

Government Contracts with Homeland Security, FEMA and Other Federal Agencies for Hurricane Katrina Projects

In the normal course of contracting with federal agencies, cumbersome procurement rules dictate (1) what method or process an agency must use to solicit a contract; and (2) how the agency is to negotiate or award a contract. A foundational principle underlying all government contracting is “full and open competition” accomplished by use of competitive procedures. However, a national disaster such as Katrina triggers emergency rules allowing for streamlined contracting/procurement procedures and less competition.

If these emergency rules do not govern, the government requires stricter adherence to bidding procedures (See Part II below). Part II provides an overview of the typical, non-emergency procurement process characterized by more time-consuming and competitive procedures.

I. EMERGENCY OR CONTINGENCY CONTRACTING

The current Katrina situation meets the definition of a “contingency operation” because it is a “military operation” that has resulted in the deployment of active-duty forces during a national emergency that has been declared by the President. Consequently, federal agencies may contract using simpler procedures and frequently no competition.

Below is a summary of those procurement procedures affecting \$62 billion of federal work:

- **MICRO-PURCHASES INCREASED TO \$250,000.00 AND NO COMPETITION REQUIRED UP TO \$250,000.00:** Contracts up to \$15,000.00 and contracts/purchases through government-issued credit cards for purchases have been increased from the normal micro-purchase threshold of \$2,500.00.
- **DAVIS-BACON ACT (MINIMUM WAGE LAW) SUSPENDED.** By presidential declaration, minimum wage law does not apply to Katrina-related contracts which would allow for construction contracts to fall under the micro-purchase procedures.
- **COMMERCIAL ITEMS: “Simplified acquisition procedures”** may be utilized for purchases up to \$10 million. Competition may not be required under certain conditions. Services may fall within the definition of commercial items. The simplified procedures significantly reduce advertising, minimize or eliminate competitive bidding and evaluation requirements, and allow less burdensome contract clauses.

Other differences caused by Katrina:

- **ORAL REQUESTS FOR PROPOSALS.** Agencies may use this informal procedure during contingency or emergency situations when “processing a written solicitation would delay the acquisition of supplies or services.”
- **EXEMPTION FROM REGISTRATION IN THE CENTRAL CONTRACTOR REGISTRATION (CCR) DATABASE.** As a contingency operation and declared “major disaster” by the President, contractors need not be registered in this important database, which is a requirement for contracting with the federal government under normal circumstances.
- **NO ADVERTISEMENT OF CONTRACTING OPPORTUNITIES.** Federal agencies are not posting Katrina-related procurements on the government’s centralized website. Instead, contractors are urged to directly contact procurement officials. (See attachment listing contact information for Katrina-related contracts.)
- **PREFERENCE FOR CONTRACTING WITH LOCAL ORGANIZATIONS, FIRMS, AND INDIVIDUALS IN THE AFFECTED AREAS.** When a “major disaster” has been declared (as in this case), statutory and regulatory laws require that “preferences be given, to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by such major disaster or emergency.”
- **AWARD OF LETTER CONTRACTS.** To expedite the start of work, federal agencies may issue this preliminary contract. Negotiation of specific terms and conditions (such as final price) must be definitized in a contract at a later date.
- **CONTRACTS IN EXCESS OF \$10 MILLION WITH MINIMAL COMPETITION.** To use this procedure eliminating or reducing competition, the federal agency must provide written justification of “urgent and compelling need” which then requires approval by a designated official, although the written justification and approval may be prepared after the contract award to prevent unreasonable delay. The official who must approve the particular contract depends on the contract value. For example, a contract over \$50 million requires approval from the senior procurement executive (SPE) of the federal agency.
- **GRANTS TO STATE AND LOCAL GOVERNMENTS.** Money in the form of “grant assistance” is provided to state agencies, local governments and certain private facilities (for example, hospitals, schools, and water/sewer systems). This assistance may be used for Katrina-related costs, such as debris removal, emergency measures and infrastructure repair. While these federal grants normally cover only 75% of such costs, FEMA is currently reimbursing Louisiana state and local agencies for 100% of emergency costs incurred in the immediate aftermath of Katrina, and, thus far, \$760 million in grants have been disbursed for this purpose. It is unclear whether *future* grants will likewise cover 100% of Louisiana’s expenses. In contracting for Katrina-related work, state and local officials would presumably utilize all emergency procurement rules available to them under state law and municipal codes.

II. ROUTINE, NON-EMERGENCY CONTRACTING

Below are important considerations when attempting to contract with FEMA or other executive agencies under normal circumstances:

- All interested contractors must be registered with the Central Contractor Registration (CCR) prior to receiving any contract award from Homeland Security or FEMA. (go to www.ccr.gov) The CCR is the primary vendor database for the federal government.
- Potential contractors should monitor the government's centralized website for posting and to learn of procurements. See, www.fedbizopps.gov. This website normally provides a wealth of information about current government requirements and offers specific guidelines regarding the submission of bids or proposals. (Currently, Katrina-related procurements are not posted on this website)
- In accordance with the competition requirements of statutory and regulatory law, contracts for supplies or services are normally awarded on the basis of SEALED BIDDING, a process characterized by rigid adherence to formal procedures, or COMPETITIVE NEGOTIATION, a more flexible process that enables the agency to conduct discussions, evaluate offers, and award the contract using price and other factors.
- Even as to routine contracting, "SIMPLIFIED ACQUISITION PROCEDURES" are allowed which expedite the procurement of low dollar value, high demand items. Under these procedures, procurement of services or items of \$1,000,000.00 or less may be acquired by eliciting informal quotations from vendors, reducing competition requirements and eliminating other time consuming procedures; however, even under these simplified procedures, some form of competitive bidding is still required for purchases exceeding \$2,500.00.
- With respect to routine contracting, the MICRO-PURCHASE authority allows the use of government-issue credit cards for purchases of up to \$2,500.00 and eliminates competition requirements for such purchases.