the vendor how to get prompt payment using these forms.
- Try to convince the vendor to accept SF 44, SF 1449 and explain how prompt cash payment works.

- Explain to the customer that the CCO may decide not to do business with the vendor because the vendor will only accept advance payments, and the CCO will look for other sources.

Advance payments are acceptable for subscriptions. (*FAR Subpart 32.404(a)*, use clause 52.213-2)

Partial Payment. The CCO will place a statement on the invoice so finance knows the invoice is a partial, not a final payment.

- Finance guidance for partial payment (*DFAS DR 102-1711*)
- Exceptional circumstances only (*FAR 32.403(h)*)

Settlement of Paying Agent Account. After deployment operations or when the disbursing office resumes operations, the paying agent will terminate this account with the disbursing office. The paying agent will obtain a copy of *DD Form 1081, Statement of Agent Officer's Account*, showing the account reduced to zero.

Field Ordering Officers and Ordering Officers



Field Ordering Officers (FOO). The SF 44 may be used by persons other than the CCO (such as the FOO) provided the individual:

- Has written authorization from the CCO. The CCO should give a copy of the written authorization to the finance and accounting officer, in effect delegating authority to sign a contract instrument.
- Has been trained by the CCO to use the form.
- Is teamed with an appointed and trained paying agent. In addition, the paying agent must also be designated in writing.

Designation. The CCO may designate individuals as FOOs, either from within or outside the contracting organization, with the authority to

execute micro-purchases by using the SF 44. Strict operational control and oversight of FOOs by the CCO is necessary to prevent violations of laws and regulations. The CCO is responsible for helping the commander determine the adequate number of FOOs required to ensure mission accomplishment.

Nomination, Appointment, and Termination. Commanders, on a nondelegable basis, must formally nominate FOO candidates, by name, to the CCO for appointment. The FOO candidate must be a DoD employee. Contractor employees cannot be FOOs. The CCO must determine the validity of the requirement and formally appoint individuals as FOOs via an official appointment letter. The appointment letter must specify the extent and limitations of the FOO's authority to act on behalf of the CCO. The appointment is effective until the FOO is reassigned to another unit or the individual's duties are terminated by the CCO. The CCO, or higher authority, reserves the right to revoke a FOO's appointment at any time. Revocation must be made in writing.

Qualification and Training. As a minimum, the FOO candidate must review the standards of conduct as prescribed in *Department of Defense Directive [DoDD] 5500.7-R, Joint Ethics Regulation* at least annually. The CCO will develop an effective FOO training program. The FOO candidate must complete training prior to being officially appointed a FOO. Refresher training will be conducted whenever the CCO deems necessary.

Authority and Responsibilities. The scope of the delegated authority limits all FOOs as to the dollar limitation a FOO may obligate. The FOO must review his or her written appointment and ensure he or she has a complete understanding of the scope and limitations of his or her authority. The FOO, before making any purchases, must receive written appointment orders from the CCO and must receive a funded document from the comptroller, showing a fund cite with a specific dollar amount. The FOO cannot exceed the amount specified on the document. If additional funds are required by the FOO, he or she must request and

receive more funds from the comptroller before proceeding with any purchases. After a valid purchase request (PR) is received by the FOO, he or she must consider the following:

- Is the purchase allowable in accordance with established purchasing procedures?
- Are funds available?
- Does the FOO have authority to purchase the item (type and dollar threshold)?
- Are the supplies available in the supply system or other government source?
- Is this the most efficient purchase method?

After consideration of the items listed above, the FOO must record all requests for purchase in a logbook, as approved by the CCO. The FOO must maintain the original PR document, a copy of the SF 44 used for the purchase, logbook, original receipt of the purchase, and the receipt for property received (RPR).



If the vendor cannot provide an automated receipt, a hand receipt may be substituted. It is the FOO's responsibility to provide all RPRs to the appropriate office to ensure the accountability of acquired items.

- **Limitations.** FOOs may not redelegate their authority. The CCO may set additional limitations to maintain an effective and efficient FOO program.
- **Separation of Functions.** The FOO should avoid, if possible, being a paying agent or the individual receiving the products or nonpersonal services. There should be a separation of functions between the FOO, paying agent, and the individual receiving the

products or nonpersonal services in order to ensure the integrity of the procurement process.

- **Evaluation, Documentation, and Reconciliation.** The FOO shall be under the supervision of the CCO. At least monthly, or as otherwise determined by the CCO, the FOO's purchase documents shall be reviewed and reconciled by the CCO. This review will be documented on the FOO clearance letter. Upon receipt of this letter, the FOO will reconcile his or her account with the paying agent. Any potential case of waste, fraud, or abuse will be immediately forwarded by the CCO to the appropriate legal office for review.
- **Revocation of Authority.** When a FOO's appointment is terminated for any reason, the FOO will bring the CCO the following:
 - Copy of the appointment letter.
 - Copies of all reports previously filed.
 - A complete report for any period between the last audit and termination date.
 - Receipts, PRs, and RPRs.
 - Any unused SF 44s.

Once the CCO conducts a final review and documents the outcome, the CCO will issue an official Revocation of Authority to the FOO terminating his or her appointment. One copy will be provided to the terminated FOO, one copy will be provided to the FOO's commanding officer, one copy to the appropriate disbursing office and one copy will be maintained on file with the contingency contracting office. Any additional purchases or business agreements by the FOO after revocation of his or her authority will be considered unauthorized commitments for which the former FOO may be held liable.

FOO Violations. The CCO may revoke the FOO appointment for any violations of regulations, orders, or statutory authority. These violations

include, but are not limited to, unauthorized commitments, split purchases, purchases not authorized by the CCO, purchases made over the FOO's dollar limitation, delinquent reconciliation with the CCO, or training delinquencies. Violations may result in the revocation of the appointment of the FOO and of any additional FOOs within the unit, section, or battalion. In the case of an unauthorized commitment, the revocation will remain effective until the unauthorized commitment is ratified by the appropriate authority and reviewed by legal to determine if disciplinary action is recommended. For other violations, the CCO may reinstate the FOO appointment upon correcting the deficiency.

Contract Tracking and Reporting

Procurement Instrument Identification Numbers (PIIN). *DFARS 204.70* prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments. The purpose of this number is to aid in tracking all actions. (See Table 7 for an example of a PIIN from *DFARS 204.7003*.)

PIIN Logs. Establishing and maintaining accurate PIIN logs in accordance with *DFARS 204.70* is essential in the contingency environment. Generally, terminations, claims, and contract closeouts have been a recurring problem in all recent contingency operations. A contributing factor in many cases has been the lack of accurate records, duplicative contract and purchase order numbers, and so forth. In fixed installation and systems contracting offices, standard contracting automated systems are generally used to perform the PIIN log function. In the contingency environment, this capability is usually unavailable.

DoDACC	Last 2 digits of FY	Instrument Type	Serial #	Supplemental #
N00062	10	D	0001	0005

Table 7. Sample PIIN N00062-10-D-0001-0005

Therefore, CCOs must ensure they have appropriate blocks of PIINs assigned for their use and must also design and implement a log system for local use. Commercial off-the-shelf software such as Microsoft Excel and Lotus 1-2-3 can be used to automate the PIIN generation system in contingency environments. A well thought out PIIN log can also be used to capture and track other key data such as PR number, dollar value of request and award, delivery data, payments data, and more.

Contract Action Reporting (CAR). A CAR is required for all contract actions that obligate or deobligate funds above \$3K within 3 business days of executing an action. In addition, all modifications, regardless of price, must be reported. However, in a contingency, OCONUS [outside continental United States] reporting may not be possible due to the lack of Internet connectivity. Therefore, actions that require reporting shall be accomplished upon arrival to an area where Internet connectivity is available; this may be upon redeployment to CONUS [continental United States] bases or stations. The CAR can be created on the Federal Procurement Data System-Next Generation (FPDS-NG) Web site. The CAR replaces the *DD Form 350, Individual Contracting Action Report*, and *DD 1057, Monthly Summary of Contracting Actions*, reports. 

The process is as follows:

- Contract is complete through approval by the CCO.
- CAR is created from the unreleased contract by the CCO through validation and approval. The CAR is created directly on the FPDS-NG Web site with a link to the CAR in the Standard Procurement System.
- Both the contract and CAR are routed to the CCO for release of the contract and finalization of the CAR.

An express CAR is used to report data for more than one contract action. The following are contract actions that may be reported on an express CAR instead of an individual CAR.

- Indefinite delivery/Indefinite quantity vehicles, requirements contracts, BPAs, and basic ordering agreements
- Contracts from foreign vendors not registered in the Central Contractor Registration

The CAR is created prior to the release of the contract action. In FPDS-NG, much of the data in the CAR is prefilled from data in the contract (*North American Industry Classification System, Service Contract Act, and so forth*). The creation of the CAR prior to the release of the contract enables correction of the contract in order for the CAR to pass the validation process in FPDS-NG. Training for FPDS-NG can be found at <https://www.fpds.gov>.

Awards using appropriated funds must follow the congressional notification procedures in *DFARS 205.303* unless an exception listed in *FAR 5.202* applies. The reach back office can assist in preparing congressional notifications to alleviate the burden to forward deployed units or CCOs.

Unauthorized Commitments and Ratifications



An *unauthorized commitment* is an agreement that is nonbinding solely because the government representative who made it lacked the authority to enter into that agreement (*FAR 1.602-3*). An unauthorized commitment typically occurs in a contingency environment by a well-meaning individual who believes that immediate action was necessary to support the mission. Ratification is the act of approving an unauthorized commitment by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the government as a result of an unauthorized commitment (*FAR 1.602-3(a)*). It can be avoided if the CCO gets to the operation early and becomes highly visible.

The HCA may ratify an unauthorized commitment up to a specified threshold as designated by agency procedures. The HCA may further delegate ratification authority at specific thresholds to the senior contracting official (SCO) or the RCC office.

IAW FAR 1.602-3(c), unauthorized commitments may be ratified provided that:

- Supplies or services have been provided to and accepted by the government, or the government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment.
- The ratifying official has the authority to enter into a contractual commitment.
- The resulting contract would otherwise have been proper if made by an appropriate contracting officer.
- The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable.
- The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence.
- Funds are available and were available at the time the unauthorized commitment was made.
- The ratification is in accordance with any other limitations prescribed under agency procedures. (FAR 1.602-3(c)).

Unauthorized commitments need to be resolved as quickly as possible. Once it is determined the actions were in the government's best interest, funds were available, the ratification is approved at the required level, and the customer was counseled, the CCO should put a memo in the file and pay the vendor. RCC chief shall publish to the base populace, at least quarterly, a reminder that only duly appointed contracting officers can

obligate the government. Commanders will reinforce this policy by publishing an annual letter to emphasize the seriousness of obligating the government without proper authority. Ratification authority and specific thresholds are granted from the HCA to the SCO, who may delegate that authority to a level no lower than the RCC chief. If you anticipate a high likelihood for substantial unauthorized commitments, you may want to request a waiver of policy to increase the RCC chief's ratification authority level.

Processing a ratification involves determining if the action should be ratified into a contract and then creating the contract document. Actions that do not meet the criteria are deemed non-ratifiable and are subject to resolution by the Government Accountability Office under its claim procedures.

Notes

1. It is anticipated that the simplified acquisition threshold for commercial items will increase. Please check FAR 13.003 for changes in the SAT.
2. *Ibid.*
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. *Ibid.*

Chapter Acronyms

AOR – Area of Responsibility

BPA – Blanket Purchase Agreement

CAAF – Contractors Authorized to Accompany the Forces

CAP – Civil Augmentation Program

CAR – Contract Action Reporting

CCO – Contingency Contracting Officer

CONUS – Continental United States

COR – Contracting Officer's Representative

D&F – Determination and Findings

DBA – Defense Base Act

DD – Department of Defense (Form)

DFARS – Defense Federal Acquisition Regulation Supplement

DoD – Department of Defense

DoDD – Department of Defense Directive

EFT – Electronic Funds Transfer

FAR – Federal Acquisition Regulation

FFP – Firm-Fixed-Price

FMR – Financial Management Regulation

FOO – Field Ordering Officer

FPDS-NG – Federal Procurement Data System—Next Generation

GCPC – Governmentwide Commercial Purchase Card

HCA – Head of Contracting Activity

HQDA – Headquarters Department of the Army

IACR – International Agreement Competitive Restrictions

IAW – In Accordance With

J&A – Justification and Approval

LPTA – Lowest Price Technically Acceptable

MILCON – Military Construction

NAFTA – North American Free Trade Agreement

NDAA – National Defense Authorization Act

NTE – Not to Exceed
NTV – Nontactical Vehicle
OCONUS – Outside Continental United States
PIIN – Procurement Instrument Identification Number
PNM – Price Negotiation Memorandum
PPT – Performance Price Trade-Off
PR – Purchase Request
RCC – Regional Contracting Center
RFP – Request for Proposal
RPR – Receipt for Property Received
SAP – Simplified Acquisition Procedures
SAT - Simplified Acquisition Threshold
SCO – Senior Contracting Official
SF – Standard Form
SPOT – Synchronized Predeployment & Operational Tracker
SSA – Source Selection Authority
SSD – Source Selection Decision
SSEB – Source Selection Evaluation Board
UCA – Undefined Contract Action
US – United States
USCENTCOM – United States Central Command
USC – United States Code
WAWF – Wide Area Workflow

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Chapter 6 Contract Administration



Contract Administration



Key Points

- All Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) administrative recordkeeping and file management requirements continue under contingency, humanitarian assistance, or peacekeeping conditions.
- Contract files must be organized and sufficiently annotated to document the actions taken and the supporting rationale for the entire procurement process.
- Contracting does not end with contract award. Contract administration completes the cycle and assures the customer's needs are satisfied.
- Fast and accurate reporting is the key to satisfactory contract performance. Timely identification and documentation of deficient contractor performance is critical.
- Contracting officer's representatives (COR) must be appointed and trained properly.
- When the contractor has satisfactorily completed performance of the terms of the contract, and final payment has been made, the contract file should be closed out as soon as possible.

Introduction

This chapter discusses actions a contracting officer should take to administer a contract. It covers actions to be taken and documentation to be included from contract award to contract closeout. This includes monitoring, transferring, terminating, and closing out contracts.

Administration Documentation

Contract administration documentation involves recordkeeping and ensuring adequate documentation exists to provide an audit trail. It cannot be overemphasized how important it is to accurately document all purchases, especially in a contingency environment. Since normal checks and balances may not exist during contingency situations, contingency contracting officers (CCO) can be assured auditors will be interested in all paperwork when the unit returns home.

Problems You Will Face. You can expect to face difficulty obtaining detailed documentation from contractors. This holds true not only for documents supporting their claims, but also for general purchases, as many overseas vendors operate on a strict cash-and-carry basis, and are not in the habit of providing paper receipts or using invoicing procedures. General guidance on recordkeeping is provided by FAR 4.8 and DFARS 204.8.

File Management



Contract Files. All FAR and DFARS administrative recordkeeping and file management will continue under contingency, humanitarian assistance, or peacekeeping conditions unless specifically stated otherwise. Contract files must be organized and sufficiently annotated to document the actions taken and the supporting rationale for the entire procurement process to include blanket purchase agreements (BPA), purchase cards, and other expenditures.

Documentation in files shall:

- Furnish essential facts (including a description of the acquisition environment) used as a basis for informed decisions at each step in the acquisition process

- Document the rationale for actions taken
- Provide a complete audit trail that may be used to support reviews and future investigations, litigation, or congressional inquiries

File Contents. The following are examples of the records normally contained, if applicable, in contract files: (*FAR Subpart 4.803*)

- Purchase request, acquisition planning information, and other presolicitation documents
- Justifications and approvals, determinations and findings, price negotiation memorandums, and supporting documents
- Evidence of availability of funds
- List of sources solicited
- Independent government estimate
- Copy of the solicitation and all amendments
- Copy of each offer or quotation and related abstract and records of determinations concerning late offers or quotations
- Contractor's contingent fee representation and other certifications and representations
- Pre-award survey reports
- Source selection documentation
- Cost and pricing data and certificates of current cost or pricing data
- Packing, packaging, and transportation data
- Cost or price analysis
- Determinations and findings
- Justification for type of contract
- Records of negotiation
- Required approvals of award and evidence of legal review

- Notice of award
- The original of the signed contract, all contract modifications, and documents supporting modifications
- Notice to unsuccessful bidders or offerors and record of any debriefing
- Post-award conference records
- Orders issued under the contract
- COR appointment letters and training
- Quality assurance records
- Property administration records
- Bills, invoices, vouchers, and supporting documents
- Record of payments or receipts
- Receiving documentation
- Contract completion documents

Format, Numbering, and Transfer.

- File large purchase orders and contracts in six part folders. Avoid the use of multiple manila folders.
- Maintain a central registry of all contract instruments including basic instruments and modifications, amendments or other changes.
- Establish a file tracking system that permits the location of files to be closely monitored as they are used within the contracting office and eventually closed out or transferred to another activity for administration. You must be able to locate files quickly to support efficient contracting operations and potential audits or reviews.
- Logs, either through an automated system or manual, will be maintained to identify purchase requests that are open, completed, and closed. This will provide a common reference point through the

purchase request number between the customer, finance, comptroller, and contracting. In addition, the logs may be used to develop reports and graphs to present production status.

Status of Procurement Action Database. A simple database reporting system to provide visibility and status of procurement actions is required and should be implemented upon arrival at the contingency location. Automation to include laptop computers will assist in establishing a more efficient system which will coincide with continental United States (US) systems. To prevent total loss, all procurement actions should also be stored in a backup system. The procurement actions will be collected and maintained by the contracting office and transferred to the senior contracting official per theater guidance. The system should include the following data fields:

- Date of receipt of requisition
- Date of award
- Contract end date
- For services: option periods
- For construction: notice to proceed date, completion date
- Type: construction, service, commodity
- Type of contracting action (for example, contract, purchase order, BPA, delivery order, or modification)
- Amount of committed dollars
- Contractor name
- Contractor Nationality: United States, host nation, third country national
- Uniform Procurement Instrument Identification Number (PIIN)
- Contract number and requisition number
- Amount of obligated dollars

- Unit of measure
- Quantity (for example, job, lot, or each)
- Item description
- Contracting officer's name
- Customer organization
- Date of receiving report
- Date of final payment
- Date contract was closed out
- Location of contract file
- Remarks (to include pertinent e-mail)

General Contract Administration



Contract Administration. The contracting process does not end with the award of a contract, purchase order, or delivery order. All the effort spent in planning, describing, and funding the customer's requirement could potentially go for naught without effective administration of the resultant contractual instrument. The role of contract administration is to complete the cycle, assure the customer's needs are satisfied, and the contractor is fully compensated for services or supplies rendered per contract terms and conditions.

Purchase, Pickup, Receive, and Deliver. The CCO's responsibilities for supply purchases are more challenging during deployments than during peacetime. Many of these challenges are associated with the lack of proper receipt of goods and services. First, the lack of reliable communications in many contingency environments makes it necessary to travel to the vendor's location. Second, most businesses will be cash-and-carry, which may require the CCO to officially receive and deliver items on behalf of the customer. There are times, of course, when the CCO

will not have to make delivery. For example, a large order of construction materials will have to be delivered by the contractor or picked up by the customer. For the most part, the CCO can count on being the *link in the supply chain* for validating proof of delivery. Contracting may set up a receiving area outside the installation and then have the customers pick up orders there, or shuttle the merchandise into the compound or base. Other options include the customer going into *town* to pick up their goods, or the CCO or his designee delivering the items to the customer. There is no policy or procedure set in stone regarding where merchandise will be received. Expect frequent changes and some possibly cumbersome procedures throughout your deployment.

Followup. Because you are in a deployed situation you may not have the benefit of interconnected computer information systems. Therefore, followup is a must with your customer. Having as much information available as possible for your customer along the way will save you a lot of headaches in the end. If the delivery date has passed, the customer received the wrong item, part of an item, or a broken or damaged item, you will hear about it. The customer should be prepared to describe what was received versus what the order said. The best method is to instruct your customer not to sign for a purchase until the problem is resolved. Sometimes, however, the discrepancy is not immediately apparent. In any event, the customer should call you as soon as practical (if possible, when the delivery truck is still there), so you can assist. Written followup is essential because it helps keep the facts straight when dealing with vendors. The customer should never deal with the vendor directly in resolving a discrepancy. It is your job to take care of your customers.

Receipt, Inspection, and Payment. Goods and services are inspected by the customer. Once the item is delivered or service is performed, the customer must sign a receiving report acknowledging receipt and authorizing payment. The contractor's invoice is then submitted to the contracting office. Next, the contracting office will ensure the invoice is correct. This receiving report must accompany the invoice in order for

the vendor to be paid in a timely manner. It is important to know that government support contractors are not authorized to accept or sign for the government in any situation. The report goes to finance where they will issue payment to the vendor. Finance will not pay without a signature acknowledging the government received the goods or services.

To read more about receipt and inspection consult the DVD. 

Typical Problems Encountered. There are many problems associated with the proper receipt of goods. There may be no central control point for contractors to deliver goods. Vendors may deliver directly to the user and the user may fail to notify the contracting activity upon receipt. Additionally, someone at the site may accept the delivery, but when it is time to verify delivery and quantity, no one will accept responsibility for receiving the goods. Consequently, payments to the vendor are ultimately delayed. Without all the key support members involved and coordinating on purchases, accountability is quickly lost. Spending a little time and effort planning and ironing out the processes will help you tremendously in the end.

Tracking initial vendor deliveries will be difficult; however, not taking the time to organize for receipt of vendor goods will present several long-term problems. Two alternatives to alleviate some of the problems involved in receiving emergency goods are as follows:

- Strive for a central base receiving point where all goods can be processed. This will ensure all goods are accounted for and will aid in timely payment to vendors.
- Have supply provide a receiving individual to accompany the CCO on all initial buys. Accountability and control will be established from the onset. Note, however, this approach has limited application. It will only solve the problem for government pickup items. Direct vendor deliveries to the base will still require proper receipt.

Regardless of what system is used, prior coordination with base supply is necessary to ensure accountability on all emergency goods delivered. A good accountability system can ensure quick and accurate payment to vendors.

Contract Payments. While the customer does not actually make the payments to contractors, it is important to understand the nature of business in foreign areas. Payment methods will vary at each location. They may be made by check, electronic funds transfer, or cash. Some installations make payments once a week or even once a month. In this case contractors come to the location at a given time with their invoices and are paid on the spot. In other cases finance may issue checks to be hand carried into town to pay for previous deliveries. In many cases during the outset of a deployment, payment is a rather large issue for foreign vendors. Many times they will insist on being paid in cash on delivery the first time you do business with them.

Paying in Local Currency. Unless otherwise directed in a host nation agreement or status of forces agreement, payment can be made in the local currency. See your local finance office for currency exchange rates or <http://www.fms.treas.gov/>. For additional information see Chapter 5.

Customer and Contractor Training. Do not just issue an order or contract and assume the customer and contractor understand the receiving report and how to invoice. It is critical to ensure both parties understand their responsibilities here (as getting the goods and getting paid are of paramount interest to both parties).

Increased Funding Requirements. In more cases than not, your customers will need additional funding for their requirements in an overseas environment. If the customer needs to obtain an increase in funding and the amount exceeds the percentage deviation authority from the deployed commander, the CCO needs to work with the requiring activity and process a request for an *increase in funds letter*.

Installation Access. Usually, the host nation installation or headquarters commander determines the type of credentials required for installation

entry. What is required may therefore vary from not only country to country, but also from base to base within a country. Additionally, some nationalities aren't allowed on any military installation. You must pay particular attention to this in the Middle East where virtually all normal laborers or truck drivers are third country nationals. Regardless of your location, solicitations and contracts shall contain a provision identifying which credentials are required for base entry.

Generally, contractors submit requests for passes for their employees and vehicles in coordination with the contracting officer or designated representative. As with bases in the US, you must ensure passes are returned whenever one of the following conditions occur:

- The contract is complete.
- A particular individual is no longer working on the contract.
- A vehicle or piece of equipment is no longer required for the work required by the contract.

The security personnel must establish clear procedures or local installation authorities to facilitate access to the base. In some cases, deliveries and shipments have been held at the gate for hours or not made at all due to access problems. To work around some of these problems, installations often establish receiving sections outside the gate and then reload supplies and equipment onto government vehicles to make final delivery.

Shipment of Supplies and Equipment to an Overseas Location.



Waiting for the supplies and equipment ordered from the United States can be very frustrating for the CCO's customers. To minimize shipping time, contractors can use the mail or similar commercial services (for example, DHL or Federal Express), if available. While the shipping time may be shorter, shipments sent by ordinary mail incur some additional risk because they are not traceable.

Military transportation, either ship or aircraft, does provide traceability for shipments. For military transportation, the reachback buying office will check with the local traffic management office for assistance in determining:

- Port of Embarkation. The geographic point in a routing scheme from which cargo or personnel depart.
- Port of Debarkation. The geographic point at which cargo or personnel are discharged.

Additionally, the reachback buying office can obtain a transportation control number for the shipment. If contractors use commercial transportation, they must understand preference shall be given to US flag vessels and air carriers.

Construction Contract Administration



Full administration is used on construction contracts. **Note:** For ‘Unspecified Minor Construction,’ see *10 United States Code § 2805, Unspecified Minor Construction* and *Department of Defense Directive 4270.5, Military Construction* for additional policy and guidance.

The CCO needs to ensure that all pre-award actions have been accomplished.

Preconstruction Conference.

- Construction contracts may require a preconstruction conference. This conference gives the government one more opportunity to inform the contractor of his obligations, discuss safety and fire precautions, emphasize who may obligate the government, and get everyone organized for the start of work. The user or building occupant is usually invited to these conferences. This conference is

not a place to decide how the work really should be done (that is all in the contract), but a time to review the terms, conditions, and specifications to ensure everyone knows what is happening. The contracting officer chairs the meeting.

- Each contract, regardless of value, has a designated COR. The COR (unless his or her authority is expanded) has no authority to interpret the specifications for the contractor, effect changes, or direct the contractor's employees; neither does the building occupant.

Liquidated Damages (LD).

Although LDs are most commonly used in construction contracts, CCOs need to be aware they can be used in other types of contracts. See *FAR 11.501* and *DFARS 211.503* for LD procedures.

- LD clauses are mandatory on construction contracts over \$550K. (*DFARS 211.503*)
- LD clauses on construction contracts under \$550K should be used only when both:
 - The time of delivery or performance is such an important factor in the award of the contract that the government may reasonably expect to suffer damage if the delivery or performance is delinquent.
 - The extent or amount of such damage would be difficult or impossible to ascertain or prove.
- The rate of LD used must be reasonable and considered on a case-by-case basis.
- The contracting officer shall take all reasonable steps to mitigate LD.

If Liquidated Damages are to be Assessed.

- Adjust invoice for payment.
- Assess LDs in accordance with (IAW) contract terms.

- Obtain contractor's release of claims on a final invoice where the payment amount is subject to contract settlement actions. If a release of claim cannot be obtained, acceptance of the LD shall be deemed to have occurred on the effective date of the contract settlement.
- Obtain contractor's receipt of notice that the assessment was received.

LD Procedures. (*FAR 11.502*)

- If an LD clause is to be used, the applicable clause and appropriate rates of LD shall be included in the solicitation.
- If an LD clause is used in a construction contract, the rates of LD to be assessed against the contractor should be for each day of delay and the rates should, as a minimum, cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the government will suffer other specific losses due to the failure of the contractor to complete the work on time, the rates should also include an amount for these items.

Examples of specific losses are as follows:

- The cost of substitute facilities.
- The rental of buildings and equipment.
- The continued payment of quarters allowances.
- If appropriate to reflect the probable damages, considering that the government can terminate for default or take other appropriate action, the rate of assessment of LD may be in two or more increments which provide a declining rate of assessment as the delinquency continues. The contract may also include an overall maximum dollar amount or period of time, or both, during which LD may be assessed, to ensure that the result is not an unreasonable assessment of LD.
- Consideration may be used instead of assessing LDs

Payments. There are three different types of payments a CCO can authorize: advance, progress, and final. Advance payments occur rarely in construction and should be used only as a last resort. Progress payments are supported by a customer satisfaction report from the COR or contract monitor. For a construction contract, the report should also include an estimate of job completion (or progress report) stated in percentages to let the CCO know what percentage of the total contract amount can be released to the contractor. Final payments are made whenever the contractor has successfully completed the contract and the work has been accepted by the government, or the CCO has cancelled any remaining requirements.

For construction final payment the following items are required.

- Invoice
- Release of claims (if contractor refuses to sign, a memorandum of record must be included in the file)
- Receiving report

Contract Monitoring

As a representative of the contracting officer, it is the COR's responsibility to ensure the contractor has provided at least the minimum contract requirements. Any perceived deviations from the statement of work (SOW), statement of objectives, or performance work statement should be brought to the attention of the contracting officer. The customer should not attempt to interpret these documents for the contractor and cannot direct changes or accept substitute performance. Many people have improperly cost the government (or themselves) money by making seemingly nonchalant remarks asking the contractor to act outside the scope of the contract.

Contract Monitoring System (Past Performance).

The formal Contractor Performance Assessment Reporting System/ Construction Contractor Appraisal Support System [CPARS/CCASS] contract monitoring system used in peacetime is much too complex and time consuming for the contingency environment. This system should be replaced with an informal *contractor compliance system* as the method for contractor surveillance. If the customer is satisfied, the contractor is performing sufficiently; this should satisfy the CCO as well. Paperwork could be a simple handwritten statement from the COR in order for the CCO to support a progress payment or a final payment. If the contractor is not performing well, the COR will be the first to inform the CCO. All directions given to contractors, whether verbal or written, will be given by the CCO and should be made a part of the record in the contract file.

Contracting Officer's Representatives (COR).

Contractor surveillance by contracting personnel under contingency conditions may be difficult due to ongoing military operations, local threat conditions, remote location, broad customer base, and the performance and delivery time involved. Therefore, it is important to establish a properly trained cadre of CORs within the organization's major customers you support. CORs are qualified individuals appointed and trained by the CCO to assist in the technical monitoring or administration of a contract. If a COR is planned for a procurement, the CCO should include the clause at DFARS 252.201-7000, *Contracting Officer's Representative*, in the solicitation and resulting contract. Figure 9 provides a summary of key COR duties, file content, and important forms. Additional COR information is as follows.

<p>COR File should include the following:</p> <ul style="list-style-type: none">▶ A copy of your letter of appointment from the contracting officer, a copy of any changes to that letter, and a copy of any termination letter.▶ A copy of the contract or the appropriate part of the contract and all contract modifications.▶ A copy of the applicable quality assurance surveillance plan (QASP).▶ All correspondence initiated concerning performance of the contract.▶ The names and position titles of individuals who served on the contract.▶ A record of inspections performed and the results.▶ Memorandum for record of minutes of any meetings and discussions with the contractor or others pertaining to the contract or contract performance.▶ A copy of the surveillance schedule.▶ Documentation pertaining to your acceptance of performance of services, including reports and other data. <p>Remember you should receive most of these files from your contracting officer during your COR training. COR File should be considered confidential and safeguarded appropriately.</p> <p>COR Key Duties:</p> <p>Monitor the contractor performance, perform inspections, verify corrected deficiencies, perform governmental acceptance, liaison with all parties, submit performance reports and perform properly surveillance. See your COR appointment letter for further details of your duties.</p>	<p>Forms you need to know:</p> <p>Typical Contractual Instruments</p> <ul style="list-style-type: none">▶ SF 44 Pocket-sized purchase order/invoice/voucher▶ DD Form 1155 Order for supplies or services▶ SF 1449 Solicitation/contract/order for commercial items (common)▶ SF 1442 Solicitation/offer/award for construction▶ SF 30 Amendment of solicitation/modification of contract (common) <p>Typical Receiving Report Instruments</p> <ul style="list-style-type: none">▶ SF 44▶ SF 1449▶ DD 250 (common)▶ Invoices used as receiving reports▶ SF 1442 <p>Typical Funding Instruments</p> <ul style="list-style-type: none">▶ DA 3953 Purchase request (PR) form (common)▶ AF 9 Air Force purchase request▶ DD 448 military interdepartmental purchase
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Figure 9. COR Key Duties, File Content, and Important Forms

- Commanders, as well as CORs, must understand they do not have contractual authority to issue directions or changes to any contract or purchase order. In cases where changes have been made by unauthorized personnel, the CCO must be immediately notified. The CCO will then determine if the work performed was within the scope of the original contract. If the work is determined not to be within scope, corrective action through the ratification process will be taken.
- CORs shall forward any correspondence received from the contractor to the CCO. Since the COR is an authorized representative of the CCO, the COR's records are a part of the

official post-award contract files and shall be forwarded to the CCO for retirement with the official contract file upon completion of the contract. Documents that pertain to the contract shall be clearly identified when forwarded to the CCO.

- Appointment of a COR:
 - Appointment of CORs will be done by the CCO in writing to include the rank or grade of the COR and the applicable contract number.
 - Appointment letter will define scope and limitations of the COR's responsibilities and will state the period for which the appointment is effective.
 - Normally appoint COR and an alternate COR. Ideally, both should be identified and trained prior to deployment.
 - All service and construction contracts require CORs. Some highly technical goods may also require a COR. CCOs must ensure COR personnel have the technical experience and ability to monitor contractor performance.
 - State that the COR authority cannot be redelegated.
 - State that the COR may be personally liable for unauthorized acts.
- Appoint COR prior to contract award—if practical, identify with purchase requisition (PR).
- A COR will not:
 - Obligate funds.
 - Direct the contractor by words, actions, or failure to act for contractor to take on new work.
 - Interfere with contractor performance.
 - *Supervise* contractor employees.
 - Authorize contractor to obtain property or use government-furnished property (GFP) from another contract.

- Modify contract terms and conditions via words, actions, or failure to act.
- COR Training: The following COR training is available prior to deployment from the Defense Acquisition University (<https://acc.dau.mil/cor>).
 - CLC106, Contracting Officers Representative with a Mission Focus (8-hour online course)
 - CLC 206, CORs in the Contingency Environment
 - COR 222, Contracting Officer Representative Course
- To the maximum extent practicable, CORs should receive COR training prior to deployment.
- COR training should focus on the duties of a COR, ethics training, and then the specific issues, terms, and conditions of the SOW associated with the contract to which the COR will be assigned.

The following are additional courses available depending on the mission of the COR:

- CLC 004, *Market Research*
- CLC 006, *Contract Terminations*
- CLC 007, *Contract Source Selection*
- CLC 011, *Contracting for the Rest of Us*
- CLC 013, *Performance Based Services Acquisition*
- CLC 055, *Competition Requirements for DoD Acquisition*
- CLC 133, *Contract Payment Instructions*
- CLM 013, *Work Breakdown Structure*
- CLM 024, *Contracting Overview*
- CLM 031, *Improved Statement of Work*
- CLM 039, *Foundations of Government Property*

On 29 March 2010, the Under Secretary of Defense for Acquisition, Technology, and Logistics issued a *DoD Standard for Certification of Contracting Officer's Representatives (COR) for Service Acquisitions*. The standard defines minimum COR competencies, experience, and training based on the nature and complexity of the requirement and contract performance risk. The standard identifies COR competencies, experience, and minimum training for three types of requirements:

- Type A: Fixed price, low performance risk requirements
- Type B: Other than fixed-price, low performance risk requirements
- Type C: Unique requirements that necessitate a professional license, higher education, or specialized training

The standard introduces structure and rigor to COR responsibilities and performance and will be the basis for a DoD Instruction establishing a comprehensive COR certification program that addresses roles and responsibilities for the COR, COR management, and Contracting Officer.

Contract Modifications



Contract Modifications. The contracting officer can expect wide fluctuations in projected requirements versus actual requirements. *FAR 43.1* and *FAR 52.212-4* provide definitions, policy, and limitations regarding the modification of contracts. One important aspect of modifying contingency contracts is the impact these changes will have on timely performance and cost. There are three ways to change the contract terms or contractor performance: change orders, administrative change, or constructive change. Contracts can be modified either bilaterally or unilaterally.

Change Orders. Contract modification is a generic term meaning any written change in the terms and scope of the contract. Contracts may be modified by use of a change order. A clear distinction must be made between the terms change and change order, and in scope and out of scope.

- A change is any alteration within the scope of the contract. Changes can be made in the specifications, drawings, designs, method of packing or shipment, time or place of delivery, and quantity or type of government provided materiel.
- A change order is a unilateral order signed by the contracting officer directing the contractor to make changes under the various change clauses. If the change order causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the contract (whether or not changed by the order) the contracting officer shall make an equitable adjustment in the contract price, the delivery schedule, or both. The contractor is required to comply with the change order immediately upon issuance thereof. **Note:** changes clause is not applicable to *FAR Part 12, Commercial Item Contracts*.
- Within scope or out of scope? Oral agreements, letter contracts, and the rapid pace of acquisition can lead to loosely worded arrangements for contractual actions. This should not be construed to mean that CCOs can make broad interpretations of what items are within the original scope of the contract. The process of issuing an out of scope modification is not complicated. There are only 3 general rules to follow: (1) The modification must be bilateral, (2) A justification and approval is required, and (3) Approval above the CCO level is needed if the modification exceeds \$550K.
- CCO should verify proper change order authority (on Standard Form [SF] 30) used prior to issuing modification.

- Ensure supplemental agreements containing an equitable adjustment as the result of a change order include a statement of release. (*FAR 43.204(c)(2)*)

Administrative Change. Administrative changes are unilateral changes that do not affect the substantive rights of the parties. They are used to make changes such as a change of paying office or the name of the contracting officer.

Constructive Change. A constructive change occurs when the contract work is actually changed but the procedures of the changes clause have not been followed. There are two essential elements for all constructive changes:

- To find the *change* element we must examine the actual performance to see whether it went beyond the minimum standards demanded by the terms of the contract.
- The *order* element must also be present for the change to be compensable. The change must be ordered by the government. The government representative, by words or deeds, must require the contractor to perform work which is not within the scope of the contract.
- Several common actions which often lead to a constructive change include: (1) Directing a particular method of performance, (2) Late or defective government-furnished equipment (GFE), (3) Requiring higher quality than specified, and (4) Failure to approve time extensions. For example, if a contractor fails to complete performance within the specified contract date and time, and the government allows work to continue without approval, the government has executed a constructive change by not placing the contractor on notice for failure to meet a contract deadline.
- Constructive changes must be formalized with a contract modification.

Methods to Incorporate Contract Changes—Unilateral and Bilateral Modifications. For the protection of all parties, unilateral and bilateral contract actions should be priced before execution of the modification. IAW FAR 52.212-4(c), commercial item contracts require bilateral modifications to contracts. However, the magnitude of some changes and the contingency environment make this difficult.

- Unpriced orders are risky business because, during the time that negotiations are being conducted and performance is going on, the contractor has no incentive to keep costs down. If a contract action cannot be priced before it is authorized, an agreement should be reached with the contractor on a ceiling (not to exceed) price.
- For changes that result in a relatively small increase or decrease in price, efforts should be taken to reach an agreement to incorporate them into the contract on a *no-cost* basis.

Bilateral Modifications. Supplemental agreements must be in writing and must be signed by both parties. (*FAR 43.103(a)*) Supplemental agreements are appropriate when the contractor's consent is needed before modifying the contract. All supplemental agreements to contracts for commercial items must be bilateral.

- Examples of circumstances that require a supplemental agreement are when:
 - Incorporating substantive contract changes that were agreed to by both parties.
 - Negotiating an equitable adjustment resulting from a change order.
- Prepriced or unpriced? The more formal, regulatory words for this concept are “definitized” and “undefinitized.” The risk of unpriced actions is that the government must be willing to pay for what it wants. Policy and procedure for definitizing an unpriced action can be found at *DFARS Subpart 217.74*. More information on undefinitized contract actions can be found in Chapter 5.

Unilateral Modifications. Unilateral modifications (signed only by the contracting officer) are used to make administrative changes, issue change orders or termination notices, or make changes authorized by clauses other than the changes clause, such as option clause, property clause, or suspension of work clause, or for changing GFP or incorporating a value engineering proposal into the contract. (*FAR 43.103(b)*)

The Changes Clause. Generally, government contracts contain a changes clause that permits the contracting officer to make unilateral changes in designated areas within the general scope of the contract. There are slight differences in the particular changes clauses, depending on what is being purchased (supplies, services, or construction) and the type contract that is awarded (fixed price or cost reimbursable). (*FAR 43.2*) However, there are elements that are common to all changes clauses. They are as follows:

- A change order must be within the general scope of the contract.
- The change order must be in writing.
- The change order must be issued by the contracting officer.
- Quantities may not be unilaterally adjusted by use of the changes clause. A decrease in quantity may be affected by a partial termination for convenience. If the contract contains the *Variation in Estimated Quantity* clause, a price adjustment is required for items received in excess of the quantity called for (including the variation allowed) that are in excess of \$250. These items may, however, be returned at the contractor's expense. (*FAR 11.701*)

Request for Equitable Adjustments (REA).

The government's policy is to try to resolve all contractor REAs at the contracting officer's level without litigation.

- If a mutual agreement regarding an appropriate equitable adjustment to the contract cannot be reached with the contractor,

the contractor can submit a claim. The contracting officer must then issue a final decision to a contractor's claim (see Chapter 7).

- A valid contracting officer's final decision must: (*FAR 33.211*)
 - Be in writing.
 - Be the decision of the contracting officer.
 - Inform the contractor of the right to appeal.
 - Adequately inform the contractor of the reasons behind the contracting officer's decision.

Transferring Contract Functions

Established, permanent-station contracting offices rarely, if ever, transfer contract administration functions to another agency. On the other end of the spectrum, many CCOs will transfer contract functions for redeployment. As one unit packs up their bags to return to their home station, another unit arrives to assume the mission.

Delegation of Contract Administration. Delegation most commonly occurs in large contingencies. The responsibility for administration of contracts can be assigned to the Defense Contract Management Agency (DCMA). The team that assumes the mission will either be the on-site DCMA theater area operations organization (for locations that have a permanent DCMA office) or a deployable DCMA team. While the DCMA teams typically only deploy in support of major contingencies, the theater chief administrative officer may be able to provide limited support to smaller operations. (IAW *FAR 42*)

When delegating or transferring functions, the following matters should be considered:

- **Accounting for Government and Contractor Property.** If the contract calls for GFE or government-furnished materiel, the follow-on unit must be aware of all the details.

- Transfer versus Termination for Convenience (T4C) and New Award. The CCO will have to make a judgment call as to which of these options is better suited to the particular instances involved.
- Although the mechanics of transfer are simple—a delegation letter and a unilateral modification are sufficient—the impact on the contract could be significant. If the atmosphere of the contracting has been largely based on a mutual trust and personal relationship between the government and the contractor, bringing in a new player may be viewed with suspicion by the contractor.

Terminations



There are basically two options for termination of contracts. They include T4C and termination for default (T4D) or cause. Once you've decided which method to pursue, be prepared to negotiate a fair and reasonable settlement. Remember that termination implies a breach of contract, and adequate compensation is appropriate. Follow local procedures for reporting and reviewing any termination actions.

To read more about terminations consult the DVD. 

- Notice of termination should be in writing. It will state or contain:
 - The contract is being terminated.
 - Extent of termination.
 - Any special instructions.
 - The steps the contractor should take to minimize impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force.

Upon receipt of a termination notice, the contractor should (FAR 49.104):

- Stop work immediately
- Terminate all subcontracts
- Immediately advise the termination contracting officer (TCO) of any special circumstances precluding the stoppage of work
- Perform any continued portion of work
- Submit a request for equitable adjustment if necessary
- Protect any GFP
- Notify the TCO of any legal proceedings growing out of terminated subcontracts
- Settle any outstanding liabilities (subcontracts)
- Submit a settlement proposal
- Dispose of termination inventory

Termination for Convenience (T4C). The rapid pace at which requirements change can often result in a situation where the government no longer needs the supplies or services for which it has contracted. Asking a contractor to stop providing these supplies or services can often be met with confusion. Regardless of your reason for not wanting performance to continue, the contractor may perceive that you are simply not satisfied with his or her performance. If less than \$5K remains on contract, you should not terminate. (FAR 49.101(c))

General procedure for T4C (these items are not necessarily performed in the exact sequence listed):

- Issue suspension of work for construction or architecture and engineering, specifically excludes profit. (FAR 42.1302; 52.242-14)
- Issue stop work for service or supply, does not exclude profit. (FAR 42.1303; 52.242-15)

- Usually in effect for 90 days. If no notice after 90 days, contractor is to restart work.
- Negotiate settlement. If no settlement reached, unilaterally make determination and notify the contractor that changes are under the disputes clause.

When a T4C is requested, the following actions should be taken:

- Request or recommend meeting with contractor.
- For construction, engineering should provide an estimate of the contractor cost incurred.
- Establish and negotiate a cost settlement.
- Stop work or suspension of work should be prepared. If necessary, consult with the head of contract activity (HCA).
- Prepare an SF 30 using the T4C clause. (*FAR 52.249-2*)

When you have a partial contract cancellation or a total contract cancellation, consider the following:

- No-cost settlement
- Partial settlement (such as restocking charge), and
- Total termination

Termination for Default (T4D). When the contractor fails to perform as required, the CCO may terminate the existing contract and begin procurement under a new contract. If you anticipate needing to enter another contract with a specific vendor in the future (especially in areas with limited sources), defaulting that vendor on an existing contract may hinder future contracts.

General procedures for T4D (these items are not necessarily performed in the exact sequence listed):

- Reference default clause *FAR 52.249-8, Supply and Service*, or *FAR 52.249-10, Construction*.
- Issue a cure notice and give the contractor a minimum of 10 days to cure. (*FAR 49.607* for format)

- After 10 days, or if there are not 10 days left in performance, issue a show cause notice. (*FAR 49.607* for format)
- Completion of work—have an engineer verify the extent of completion and give an estimated value of the completed work.
- Consult with the HCA prior to issuing modification.

Termination or Cancellation of Purchase Orders. (*FAR 13.302-4*) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with *FAR 52.212-4 (l) or (m)* for commercial items; or *FAR 52.213-4* for other than commercial items.

If a purchase order that has not been accepted in writing by the contractor is to be cancelled, the contracting officer shall notify the contractor in writing that the purchase order has been cancelled and request the contractor's written acceptance of the cancellation.

Termination for Cause. (*FAR Part 12, Contracts*) The government may terminate for cause in the event of any default by the contractor if the contractor fails to comply with terms and conditions of the contract or fails to provide the government, upon request, adequate assurance of future performance. Contracts for commercial items purchased under the procedures outlined in *FAR Part 12* may be terminated for convenience or for cause. In general, the constraints of *FAR 49* (T4C) and *FAR 49.4* (T4D) are inapplicable. Procedures for termination of commercial item contracts are provided at *FAR 12.403*.

Delinquency Notices. (*FAR 49.607*)

The formats of the delinquency notices discussed in this section may be used to satisfy the requirements of *FAR 49.402-3*. All notices will be sent with proof of delivery requested. (*FAR Subpart 42.1303* for stop-work orders)

Cure Notice.

If a contract is to be terminated for default before the delivery date, a cure notice is required by the default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of *cure* remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic cure period of 10 days or more, the cure notice should not be issued.

After the cure notice is issued:

- Negotiate changes
- Prepare modification to T4D
- Document negotiations
- Obtain contractor's receipt of cure notice

Show Cause Notice.

If the time remaining in the contract delivery schedule is not sufficient to permit a realistic cure period of 10 days or more, a show cause notice may be used. It should be sent immediately upon expiration of the delivery period.

Considerations. When deciding whether to use T4C, T4D, or allow the contract to run to completion, the CCO must utilize sound business judgment. Remember that contractors are providing goods and services at a time when the government has been fairly demanding. Vendors may incur costs in order to perform in accordance with our wishes, and should be properly compensated for doing so. The CCO may have to balance fair and just compensation against legally sufficient adjustment and allowability of costs.

Contract Closeout



Contract Closeout. When the contractor has satisfactorily completed performance of the terms of the contract, and final payment has been made, the contract file should be closed out as soon as possible. The following steps should be used:

- Upon receipt of final invoice and a receiving report, issue a unilateral modification to deobligate any excess funds.
- Release of Claims. 

On a final invoice where the payment amount is subject to contract settlement actions (release of contractor claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement. (*FAR 43.204(c)(2), Release of Claims*, provides language for supplemental agreements)
- Complete a *Department of Defense (DD) Form 1594 (Contract Completion Statement)*, or agency specified form for all contracts, and *DD Form 1597 (Contract Closeout Checklist)* or agency specific form such as Air Force Form 3035 for contracts over the simplified acquisition threshold (SAT) after receiving proof that work or delivery is complete.
- Place the completed and certified *DD 1594* in the contract file, write the word *closed* on the file (preferably in large, bold letters), and remove the file from the active contracts. Retain the completed contract file as required by FAR or your particular agency.
- Perform procedures for closing out contracts:
 - The *DD Form 1597, Contract Closeout Checklist*, is the primary document for initiating a systematic contract closeout. When all necessary and applicable actions have been completed, the

contracting officer will sign and attach this form to the DD Form 1594.

- When the physically completed contract involves government property in the possession of the contractor, the contracting officer will forward a DD Form 1593, Contract Administration Completion Record, to the property administrator requesting the actual or estimated dates for completion of property administration. The DD Form 1593 should also be used to verify that other functional activities have completed their required closeout actions.
- The contracting officer will review the status of funds on physically completed contracts to ascertain whether funds are available for removal prior to final payment.
- For all contracts not in excess of the SAT, the contracting officer shall include in the contract file a statement that all contract actions have been completed. The completed form or statement is authority for closing out the contract file.
- When the purchasing office administers a contract, that office is responsible for ensuring that all required purchase actions and contract administration have been completed, utilizing as necessary DD Form 1597, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record.
- When all required actions have been completed, the purchasing office shall prepare a Contract Completion Statement, DD Form 1594, for all contracts in excess of the SAT. The contract completion statement shall be made a part of the official contract file.
- DFARS 204.804 prescribes the use of the DD Form 1594.

Closeout of CCO, Field Ordering Officer (FOO), and BPA Authorized Callers Accounts.



When FOO and BPA authorized callers are ready to redeploy, be sure they return their original appointment order, any completed forms and documents, updated PIIN logs, and any unused forms (especially SF 44). Throughout the contingency, you should be getting Joint Uniformed Lessons Learned System and after action report input from your ordering officers.

See *FAR 4.804-5* for procedures on closing out the contract files. The main issues are as follows:

- Contractor's release of claims
- Final invoice has been submitted and paid
- Contract funds review completed and excess funds deobligated

Abandoned or Unclaimed Property. An issue that may arise is disposal of contractor-owned property that has been abandoned. (*FAR Subpart 45.6, Reporting, Reutilization, and Disposal*) Consult with the local judge advocate for disposition of contractor property left behind by the contractor before utilizing or appropriating the asset.

Chapter Acronyms

BPA – Blanket Purchase Agreement
CCO – Contingency Contracting Officer
COR – Contracting Officer’s Representative
DCMA – Defense Contract Management Agency
DD – Department of Defense (Form)
DFARS – Defense Federal Acquisition Regulation Supplement
DoD – Department of Defense
FAR – Federal Acquisition Regulation
FOO – Field Ordering Officer
GFE – Government-furnished Equipment
GFP – Government-furnished Property
HCA – Head of Contracting Activity
IAW – In Accordance With
LD – Liquidated Damages
PIIN – Procurement Instrument Identification Number
REA – Request for Equitable Adjustment
SAT – Simplified Acquisition Threshold
SF – Standard Form
SOW – Statement of Work
T4C – Termination for Convenience
T4D – Termination for Default
TCO – Termination Contracting Officer
US – United States

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Chapter 7 Protests, Claims, Disputes, and Appeals



Protests, Claims, Disputes, and Appeals

Key Points

- Upon receipt of a protest, the contingency contracting officer (CCO) needs to act quickly and contact supporting legal counsel.
- To avoid distracting, time-consuming litigation, strive to resolve contract performance issues by mutual agreement with the contractor to avoid disputes and litigation.

Introduction

Good lines of communication between the contingency contracting office and the supporting legal office are critical to successfully deal with a bid protest or appeal. As part of deployment preparations, the CCO must identify and know how to work with supporting legal counsel. Additionally, protests can sometimes be averted by frank and open communication with the vendor. Vendors may recognize significant errors in solicitations and evaluations overlooked by the CCO due to the pace of the operation. Encourage vendors to attempt to resolve their concerns with the CCO, then pursue an agency protest if not resolved by the CCO, and then file with the Government Accountability Office (GAO) as a last resort. Although the vendor has complete freedom to protest in any forum, and the CCO is never an advocate of the vendor, the interests of the government can often be best protected when vendor concerns are resolved quickly and at the lowest level.

This chapter discusses actions a contracting officer should take when notified of a possible protest, claim, dispute, or appeal.

Protests



Protests. (*Federal Acquisition Regulation [FAR] Part 33*) Protest means a written objection by an interested party to any of the following:

- A solicitation or other request by an agency for offers of a contract for the procurement of property or services.
- The cancellation of the solicitation or other request.
- An award or proposed award of the contract.
- A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.
- Delivery and task orders under multiple award contracts in excess of \$10M. (*FAR 16.505 (a)(9)(B)*)

Protests to the Agency

Executive Order 12979, *Agency Procurement Protests*, establishes policy on agency procurement protests. Prior to submission of an agency protest, all parties should use their best efforts to resolve concerns raised by an interested party at the contingency contracting officer (CCO) level through open and frank discussions. The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Acceptable protest resolution methods include the use of alternative dispute resolution techniques, third party neutrals, and other agency's personnel.

Protests to the agency shall include the following: (FAR 33.103(d)(2))

- Name, address, fax, and telephone numbers of the protester
- Solicitation or contract number

- Detailed statement of legal and factual grounds for the protest, to include a description of resulting prejudice to the protester
- Copies of relevant documents
- Request for a ruling by agency
- Statement as to the form of relief requested
- All information establishing protester as an interested party
- All information establishing the timeliness of the protest

Failure to substantially comply with the above may be grounds for dismissal of the protest.

Agency procedures or solicitations shall notify potential bidders and offerors whether independent review is available as an alternative to consideration by the CCO of a protest, or is available as an appeal of a CCO decision on a protest. If there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action. (*4 Code of Federal Regulations [CFR] 21.2(a)(3)*) If a party wishes to have their case classified as an *express option*, (*4 CFR 21.10(a)*) the party must submit a written request no later than 5 days after the initial or supplemental amended protest is filed. GAO will notify both parties of its decision. In some cases, GAO will decide the express option is appropriate even though no party formally requested it.

Action Upon Receipt of Protest. If a protest is received prior to the award of a contract, the contract may not be awarded until the protest has been resolved. Unless urgent and compelling reasons exist for contract award, justification should be submitted in writing and determined to be in the best interest of the government. Such justification or determination shall be approved at a level above the CCO, or by another official pursuant to agency procedures.

If an award is withheld pending agency resolution of the protest, the CCO will inform those individuals whose offers may become eligible for the award of the contract. If appropriate, the offerors should be requested to extend the time for acceptance to avoid the need for resolicitation.

Upon receipt of a protest, the CCO shall immediately suspend performance, pending resolution of the protest within the agency. This includes any review by an independent, high-level official, unless continued performance is justified. See FAR 15.505 and 15.506 for more information on receipt of protests.

Pursuing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agency protests are denied and the protester subsequently files at GAO.

Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed. Agency protest decisions shall be well-reasoned, and explain the agency position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

Protests at the GAO

Receipt of a Protest. This guidance focuses on protests before the GAO, where the vast majority of protests are filed. Upon receipt of a protest, the CCO should immediately contact supporting legal counsel. GAO protests are fast moving actions, with a government report due to the GAO within 30 days (within 20 days under the express option) and a GAO decision issued within 100 days (within 65 days under the express option).

Reachback. Reachback is a highly effective tool during a protest. A CCO's legal counsel for working bid protests may be a remote reachback asset. If the CCO has local legal counsel available, then the chances are that local counsel will be working with a reachback legal office. Reachback offices frequently work bid protests and can rapidly understand protest issues.

Protests Before Award. (FAR 33.104(b)) When the agency has received notice from the GAO of a protest filed directly with the GAO, a

contract may not be awarded unless authorized, in accordance with agency procedures, by the head of the contracting activity (HCA), on a nondelegable basis, upon a written finding that:

- Urgent and compelling circumstances that significantly affect the interest of the United States (US) will not permit awaiting the decision of the GAO
- Award is likely to occur within 30 days of the written finding

A contract award shall not be authorized until the agency has notified the GAO of the finding as discussed at FAR 33.104(b)(1). When a protest against the making of an award is received and the award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest.

Protest After Award. (FAR 33.104(c)(1)) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by FAR 15.505 or FAR 15.506, whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract. In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that:

- Contract performance will be in the best interests of the US.
- Urgent and compelling circumstances that significantly affect the interests of the US will not permit waiting for the GAO's decision.

Contract performance (or continued performance) shall not be authorized until the agency has notified the GAO of the aforementioned finding. When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis. When the agency receives notice of

a protest filed with the GAO after the dates contained in subparagraph *FAR 33.104(c)(1)*, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the government's interest.

Responding to a Protest—the First 24 Hours. The actions the CCO should accomplish within 24 hours of receipt of a written protest include:

- Transmit a copy of the protest document to the supporting legal office. Because the protest document may contain proprietary or source selection sensitive information, do not release any copies of the protest to other parties (for example, awardee or offerors) until you discuss the release with the assigned attorney.
- Confirm the identity of the attorney assigned to work the protest and obtain contact information (e-mail address and telephone numbers). Ensure the attorney has CCO contact information.
- Discuss the allegations with the attorney and the impact on mission operations if a delay of award or performance is triggered by a protest.
 - If a delay is triggered, the award cannot be made (pre-award protests) and contract performance may not begin (post-award protests).
 - Following coordination with the assigned attorney, inform offerors and awardee that a protest has been filed and that contract award or contract performance has been stayed.
 - Ensure the assigned attorney informs GAO of the status of the delay.
- Discuss with the attorney if the HCA authorizes contract performance. (*FAR 33.104*)
- Identify the key persons who are knowledgeable about the allegations of the protest, and obtain their contact information to

pass on to the attorney. These persons may be technicians, evaluators, or personnel within the requiring activity. Inform these key persons of the protest and ensure their availability for the next 100 days (protest time frame) to support the government's response to the protest. Determine whether declarations, affidavits, or other statements of fact from key persons will be necessary.

Responding to a Protest—the First 30 Days. The first 30 days of any GAO protest are very important. The government must submit its agency report to the GAO and the protester within 30 days. This period provides the CCO and legal counsel an opportunity to assess the merits of the case and develop an appropriate response. Items to consider or accomplish are as follows:

- Chances are that the CCO and the contingency contracting office have extremely limited administrative support and equipment. GAO protests are typically document intensive, requiring considerable copying and collating. Given these circumstances, the CCO and supporting legal counsel should determine how to best assemble the agency report.
- The CCO should immediately coordinate with and begin transmitting key contract documents to supporting legal counsel. This enables government counsel to understand the facts and issues, and to assess the merits of the protest early in the process. It also allows the legal office to begin assembling the agency report to the GAO.
- Agency Report. The documents required in an agency report to the GAO include:
 - CCO's statement of relevant facts.
 - The bid or proposal submitted by protester.
 - The bid or proposal of the awardee.
 - The solicitation.

- All evaluation documents.
- Other relevant documents (for example, debriefing slides and related documents).
- Given the concentrated timeline involved, it is good practice to maintain daily communication between the attorney and the CCO regarding the status of the protest.

Corrective Action. Day 30 (Day 20 under the express option) of a GAO protest is a significant milestone as the government must file its agency report with the GAO by this deadline. Additionally, the GAO has held that the government is not liable for a protestor's legal fees and costs if the government takes corrective action in response to a protest within the first 30 days (20 days under the express option). Consequently, the timely review and assessment of the merits of a protest not only aid in getting the acquisition back on track toward award, but are key to avoiding the payment of what may be significant legal expenses.

After Day 30 (Day 20 under the express option). A protester has 10 days to file a written response to the government's agency report, usually in the form of a legal brief. GAO will issue its decision by day 100 (day 65 under the express option). Occasionally, to clarify the record or the issues involved, the GAO requests a hearing and requires testimony by government officials.

Contract Claims



There are a number of aspects of contingency contracting that produce an environment ripe for contract claims. There is little a CCO can do to eliminate the likelihood of claims. The key is to focus on actions that will ease the resolution of the claim. These actions include monitoring the contractor's performance (so there is a clear record of exactly what the

contractor did) and performing market research on an ongoing basis (to keep an eye on fair and reasonable price data).

As appropriate, the CCO should strive to resolve contract performance issues by mutual agreement with the contractor, thereby avoiding distracting and frequently time-consuming litigation. When a claim or a potential claim occurs, contact your supporting legal counsel for assistance and advice. If an agreement cannot be reached with a contractor, the CCO must issue a final decision to a contractor's claim. During a contingency, the CCO must strike a balance between expeditious settlement of contract claims and protecting the government's interests.

Contractor Claims. Because of the high operations tempo usually associated with contingency contracting, responding to contractor claims and disputes can divert precious time away from the mission at hand. You should consider or accomplish the following:

- The CCO should recognize that not every contractor request for costs or other relief is a *claim*. A contractor request for equitable adjustment may be just that—a straightforward request that is related to changed or increased contract requirements. If so, the CCO may be able to dispose of such requests relatively quickly. Unlike requests for adjustments, submission of a contract claim begins accrual of interest on the claim.
- A working understanding of the flexibility that exists under the FAR and the Defense Federal Acquisition Regulation Supplement, an understanding of what is and is not a *contract claim*, assigning and maintaining communications with a trained contracting officer's representative (COR), ensuring good contract file documentation exists, and applying alternative dispute resolution techniques are some ways to mitigate the administrative burden that contractor claims can place on the CCO and the overall contingency contracting mission. To help alleviate this burden, the CCO should seek early and frequent counsel from the supporting legal office.

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- Upon receipt of a claim exceeding \$100K, the CCO should ensure that the claim is certified by the contractor, consistent with FAR 33.207.
- Report any suspected fraudulent claim or other misrepresentation of fact to the supporting legal office and the chief of the contracting office.

The CCO's Final Decision. The CCO's final decision should be as follows.

- The CCO should utilize the specialized skills of the functional representatives (for example, COR) when addressing the facts and issues in dispute.
- Final decisions for claims equaling \$100K or less must be issued within 60 days after receipt of the claims.
- For claims exceeding \$100K, within 60 days after receipt of a certified claim, the CCO must either issue a final decision or notify the contractor when a final decision will be issued.
- Final decisions will be prepared in accordance with FAR 33.211. Final decisions must include notification to the contractor pursuant to the disputes clause contained in the contract.
- The CCO's final decision to deny a contractor's claim (either in part or in total) may result in a dispute by the contractor under the applicable contract disputes clause.

Seizures

Commanders may, under the principle of military necessity, and subject to restrictions, seize private property during hostilities. Seizing private or public property for mere convenience is unlawful. As a result of a seizure of civilian property, commanders may not leave civilians without

adequate food, clothing, shelter, or medical supplies. Legal assistance must be obtained prior to the seizure of any property.

Property Control Record Book (PCRB). This book, which may be issued to any level, confers no authority—it merely facilitates the ability to document seizures under the law of war.

PCRB Procedures. PCRB procedures are outlined below.

- Each PCRB should be numbered and contain a minimum of ten sets of four serial numbered copies of the property control record form.
- The cover of the book should contain a statement detailing where the book may be used.
- The inside cover of the PCRB should contain instructions to the commander on the use of the forms to include the appropriate distribution of the four property control and receipt records.
- The serial numbered property control record should require the soldier seizing the property to enter pertinent information concerning the seized property and should contain a receipt, both in English and the local language, to be signed by the property owner, if available.
- The inside of the back cover should contain a seizure record.
- The staff judge advocate (SJA) office should be responsible for the issuance of the books to the commanders. Hand receipts can be used to issue PCRBs to the units. It should be emphasized that the SJA is only issuing the books and that accountability for the books and seized property is a command responsibility.

Payment for Seizures. There are several procedures available to provide compensation for seized property. They are as follows:

- **Ratification.** This is the act of approving an unauthorized commitment by an official who has the authority to do so. More information on ratifications can be found in Chapter 5.

- Retroactive leases. The Corps of Engineers may negotiate retroactive leases in accordance with in accordance with (IAW) Army Regulation 40515.
- *Public Law 85-804*, as amended by *Public Law 93-155 (50 United States Codes [USC] §1431-1435)*, as amended, and Executive Order 10789 dated November 14, 1958, as amended. Defense agencies may enter into, amend, and modify contracts, without regard to other provisions of law related to making, performing, amending, or modifying, whenever the secretary concerned considers that such action would facilitate the national defense.
- Claims adjudication IAW applicable Service regulations.

Whatever process is used to settle claims will be influenced by the local conditions. However, contracting responsibility is generally limited to ratification actions and extraordinary contractual relief under Public Law 85-804.

Contract Disputes and Appeals



The rules for handling contract disputes and appeals are the same in a contingency contracting environment as they are for routine contract actions occurring at home base. Under the *Contract Disputes Act*, CCOs receive no special treatment or waiver of applicable rules simply because a contingency contract action is at issue. As with bid protests, the CCO's legal support will likely be provided via a reachback attorney. Experience shows that early involvement by legal counsel can help avoid an appeal altogether. That said, if an appeal is received, legal counsel should be extremely effective in assessing and orchestrating any government response to a contractor's appeal. The underlying record of evidence related to any contract dispute is critical to crafting the government's response. Through the application of a few simple practices, the CCO can

greatly enhance the underlying contract record, and the government's position, in a contract appeal. Have contractors send appeals to the following address:

Civilian Board of Contract Appeals
1800 F Street, NW
Washington, DC 20405

For more information go to: <http://www.cbca.gsa.gov/>

A Few Best Practice Tips. Generally speaking, contract disputes involve issues that develop over time and entail a series of actions by both the contractor and government personnel. In a contingency contracting environment, assembling a solid contract record presents unique challenges. To mitigate these challenges, the CCO should employ a few simple practices within the contingency contracting office.

- **Digital and Video Camera—A Picture is Worth a Thousand Words.** Case law and experience demonstrate that evidence obtained concurrently with contract performance or a disputed event is generally given greater weight than evidence that is cobbled together after contract litigation has commenced. The CCO should ensure that inspectors, quality assurance personnel, CORs, and other representatives make it a standard practice to use digital cameras. This is of particular value for vehicle leases in the area of responsibility (AOR). Pictures and videos should immediately be e-mailed to the CCO for review and be included as part of the contract file. Such pictures are particularly useful for assessing, if not enhancing, the strength of the government's case.
- **Account for Personnel Turnover.** The turnover of government personnel involved in contingency contracting actions is a significant impediment to developing the government's case in an appeal. The CCO should work with J1 to ensure that key witnesses, past and present, can be located. The CCO must employ a personnel

locator process that permits the CCO and his successors to identify and locate witnesses—to include personnel who redeploy away from the contingency. At a minimum, the CCO should inform key individuals of the appeal, their role in the appeal, and ensure that the government can locate them if necessary.

- **Contract Files and Related Documentation.** The key to success in prosecuting any contract dispute is the availability of contract documents. Without the necessary documents, a case is seriously weakened. Hence, the CCO should establish an administrative process for obtaining and filing documentation underlying a contract action.
- Consider developing an electronic contract file where documents, digital pictures, charts, and other records can be readily stored and retrieved. **Note:** CCOs should make an electronic copy of all e-mails pertaining to claims and include them with the contract file prior to leaving the AOR. This documentation may be needed later to assist with claims.
- As appropriate, use your reachback legal office to assemble the underlying record for any contract appeal (referred to as the Rule 4 file [Title 28a USC, Rule 4]). This is where the CCO's practice of establishing an electronic contract file pays dividends.

Contract Settlements and Alternative Dispute Resolution



If a dispute cannot be resolved between the parties, then a protracted litigation process often results. To avoid distracting, time-consuming litigation, the CCO may consider negotiating a settlement with the contractor or using more formal alternative dispute resolution (ADR) procedures. In either event, the CCO should seek the assistance and

support of legal counsel. As stated previously, CCOs should regard legal counsel as useful problem solvers who can assist in negotiating settlements or pursuing ADR measures, thereby expediting the resolution of contractor disputes. Finally, a timely agreement developed by the parties, rather than a decision resulting from litigation, may be more valuable in maintaining a continuing business relationship with the contractor during a contingency.

ADR Elements. The essential elements of ADR are as follows: (1) the existence of an issue in controversy, (2) a voluntary election by both parties to participate in the ADR process, (3) an agreement on an alternative procedure and terms, and (4) participation in the process by officials of both parties who have the desire and authority to settle. If ADR is used, a few tips to consider prior to commencing are as follows:

- Know your facts.
- Avoid using words and body language that anger.
- Be professional and observe local customs at all times.
- Develop an appreciation for the other side's view.
- Diffuse anger at first sight.
- If using a mediator or facilitator, talk to the other side, not the mediator. The mediator is there to assist, not to judge.
- Use simple, clear, and concise language. Most people want to settle.

Claims Under ADR. If a claim has been submitted, ADR procedures may be applied to all or only a portion of the claim. If ADR is used subsequent to a CCO's final decision, its use does not alter any of the time or procedural requirements for filing an appeal nor does it constitute reconsideration by the CCO of the final decision.

Continued Performance. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim

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arising under or relating to the contract, the contracting officer shall use the disputes clause (FAR 52.233-1) with its Alternate I.

Reminder. In preparing contracts and solicitations, remember to insert the disputes clause at FAR 52.233-1 unless the conditions in FAR 33.203(b) apply, and to insert the applicable law for the *Breach of Contract Claim* clause at FAR 52.233-4.

Chapter Acronyms

ADR – Alternative Dispute Resolution

AOR – Area of Responsibility

CCO – Contingency Contracting Officer

CFR – Code of Federal Regulations

COR – Contracting Officer's Representative

FAR – Federal Acquisition Regulation

GAO – Government Accountability Office

HCA – Head of Contracting Activity

IAW – In Accordance With

PCRB – Property Control Record Book

SJA – Staff Judge Advocate

US – United States

USC – United States Code

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Cultural and Situational Awareness

Key Points

- Contingency contracting officers (CCO) must be familiar with the statutes, directives, treaties, and agreements that will affect contracting operations when deployed.
- Much of the business conducted by contractors overseas is by negotiation. Negotiating for lower prices should be considered a normal business practice.
- Be aware of antiterrorism countermeasures and security.
- Maintain information operations security in all your activities.

Introduction

As a CCO, your travels will take you to many places around the globe. With that in mind, this chapter was written to provide you with an understanding of foreign acquisitions, business advisor considerations, antiterrorism and security, antiterrorist countermeasures, and operations security (OPSEC) issues that are inherent with doing business in a foreign country.

Cultural Awareness



Cultural Awareness. Try to learn as much as possible about the country you'll be visiting (<http://catalog.janes.com/catalog/public/html/subject.html>):

- Try to understand the culture and customs.
- An informed visitor is a safer visitor.

- Recognize other nations may not have lifestyles and habits similar to our own. Resist the temptation to make value judgments.
- Establish a rapport with local nationals. If you do so, they can forewarn you about suspicious activities and may even ward off impending attacks. They may also prevent you from making grave social errors that might offend other local nationals.
- Try to learn as much of the local language as possible, but especially know key phrases such as “I need a policeman,” “Help,” “Fire,” or “I need a doctor.”
- Avoid becoming involved in local politics and steer clear of civil disturbances.
- Know how to use local telephones and keep sufficient pocket change on hand to use them.
- Try to blend in with your environment as much as possible. Rather than going to popular, American-frequented restaurants and bars, try local establishments suggested by your *trusted* local national friends, as the tourist attractions can become targets.
- If major attractions in the country are experiencing security problems—stay away. Instead, try to keep a low profile by visiting less frequented places.

Ethics. CCOs should always ensure that the appropriate ethics regulations are observed. When ethical or procurement integrity requirements conflict with local practices, CCOs should explain to contractors the restrictions placed on United States (US) procurement officials. All personnel should be conscious of the fact that many business cultures expect *kickbacks*, *finder's fees*, exchange of gifts, or other gratuities that are illegal for US personnel to provide or accept. Be aware that many business cultures encourage the use of deceptive techniques during negotiations; the rule of law and corruption level influence outcomes. Further, in austere areas contractors may promise more than

they can deliver or faster timelines than are actually possible. CCOs should conduct site inspections and see the products whenever possible. CCOs must be vigilant in advising US commanders, requirements personnel, and CCO appointed representatives about practices which may violate standards of conduct as prescribed in Department of Defense (DoD) Regulation 5500.7-R, *Joint Ethics Regulation*. Personnel should obtain the assistance of the legal office for guidance with respect to ethics matters. For more information on ethics see Chapter 1.

Negotiating Practices. Much of the business conducted by contractors overseas is by negotiation. When setting the price of an item, keep in mind the first price quoted is usually only a starting position for negotiations. Be advised most of the foreign contractors with whom you will be dealing can be shrewd negotiators. Negotiating for lower prices should be considered a normal business practice. Two or three rounds of exchange may be the most prudent and effective way to reduce prices proposed. For supplies, services, and construction, experience in the USCENTCOM (United States Central Command) theater has shown that the price drops dramatically whenever discussions are opened up with an offeror. The CCO's bargaining position is enhanced when the product or service is available elsewhere, or the requirement is not urgently needed. If these two factors are reversed and the contractor is aware of that, the CCO may be hard pressed to negotiate a better deal.

CCOs must ensure that the government pays a fair and reasonable price. The availability of the needed supply or service in the local marketplace, the feasibility of meeting the need from outside the local area, the ability to secure delivery within the requested time frame, the urgency of the need, and consideration for the need to build the local economy are all part of the determination of a fair and reasonable price. As the contingency environment is dynamic, it is important to document what conditions were like to support the determination of fair and reasonable price. For additional information on negotiating practices see Chapter 5.

Oral Agreements. It is prevalent in many countries to conclude an agreement or contractual understanding with nothing more than a handshake. This may occur at the outset of the contingency, humanitarian assistance, or peacekeeping operation, but should be quickly followed with a written contract. Contracts written in English may be viewed by vendors with suspicion and sometimes anger. Obtaining a vendor's signature on a contract may become a challenge. When a local businessman or provider refuses to sign contractual documents, the ordering officer (OO), field ordering officer (FOO), and the CCO must document the file with a memorandum for record or annotate the contractual document (document not signed). CCOs, OOs, and FOOs, should ensure that another US government official countersigns the document. Once a contract has been performed and the contractor has received payment, relations should improve. CCOs should always remember to keep oral communications simple and straightforward.

Local Business Practices. Local business practices in a less than stable environment, and the contractor's lack of knowledge of DoD's payment procedures may require contracting officers to arrange for immediate payment after completion and acceptance of work. See Chapter 5 for payment procedures.

Interpreter Services. Often CCOs will be deployed to locations where the local contractors speak little or no English. In these situations CCOs will need the services of interpreters. Some interpreters are deemed by the contracting officer, in consultation with the requiring activity, as mission essential contractor employees. They are considered as a contractors authorized to accompany the forces (CAAF). Mission essential interpreters have managerial or technical skills not commonly found in the general population. If CAAF interpreters are not available, CCOs should contact the US embassy for a list of approved interpreters. In absence of embassy support, CCOs may check with hotels, find a phone book, or ask bus drivers for tour operations. You will probably be successful contacting local schools (teachers, senior students, and so forth) for interpreters. CCOs

should be cautious of utilizing interpreter services from unapproved sources.

Limitations. Deployed CCOs do not have the authority to negotiate or to enter into agreements with foreign governments. If an agreement is already in existence, the CCO may obtain authority through the head of contracting activity to work with the host nation support office to write priced delivery orders against the agreement. If an agreement is needed, the CCO may request the establishment of an agreement through the host nation support office.

Multinational Programs. It is highly likely that a deployment will involve coalition forces and greater emphasis on multinational perspectives. Be aware that the international environment is governed by a myriad of statutes, directives, treaties, and implementing arrangements for conducting transactions. Guidance concerning these matters should be sought from the host nation support team, combatant command J4, and US embassy. For contingency and exercise operations in a foreign country and acquisition under provisions of mutual support logistics between the US and governments of eligible countries, be aware of host nation support agreements, assistance in kind agreements, the status of forces agreement (SOFA), and acquisition and cross-servicing agreements. CCOs should ensure they understand the role of each of these agreements, how they work, and what they can provide.

Customs and Taxes. Many times the SOFA will address contracting support related to legal obligations (such as taxes and customs), and the process and documentation needed for exemption. If procedures have not been established, contact the customs office or US embassy for guidance.

Do's and Taboos. The book *Do's and Taboos of Hosting International Visitors* by Roger E. Axtell is an excellent reference. Use it as a reference when hosting international visitors from other countries or when visiting these countries. Additionally, several Web sites are available to assist you in familiarizing yourself with the host culture:

<http://www.cia.gov/cia/publications/factbook/index.html>

<http://www.globalbusinessleadership.com/>

Additional guidance on cultural awareness is listed below.

- The US Marine Corps Center for Advanced Operational Culture Learning (CAOCL) provides information about regional cultures and languages to help planning and operations in a Joint expeditionary environment. The CAOCL Web site (<http://www.tecom.usmc.mil/caocl/>) provides specific cultural links related to Operation Iraqi Freedom, Operation Enduring Freedom, United States Africa Command (USAFRICOM), United States Pacific Command (USPACOM), United States Southern Command (USSOUTHCOM), and United States Central Command (USCENTCOM).
- The Defense Language Institute Foreign Language Center offers culturally based education in more than 40 languages. The center's Web site offers downloadable products for predeployment training, deployment use, or refresher training (see <http://www.dliflc.edu/products.html>).
- The Air Force Air University Web site offers sociocultural and language resources at <http://www.au.af.mil/culture/index.htm>. One such resource is the Air Force Culture and Language Center's Expeditionary Skills Training Portal at <http://www.culture.af.edu/estPortal.html>.

Situational Awareness

Operations Security Awareness. Your awareness of the security fundamentals allows you to focus attention on security measures needed during emergencies and in certain peacetime operations. OPSEC is a broad-based security program designed to prevent all types of sensitive information from getting into the wrong hands. Such information can be

extremely valuable to our adversaries. It can provide intelligence indicators of our daily operations and more importantly, of our future plans and activities.

OPSEC Defined. OPSEC is the process of identifying critical information and subsequently analyzing friendly actions attendant to military operations and other activities to:

- Identify those actions that can be observed by adversary intelligence systems
- Determine indicators that an adversary's intelligence systems might obtain that could be interpreted or pieced together to derive critical information in time to be useful
- Select and execute measures that eliminate or reduce to an acceptable level the vulnerabilities of friendly actions to adversary exploitation

The key to successful OPSEC is identifying indicators that are tip-offs of impending activities, such as stereotyped standard operating procedures or, in some cases, observable deviations from normal operations.

The OPSEC Process. OPSEC is a continuous, systematic process involving security and common sense. It is used to analyze operational plans or programs to detect any weakness which could provide adversaries or potential adversaries useful information. The most important steps in the process are as follows:

- Knowing your unit's mission
- Recognizing the adversary's intelligence threat to your unit
- Being aware of unit's critical information—essential elements of friendly information
- Identifying indicators which might disclose this information

- Developing protective measures to eliminate these indicators
- Being constantly alert for vulnerabilities in your unit

Communication with Vendors (Elicitation, Espionage, and Subversion)

Over time, you will develop a rapport with most of the foreign vendors you deal with. However, be wary of what you say to even the most trusted of contractors. You may find them soliciting information that might be of possible intelligence value. For example, you might be asked: Is there an exercise happening soon? How many people are on the base? Are more personnel coming in soon? Immediately report any suspicious activities to Army's CID [Criminal Investigation Division], Air Force's OSI [Office of Special Investigation], NCIS [Navy Criminal Investigation Service], or local security unit.

Always be wary of what you say when corresponding with your vendor base, either directly or indirectly, as it could be overheard by another person. Additionally, information within contract requirement documents could disclose operational information (completion dates, troop movement, and delivery locations).

You should be cautious when using satellite, cellular phones, and electronic e-mail. These methods of communication are generally not secure.

Contractor Security.



CCOs must be aware that many contractors live in the local area and that doing business with the US government can be dangerous for them and their families. All precautions must be taken to ensure that a contractor's personal information is protected. Prior to publicizing award notifications and other contracting information, check the local policy on what needs to be posted.

Antiterrorism and Security

Threat Factors. There are eight factors you should consider to understand the threat in your environment. These factors are as follows:

- Are there terror groups in the area?
- Are they violent?
- Do they attack Americans?
- How active are they?
- How sophisticated are they?
- How do they operate?
- What is their level of popular support?
- Are there common tactics?

The Department of State publishes an annual report identifying terrorist groups and describing their actions against Americans. You should also ask your intelligence officer or your chain of command for information on terrorist groups in your area. What other sources of information could you use? Be alert to news stories in the paper, on radio, or on television.

If there are terrorist groups in your area, how sophisticated are they? Do they use highly targeted, carefully planned attacks? Or do they explode bombs randomly in public places? If you know how they operate, you may be able to avoid danger spots and detect evidence of an attack before it occurs. For example, some terrorists study their targets for a month or more to carefully plan an attack. If you know how to look for this type of surveillance, you can take steps to protect yourself and report it to your intelligence officer.

It is important to know whether a terrorist group has local popular support. If they do not have popular support, the local population is more likely to warn Americans about things leading up to an attack. The Defense Department and agencies of the US government study these factors to

increase protection of US forces. Your personal awareness can contribute to these efforts by the US government. Always be attentive to what is happening around you. If you are traveling abroad, you should always be aware of your surroundings and be ready to react at the first sign of danger.

Target Selection and Target Identification. Try to see yourself as a terrorist might. Do you stand out as an American military person? Do you hang out with large groups of American troops in public? Does your behavior and the behavior of people you are with draw attention to you as Americans? Could a terrorist see you as an important person? Large groups of Americans can be an inviting target. Terrorists also identify and target specific individuals by name. You should protect your personal information to minimize your exposure. Finally, terrorists might target individuals because they appear important. Terrorists might perceive you to be important even if you do not think you are. To attack you, terrorists generally must perceive you, your associates, or your location as a target. Do not be an easy target. See accompanying DVD: “DoD Terrorism Threat and Force Protection Levels.”

Antiterrorist Countermeasures



Apply antiterrorist countermeasures to the following:

- Air travel
- Government facilities
- Ground travel
- Hostage survival
- Hotel security
- Individual protective measures
- Protecting residence

Personnel Recovery

Personnel Recovery Defined. Personnel recovery is the sum of military, diplomatic, and civil efforts to prepare for and execute the recovery and reintegration of isolated personnel.

Isolated Personnel. US military, Department of Defense civilians and contractor personnel (and others designated by the President or Secretary of Defense) who are separated from their unit (as an individual or group) while participating in a US sponsored military activity or mission, and are (or may be) in a situation where they must survive, evade, resist, or escape.

Personnel Recovery Requirements. The geographic combatant commander and subordinate commands must plan for the possible isolation, capture or detention of contractors by adversarial organizations or governments. Contractors must be included in the personnel recovery plan as demonstrated in JOPES [Joint Operation Planning and Execution System] and subordinate operational orders and plans, as well as contractor integration plans. Regardless of the threat environment, contracts should require contractors to be personnel recovery trained, to prepare *Department of Defense Form 1833, Isolated Personnel Report (ISOPREP)*, and to prepare an evasion plan of action (EPA). The contract should also clearly identify the organization and responsibility for ensuring personnel recovery training is accomplished and the ISOPREPs and EPAs are included in the theater's personnel recovery plan, and recovering and reintegrating isolated contractors.

See *JP 3-50, Personnel Recovery*, for more information on personnel recovery planning, and ISOPREP, and EPA development.

See Chapter 4 for additional information on personnel recovery.

Chapter Acronyms

CAAF – Contractors Authorized to Accompany the Forces
CAOCL – Center for Advanced Operational Culture Learning
CCO – Contingency Contracting Officer
CID – Criminal Investigation Division
DoD – Department of Defense
EPA – Evasion Plan of Action
FOO – Field Ordering Officer
ISOPREP – Isolated Personnel Report
JOPES – Joint Operation Planning and Execution System
NCIS – Navy Criminal Investigation Service
OO – Ordering Officer
OPSEC – Operations Security
OSI – Office of Special Investigation
SOFA – Status of Forces Agreement
US – United States
USAFRICOM – United States Africa Command
USCENTCOM – United States Central Command
USPACOM – United States Pacific Command
USSOUTHCOM – United States Southern Command

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Chapter 9 Domestic and Overseas Disaster Response



Domestic and Overseas Disaster Response

Key Points

- Federal Emergency Management Agency (FEMA) (branch of Department of Homeland Security) is the lead federal agency responsible for coordinating contracting support for domestic emergency operations.
- Department of Defense (DoD) does not augment FEMA or other federal agencies with contracting staff, but can support specific contracting related tasks as directed by the President or Secretary of Defense.
- Military forces operating in domestic support operations should keep contracted support to the deployed force to a minimum to avoid competing with other support efforts for limited local resources.
- Many domestic support operations are handled at the state level. In these cases, Army and Air National Guard units provide military support under state active duty or Title 32 United States Code (USC) control.
- Acquisition and emergency acquisition flexibilities are identified in *Federal Acquisition Regulation (FAR) Part 18* and *Defense Federal Acquisition Regulation Supplement (DFARS) Part 218*.
- Contracting officers are fully authorized to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority.

Introduction

Domestic emergencies affect the public welfare, endanger life and property, or disrupt the usual process of government. Domestic emergencies may result from enemy attack, a natural disaster

(hurricane, earthquake, flood, fire) or a man-made disaster (insurrection or civil disturbance). The faster contingency contracting officers (CCO) can establish a robust contracting support network, the better. Efficient use of time can contribute to saving peoples' lives. Domestic contracting operations after a disaster such as an earthquake, hurricane, tornado, flood, or other severe weather conditions depend on advance planning and preparation. This chapter discusses actions a contracting officer should take when assigned to support relief and recovery operations after a domestic emergency (such as natural or man-made disaster) or a humanitarian assistance mission (such as disaster assistance to a foreign nation). The chapter also provides guidance to assist contracting offices supporting the mission before, during, and after an emergency situation at their home station.

Domestic Emergencies



The Secretary of Homeland Security is responsible for coordinating federal operations with the United States to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. For most emergency operations within the United States, FEMA serves as the lead federal agency and provides support to local, tribal, or state authorities under the provisions of the *Stafford Act* and guidance contained in the *National Response Framework*. The DoD supports these missions by providing Defense Support of Civil Authorities (DSCA). Federal response is shown in Figure 10.

Defense Support of Civil Authorities. Contracting support provided in support of homeland security operations is similar to support provided for foreign contingency contracting support.

Homeland Security Operations. Contracting support to homeland security operations is very similar to contracting support to foreign

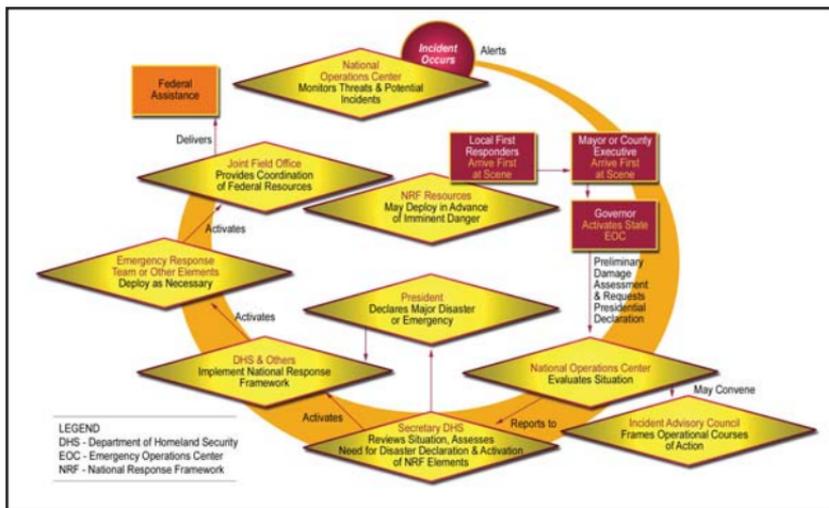


Figure 10. Federal Response

contingencies, but has some nuances that can make it very different than planning and executing contracting support in foreign contingencies.

The National Response Framework (NRF). The NRF is an all-hazards plan that provides the structure and mechanisms for national-level policy and operational direction for incident management to ensure timely and effective federal support. The NRF is applicable to all federal departments and agencies that have primary jurisdiction for, or participate in, operations requiring coordinated federal response. The NRF identifies how federal departments and agencies will respond to state, tribal, or local requests for assistance (RFA). The NRF is coordinated and managed by FEMA. The overall coordination of federal incident management activities is executed through the Secretary of Homeland Security. See http://www.fema.gov/pdf/emergency/nrf/about_nrf.pdf for more information.

Robert T. Stafford Act. The *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Public Law 107-136) (*42 USC Section 5121*),

authorizes the federal government to help state and local governments alleviate the suffering and damage caused by disasters. Requests for DoD assistance may occur under the *Stafford Act* or non-*Stafford Act* conditions. A *Stafford Act* incident is one in which state and local authorities declare a state of emergency and request federal assistance. The *Stafford Act* establishes programs and processes for the federal government to provide major disaster and emergency assistance to states, local governments, tribal nations, individuals, and qualified private nonprofit organizations. A non-*Stafford Act* incident is essentially any of the other emergencies that occur each year which do not necessarily overwhelm state and local authorities, but during which the local authorities would benefit from federal assistance and coordination. The Secretary of Homeland Security is responsible for overall coordination of federal Stafford and non-Stafford incident management activities.

Overview of Disaster Response and Incident Management. This overview illustrates actions federal agencies will likely take to assist state and local governments that are overwhelmed by a major disaster or emergency. Figure 10 provides a graphic display of a federal response under the *Stafford Act*.

Request for Assistance (RFA) Process. Federal agencies or state governors request DoD capabilities to support their emergency response efforts by using a formal RFA process. How DoD handles RFAs depends on various factors, such as *Stafford Act* or non-*Stafford Act* situation, urgency of the incident, establishment of a Joint field office (if a defense coordinating officer or Joint Task Force has been appointed) and originator of the request (incident command, state, regional, or national).

Contracting Support to Domestic Emergency Operations. For domestic emergencies, the *National Response Framework* (<http://www.fema.gov/emergency/nrf/>), defines the key principles, roles, and structures that organize the way we respond as a nation. It describes how communities, tribes, states, federal government, and private-sector partners apply these principles for a coordinated, effective response to

incidents that range from the serious but purely local, to large-scale or catastrophic disasters.

Normally, FEMA is the lead federal agency in domestic emergency operations. When required, US military support assists FEMA or other lead federal agencies as directed by DoD. Generally, this military support comes in the form of organic military forces with limited contracted support. Additional information on disaster or emergency response contracting can be found at www.acquisition.gov. The following are key principles for providing contracting support during domestic disaster and emergency operations:

- DoD does not augment FEMA or other federal agencies with contracting staff, but can support specific contracting related tasks as directed by the President or Secretary of Defense.
- Military forces operating in domestic support operations should keep contracted support to the deployed force to a minimum in order to avoid competing with state and federal agencies for limited local commercial resources.

Title 32 National Guard Operations. There are many domestic support operations that are handled at the state level. In these cases, Army and Air National Guard units provide military support under Title 32 USC, *National Guard or State Active Duty*. When National Guard units deploy within the continental United States, they normally receive contracting support from their home state. In these situations, they will usually have several governmentwide commercial purchase card (GCPC) holders with the unit and, when required, warranted contracting officers. These are generally short-term deployments such as disaster response. When the National Guard has contracting personnel shortages in a particular state, the National Guard Bureau-Joint Task Force-State (NGB JTF-State) coordinates with other states to provide short-term contracting personnel support augmentation to the state requesting assistance. In some cases,

the NGB JTF-State may also form and dispatch a *contracting tiger team* of experienced contracting personnel capable of soliciting, awarding, and administering large service and military construction contracts.

Overseas Disaster Response

While the DoD humanitarian assistance mission may include numerous activities where resources are deployed to a foreign land, from a contingency contracting perspective, the focus is on foreign disaster relief (FDR) and emergency response (ER) operations. When contracting in support of FDR and ER operations, the initial response is treated as a contingency operation (See Chapter 5). As the situation matures, additional guidance is issued regarding changes in the application of available emergency acquisition flexibilities.

Interagency Coordination. During FDR and ER operations, the overall DoD response involves interagency coordination similar to that discussed earlier for domestic emergencies. It may also involve coordination with international bodies (such as the United Nations) and nongovernmental organizations (NGO) such as the International Red Cross. Contracting officers must be aware of NGOs operating in the area, their status with both the host nation and the United States (US) military, and the parameters restricting support to and from the NGO before entering into any contractual arrangement where the NGO is either the supplier or customer.

- DoD components participate in FDR and ER activities:
 - In emergency situations in order to save lives
 - With the concurrence of the Secretary of State
 - When directed by the President

All responses to such crises are coordinated with the Department of State (DOS) and other relevant agencies. DoD, FDR, and ER activities may also be conducted upon receipt of an official request for assistance from DOS, normally the receipt of a disaster declaration notice from the

US ambassador or chief of mission. Within an individual country, the US ambassador or chief of mission are the initial focal points for interagency coordination. He or she will also lead the country team comprised of all US agencies present and involved in the operation.

DoD Role. Similar to a presidential declaration of a domestic disaster, the FDR and ER authorization supports the ability of DoD, through its combatant commanders, to respond to natural and man-made disasters when necessary to prevent loss of lives or serious harm to the environment and to manage the humanitarian considerations of security crises. Other emergency response activities include services and supplies for transportation of emergency assistance, logistical support, search and rescue, medical evacuation, and refugee assistance. Projects also may assist recipient countries and NGOs in building capabilities to respond to emergencies (such as training of first responders), thus reducing the potential need for US military involvement in crisis response.

In foreign emergency operations, the contracting environment closely tracks to a contingency operation in theater and the material presented in previous chapters is applicable. The key differences have been discussed in the section on humanitarian assistance.

Incident Command System (ICS). ICS is a standardized on-scene incident management concept designed specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries. ICS was developed to manage and address the following problems:

- Too many people reporting to one supervisor
- Different emergency response organizational structures
- Lack of reliable incident information
- Inadequate and incompatible communications
- Lack of structure for coordinated planning among agencies

- Unclear lines of authority
- Terminology differences among agencies and unclear or unspecified incident objectives
- An ICS enables integrated communication and planning by establishing a manageable span of control

Emergency Acquisition Authorities



Acquisition and emergency acquisition flexibilities are identified in *FAR Part 18* and *DFARS Part 218*.

Overview. *FAR Part 18, Emergency Acquisitions*, identifies available flexibilities as well as flexibilities that are available only for the following prescribed circumstances:

- Contingency operations. (*FAR 18.201*) (See Chapter 5)
- Defense or recovery from nuclear, biological, chemical or radiological attack. (*FAR 18.202*)
- Incidents of national significance, emergency declaration or major disaster declaration. (*FAR 18.203*)

The contracting flexibilities available during domestic emergencies vary with the specific circumstances involved. For example, when the President issues a major disaster declaration, the thresholds for micro-purchases and simplified acquisitions do not automatically increase. Such increases, however, may be triggered by incident-specific legislation (such as emergency supplemental appropriations acts passed to fund the response to Hurricane Katrina).

Absent the threshold increases available under the specific incidents, contracting officers are fully authorized to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority. Do not assume that a new approach is prohibited simply

because it is not in the FAR. 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. (*FAR 1.102-4(e)*)

Micro-Purchases

(Normally under \$3K¹) See definition at FAR 2.101

- \$15K¹ per transaction within the United States
- \$25K¹ per transaction outside the United States

Small Dollar Acquisitions Under the Simplified Acquisition Threshold (Normally \$3K to \$100K¹)

See definition at FAR 2.101

- \$250K¹ for purchases inside the United States
- \$1M¹ for purchases outside the United States

Commercial Item Acquisitions (Over \$5.5M)

In general, the test program for certain commercial items allows the use of simplified acquisition procedures up to the \$5.5M limit or up to \$11M if used in support of a contingency operation. When the purchase is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the limit may be increased by the agency head to \$11M. See Federal Acquisition Regulation 15.500(e).

Use of Commercial Item Procedures for Acquiring Noncommercial Items

Contingency contracting officers 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 Federal Acquisition Regulation Part 12. This allows noncommercial items to be purchased using the policies and practices applicable to commercial items. See Federal Acquisition Regulation 12.102(f)(1).

Table 8. Quick Reference: Emergency Acquisition Flexibilities for Defense or Recovery from Nuclear, Biological, Chemical, or Radiological Attack, Part 1¹

Caution: Cost accounting standards are generally inapplicable to commercial item acquisitions. However, a contract in an amount greater than \$16M 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 is **NOT** exempt from cost accounting standards or cost or pricing data requirements, (See Federal Acquisition Regulation 12.102(f)(2)).

Suspension of Policy for Unique Item Identification

Contractors are not required to provide DoD unique item identification for items to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See Department of Defense Federal Acquisition Regulation Supplement 211.274-2(b)).

Table 8. Quick Reference: Emergency Acquisition Flexibilities for Defense or Recovery from Nuclear, Biological, Chemical, or Radiological Attack, Part 2

Contracting officers facing emergency situations should seek legal assistance to identify their options.

Emergency Acquisition Flexibilities. The following authorities are available during any of the types of emergency situations described in this section. Table 8 provides a quick response summary for emergency acquisition flexibilities for defense or recovery from nuclear, biological, chemical, or radiological attack.

- Relief from Registration in Central Contractor Registration (CCR). Contracting officers may make award to contractors not registered in the CCR. If practicable, the CCO will modify the contract or agreement to require registration after award. (*FAR 4.1102(a)(3)* and *4.1102(b)*)
- Relief from Use of Electronic Funds Transfer (EFT). Contract payments are exempt from EFT requirements when EFT is not known to be possible, or an EFT payment would not support the objectives of the operation.

- Defense or Recovery from Specific Attacks. Table 8 provides a quick reference to the flexibilities available to support acquisitions that are made, when determined by the agency head, to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack or declared contingency.

Incidents of National Significance, Emergency Declaration, or Major Disaster Declaration. The flexibilities (as follow) are available when one of the following is declared:

- Incident of national significance
- Emergency declaration
- National emergency
- A major disaster

Limited Use of Full and Open Competition. Contracting officers 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*.

Local Area Preferences. The *Stafford Act* further requires preference be given to local organizations, firms, and individuals when contracting in support of major disaster or emergency assistance activities. Preference may take the form of a local area set-aside or an evaluation factor. A local area set-aside restricts competition to offerors residing or doing business primarily in the area affected by a major disaster or emergency.

When using a local area set-aside, the contracting officer may further restrict it to an area smaller than that defined by the disaster or emergency declaration (but cannot extend outside it), or to small business concerns in the restricted area. (*FAR 26.202*) **Note:** use of a local area set-aside is required for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities.

Temporary Waiver of Cargo Preference Act Requirements. In normal circumstances, the *Cargo Preference Act of 1954* requires preference for US-flag vessels when transportation by ocean vessel is necessary. *FAR 47.502(c)* allows waiver of this requirement 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.

Lessons Learned—Avoid Common Pitfalls

Sourcing. Be careful not to overload construction contractors. Limit the amount of short-term emergency projects to each contractor. Some small contractors will promise you the world, but may overextend themselves and then can't progress on all work. Watch for contractor workers jumping from one construction site to another. This is a sure sign that a contractor doesn't have adequate manpower and resources to complete all work on time.

- **Contractor Qualifications.** You may not have the time to do a full background check on all contractors. Additionally, because of the emergency, you will probably waive the bid bond, which further increases your risk when dealing with an unknown contractor. While you cannot exclude sources simply because you are unfamiliar with them, consider limiting your sources to known contractors as much as possible. During your planning, identify several contractors that respond to natural disasters and specialize in all-purpose, emergency recovery contracting.
- **Bid Bonds.** Increased contract termination risk is partially explained by not requiring bid bonds on short-term solicitations. A bid bond may weed out the less qualified contractors; however, the use of emergency procurement procedures may not allow the contractor enough time to secure a bid bond. Unfortunately, you

may not find out your contractor is not qualified until after contract award, when the contractor can't obtain performance and payment bonds. This is a local judgment call, but the use of terminations for convenience is a viable alternative in this situation. Bid bonds can be waived due to the emergency circumstances; however, there are no provisions available to the contracting office to waive performance and payment bonds. If a contractor is unable to obtain this bonding on a construction contract, the contract must be terminated.

Long-Term Issues. The effects of a disaster often last beyond the initial recovery effort. If the disaster causes extensive damage to the installation, recovery can take a long time. While most long-term support involves administering construction contracts, there are other long-term efforts. This section discusses long-term contracting issues and offers suggestions to avoid common pitfalls.

- **Prolonged Emergency Use.** The contracting office must inform senior leadership that emergency buying procedures do not last forever. It gets increasingly difficult to justify emergency projects identified several weeks or months after the disaster occurred. Because of the short turnaround involved with emergency contracting procedures, your customers will try to stretch *emergency* work to the limit. Also, watch for companion contracting projects to emergency repairs (for example, adding garages to damaged units). Emergency procedures can only be used for emergencies. Be prepared to play *hard ball* on this issue.
- **Contract Administration.** Contract administration for emergency projects may be very challenging. Specifications and solicitations will be rushed, resulting in a potentially *loose* contract. If your contract is loosely written, expect a significant increase in change orders. Consider assigning more contract administrators than normal

to the affected parts of the contracting office. Also consider seeking assistance from Defense Contract Management Agency for complex service contracts.

- **Service Contracts.** Several major service contracts may be altered significantly during and after an emergency situation. The grounds maintenance contract, for example, will probably see a large increase in work orders for services such as clearing of debris, removing stumps, and trimming trees. The military family housing contract may also be significantly affected by an increased need for interior minor damage repair work. Monitor new work closely and return service contract terms to their original scope promptly upon satisfactory completion of the recovery-related work.
- **Custodial Contracts.** If there is major structural damage on the installation, organizations may move into temporary facilities. This will require custodial service contracts to be modified to temporarily add and delete services for buildings. This can be both costly and an administrative burden. Some janitorial contracts are paid based on square footage serviced so movement of organizations into smaller quarters or trailers will result in overpayment unless the contract is modified. If you take the approach of swapping building square footage, look at the entire scope of contract changes to ensure the government only pays the contractor for work being performed. Tasks that were required in one building (such as high dusting, window cleaning, and so forth) may not be required in the temporary facilities.
- **Construction Contracts.** Depending on the extent of damage to the installation, your construction contract administration workload will increase and may continue for a prolonged period. If so, consider detailing more administrators to the construction branch until workload levels return to normal.

- Contractor employee. Existing contractor support may also be impacted as employees may have evacuated or are responding to personal needs.

Advance Planning for Emergencies at Your Home Station

Successful domestic contracting operations after a disaster depend on advance planning and preparation.

The remaining sections of this chapter cover topics of interest to those involved in domestic emergency response operations. The primary focus is installation and home station readiness and response. This is in keeping with the current DoD role in domestic emergencies—providing organic military forces (with limited contracted support) to assist FEMA or other lead federal agencies.

No one is ever truly prepared to handle the devastation caused by a natural or man-made disaster, but a viable readiness plan can often significantly soften the impact. When a disaster hits, there is no time to train personnel on how to effectively support recovery efforts. Personnel must be well versed in contingency and emergency contracting procedures ahead of time. Below are some issues contracting offices can prepare and train for in advance of an emergency event.

Topics to Consider. Develop a plan that best suits your particular operating location or area of deployment. If your office is located in an area susceptible to hurricanes or tornadoes, your plan should reflect these possibilities. The plan below is a generic outline of what to do in an emergency, but the outline should be further tailored to fit your specific needs. This plan should also be coordinated and integrated into local support plans. The plan should communicate to senior leadership:

- Contracting's role during contingency conditions.
- How contracting can support installation recovery.

- The tools required to carry out this support.

Consider the following when drafting your office's plan:

- Contingency support for local emergencies.
- Review of installation operation plans (OPLAN).
- Defense Logistics Agency (DLA) Capabilities and Sources. DLA has been formally designated as the DoD executive agent for the following commodities: subsistence; bulk fuel; construction and barrier material; and medical material. DLA contracts contain surge clauses for added flexibility to meet increased demands, including emergency response situations. Your plan should include use of DLA to the fullest extent possible.

In addition to developing and maintaining your local support plan, the chief of the contracting activity will ensure that local contingency plans requiring contracting support for the installation are reviewed and coordinated. These plans typically address local and deployed location conditions ranging from natural disasters and industrial accidents, to local hostilities and acts of terrorism. The contracting activity will review these plans to:

- Determine types of supplies and services that might be needed with short lead time, such as rental vehicles, snow removal, construction materials, and environmental cleanup services.
- Become familiar with local conditions and factors that are unique to the area, such as geological conditions, industrial hazards, weather conditions and problems, civilian emergency services, and so forth.
- Become familiar with installation relocation or alternate work site plans.
- Establish alternate data automation capabilities.

- Determine appropriate actions to continue performance of essential contractor services pursuant to Department of Defense Instruction *(DoDI) 1100.22, Manpower Mix Instruction*.
- Ensure that plans provide for adequate transportation, communications, and office space for contracting and other essential contingency support personnel.
- Ensure inclusion of procedures for receipt and inspection of purchases; facilitate prompt payment and expeditious closeout of contract files.
- Ensure that the process for prioritizing requirements is agreed to before the contingency hits. It is important to have an authority outside of contracting decide which of the competing customer requirements are the most critical. If everything is important, nothing will get done. Suggest that the installation commander form a requirements review board drawn from the senior requirements officials on the installation. This will ensure that the relative importance of the requirements is established in a fair and effective manner.

Local Contracting Support Plans.

Contracting offices will develop a comprehensive local support plan (usually as an annex to the logistics chapter of your installation's plan) to ensure contingency contracting support for tasks assigned by the installation OPLANs. Plans will provide as a minimum:

- A capability for commanders to contact contracting personnel on short notice through the unit emergency action center or command post, and account for all contracting personnel when emergencies occur during duty hours.
- Identification of contingency contracting officers (CCOs—may be identified on unit recall rosters). Also consider how contracting officers within tenant organizations may assist recovery efforts.

- Instructions on where to relocate the contracting office in the event the primary contracting facility is not usable, considering alternate locations on and off the installation.
- A current list of installation emergency plans and their contracting portions.
- Provisions for emergency communications with installation officials, customers, and suppliers.
- Procedures for manual requisitioning of supplies, including required approval authorities, forms, and general processing requirements.
- Provisions for funding requests.
- Instructions for manual purchase registers and recordkeeping.
- Guidance for use of the GCPC for emergency purchases, including keeping a manual purchase log in the absence of connectivity to the automated log at: <https://access.usbank.com/cpsApp1/index.jsp>.
- Procedures for using alternate data automation facilities to restore automated purchasing support and records.
- Instructions for use of unit deployment kit. Include a global positioning system [GPS] even for local disasters.
- Current telephone listings for key regional contracting offices, local suppliers, other nearby installations, and grid maps of the installation and local areas.
- An ongoing process for developing, maintaining, and using currently available source lists for emergency supplies and services, identifying sources available for 24-hour response to emergency requirements. Lists should include the commodity or service contractor or vendor address, point of contact, and 24-hour telephone number. Update the lists quarterly to ensure the sources will be available to help address the contingency or emergency.

- Think ahead and address surge capability for supplies with contractors in order to source critical supplies outside of the local area, such as lumber and roofing materials, as these supplies will quickly be consumed or destroyed in a natural disaster. If there's time to act ahead of the disaster, as with a hurricane, most contractors will preposition items outside the disaster area to facilitate a quick response.
- Procedures for accommodating a spike in contract terminations.
- Procedures for accommodating unusual contract administration requirements.

After Action Reports (AAR).



One of the best ways to plan and prepare for local emergencies is to review applicable AARs from prior emergencies. See the AAR Web site: <https://acc.dau.mil/contingency>.

When reviewing AARs, you should consider:

- The type of emergency involved and the associated needs with each phase of the emergency (such as initial response and 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.
- Management's overall assessment of agency and contractor performance.

Training. FEMA's Emergency Management Institute, in coordination with the Defense Acquisition University and the Federal Acquisition Institute, offers online courses on the National Incident Management System and the Incident Command System for all contracting officers who may be deployed during an emergency. Visit <https://acc.dau.mil/communitybrowser.aspx?id=21708> or www.fai.gov for current course offerings and updates to these supplementary contracting courses.

Power. For planning purposes, you must assume there will be no power to operate office equipment. Access to a portable generator and plenty of fuel should be a top priority. Procure these requirements quickly (if not already acquired), because they will be bought up quickly and hard to find in the local area. Resources are limited and getting your requirement to the top of the installation priority list will be difficult. If you cannot get the approval for a generator, consider relocating your operation to where the generators will be available—hospital, commander's office, command post, and so forth. These arrangements must be worked out in advance and detailed in your contingency plan.

Off-Site Location. You may need to work from an alternate location. Include this option in your continuity of operations plans. If the installation is severely damaged, consider establishing an off-site location. Designate your proposed on- and off-installation alternative contracting sites in advance and incorporate them into the installation contingency plan. When an emergency disaster or event occurs, senior management must quickly decide how and from where you will operate.

Buying Procedures. Your plan should include the buying procedures contracting officers will use during an emergency (See Chapter 4). You can avoid many buying problems by maintaining a current and accurate emergency support source listing covering commodities, services, and construction. This list should include:

- Multiple vendors for all required goods and services
- Telephone numbers (business and home) for each vendor

- An accurate address for each vendor (in case telecommunications are out)
- A 24-hour point of contact for each business

One critical lesson learned is that local vendors may not be able to support the installation in an emergency. Chances are, if the installation is trying to recover, so are local civilian contractors and support agencies. Develop a list of contractors or vendors outside your local area. If other installations are nearby, you may want to exchange vendor lists for wider coverage. Finally, make sure your vendor listings are kept current. Review them quarterly to update and supplement with new sources, based on market research.

Reachback. In a catastrophic disaster or event that produces severe and widespread damage of such a magnitude that the local contracting office cannot execute its mission, contracting offices must coordinate lateral support with other regional contracting offices unaffected by the disaster or event. Contracting offices may be requested to commit contracting resources to the affected area in the form of personnel or reachback contracting support. Contracting offices located in areas that have a greater potential to be affected by a catastrophe should team with other nearby contracting offices (and those capable of providing reachback contracting support because they have similar missions) to plan and prepare for a catastrophic contingency.

On-Scene Operations

Initial contracting actions during a recovery effort are the most critical. How you assess your support capabilities and how widespread the damage is will set the tone for the entire recovery process.

Activating Recall Procedures. Your first priority during an emergency is to get your personnel to work. If you are fortunate, you will be able to contact them by telephone or recall announcements over the radio or television. You may, however, have to go house to house to recall

personnel. The more personnel you are able to recall, the more comprehensive your support will be.

Assessing Damage to the Contracting Office. Quickly assess the physical appearance of the contracting office. Assess its overall functioning capabilities and decide whether to stay or relocate to your alternate site. At a minimum, you must find a site where personnel safely may access tables, desks, and phones. Consider the following when evaluating the contracting office and alternate sites:

- Do you have telephone capabilities?
- Is there electricity?
- What is the extent of damage?
- Is it safe and otherwise suitable for operations?

Organizing the Contingency Staff. Once the personnel recall is complete, assess division support capabilities. If personnel are experienced, set up a *flat* organization, letting your experts buy and administer supply, construction, and service requirements with as little supervision as possible. If personnel are inexperienced, set up a more structured, centralized support organization. Next, designate what roles your personnel must perform. You may have to dedicate staff members to order from preestablished blanket purchase agreements (BPA) or federal schedules and assign another group to acquire other requirements (such as equipment rentals, specialized parts, and supplies from the open market). The following must also be considered:

- **Major Construction and Service Contracts.** Evaluate construction sites for damage and identify any new construction requirements. Assign staff members to coordinate with major service contractors to restore refuse, sanitation, and grounds maintenance support as quickly as possible.

- Assign staff members as *runners* to pick up needed goods in the local area. If, however, local area vendors are unable to support the installation, you may have to send a runner with a CCO outside the local area to procure needed goods and services.

Completing Initial Set-Up Actions.



Once you've established your support organization, there are several immediate actions you need to address:

- Identify the initial requirements you will need to procure.
- Contact the local commander to provide an update on your status and your plan of operations.
- Establish Communications. Find out what is available to you. If phone lines are up, you are in business. If not, obtain access to mobile radios or cellular phones, if available.
- Contact Finance. Make sure money isn't a problem. Have them send over a single obligation authority, if possible.
- Seek Lateral Support. If you are able to communicate via long distance, contact your head of contracting activity (HCA) and neighboring installations to put them on standby for possible support.
- Assess Power Capabilities. If you have no power, consider relocating to a building on the installation that has power. If power is limited, make sure contracting is in line to receive a portable generator. If you have limited power, do not try to activate the standard procurement system or other automated contract writing system. A personal computer with word processing capability is all you need.
- Obtain Transportation. Make sure enough vehicles are available to support your needs. Most initial purchases will be government

pickup. Ensure at least one of your vehicles is capable of transporting large volumes of goods (such as lumber, plywood, and rolls of plastic sheeting). A large pickup truck is ideal.

Managing Initial Purchases. The first 24 hours of recovery will be the most hectic and will require a concentrated buying effort. Before everyone gets too involved in this intense effort, get organized. Make sure you set up a purchase request tracking list and ensure all personnel are aware of the procedures. The simplest and best method is to start with a separate block of purchase order numbers. It is also a good idea to appoint a requisition control point (RCP) monitor. The RCP monitor can manually, or through the use of a personal computer or laptop, track requests throughout the acquisition process. This individual will also be able to detect duplicate requisitions, which are common in the first few days.

- Establish one focal point for each customer. The local commander will have the majority of initial inputs, some of which may not have been properly coordinated. Communicate to the commander that you need one point of contact for all requests.
- Establish comprehensive procedures for receiving goods. Have a central receiving point for all goods brought into the installation. If the goods are delivered directly to the customer, establish a point of contact and instruct the customer on the proper method of receiving goods. Make your customer responsible for the timely submission of paperwork.

Dealing with Rental Requests. During the first week of recovery there may be numerous requests for rental of equipment, vehicles, and temporary living and office quarters. Consider the following factors before filling your customers' requests.

Heavy Equipment. Before renting, first make sure you cannot borrow the equipment from other bases, posts, military installations, or federal agencies. During hurricane recovery operations at Charleston and Shaw Air Force Bases, several pieces of equipment were received from other installations and the Southwest Asia (SWA) transportation unit at Seymour Johnson Air Force Base. The SWA unit alone transported 42 pieces of heavy equipment and vehicles to Shaw and 17 pieces to Charleston. There are two reasons to exhaust all internal sources before renting:

- It is very expensive to rent heavy pieces of equipment and vehicles. Many companies insist their operators accompany their equipment, adding an additional expense.
- If disaster recovery is extensive, rental periods may be long, increasing the risk of damage. If forced to rent heavy equipment or vehicles, ensure they are returned immediately when no longer required.

Leasing Trailers and Temporary Buildings. If installation facilities are damaged extensively, you may need to lease trailers or temporary buildings. Be very careful when leasing trailers. Set minimum acceptable requirements, such as size, amount of functional office space, outlets, doors, windows, and so forth. Stress to commanding officials that you need time to ensure you obtain a quality product. Suggest a site visit before leasing a trailer or temporary building as site preparation may be problematic. Consider electrical distribution needs early on. Another problem common with trailer leases is that the tenants may want to make extensive alterations to make it similar to the permanent facility they previously occupied. This should be avoided—lease trailers strictly for office use. If major alterations are allowed, the installation may end up buying the trailers. This later becomes a real property nightmare, causing funding problems as lease for purchase must use capital investment or construction funds. Ensure that the total lease payments remain lower than

90 percent of the purchase price. Relocatable buildings must be obtained in accordance with DoDI 4165.56. In particular, the lease period normally may not be more than 3 years. In all cases, coordinate requirements through civil engineering or real property management.

Managing Other Service Requirements. Grounds maintenance, refuse, and mess attendant contractors could significantly aid installation recovery with appropriate modifications to their contracts. The grounds maintenance contractor may have the equipment and manpower to help clear debris from the installation. The refuse contractor can play a similar role by increasing the frequency of his pickups and providing several large dumpsters. The mess attendant contractor can aid by going to a 24-hour food service operation.

These increased contractor efforts represent changes to their contracts and compensation will be due; however, you will be dealing with known, and hopefully reliable, sources. Contracting officers can issue change orders (with the appropriate funds) and negotiate the changes when the situation calms down. In some cases, you may have already established unit prices for the increased work. By going to contractors you can rely on, you'll save time and avoid emergency contracts with unknown sources. Tree removal will be one of the largest service requirements for high wind-related emergencies (tornados or hurricanes).

Obtaining Key Commodities. Several supply items will be in high demand during a disaster recovery. Consider establishing BPAs with multiple suppliers within and outside the local area for these commodities if your installation is located in a high-risk disaster area. Some of these are as follows:

- Ice. This may be a hard commodity to find. If power is out, the commissary, food service, and installation residents will need ice to preserve their food. Develop at least one source outside the local area because you will be competing with the local community. Make sure the individual who is receiving the ice monitors the

quantity carefully. All ice and water purchases must be authorized by an approved medical authority (for example, Army veterinarian). See “Approved Food Sources” link on the US Army Veterinarian Web site for locations by theater at <http://vetcom.amedd.army.mil/food.html>.

- Paper Products. With power off, on-base dining facilities will use paper products to feed the troops. Because personnel may be working 24 hours a day, paper product usage will increase substantially.
- Other Common Items (such as lumber, plastic sheeting and chain saws). All will likely be scarce in the local market since you will be competing with the demands of local residents. Again, consider setting up BPAs with multiple suppliers.

Evaluating Construction Needs. The biggest impacts of Hurricane Hugo recovery efforts occurred in the construction branch of each contracting office. Construction work involved assessing and modifying ongoing construction projects damaged by the storm, and the rapid procurement of new construction projects to repair installation damage. Taking the following steps will help minimize construction issues you may encounter during installation recovery:

- Evaluate current construction sites using a team approach—a construction contract administrator and an inspector evaluate the damage at each construction site. After an initial government assessment, meet with the contractor to develop a plan of action. Resolve any storm damage assessment differences between contractors and inspectors early in the process. This will go a long way to prevent future contract claims.
- Once the extent of damage is agreed to by all parties, liability has to be addressed. Natural or man-made disasters are created by an act of God or external source—neither of which are the responsibility of

the contractor. The contracting officer must determine how much additional time is due the contractor, and who is liable to pay for any damages to the construction project or site.

- Be careful when negotiating time extensions. Lost productivity, staging of work, and availability of subcontractors all must be considered. The contractor, if behind schedule at the time of the disaster, may try to pad the estimate in order to catch up with other work commitments. Remember, time is money.
- The liability issue is more involved. As a general rule, the contractor is liable for damage caused to the construction site. FAR clause 52.236-7, Permits and Responsibilities, states "...the contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract." Many contractors believe the government is self-insured and will automatically pay for any rework. This belief is the reason we require contractor's insurance. The enforcement of the permits and responsibilities clause has been upheld in several Armed Services Board of Contract Appeals decisions. *Leitner Construction Company, Inc., AGBCA No. 78-126, April 30, 1979*, and *J. L. Coe Construction Co., Inc., 67- 2BCA 6473, July 27, 1967*, both state "the builder under a construction contract has the risk of loss or damage to the work constructed due to any cause except the fault of the owner until the completion and final acceptance of the work by the owner."
- The permits and responsibilities clause does not, however, give the government carte blanche authority to enforce contractor rework. There may be mitigating circumstances the contracting officer has to consider. For example, if the government has taken beneficial occupancy, it would not be able to enforce the clause. Similarly, the clause may also be rendered void by government-caused delays.

This problem was encountered by the Charleston Air Force Base during recovery from Hurricane Hugo. The construction contractor would have completed the project prior to the disaster if it were not for project delays caused by government design deficiencies. The contracting officer negotiated a settlement to share the risk with the contractor and pay for half of the construction rework caused by the hurricane. Suggestion: installations in areas susceptible to natural disasters should stress the permits and responsibilities clause in all construction solicitations and in preconstruction meetings.

- You can expect several new construction requirements after a natural disaster. Most short-term emergency efforts involve repairing existing facilities. Initially, there may be a hard push from local senior leadership to issue letter contracts to local contractors. Although in some cases this may be unavoidable, use of alternate emergency procedures is preferable for installation construction recovery. Use letter contracts or cost-reimbursement type contracts only as a last resort. Coordinate with your HCA.
- If you can locate two or more sources, use a short-term request for proposals to increase competition and avoid a cost-reimbursement type contract. Shaw and Charleston Air Force Bases used this method very effectively during Hurricane Hugo recovery. After civil engineering developed the statement of work, a government team (contracting officer, construction contract administrator, civil engineer, and inspector) met with prospective contractors at the site. All contractor questions were clarified at the site visit and they were given one day to turn in their proposals. Bid bonds (bid guarantee) were waived; however, performance (secures performance and fulfillment of the contractor's obligations) and payment bonds (ensures vendors pay their employees and suppliers) were required before actual work started on the contract.

- Another alternative to mitigate the increased demand for contracting support is use of preestablished indefinite delivery, indefinite quantity or requirements-type contracts (for example, job order contracts or simplified acquisition for installation engineering requirements contract). These contracts are ideal for small, limited design, repair, and priority projects. You can expand the role of these contracts by using them to repair minor damage to housing units. Be careful not to use these contracts as a cure-all for installation emergency construction needs. The contractors may not be able to keep up with the work demands.

Notes

1. It is anticipated that the simplified acquisition threshold for commercial items will increase. Please check FAR 13.003 for changes in the SAT.

Chapter Acronyms

AAR – After Action Report
BPA – Blanket Purchase Agreement
CCO – Contingency Contracting Officer
CCR – Central Contractor Registration
DFARS – Defense Federal Acquisition Regulation Supplement
DLA – Defense Logistics Agency
DoD – Department of Defense
DoDI - Department of Defense Instruction
DOS – Department of State
EFT – Electronic Funds Transfer
ER – Emergency Response
FAR – Federal Acquisition Regulation
FDR – Federal Disaster Relief
FEMA – Federal Emergency Management Agency
GCPC – Governmentwide Commercial Purchase Card
GPS – Global Positioning System
HCA – Head of Contracting Activity
ICS – Incident Command System
NGB-JTF – National Guard Bureau Joint Task Force
NGO – Nongovernmental Organization
NRF – National Response Framework
OPLAN – Operation Plan
RCP – Requisition Control Point
RFA – Request for Assistance
SWA – Southwest Asia
US – United States
USC – United States Code

Chapter 9 Notes
Domestic and Overseas Disaster Response

Chapter 10

Additional Resources Available on the DVD/Web Site

The *Defense Contingency Contracting Handbook* is designed to provide general guidance on contracting in a contingency environment. However, the contingency contracting world is extremely complex and requires an understanding that is much more extensive than the handbook's scope. The Web site and DVD are designed as a supplement to the handbook and to provide additional resources for the contingency contracting officer.

There are more than 1,000 additional resources available on the DVD/Web site. This chapter highlights the most commonly used resources available via the *Defense Contingency Contracting Handbook* Web pages (Figure 11).

Topic									
A									
Agreements				X		X			
Administration	X	X	X	X	X	X		X	X
Acquisition Planning		X	X	X	X			X	
Advanced Echelon Team (ADVON)			X						
After Action Reports	X		X			X		X	
Alternative Dispute Resolution (ADR)			X	X					
Antiterrorist Countermeasures	X	X				X			
B									
Blanket Purchase Agreements (BPA)	X	X	X	X	X			X	
Bona Fide Needs Rule		X	X						
C									
CCO Authority		X						X	
Changes Clause									

Figure 11. Commonly Used DVD/Web Site Resources—Topical Index, Part 1

Additional Resources Available on the DVD/Web Site



Civilian Deployment				X					
Civil Augmentation Programs (CAP)									
Claims	X	X	X		X		X	X	
Command/Contracting Lines of Authority	X	X		X	X	X		X	
Commercial Contracts		X	X	X				X	
Conflict of Interest		X		X		X		X	
Construction Contracts	X	X	X	X		X	X	X	X
Constructive Changes									
Contingency Contracting Support Phases									
Contract Closeout	X	X	X	X					X
Contract Types		X							
Cost-Reimbursement		X							
Definite Quantity	X	X	X						
Fixed Price			X						
Incentive Type				X					
Indefinite Delivery	X	X	X						
Letter Contracts	X	X	X					X	
Requirements Contracts									
Contracting Officer's Representative (COR)	X	X		X				X	
Contractor Security	X	X				X			
Contractors Authorized to Accompany Forces (CAAF)	X	X		X		X	X		
Cost Analysis	X	X	X	X		X		X	
Cultural Awareness		X		X	X	X			
Cure Notice	X	X						X	
D									
Determination & Findings (D&F)		X						X	
Disputes and Appeals	X	X			X	X	X	X	
Domestic Emergency Operations		X	X		X				
E									
Emergency Acquisition Authorities	X	X		X		X	X		
Ethics		X		X	X	X	X		
CTIP	X	X				X	X		
Fraud Indicators		X		X		X			

Figure 11. Commonly Used DVD/Web Site Resources—Topical Index, Part 2

Chapter 10

Additional Resources Available on the DVD/Web Site



Gift Prohibition	X		X				X	X	
F									
Field Ordering Officer (FOO)/Ordering Officer (OO)		X		X		X		X	X
File Management	X							X	
Forms	X	X			X				X
AF Form 9	X	X							X
AF Form 4009									X
DD 360 CARS									X
DD 1149									X
DD 1155									X
DD 1348									X
DA 3953									X
NAV SUP 1250-2									X
SF 44	X	X	X					X	X
SF 1449	X	X	X						X
Funding	X	X	X	X	X	X		X	X
Accounting Classification Codes		X							
Fiscal Law			X			X			
Foreign Disaster Assistance			X						
Fund Cites									
Government Financing Options									
Fund Types	X	X	X	X	X	X	X	X	X
CCIF									
CERP		X	X						
MILCON			X				X		
NAF	X		X			X	X	X	X
ORF							X		
O&M									
OHDACA			X						
G									
Government Estimates		X		X		X			
Governmentwide Commercial Purchase Card (GCPC)	X	X	X	X		X	X	X	X
H									
Host Nation Support (HNS)			X						
Humanitarian and Civic			X						

Figure 11. Commonly Used DVD/Web Site Resources—Topical Index, Part 3



Assistance (HCA)									
I									
Imprest Fund and Third Party Drafts	X	X	X	X			X	X	
Initial Set-up Actions	X	X	X	X			X	X	
J									
JCC I-A Info		X		X	X	X		X	
J&As	X	X		X		X		X	
L									
Lease or Purchase		X				X	X	X	
Liquidated Damages								X	
M									
Maintenance and Repair		X							
Modifications	X	X	X	X				X	X
Market Research		X	X	X		X		X	
N									
NATO Tasking							X		
O									
Options	X	X				X		X	
P									
Past Performance		X		X		X		X	
Performance-Based Requirement	X	X							
Preconstruction Conference		X							
Predeployment Planning	X	X	X	X					
Pricing	X	X	X	X		X		X	
Certified Cost and Pricing Data				X		X		X	
Fair and Reasonable	X	X				X		X	
Price Negotiation Memorandum (PNM)	X	X		X				X	
Procurement Appropriation	X	X							
Proof of Delivery			X			X			
Protests	X	X	X	X	X	X			
Purchase Request (PR)	X	X	X			X		X	X
PR Logs		X						X	
Q									
QAE	X	X		X				X	
QASP				X				X	
R									
Ratifications	X	X	X	X		X		X	

Figure 11. Commonly Used DVD/Web Site Resources—Topical Index, Part 4

Chapter 10

Additional Resources Available on the DVD/Web Site



Receiving Reports		X				X		X	X
Release of Claims								X	
Request for Proposal (RFP)/Quote (RFQ)		X						X	
Requirements Packages	X	X				X		X	
S									
Services	X	X		X		X	X	X	
Shipments of Supplies and Services						X	X		X
Show Cause Notice	X	X						X	
Simplified Acquisitions	X	X	X		X		X	X	X
Site Survey	X		X						
Sole Source		X						X	
Source Selection	X	X	X	X		X		X	X
SOW	X	X		X		X		X	
Supplies	X	X				X		X	
T									
Technical Evaluations		X		X				X	X
Terminations	X	X	X	X		X		X	
Thresholds									
Transportation						X	X		X
U									
UCAs		X				X		X	
Unauthorized Commitments/Ratifications			X			X		X	
W									
Warrants-CCO Appointments		X				X		X	

Figure 11. Commonly Used DVD/Web Site Resources—Topical Index, Part 5

Chapter 11

Using the Supplemental DVD/Web site

There are over 1,000 additional resources available on the *Defense Contingency Contracting Handbook's* supplemental DVD/Web site, but in the fast-paced contingency contracting environment, finding that much-needed resource may take too much time. This chapter provides the general structure of the DVD/Web site. It also provides tips to reduce search time on the Web site.

The DVD is an exact copy of the Web site (with respect to contents). The DVD exists for those who do not have Internet capability. The DVD is enclosed in an envelope as Attachment 1 at the back of the *Defense Contingency Contracting Handbook*. Please note that you must click the file labeled “Start.html” to launch the DVD. The *Defense Contingency Contracting Handbook* Web site is located at <http://www.acq.osd.mil/dpap/pacc/cc/jcchb/>.

General Organizational Structure

Figure 12 provides a screenshot of the homepage of the Web site. The navigation bar on the right-hand side provides an outline of the resources pages. The most important thing to know is that the DVD/Web site organizes resources two ways: 1) type of resource (training, checklists), and 2) topic (protests, ethics). For example, if you are looking for training on ethics, you can click on the training section and search for *Ethics*. You may also click on the Topical Index section and search for *Ethics Training*.

The quickest way to get a sense of what is available on the Web site is to click on the navigation bar's Topical Index section. This resource page provides a comprehensive list of all topics with additional resources. Figure 13 provides a snapshot of the Topical Index Web page. Topics are organized alphabetically and the Web page provides granularity on the type of resource available. It also identifies which chapter this topic is associated with.

The screenshot shows the homepage for the Defense Contingency Contracting (DCC) Handbook. The page is titled "Defense Contingency Contracting" and is part of the DPAP (Defense Procurement and Acquisition Policy) website. The breadcrumb trail indicates the path: DPAP > Program Acquisition and Contingency Contracting > Contingency Contracting > Contingency Guide Introduction & Chapter Overview.

Key features and callouts include:

- Resources by Type:** A callout points to a "HOT TOPICS" section with links for "Student's News", "FAR", "DFARS", "JP A & S", and "Click to view".
- Chapters:** A callout points to a list of chapters, including "Introduction", "Foreword", "Chapter 1: Ethics, Fraud Indicators, Standards of Conduct, and Procurement Integrity", "Chapter 2: Authorities and Structure", "Chapter 3: Contingency Funding and Requirement Process", "Chapter 4: Planning and Guidance", and "Chapter 5: Contracting Processes".
- DCC Handbook Chapters:** A callout points to the "Chapters" section header.
- PDF of DCC Handbook:** A callout points to a PDF icon and text: "Click on the PDF icon for a PDF version of the entire DCC Handbook."
- Resources by Topic:** A callout points to a "Topical Index" section.
- Other Resources:** A callout points to a "What's New!" section with links for "Pub's & Regs", "Forms", "Quick Customer Trg", "Training", "Questions", "Games", "Scenarios", "Checklists", "Guides", "D&Fs", "SOIs", "Policy", and "Other Resources".

Figure 12. Snapshot of Defense Contingency Contracting Homepage

Chapter 11

Using the Supplemental DVD/Web site

The screenshot shows the 'Defense Procurement and Acquisition Policy' website. The main content area is titled 'Index to see the Resource Icon Legend'. Below this is a table with the heading 'TYPE OF RESOURCE (LEGEND)'. The table has columns for various resource types and rows for different categories like 'Confingency Contracting', 'Acquisition Policy', etc. A callout bubble points to a legend icon in the table header, stating: 'Organizes type of resource by chapter, games, guides, and more!'. Another callout bubble points to the right-hand navigation bar, stating: 'For convenience, the right-hand side navigation bar allows you to jump to different alphabetical sections.' The navigation bar lists sections: A-C, D-F, G-J, K-N, O-R, and S-Z.

Figure 13. Snapshot of Topical Index Page

The *Defense Contingency Contracting Handbook* chapters are also available on the DVD/Web site. Though the actual handbook is invaluable as a transportable resource, there are some advantages to accessing the chapters online if mobility is not an issue. Figure 14 is a snapshot of the

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Appendix 1

Key Points of Contact

My deployed SAT is: _____

My deployed micro-purchase is: _____

My J&A authority is: _____

My legal support is: _____

My deployed supervisor is: _____

My deployed J4 is: _____

My main finance POC is: _____

My paying agent is: _____

My DCMA POC is: _____

My DCAA POC is: _____

My DLA POC is: _____

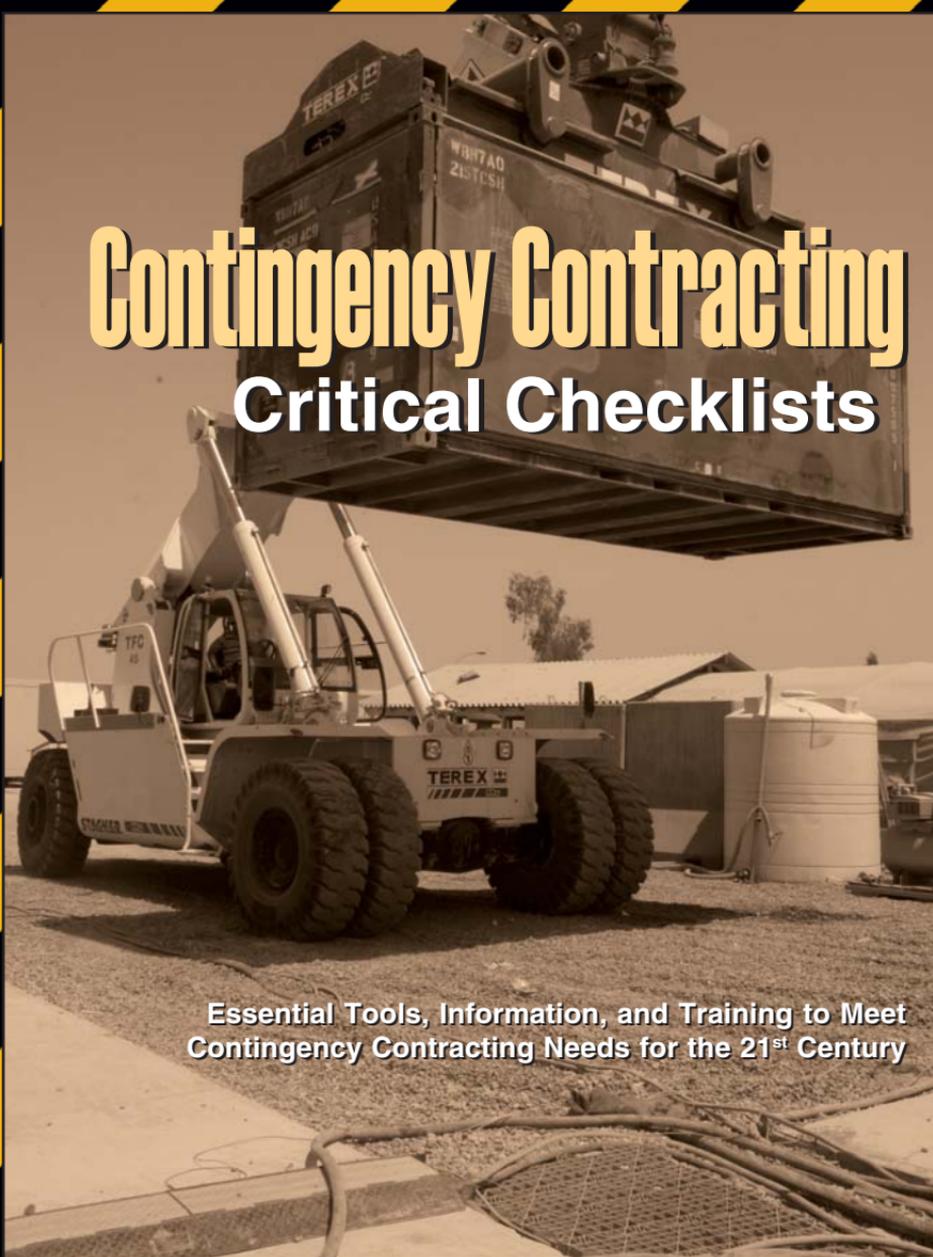
My cognizant HCA is: _____

Chief of contracting: _____

Senior contracting official: _____

Embassy ECA: _____

Nearest contracting offices: _____

A white Terex forklift is shown in an industrial setting, lifting a large, dark metal container. The forklift has "TEREX" and "TFC 45" visible on its side. The container has "TEREX" and "WHITAD ZASTOSH" visible on its top. The background shows a building and a large white tank. The entire image is framed by a yellow and black diagonal hazard stripe border.

Contingency Contracting Critical Checklists

Essential Tools, Information, and Training to Meet
Contingency Contracting Needs for the 21st Century

Questions concerning the use, update, or replacement of the attached DVD should be sent to:
Defense Procurement and Acquisition Policy, Contingency Contracting, 3060
Defense Pentagon, Room 3B855, Washington, DC 20301-3060, Commercial: 703-
699-3726, ContingencyContracting@osd.mil

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Note: checklists are arranged in alphabetical order.

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Blanket Purchase Agreements Checklist

Item Number	Reference: FAR 13.303, <i>Blanket Purchase Agreements (BPAs)</i> Reference: FAR 16.7, <i>Agreements</i>	Applicable and Present
1	Does it meet the circumstances at FAR 13.303-2?	
2	Is it prepared in accordance with FAR 13.303-2?	
3	Are the proper clauses incorporated into the BPA (services, commodities)?	
4	Is there a statement that the government is obligated only to the extent of authorized purchases made under the BPA? (FAR 13.303-3)	
5	Is there a statement that specifies the dollar limitations for each individual purchase under the BPA? (FAR 13.303-3)	
6	Are individuals who are authorized to purchase under the BPA identified? (FAR 13.303-3)	
7	Have you given customer training on ordering procedures and the use of delivery tickets?	
8	Did you give a letter to the contractor identifying who is authorized to place calls on BPA and explain how it works?	
9	Before placing a call on an authorized procurement request, ensure that funds are available.	
10	Are you reconciling orders and invoices with the using organization on a regular (monthly) basis?	
11	Are you conducting annual inspections on BPA files?	

Construction Contract Checklist

Item Number	Note: Procedures may differ based on the AOR. Contact responsible component OPR for command-specific procedures.	Applicable and Present
PRE-AWARD DOCUMENTS		
1	Is there a certified purchase request and independent government cost estimate (required if exceeding the SAT)? (FAR 36.203 and DFARS PGI 236.203)	
2	Is the project for minor construction (O&M funds (10 USC 2805, unspecified minor construction) up to \$750K or \$1.5M to correct conditions that present a threat to life, health or safety)?	
3	Has CE and contracting reviewed/determined if a stand-alone construction contract or an IDIQ contract (roofing, asbestos removal, paving) is most appropriate?	
4	Does the requirements package include a SOW, specifications, drawings, performance period, and liquidated damages?	
5	Is a source list and market research results included?	
6	If other than full and open competition, are the appropriate justification and approval/related correspondence included?	
7	Did the solicitations state the magnitude of the construction project (requirement in terms of physical characteristics and estimated price range)? (FAR 36.204 and DFARS 236.204)	
8	Were competitive proposals utilized in order to allow for discussions? (FAR 6.401(b)(2))	
9	Are the appropriate determinations/approvals and determinations and findings included? (liquidated damages, <i>Buy American Act</i> , construction materials exception) (FAR 11.501 & FAR 25.202)	
10	Are the invitation for bid/request for proposal/amendments included in the file?	
11	Is a pre-bid, pre-negotiation conference/site visit required/documented?	

12	Were late bids/proposals handled appropriately? (FAR 14.304 and FAR 15.208)	
13	Are unsuccessful bids/proposals and related correspondence filed?	
14	<p>Are the proper FAR construction clauses included in the solicitation?</p> <ul style="list-style-type: none"> -52.236-2, Differing Site Conditions -52.236-3, Site Investigation and Conditions Affecting the Work -52.236-5, Material and Workmanship -52.236-6, Superintendence by the Contractor -52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements -52.236-11, Use and Possession Prior to Completion -52.246-12, Inspection of Construction 	
15	<p>Are the following DFARS construction clauses included in the solicitation?</p> <ul style="list-style-type: none"> -252.236-7000 Modification Proposals–Price Breakdown -252.236-7001 Contract Drawings and Specifications -252.236-7002 Obstruction of Navigable Waterways -252.236-7003 Payment for Mobilization and Preparatory Work -252.236-7004 Payment for Mobilization and Demobilization -252.236-7005 Airfield Safety Precautions -252.236-7006 Cost Limitation -252.236-7007 Additive or Deductive Items -252.236-7008 Contract Prices–Bidding Schedules -252.236-7009 Option for Supervision and Inspection Services -252.236-7010 Overseas Military Construction–Preference for United States Firms -252.236-7011 Overseas Architect-Engineer Services–Restriction to United States Firms -252.236-7013 Requirement for Competition 	

	Opportunity for American Steel Producers, Fabricators, and Manufacturers	
16	Are the contractor's proposal and revisions, representations and certifications (RFP Section K), and correspondence filed?	
17	Was an evaluation of transportation cost factors completed? (DD Form 1654)	
18	Was a price negotiation memorandum or price competition memorandum completed?	
19	Was a legal review obtained if exceeding the simplified acquisition threshold?	
20	Was the solicitation reviewed by the appropriate approval authority?	
	AWARD DOCUMENTS (CONTRACT/MODIFICATIONS)	
21	Were appropriate performance and payment bonds/waivers and alternative payment protections for construction contracts accomplished?	
22	Was the contract reviewed by the appropriate approval authority?	
23	Was the contractor informed not to commence work until a Notice to Proceed was issued? Was a notice to proceed issued?	
24	Was the SF 1442 utilized/properly executed/distributed for construction contracts over/under the SAT or Optional Form 347 under the SAT?	
25	Was the appropriate automated system documentation accomplished (SPS, FPDS NG)?	
26	Were letters sent to unsuccessful bidders/offerors?	
27	Is a copy of the contract and contract modifications included in the file?	
	POST AWARD DOCUMENTS	
28	Contract bonds (payment & performance bonds/consent of surety/contract bond) (FAR 28.1)	
29	Was a post-award orientation conference/pre-performance construction conference held?	

CONTRACT ADMINISTRATION		
30	Did the contractor submit a progress schedule and progress reports?	
31	Before progress payments are made, are invoices compared with progress reports separately submitted by both the contractor and contracting officer technical representative and are copies of payment vouchers included in the file?	
32	Are the drawings, specifications/statement of work, and material approval submittals on file?	
33	Did the CCO evaluate contractor performance and prepare a performance report using the DD Form 2626, <i>Performance Evaluation</i> (Construction), for each construction contract of \$550K or more or more than \$10K, if the contract was terminated for default?	
34	Was a punch list of discrepancies provided and resolved before final inspection and acceptance?	
35	Does the file include final inspection and acceptance documentation from the requiring activity?	
36	Is a release of claims submitted and signed by the contractor after contract completion?	
37	Is there a contract completion statement (DD Form 1594)?	

Contract Administration Checklist

Item Number	Note: Procedures may differ based on the AOR. Contact responsible component OPR for command-specific procedures.	Applicable and Present
1	Is the contract file organized in a logical, standard format? (FAR 4.803)	
1a	<p>Table 15-1. Uniform Contract Format (FAR 15.204-1)</p> <p>Section Title</p> <p>Part I. The Schedule</p> <p>Section A–Solicitation/contract form</p> <p>Section B–Supplies or services and prices/costs</p> <p>Section C–Description/specifications/statement of work</p> <p>Section D–Packaging and marking</p> <p>Section E–Inspection and acceptance</p> <p>Section F–Deliveries or performance</p> <p>Section G–Contract administration data</p> <p>Section H–Special contract requirements</p> <p>Part II. Contract Clauses</p> <p>Section I–Contract clauses</p> <p>Part III. List of Documents, Exhibits, and Other Attachments</p> <p>Section J–List of attachments</p> <p>Part IV. Representations and Instructions</p> <p>Section K–Representations, certifications, and other statements of offerors or respondents</p> <p>Section L–Instructions, conditions, and notices to offerors or respondents</p> <p>Section M–Evaluation factors for award</p>	
2	Were post award notices provided within 3 days after award to offerors included in the competitive range? (FAR 14.409)	

3	Were offerors debriefed subsequent to contract award and within 5 days after the contracting office received a request for debriefing? (FAR 15.506)	
4	Does the contract file contain all documents required to organize and sufficiently document the actions taken, and the supporting rationale, for the entire procurement process? (FAR 4.803)	
4a	<ul style="list-style-type: none"> -Purchase request (PR), acquisition planning information, and other presolicitation documents -Justifications and approvals, determinations and findings, price negotiation memorandums, and supporting documents -Evidence of availability of funds -List of sources solicited -Independent government estimate -Copy of the solicitation and all amendments -Copy of each offer or quotation and related abstract and records of determinations concerning late offers or quotations 	
4b	<ul style="list-style-type: none"> -Source selection documentation -Cost and pricing data and certificates of current cost or pricing data -Packing, packaging, and transportation data -Justification for type of contract -Required approvals of award and evidence of legal review -Notice of award 	
4c	<ul style="list-style-type: none"> -The original of the signed contract, all contract modifications, and documents supporting modifications -Notice to unsuccessful bidders or offerors and record of any debriefing -Post-award conference records -Orders issued under the contract -Quality assurance records -Bills, invoices, vouchers, and supporting documents 	

	<ul style="list-style-type: none"> -Record of payments or receipts -Receiving documentation 	
5	Is an effective COR program in place? (DFARS 201.602-2)	
5a	Do CORs understand that their role in the contracting process is to ensure the government receives/accepts only products that fully conform to contract requirements?	
5b	Are CORs appointed in writing to include rank or grade, and the applicable contract number? Does the appointment letter include: defined scope and limitations of the COR's responsibility, period of performance for which the appointment is effective, states that the COR may be personally liable for unauthorized commitments?	
5c	<p>Do CORs understand the scope of their duties?</p> <ul style="list-style-type: none"> -Monitor contractor performance IAW terms and conditions of the contract and notify the CCO of performance -Perform inspections -Verify corrected deficiencies -Perform government acceptance (IAW contractual requirements) -Liaison with CCO and the contractor -Submit performance reports (DFARS 201.602-2) 	
5d	<p>Are COR files properly documented with the following:</p> <ul style="list-style-type: none"> -A copy of the commander's nomination letter -A copy of the appointment letter from the CCO -A copy of the quality assurance surveillance plan (QASP) -Any correspondence from the CCO which amends the letter of appointment -A copy of the contract or pertinent part of the contract and all modifications -All correspondence initiated concerning performance of the contract 	

	-All correspondence to and from the CCO and the contractor -Documentation pertaining to the COR's acceptance of performance of services, including reports and other data (DFARS 201602-2)	
6	If changes needed to be made to the contract, were all policies and procedures followed?	
6a	Were changes in terms and conditions for commercial items made only by written agreement of the parties? (FAR 43.103(a))	
6b	Were modifications within the general scope of the contract? (Review SOW)	
6c	Were funds secured for modifications that increased the contract price? (FAR 43.105)	
6d	Was SF 30 used for: (FAR 43.301) -Any amendment to a solicitation -Change orders issued under the changes clause of the contract -Any other unilateral contract modification issued under a contract clause authorizing such modification without the consent of the contractor -Supplemental agreements/bilateral modification (see 43.103) -Removal, reinstatement, or addition of funds to a contract.	
7	If a contractor submitted a claim to the CCO, were all policies and procedures followed?	
7a	Were claims submitted, in writing, to the CCO for a decision within 6 years after accrual of a claim?	
7b	Did the CCO issue a written decision on any government claim initiated against a contractor within 6 years after accrual of the claim?	
7c	Did the contractor provide the certification specified when submitting any claim exceeding \$100K, stating the following: "I certify that the claim	

	is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable; and that I am duly authorized to certify the claim on behalf of the contractor"? (FAR 33.207(c))	
7d	Did the CCO review the claim for accuracy? (math errors, wrong quantities)	
7e	Did the CCO attempt to negotiate contractor's final price? (FAR 33.204)	
7f	If an agreement could not be met, did the CCO issue a final decision to a contractor's claim? Did the final decision include the following: (FAR 33.211) -A description of the claim or dispute -A reference to the pertinent contract terms -A statement of the factual areas of agreement and disagreement -A statement of the contracting officer's decision, with supporting rationale -Inform the contractor of the right to appeal (FAR 33.211)	
7g	Did the CCO furnish a copy of the decision to the contractor via certified mail, return receipt requested, or by any other method that provides evidence of receipt? (FAR 33.211 (b))	
8	Are contract files which have been closed out and are under the SAT, retained for 1 year? Are all other files being retained as required? (FAR 4.703/local policy)	

Expedited Contracting Procedures in Contingency Operations Checklist

Item Number	Note: Procedures may differ based on the area of responsibility (AOR). Contact responsible component office of primary responsibility (OPR) for command-specific procedures.	Applicable and Present
	The FAR and DFARS provide flexibility to permit expedited contracting actions to satisfy urgent and compelling or emergency requirements that support contingency, humanitarian, or peacekeeping operations. However, such circumstances do not provide blanket waivers of regulatory requirements, nor do they eliminate the need to maintain required controls and documentation.	
	If a policy or procedure, or a particular strategy or practice, is in the best interest of the government and is not specifically addressed in the FAR, nor prohibited by law (statute or case law), executive order or other regulation, government members of the [acquisition] team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority. Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound. (FAR 1.102-4(e))	
	When looking at expediting a contract action did you look at the following authorities and tools. Also refer to FAR Part 18 and DFARS Part 218	

1	Contractors are not required to be registered in the Central Contractor Registration (CCR) contracts awarded by deployed contracting officers in contingency, humanitarian, peacekeeping operations, and emergency operations. Contracting officers in emergency operations; contracts to support unusual or compelling needs; awards to foreign vendors for work performed outside the US; and micro-purchases that do not use electronic funds transfer (EFT). (FAR 4.1102) (also see FAR 26.205 and www.ccr.gov for the Disaster Response Registry)	
2	Exceptions for issuing synopses of proposed contract actions when this would delay award and seriously injure the government. (FAR 5.202(a)(2))	
3	Limiting sources in solicitations to less than full and open competition for urgent and compelling requirements where the government would be seriously injured if it did not limit competition to the maximum extent practicable. (FAR 6.302-2, PGI 206.302(2) and FAR 13.106-1(b))	
4	Streamlined procedures and a broad range of goods and services may be available under Federal Supply Schedule contracts (FAR Subpart 8.4), multi-agency BPAs (FAR 8.405-3(a)(4)), or multi-agency, indefinite delivery contracts. (FAR 16.505(a)(7))	
5	Purchase from Federal Prison Industries, Inc (FPI) is not mandatory and a waiver is not required if public exigency requires immediate delivery or performance. (FAR 8.605(b))	
6	Notification not required when changes in Ability One specifications or descriptions are required to meet emergency needs. (FAR 8.712(d))	
7	A determination can be made to not enforce qualification requirements when an emergency exists. (FAR 9.206-1)	

8	The Defense Priorities and Allocative System (DPAS) was established to facilitate rapid industrial mobilization during a national emergency. (FAR Subpart 11.6)	
9	Using oral solicitations. (FAR 13.106, and FAR 15.203(f)) Note that this does not relieve the contracting officer from complying with other FAR requirements	
10	Awarding letter contracts and other forms of undefinitized contract actions to expedite the start of work. (The head of contracting activity [HCA] must determine that no other type of contract is appropriate.) (FAR 16.603)	
11	Conditions for using interagency acquisition under the <i>Economy Act</i> (FAR Subpart 17.5)	
12	Awarding contracts to the SBA on a sole source or competitive basis for performance by eligible 8(a) firms. (FAR Subpart 19.8)	
13	Awarding contracts to Historically Underutilized Business Zone (HUBZone) or Service-disabled Veteran-owned Small business (SDVOSB) small business concerns on a sole source basis. (FAR 19.1306)	
14	Justification of overtime approvals retroactively in emergency circumstances. (FAR 22.103-4(i))	
15	Applications of policies and procedures of FAR Subpart 25.4, <i>Trade Agreements</i> may not apply to acquisition awarded using other than full and open competition. (FAR 25.401(a)(5))	
16	Waiver of requirement to obtain authorization prior to use of patented technology in circumstances of extreme urgency or national emergency. (FAR 27.204-1)	
17	Waiving bid guarantees. (FAR 28.101-1)	
18	Authorization of advance payments to facilitate national defense for actions taken under Public Law 85-804 and conditions. (FAR Subpart 50.1 and FAR 32.405)	

19	Appropriateness of no-setoff provision to facilitate the national defense in a national emergency or natural disaster. (FAR 32.803(d), <i>Assignment of Claims</i>)	
20	Exception for providing payment through electronic funds transfer. (FAR 32.1103(e)(1) and DFARS 232.7002(a)(4))	
21	Protest overrides for urgent requirements where the government will be seriously damaged if award is delayed. (FAR 33.104)	
22	Rental requirements do not apply to government production and research property that are part of an approved FEMA program. (FAR 45.301)	
23	Policies and procedures for amending contracts in order to facilitate national defense under the extraordinary emergency authority under PL 85-804. (FAR 50.103-2(a),(b), and (c))	
24	Use of the advance Military Interdepartmental Purchase Request (MIPR). (DFARS PGI 208.7004-3)	
25	Issuing a written job order for emergency work to a contractor who had previously executed a master agreement to avoid endangering a vessel, its cargos or stores, or when military necessity requires it. (DFARS 217.7103-4, 252,217-7010, and PGI 217.713-4)	
26	Not delaying an urgent immediate buy for spare parts. (DFARS PGI 217.7506, paragraph 1-105(e))	
27	Exceptions to prohibition on storage of disposal of non-DoD owned toxic or hazardous materials on DoD installations. (DFARS 223.7102(a)(3) and (7))	
28	Exceptions to the <i>Berry Amendment</i> requirement for items produced in the US. (DFARS 225.7002-2)	
29	Exemptions to restrictions on foreign contracting with a country subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control for buys up to \$15K. (DFARS 225.701-70)	

30	Exceptions to Rights in technical data restrictions for emergency repair or overhaul during urgent or compelling circumstances. (DFARS 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)	
31	Procedures for duty-free import of equipment or materials in urgent situations in Spain when copies of contract not available. (DFARS PGI 229.7001)	
32	Exception for foreign vendors to submit payment requests in electronic form for awards for work performed outside the United States or to support unusual or compelling needs. (DFARS 232.7002(a)(2) and (5))	
33	Obtaining mortuary services in an epidemic or other emergency. (DFARS 237.7003(b) and 252.237-7003)	
34	The micro-purchase threshold increase in support of a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (FAR 2.101 and 13.201 (g))	
35	The SAT threshold in support of a contingency operation or to facilitate defense against or recovery from nuclear biological, chemical, or radiological attack. -\$250,000 (Inside the United States) -\$1M (Outside the United States) (FAR 2.101)	
36	Additionally SAP are authorized for the purchase of commercial supplies and services exceeding the SAT but not exceeding \$11M, including options. (FAR 13.500(e))	
37	The SF 44 may be used for higher dollar purchases to support a contingency operation. (FAR 13.306 and DFARS 213.306(a)(1)(B))	
38	Treating the acquisition of supplies or services as an acquisition of commercial items. (FAR 12.102(f)(1) and 13.500(e))	

39	Set aside to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities. (FAR 6.207 and FAR Subpart 26.2)	
40	Waiving the provisions of the <i>Cargo Preference Act</i> of 1954 in emergency situations. (FAR 47.502 c)	
41	Contracting officer qualification requirements for DoD employees or member of the armed forces who are in a contingency contracting force. (DFARS 201.603-2(2))	
42	Exceptions to the normal limitations on price ceilings, definitization schedules, and obligation percentages for letter contracts and other forms of undefinitized contract actions. (DFARS Subpart 217.74)	
43	Exception for DoD unique identification for items used to support a contingency operation. (DFARS 211.274-2(b))	
44	Use of the governmentwide commercial purchase card for an overseas transaction in support of a contingency operation, training exercises in preparation for an overseas contingency, humanitarian, or peacekeeping operation. (DFARS 213(c3) and (5))	
45	Use of the governmentwide commercial purchase card in support of a contingency operation or humanitarian or peacekeeping operation to make a purchase that exceeds the micropurchase threshold but does not exceed the SAT. (DFARS 213.301(3))	
46	Authorized use of imprest funds and third party drafts at or below the micro-purchase threshold in support of a contingency operation or a humanitarian or peacekeeping operation. (DFARS 213.305-3(d)(iii)(A))	
47	Head of contracting activity determinations in lieu of head of the agency. (FAR 2.101; 12.102(f); 13.201(g); 13.500(e); and 18.2)	
Note: Additional information is available on the Topical Index of the DVD/Web site.		

Gratuities Checklist

Item Number	Note: Procedures may differ based on the AOR. Contact responsible component OPR for command-specific procedures.	Applicable and Present
1	REFERENCE: FAR 3.101-2, <i>Solicitation and Acceptance of Gratuities by Government Personnel.</i>	
2	PERSUASION. Attempt to persuade the contractor not to give the gratuity to the CCO. Explain to the individual the restrictions place on US Procurement Officials. (A gratuity violates the <i>Joint Ethics Regulation</i> and gives the perception of violating the principles of competition and fair and impartial evaluation of offers.)	
3	DO NOT OFFEND. If the contractor is offended by the attempt identified above, accept the gratuity. (Make a mental note of what [cash, gold, and so forth], when [date and time], where [location], who [name of individual, contractor, any witnesses], and how much [quantity and value of gratuity] for documentation purposes.)	
4	SAFEGUARD. Once you have accepted the gratuity, it must be safeguarded. If necessary, request local finance personnel put the gratuity in the finance office safe. (Be sure to get a receipt if this method is utilized.)	
5	LEGAL. Turn the gratuity over to judge advocate general [JAG] as soon as possible. (Get something in writing stating the item was turned over to them.)	
6	DOCUMENTATION. Write a memorandum for record (MFR) identifying as much information as possible to include all of the information in Item #2, legal advice, and the approximate value of the item. (Refer to example below.)	
7	BUYING THE ITEM. If the CCO wants the item, check with the legal office about the possibility of buying the item at a reasonable cost.	

MEMORANDUM FOR RECORD

Date

SUBJECT: Received gratuity from

1. On 200X, at approximately hours, subject contractor attempted to give me a gratuity. I attempted to not accept this gratuity and explained to the contractor the restrictions placed on US procurement officials IAW the Joint Ethics Regulation (DoD 5500.7-R). Additionally, I explained how accepting such a gratuity gives the perception of violating the principles of competition and fair and impartial evaluation of offers (IAW FAR Part 6 and FAR 13.104).

2. Subject contractor became greatly offended (maybe expand on culture here?). Therefore, I accepted the gift on behalf of the US government and secured it in for proper disposition. At , the value of the gift was ascertained to be approximately \$ and given to accounting and finance office personnel to be placed in their safe. A receipt was obtained for record (if applicable, refer to attachment).

3. Legal advice will be obtained regarding this matter at the earliest. Further questions concerning this unsolicited gratuity should be directed to the undersigned at extension XXX-XXXX.

Contracting Officer

Atch

Receipt from finance

J&A Checklist

Item Number	Note: Procedures may differ based on the AOR. Contact responsible component OPR for command-specific procedures.	Applicable and Present
1	Each justification must contain sufficient information to justify the use of the cited exception. (FAR 6.3032(a)). The J&A needs to be a well composed document that fully justifies the agency action. It is often the critical document subjected to judicial scrutiny in litigation opposing the agency action.	
2	Does the J&A specifically identify the document as a <i>justification for other than full and open competition</i> ?	
3	Does the J&A provide identification of agency and the contracting activity? (FAR 6.303-2(a)(1))	
4	Does the J&A provide description of supplies or services required to meet the agency's need with estimated dollar amount? (FAR 6.303-2(a)(2))	
5	Does the J&A list contemplated contract type? (FAR 6.303-2(a)(2))	
6	<p>Does the J&A determine which statutory authority cited applies:</p> <ul style="list-style-type: none"> a. Only one responsible source and no other supplies or services will satisfy agency requirements (FAR 6.302-1) b. Unusual and compelling urgency: applies in a situation when an unusual and compelling urgency precludes full and open competition and delay in award would result in serious injury, financial or other, to the government (FAR 6.302-2) c. Industrial mobilization; engineering, developmental, or research capability; or expert services (FAR 6.302-3) d. International agreement (FAR 6.302-4) e. Authorized or required by statute (FAR 6.302-5) f. National security (FAR 6.302-6) g. Public interest (FAR 6.302-7) <p>Note: Other than full and open competition shall not be justified on the basis of the following:</p>	

	<p>a. A lack of advance planning by the requiring activity</p> <p>b. Concerns related to available funds or funds expiring</p>	
7	<p>Does the J&A provide reasons for authorities cited? Describe how this action requires the use of the authority cited.</p> <p>a. If the authority FAR 6.302-1 is cited, identify the proposed or potential contractor(s), and include a discussion of the proposed contractor's unique qualifications for fulfilling the contract requirements. Additionally, explain how and why no other type of supplies or services will satisfy agency requirements.</p> <p>b. If the authority is FAR 6.302-2, include the required delivery schedule and lead-time involved as well as a discussion of the serious injury to the government which would result if award of a contract is delayed. Must explain harm that the government would be seriously injured unless permitted to limit sources. J&As for FAR 6.302-2, may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition. (FAR 6.302-2(c)(1))</p>	
8	<p>Does the J&A describe the efforts made to obtain competition? Provide a description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies. (FAR 6.303-2(a)(6))</p>	
9	<p>Does the J&A provide a determination by the CCO that states the anticipated cost to the government will be fair and reasonable? (FAR 6.303-2(a)(7))</p>	
10	<p>Does the J&A provide a market survey or reasoning for market research not being conducted? (FAR 6.303-2(a)(8))</p>	
11	<p>Does the J&A list any other facts supporting the use of other than full and open competition? (FAR 6.303-2(a)(9))</p>	

12	Does the J&A list sources, if any, that expressed, in writing, an interest in the acquisition? (FAR 6.303-2(a)(10))	
13	Does the J&A provide a statement of actions, if any, the agency took to increase competition? (FAR 6.303-2(a)(11))	
14	Does the J&A have a CO certification that indicates the justification is accurate and complete to the best of the CO's knowledge? (FAR 6.303-2(a)(12))	
15	Does the J&A have a technical/requirements certification that the supporting data (Including: minimum needs, schedule requirements, or other rationale for other than full and open competition) is complete and accurate? (FAR 6.303-2(b))	

Item Number	Letter Contracts Checklist Reference: FAR 16.603	Applicable and Present
1	Use letter contract when:	
2	The government's interest demand the contractor be given a binding commitment so work can start immediately.	
3	Negotiating a definitive contract is not possible in sufficient time to meet the requirement.	
4	Do you have approval/authority from HCA to enter into letter contracts?	
5	Is Clause 52.216-23, <i>Execution and Commencement of Work</i> (mandatory) included in contract?	
6	Is FAR Clause 52.216-24, <i>Limitations of Government Liability</i> (mandatory) included in contract? (shall not exceed 50% of estimated cost)	
7	Is Clause 52.216-25 <i>Contract Definitization</i> (mandatory) included in contract?	
8	Do you have a negotiated definitization schedule IAW FAR Clause 52.216-25?	
9	Is definitization done within 180 days after the date of the letter contract or before 40% of the work has been completed IAW FAR 16.603-2(c)(3)?	
10	Is definitization done with a modification (SF 30)?	

Contingency Micro-Purchase Checklist

Item Number	Note: Procedures may differ based on the AOR. Contact responsible component OPR for command-specific procedures.	Applicable and Present
1	Is funding certified and available? (FAR 32.702)	
2	Did CCO verify requirement cannot be met through required sources of supplies/services? (FAR 13.201(e) and FAR 8.002)	
3	Will the purchase of supplies or services be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack? (13.201(g)(1)) Note: see thresholds below.	
3a	-\$15K in the case of any contract to be awarded and performed, or purchase to be made, inside the US. (13.201(g)(1)(i)) -\$25k in the case of any contract to be awarded and performed, or purchase to be made, outside the US. (13.201(g)(1)(ii))	
4	To the extent possible, did the CCO distribute micro-purchases equitable among qualified suppliers? (FAR13.202(a)(1))	
5	If micro-purchase was awarded without soliciting competitive quotes, did CCO determine the price was reasonable? (FAR 13.202(a)(2))	

Modification Checklist

Item Number	Answers to the following questions should be in the affirmative:	Applicable and Present
1	The work contained in the modification is within the scope of work of the statement of work.	
2	The dollar value of the modification is within scope. The impact of a dollar change for purpose of scope determination should be evaluated on a case-by-case basis; however, a change of 25% in dollar value can be used as a guide.	
3	If the work and/or dollar values are determined to be out of scope, has a J&A been executed? (FAR 6.304)	
4	Funding being used for the modification is consistent with the work being done (correct fund type, year, purpose). If applicable, bonafide need considerations have been addressed. In addition, the funding document meets the requirements to address environmental considerations.	
5	The change in contract value that would result from the modification does not exceed any statutory levels approved for the project. This review prevents entering into an <i>Antideficiency Act</i> violation.	
6	An independent government technical assessment of the impact of the modification in terms of manpower and labor hours and other direct costs is accomplished by the functional and provided to the contracting officer for use in developing the pre-negotiation objective.	
7	The contracting officer has developed a prenegotiation objective?	
8	Legal review has been accomplished for all actions for which legal review is required?	
9	The modification indicates, by contract section, the changes made to the contract.	
10	Changes to Section B and the contract amount shown on the award form area have been	

	presented in a format that indicates the nature and impact of the dollar change by expressing that the dollar value changed from: ____ to ____ for a total change of _____. This format applies to other areas of the contract (Section H, Award Fee Plan, and so forth) where dollar values have been changed.	
11	If the dollar value of the modification increases a threshold to a level that requires the inclusion of a required clause(s) not previously in the contract, the required clause(s) are included in the modification.	
12	For bilateral modification actions, the contractor's signature was obtained prior to execution by the contracting officer. (FAR 43.103)	
13	For change order actions, a release statement substantially the same as that found at FAR 43.204(c)(2) was included in the modification. (FAR 43.204(c)(2))	
14	The SF 30 cites the proper authority for the modification action. (FAR 43.301(a)(1))	
15	Was a price fair and reasonable determinant made? (FAR 13.106-3; 15.4)	
16	Was a DD 350 or a DD 1057 (when applicable) completed and filed? (DFARS 204.6)	
17	Does the contract file include a price negotiation memorandum if the price changed?	
18	Was an MFR explaining the purpose accomplished?	
19	For bilateral modifications, was the Contractor's Statement of Release included? (FAR 43.204(c)(2))	
Exercising an Option		
20	Were the appropriate clauses and provisions included in the solicitations and contracts that provide for the exercise of options? (FAR 52.217-8 and 52.217-9)	
21	Does the original contract include FAR clause 52.217-9?	

22	Was the modification authority cited as FAR 52.217-9?	
23	Did the CO give the contractor a preliminary written notice to extend the term of the contract by the number of days specified in FAR clause 52.217-9?	
24	Before exercising an option, did the CO make the determinations IAW FAR 17.207 (c-f)?	
25	Is a dated and signed D&F in the file reflecting exercising or nonexercising of options by the CO?	
26	Was written coordination from the functional commander indicating the desire to exercise the option received by the CO?	
27	Contracts under a collective bargaining agreement—was the union notified prior to the option being exercised?	
28	Was the option exercised within the appropriate timeframe?	
29	Was the option to extend services clause exercised by the time specified by FAR clause 52.217-8?	
30	If the CO elects to extend services IAW “Option to Extend Services” clause was the total of all extensions 6 months or less?	
31	Was the option NTE? If so, was the effort covered by the option synopsis IAW FAR 5.201 and was a J&A for the effort approved	
Preparing Option Package		
32	Was a D & F prepared which addresses the following areas:	
33	Funds are available.	
34	Requirement fulfills an existing government need.	
35	Most advantageous method of fulfilling the government need, price and other factors considered.	
36	Option was synopsis at time of award unless exempted.	

37	A new solicitation fails to produce a better price or more advantageous offer.	
38	Informal analysis of prices or examination of the market indicated that the option price is better than prices available in the market or that the option is a more advantageous offer.	
39	Option price was part of the initial award.	
40	Relationship of the option price to the price for the initial contract period.	
41	Adequacy of competition at the time of initial award as compared to that at the time of the option period.	
42	Changes in the general economy that could affect cost of performance.	
43	Market research of other contracting activities or industry as to substantive changes in bid prices for similar service at their activities.	
44	Is an MFR in the contract file reflecting the market research performed?	
45	Potential savings in administrative costs by exercising the option as compared to the administrative cost for awarding a new contract.	
46	Time between award of contract and exercise of option is so short that it indicates the option price is the lowest price obtainable or the more advantageous price.	
47	Exercise (IAW terms of the option) requirements of FAR 17.2 and 6.	
48	Was a Determination of Contractor Responsibility included in the file?	
49	Was CCR checked to verify the status of the contractor and is a copy in the contract file?	
50	Was Excluded Parties Listing checked and is a copy with the contract file?	
51	Was a unilateral modification issued?	
52	Was the appropriate wage determination incorporated into the modification (if applicable)?	

53	If funds are not available, was the Availability of Funds clause inserted into the summary of changes? Note: Availability of Funds clauses cannot be unilaterally added to the options modification if they are not in the contract.	
54	Upon completion of award, was a DD Form 350 completed, signed and filed in the contract? Was a copy provided to the Plans and Programs Flight?	
55	Is the amount of the modification, when funded at the same time exercised, the same as Line B8 of the DD Form 350?	
56	When the modification is mailed is a copy of the return receipt card maintained once returned?	
57	Is an inventory conducted if GFP is included on the contract and required by the contract?	

Ratification Checklist

Item Number	Note: Procedures may differ based on the AOR. Contact responsible component OPR for command-specific procedures.	Applicable and Present
	<p>This ratification briefing should be given to all CCO customers as soon as possible. The seriousness of acting without proper authority cannot be overemphasized. Don't do it. Let the contracting officer help you. The contracting office is responsible for contracts with all firms wanting to sell goods and services to the installation. To protect the interests of the government and prevent unauthorized contracting, the following measures should be taken:</p> <ol style="list-style-type: none"> 1. If you are not a contracting officer, make sure the vendor or business representative knows you cannot make the purchase. 2. Do not give advance contracting information to any contractor. Civil engineering planners may ask about pricing, but will not obtain written quotations. Planners must make it clear to vendors that they are not authorized to purchase materials and that the information being sought is for planning purposes only. 3. Personnel without contractual authority will not make statements regarding contractual matters which may be construed as a commitment by the government. 	
1	Does the file include statement from officer or employee describing circumstances?	
2	Did the CCO include all orders, invoices, or other evidence of transaction?	
3	Does the file contain the commanding officer's (of the person who committed the UAC) endorsement concurring that the commitment should be ratified and measures taken to prevent reoccurrence of unauthorized commitment?	
4	Was a determinations and findings completed by the CCO? (FAR 1.602-3)	
5	Were supplies or services provided and accepted by the government? (FAR 1.602-3(c)(1))	

6	Does the ratifying official have the authority to enter into a contractual commitment? (FAR 1.602-3(c)(2))	
7	Would the resulting contract otherwise have been proper if made by a warranted contracting officer? (FAR 1.602-3(c)(3))	
8	Did the contracting officer determine the price to be fair and reasonable? (FAR 1.602-3(c)(4))	
9	Did the CCO recommend payment and did legal counsel concur? (FAR 1.602-3(c)(5))	
10	Were funds available at the time the unauthorized commitment was made and are funds presently available? (FAR 1.602-3(c)(6))	
11	Is the ratification in accordance with any other limitations prescribed under agency procedures? (FAR 1.602-3(c)(7))	
12	Was the ratification reviewed and approved in accordance with the HCA delegations but in no cases lower than the chief of contracting office? (FAR 1.602-3(b)(2)(3))	
13	If authority was above the CCO, did the ratifying official with the proper authority perform a price fair and reasonable and unauthorized commitment determination and findings? (FAR 1.602-3(2))	
14	Was a legal review obtained and included in the file?	
15	Was a contractual document executed by the ratifying official?	
16	<p>The following is an example of a ratification file index:</p> <p>SAMPLE RATIFICATION FILE INDEX</p> <ol style="list-style-type: none"> 1. PURCHASE REQUEST/FUNDING DOCUMENTS 2. MEMO FOR RECORD (MFR) FROM CUSTOMER WITH COMMANDER'S ENDORSEMENT TO INCLUDE DISCIPLINARY ACTIONS AND ACTIONS TAKEN TO PREVENT RECURRENCE OF FUTURE UNAUTHORIZED ACTIONS 3. MFR FROM RESOURCE MANAGER 	

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|--|--|
| <ol style="list-style-type: none">4. RECEIVING REPORTS AS REQUIRED5. INVOICE (S)6. PRICE FAIR AND REASONABLE AND UNAUTHORIZED COMMITMENT DETERMINATION & FINDINGS FROM CONTRACTING OFFICER WITH LEGAL REVIEW7. FINDINGS OF RATIFYING OFFICIAL8. CONTRACTUAL DOCUMENTS (EXECUTED DOCUMENT FROM RATIFYING OFFICIAL) TO INCLUDE A PURCHASE DESCRIPTION, STATEMENT OF WORK, OR SPECIFICATION9. DOCUMENTATION DIARY10. RATIFICATION CHECKLIST | |
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Requiring Activity Checklist

Item Number	Note: Procedures may differ based on the AOR. Contact responsible component OPR for command-specific procedures.	Applicable and Present
1	Are requiring activities advised of the lead times necessary to initiate and complete the contractual obligation of funds? Contracting lead time is the administrative time required to process a requirements package, prepare the solicitation documents, advertise the acquisition, receive and analyze bids or offers, obtain necessary approvals, and issue a contractual document.	
2	Is teaming between the CCO and requiring activity a routine practice in preparing contract packages and program strategies?	
3	Did the contracting office provide training material to include a customer guide to the requiring activities?	
4	Did the CCO provide the requiring activity with customer education/training which explain contracting procedures (purchase requests, COR training/duties, lease purchase, MIPR, BPA, GCPC, ratification)? Did the CCO provide help with developing requisitions for requirements, develop and maintain <i>open</i> lines of communication, and stress the importance of meaningful partnerships with customers and contractors to ensure the goals and objectives of the mission are met to the maximum extent practicable?	
5	Has the requiring activity initiated advance planning with the CCO? Planning for a requirement is the single most important element in receiving accurate, efficient, and timely contracting support. CCOs need to be involved at the first sign of an upcoming requirement. Even if there is a doubt as to whether or not a need can be satisfied through contracting channels, the CCO should assist with determining the appropriate course of action as dollar thresholds dictate distinct lead times for different requirements.	

6	<p>Is the requiring activity aware of the importance of ethics? DODD 5500-7, <i>Joint Ethics Regulation</i> and FAR, Part 3, provide detailed guidance and explain what is expected of all personnel. Acceptance of gifts or favors may result in administrative action or criminal prosecution. A small minority of contractors and potential contractors are willing to attempt to <i>put a favor in the right hands</i> in order to gain an advantage in receiving contract awards. Whenever a gratuity is presented to you, if you can, without offending the offeror, do not accept it—state that if you accept the offer or gift, you can no longer do business together. Play it safe and be safe! Whenever you are in doubt, call the contracting office or consult the legal office.</p>	
7	<p>Does the requirement need validation before it can be submitted to contracting for contract award action? Sometimes, these are not contracting-directed or contracting-owned processes. Examples include the Joint Acquisition Review Board (JARB) which validates requirements and Program and Budget Advisory Committee (PBAC) which validates funding.</p>	
8	<p>Is the requiring activity aware of the contracting office procurement process?</p>	
8a	<ul style="list-style-type: none"> -Contracting receives approved purchase request -PR is assigned to a CCO, based upon service, construction, or commodity -Contract processing lead times are based upon the dollar threshold, CCO ensures the appropriate funding type (color of money) is used (Title 10, 22) -The CCO reviews what kind of item or service is needed and how well was the item described: statement of work, performance work statement, salient characteristics -What does market research reflect (the quality of vendor base/industry) -Make sure you are available to the CCO to answer questions and obtain a technical evaluation if required -Contracts are awarded and distributed (via e-mail to the customer, finance, and vendor if possible) 	

9	<p>If someone from a requiring activity becomes involved, directly or indirectly, in an unauthorized purchase action, he or she should immediately contact the contracting office to begin appropriate contract ratification actions.</p>	
10	<p>Is the requiring activity aware of the four basic methods of contracting? They include micro-purchases (supplies or services which do not exceed the micro-purchase threshold of up to \$25K outside continental United States [OCONUS]), simplified acquisitions as prescribed in Part 13 of the Federal Acquisition Regulation for purchases of supplies or services), formal contracts (typically for contracts exceeding the simplified acquisition threshold), and orders under existing contracts (blanket purchase agreements (BPAs), indefinite delivery contracts (IDIQ) or General Services Administration (GSA) Federal Supply Schedules)</p>	
11	<p>Is the requiring activity aware of the conditions which permit other than full and open competition (FAR Part 6.302) to include: -Only one responsible source. Only one responsible source and no other supplies or services will satisfy agency requirements -Urgency. Unusual and compelling urgency precludes full and open competition and delay in award of contract would result in serious injury, financial or other, to the government? Note: It is important to remember that classifying a product or service as being critical, lack of timely logistics planning, or a short-notice requirement does not justify award of a sole source contract.</p>	
12	<p>Is the requiring activity aware of the documents which typically comprise a complete requirements package? A requirements package is a general statement that refers to all the documents required by the CCO before a contracting action is initiated. A requirements package consists of the following documents:</p>	

12a	<p>-Purchase Request/Funding Documentation (complete physical and mailing address, delivery or need date—ASAP is not a date! Delivery time per estimate is usually equal to period of performance, complete POC information, e-mail, office phone number and cell number, detailed item description, remember to include shipping [plus or minus 20 percent to 30 percent])</p> <p>-Statement of Work (SOW). A SOW is required for contracts for services (including construction) that do not require significant technical requirements or ongoing advice and surveillance from technical/requirements personnel.</p> <p>-Performance Work Statement (PWS). A PWS is a statement of work for performance-based acquisitions that describes the required results in clear, specific and objective terms with measurable outcomes.</p>	
12b	<p>-Quality Assurance Surveillance Plans (QASP) to accompany SOW/PWS. QASPs should specify all work requiring surveillance and the method of surveillance.</p> <p>-Specifications primarily required for commodities (supplies, equipment) purchases and drawings (for construction projects). A specification is a description of the technical requirements of the service or supply by size, color, weight, material, and should include the intended use. Specifications shall state only the government's minimum needs and be designed to promote full and open competition.</p> <p>-Generic purchase descriptions are a less involved explanation, written in simple language, with one exception—brand names are prohibited without separate written justification. Consider the following: kind of material, electrical data, dimensions (minimum and maximum as appropriate), principles of operation, restrictive or significant environmental conditions, essential operating conditions, special features, if any, intended use.</p>	

12c	<p>-“Brand name” or “equal” descriptions must include, in addition to the brand name and part number, a general description of those salient physical, functional, or performance characteristics of the brand name item that an “equal” item must meet to be acceptable for award. If a particular brand and part number is the only acceptable product, the purchase request must be accompanied by a justification stating the reason no substitutes are acceptable. Bear in mind that the time it takes to find a vendor and receive delivery of the brand named item(s) is usually a longer lead time than purchasing a substitute item that may not be exactly the same but can be purchased on the local economy (usually specialized items are manufactured and distributed from Europe or the US)</p> <p>-Independent government cost estimate (IGE) is required for all requirements with an anticipated total value greater than \$1M. The estimate is developed by the end-user in the functional area responsible for the requirement and must accompany the purchase request package.</p>	
12d	<p>The government estimate should never be prepared using a vendor’s <i>price quote</i> rather should be based on previous purchases, similar purchases, and internet research. Estimates should include a complete breakout of each element, to include labor costs, material costs, along with all shipping costs.</p>	
13	<p>Is the requiring activity aware of receipt of items/accountability?</p>	
13a	<p>Contractor invoices should flow to the contracting office to review/certify correct for payment (ensures accuracy and completeness). The contracting office will return inaccurate or incomplete invoices to the vendor with an explanation and instructions to resubmit. After CCO certification, the assigned CCO will forward the invoice to the applicable requiring activity with instructions to complete the receiving report (DD250).</p>	

13b	Receiving Reports (DD250)—requiring activity role—organizations receiving deliveries must document which items were received. Documentation can be accomplished via completing a receiving report, DD Form 250. Proper documentation ensures the contractor gets paid correctly and efficiently. This is especially important in a deployed environment where there is constant turnover. Upon receipt of a request to complete a receiving report, the end user shall: Review invoice received from CCO. If no discrepancies found, complete DD250 in a timely manner (within 72 hours). If discrepancies are found, coordinate with the CCO to make corrections.	
13c	Finance's Role. Finance will review and inspect invoice, DD250, and any other supporting documents, and reject any invoices with discrepancies. A properly completed invoice and receiving report is required before a contractor is scheduled for payment. Arrange payment for the vendor per finance procedures.	
14	Is the requiring activity aware of what a contract modification is?	
14a	The contracting office should be notified immediately upon discovering that a change may be required in a contract. Generally, contract changes require the same supporting documentation as for the original contract (funding document, SOW/PSW updates). Only CCOs are authorized to effect contract changes which fall into two broad categories: changes within the scope of the contract and changes outside the scope of the contract. Changes within the scope of the contract are those that affect the work originally specified in the contract. The contracting officer is empowered to make such changes upon receipt of proper documentation. The CO must give consideration to the type of work on the original contract and increase in dollar value in comparison to the change being considered. Changes outside the scope of contract are only authorized upon existence of special	

	<p>circumstances, presented by the using activity in the form of a written justification. Otherwise, directives classify such changes as a "new contract" and require separate contracting action. Out-of-scope changes must be made via a supplemental agreement.</p>	
15	<p>Is the requiring activity aware of the duties and responsibilities of a contracting officer representative (CORs)?</p>	
15a	<p>CORs are qualified individuals appointed by the CCO to assist in the technical monitoring or administration of a contract. CORs must be appointed for any contract with significant technical requirements which require ongoing advice and surveillance from technical or requirements personnel. CORs are not generally appointed for simplified acquisitions unless the requirement is complex enough in nature to warrant such action such as those that require a PWS. The requiring activities nomination must include the nominee's qualifications, including training and contract administration experience. The CO will ensure that the COR understands how to properly execute COR responsibilities. Key responsibilities of the COR include: Verify contractor performance IAW terms and conditions of the contract; perform inspections; verify corrected deficiencies; perform government acceptance; liaison with CCO and the contractor; monitor contractor performance and notify CCO of deficiencies; submit performance reports and perform property surveillance.</p>	

SF 44 Checklist

Item Number	Reference: FAR 13.306/DFARS 213.306–SF 44 <i>Purchase Order-Invoice-Voucher</i>	Applicable and Present
1	Are all of the following satisfied:	
2	Amount of purchase is at or below micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of a contingency operation.	
3	Supplies or services are immediately available.	
4	One delivery and one payment will be made.	
5	Its use is determined to be more economical and efficient than other simplified acquisition procedures.	
6	Are SF 44s controlled and safeguarded?	
7	Has training on use and control been provided?	
8	Were any prompt payment discounts offered? If so, are they on the order?	
9	Is accounting line on order and properly certified?	
10	Are all signatures accomplished—purchaser, seller (order and invoice), and accounting?	
11	Was distribution of copies made correctly?	
12	If cash paid with delivery: #1 copy CCO gives to Finance, #2 Vendor Copy, #3 Finance copy, #4 CCO copy (remain in book)	
13	If no cash paid with delivery-#1 Seller copy (Invoice), #2 Seller copy (his records), #3 Accounting, #4 CCO (remains in booklet)	
14	Was copy of #1 made for file?	

Simplified Acquisition

Item Number	Note: Procedures may differ based on the area of responsibility (AOR). Contact responsible component office of primary responsibility (OPR) for command-specific procedures.	Applicable and Present
1	Purchase Request (FAR 32.702) a. Electronic or original funding documentation in file? b. Funds increase letter in file (if applicable)? c. Fund cite matches award and sufficient funds available?	
2	Perform Market Research/Competition a. Review required sources of supply? (FAR 8.002) b. If <simplified acquisition threshold, did the CCO consider solicitation of at least three sources to promote competition to the maximum extent practicable? (FAR 13.104(b))	
3	Are acquisitions >micro-purchase threshold publicized IAW agency regulations? (FAR 5.101, FAR 5.202(a)(12) and FAR 5.303 exceptions)	
4	Has the acquisition plan been approved by the appropriate authority and does it meet the content requirements of FAR 7.105 and DFARS 207.105?	
5	Did the CCO forward actions as required to the appropriate board/council (Joint Contracting Support Board/Acquisition Strategy Council) for review and approval as required?	
6	Were determination and findings (FAR 1.704) included as required (commercial contract, fair and reasonable price, time and materials contract, period of performance extension, exercise of options) (See accompanying handbook DVD for a summary listing of D&Fs)?	
7	Solicitation a. Is a copy of the solicitation in file? (If synopsis/solicitation is done, place that in file) b. If a service > \$2500 and SCA is applicable, was an SF 98 to include applicable wage determination? (If SCA exempt, include FAR 52.222-48 in solicitation which must be completed and returned with proposal. SCA nonapplicability memo signed by CCO must also be in file)	

8	<p>Were the following solicitation clauses included?</p> <p>a. 52.212-1, Instructions to Offerors-Commercial Items, by Reference</p> <p>b. 52.212-2, Evaluation-Commercial Items, Full Text (only used if you have specific technical evaluation criteria)</p> <p>c. 52.212-3, Offeror Representation and Certifications-Commercial Items, Full Text</p> <p>d. 52.212-4, Contract Terms and Conditions – Commercial Items, by Reference</p> <p>e. 52.212-5, Contract Terms and Conditions to Implement Statutes, Full Text (applicable clauses must be checked)</p> <p>f. 252.204-7004, Required Central Contractor Registration, by Reference</p> <p>g. 252.212-7000, Offeror Reps&Certs-Commercial Items for all solicitations exceeding \$100,000, Full Text</p> <p>h. 252.212-7001, Contract Terms and Conditions to Implement Statutes, Full Text</p>	
9	<p>Were the following solicitation evaluation issues addressed:</p> <p>a. Did the CCO notify the potential quoters or offerors of the basis on which award will be made? (FAR 13.106(1)(a)(2))</p> <p>b. If evaluation factors are used, were the proposals evaluated solely on the factors contained in the solicitation? (FAR 12.602(a))</p> <p>c. If using FAR Part 15 source selection procedures, were all factors and significant subfactors that will affect contract award and their relative importance clearly stated in the solicitation; is the general approach for evaluating past performance information described; and did the CCO insert one of the phrases in 15.304(e)? (FAR 13.106, 15.304(d)(e) and 15.204-5(c)) d. 52.212-4)</p> <p>d. Was past performance an evaluation factor for contract award? If not, was the CO's rationale documented in the contract file?</p> <p>e. If only one offer was received and the price is deemed reasonable based on adequate price competition, was a determination approved one level</p>	

	above the CO? (FAR 15.305) h. Was the source selection decision documented? (15.308)	
10	Was the solicitation and contract reviewed by an appropriate review authority?	
11	Were well-supported pricing objectives developed prior to entry into negotiations?	
12	If only one offer was received and the price is deemed reasonable based on adequate price competition, was a determination approved one level above the CCO?	
Contractor Responsibility		
13	Was the publication, "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" checked before placing vendors on the solicitation mailing list? (FAR 9.405)	
14	Are procedures established for vetting of non-US vendors? (FRAGO, acquisition instruction)	
15	If a CCO determines that a compelling reason exists to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are— - Only a debarred or suspended contractor can provide the supplies or services. - Urgency requires contracting with a debarred or suspended contractor. - The contractor and a department or agency have an agreement covering the same events that resulted in the debarment or suspension and the agreement includes the department or agency decision not to debar or suspend the contractor. - The national defense requires continued business dealings with the debarred or suspended contractor. (DFARS 205.409(a))	
16	Was the local vendor database updated to determine contractor responsibility?	
Award Documentation		
17	a. Did the CCO accomplish a Price Reasonableness Determination? (FAR 13.106-3 (a), 14.408-2, or	

	<p>Subpart 15.4, as applicable)</p> <p>b. Did the CCO include the signed abstract or offer evaluation form (PD2) and offers?</p> <p>c. Is the CCR information (http://www.ccr.gov/index.cfm) for prospective awardee (Print Screen for Verification) for awards to US firms included?</p> <p>d. Did the CCO accomplish the Debar Check (http://epls.arnet.gov/) (Print Screen for Verification) for US firms?</p> <p>e. Does the contract file documentation include the following: quotes or proposals; a brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR subpart 13.5 were used; the number of offers received; an explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and any justification approved? (FAR13.106-3(b)(2) & FAR 13.501(b))</p> <p>f. Was 52.212-3, <i>Representation and Certifications- Commercial Items for Awards >\$2500</i> completed? Or</p> <p>g. Online Representations and Certifications Application (ORCA) (http://orca.bpn.gov) (Print Screen for Information) for US firms?</p> <p>h. Was 252.212-7000, <i>Representations and Certifications- Commercial Items for Awards Exceeding \$100K</i> completed?</p> <p>i. Did the CCO verify all applicable clauses are in the document (52.212-1 and 52.212-3 solicitation only)?</p>	
18	<p style="text-align: center;">Purchase Order/Contract in File</p> <p>a. Is the SF 1449/DD 1155 completed (all required blocks)?</p> <p>b. Specifies FOB terms? (Block 11) - Shows ship-to address? (Block 15)</p> <p>c. Specifies payment/discount terms? (Block 12) - Contains correct payment office address (Block 18a)</p> <p>d. Delivery or performance period clearly stated?</p> <p>e. Did the CCO distribute a copy of the PO to the customer, to the contractor and to finance?</p>	
19	<p>Was the contract modification request/reason for modification/documentation included in the file? (FAR 43.205)</p>	

20	For service contracts, did the CCO ensure that solicitations/contracts included inspection and quality assurance surveillance plans that are necessary to protect the government's interest? (FAR 37.604)	
21	For service contracts, has the contracting officer determined if the services are personal or nonpersonal services and in doubtful cases, obtained the review of legal counsel and documented the file appropriately? (FAR 37.103(a)(3), FAR 37.103(b))	
22	<p>Justification and Approvals</p> <p>a. Have justification and approvals for other than full and open competition been completed and placed in the contract file when required?</p> <p>b. For sole source procurements not exceeding the SAT, did the CCO document the file as to the circumstances of soliciting only one source?</p> <p>c. Were proper approvals obtained IAW acquisition instructions?</p>	
23	Options: Did the contracting officer justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price under 17.203(g); and include the justification document in the contract file? (FAR 17.202(d) generally covers most of the rationale needed.)	
24	Is consideration given to the need for post-award orientation conferences to foster a mutual understanding of the contractual agreement and the responsibilities assigned (FAR 42.502)?	

Site Activation Checklist

Item Number	Note: Procedures may differ based on the AOR. Contact responsible component OPR for command-specific procedures.	Applicable and Present
1	Learn organizational structure at deployment location.	
2	Brief site commander at deployed location (See attached DVD for sample deployed commander in-briefs).	
2a	<ul style="list-style-type: none"> -Explain current contracting status/organization structure. -Office location—should be collocated with finance and in a location to provide access for contractors and need an assigned finance paying agent to accompany for on the spot/over the counter SF 44 transactions. -Explain your needs for a vehicle, office space, comm, interpreter, security. -Reference who your HCA is and mention how contracting authority flows down from the HCA separate from command authority. -Discuss the role of contracting and local purchase support. We can procure supplies, services and construction necessary to support mission execution, life support, and MWR requirements. Examples: food and water, lodging and shelter, transportation and vehicle leases, base operating services such as laundry, waste disposal and utilities, fuel, equipment, communication and computers, MWR supplies, services and activities. -Requested approvals, permission and policies to include: Requirements validation and prioritization, unauthorized commitments/ratification process (per HCA guidance), undue influence whereby contracting officers will not make illegal purchases and must follow FAR, additional duties exemption, as the situation permits—permission to leave the base/camp/station and wear civilian clothes, provide contract status updates during staff meetings. 	
2b	<ul style="list-style-type: none"> -Are purchase request/funding controls in place; identify who can approve PRs? -Only CCOs can obligate the US government, though (if HCA authorizes) CCOs can train/appoint 	

	<p>decentralized ordering officers to use the SF 44s and BPAs.</p> <p>-Explain that CCOs will achieve mission success using expedited acquisition procedures while ensuring adherence to laws and regulations.</p> <p>-Is there an on-scene veterinarian or public health official for inspection of food and water?</p> <p>-Is there a base supply (LGS) function? Can we centralize receipt of goods? Can he or she accomplish quality assurance?</p> <p>-What would you like for delivery procedures—centralized receipt; delivery to on/off base customers; pickup downtown?</p> <p>-Are escorts available for on-base deliveries, trash pickup, and construction? If escorts are not available, suggest making the requesting organization responsible for providing escorts.</p> <p>-Provide customer training (weekly, monthly) and provide a contracting customer handbook (see attached DVD for sample contracting customer handbook).</p> <p>-Explain that CCOs will achieve mission success using expedited acquisition procedures while ensuring adherence to laws and regulations.</p>	
3	<p>HCA inputs: Is this a declared contingency operation? What is the simplified acquisition threshold? What is the micro-purchase amount? Is there a Host Nation Support Agreement in place? What are the NAF contracting procedures? What are the contract reporting procedures? What is the on-site CCO's/contracting office chief's ratification authority? What ratification format/form will be utilized? Who assigns PIIN numbers? Who is the contracting office chief and who is one level above the CCO? Is approval provided to allow CCOs to appoint ordering officers to utilize the SF 44? When is the GPC card approved for use?</p>	
4	<p>Team up with finance personnel and establish local funding and payment procedures; set up obligation authority for GPC purchases as appropriate.</p>	

5	Team up with supply representative, if available, to establish local purchase procedures.	
6	Team up with transportation representative, if available, to coordinate rules for vehicle hires, shipping instructions, and a contracting vehicle.	
7	Team with communication representative, if available, to coordinate procedures for comm requirements, and obtain communications support (telephone and fax access).	
8	Team up with civil engineer representatives on construction or material support.	
9	Team up with services representatives, if available, on billeting requirements, food service, and morale issues.	
10	Hire interpreter/guide if needed.	
11	Set up office space if available; identify (signpost) location of office.	
12	Survey local market, availability of local sources and capabilities, obtain maps and telephone books, and check with the embassy for local vendor recommendations.	
13	Establish a customer education guide (see DVD for samples) and rules of engagement with main customers; discuss possible requirements and develop strategies.	

Item Number	Terminations Checklist Reference: FAR 52.249-2, Termination for Convenience Reference: FAR 49.402-3, Termination for Default Reference: FAR 12.403, Termination for Cause	Applicable and Present
1	Does the CO have authority to terminate the contract? (FAR 49.101)	
2	Consider which type of termination is being considered (partial or full termination). (FAR 49.115)	
3	Was termination coordinated through legal office? (FAR 49.105-2/Local Policy)	
4	Was a notice of termination specifying the extent and the effective date made? (FAR 49.102)	
5	Was a cure notice issued? (if applicable) (FAR 49.402-3)	
6	Was a show cause notice issued? (if applicable) (FAR 49.402-3)	
7	Was a Suspension of Work (construction)/Stop Work Order (comm/services) issued?	
8	Was a notice of termination issued to the contractor? (FAR 49.102)	
9	Did contractor terminate all subcontracts? (FAR 49.104(b))	
10	Did you obtain GFP from contractor? (if applicable) (FAR 49.108-3(b)(1))	
11	Were the materials paid for received by the government? (if applicable)	
12	Were inventory schedules received from contractor? (if applicable)	
13	Did you negotiate a settlement cost with the contractor?	
14	Did you request final invoice from contractor?	
15	Was a price negotiation memorandum completed to show Proposed/Objective/Negotiated completed?	
16	Was a modification done to terminate contract (Bilateral Preferred)?	

