

April 11, 2006

AGAR ADVISORY

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT
AGAR ADVISORY NO. 79B**

Hurricane Katrina Emergency Contracting Authorities and Waivers

INTRODUCTION: This Agriculture Acquisition Regulation (AGAR) Advisory supersedes AGAR Advisory 79A, dated October 21, 2005, and updates information concerning emergency authorities and waivers related to Hurricane Katrina relief efforts.

SUMMARY: AGAR Advisory 79A established contingency contracting authorities, disseminated information related to the application of the Davis Bacon Act in specific parishes and counties, and disseminated waivers related to disaster recovery in the aftermath of Hurricane Katrina. This advisory revises and supersedes AGAR Advisory 79A. It recaps the authorities and waivers issued for Hurricane Katrina relief efforts, delineates the dates for which such authorities/waivers were in effect, and includes information about the expiration dates of authorities/waivers, as applicable. This Advisory:

- Reflects the revocation of the Davis Bacon Act suspension effective November 8, 2005;
- Reflects the revision to the contingency contracting authorities for micro-purchase for construction based on the revocation of the Davis Bacon Act suspension;
- Reflects the expiration of the waiver to the prohibition on use of convenience checks for purchases or payments; and
- Reflects the expiration of the limited exemption related to some of the paperwork requirements of the laws administered by the Office of Federal Contract Compliance Programs (OFCCP).

SPECIFIC ISSUES:

1. Applicability.

The authorities in this advisory are applicable to acquisitions that have a clear and direct relationship to Hurricane Katrina rescue and relief efforts.

2. Contingency Contracting Authorities.

Pursuant to Civilian Agency Acquisition Council (CAAC) Letter 2005-04 dated September 7, 2005 and AGAR Advisory 79A, the following thresholds which were raised effective September 9, 2005 remain in effect:

- a. The micro-purchase threshold as defined in Federal Acquisition Regulation (FAR) 2.101 is raised to \$15,000 for acquisitions of supplies or services used to support the contingency operation for Hurricane Katrina disaster recovery.
- b. The simplified acquisition threshold as defined in FAR 2.101 is raised to \$250,000 for supplies or services that are used to support the contingency operation for Hurricane Katrina disaster recovery.
- c. The FAR 19.502-1 requirements for setting aside acquisitions do not apply to purchases of \$15,000 or less for acquisitions used to support the contingency operation for Hurricane Katrina disaster recovery. Nevertheless, contracting officers and purchase cardholders shall ensure that small business concerns are provided maximum practicable opportunity under the circumstances to participate in Federal acquisitions, and shall equitably distribute purchases among qualified suppliers.
- d. The threshold for application of the clauses FAR 52.225-1, Buy American Act—Supplies and FAR 52.225-13, Restrictions on Certain Foreign Purchases is \$15,000 for acquisitions used to support the contingency operation for Hurricane Katrina disaster recovery. (See FAR 25.1101 and 1103.)

3. Micro-Purchase Threshold for Construction.

- a. Except as stated in subparagraph b, below, the micro-purchase threshold for construction is \$2,000, regardless of whether the construction, repair or alteration activity is in support of Hurricane Katrina disaster recovery efforts.
- b. Proclamation 7924 suspended the Davis Bacon Act in specific jurisdictions (listed in Proclamation 7924 attached). By Proclamation 7959, that suspension of the Davis Bacon Act was revoked. Based on Proclamation 7924, AGAR Advisory 79, dated September 9, 2005, and Proclamation 7959, during the period September 9, 2005 through November 7, 2005, the micro-purchase threshold was raised from \$2,000 to \$15,000 for construction in those jurisdictions in which the Davis Bacon Act had been suspended by Proclamation 7924. Effective November 8, 2005, the micro-purchase threshold for construction was reduced from \$15,000 to \$2,000 based on Proclamation 7959.

4. Micro-purchase authority over \$15,000.

In accordance with section 101(2) of Public Law 109-62, the micro-purchase threshold for actions in support of Hurricane Katrina rescue and relief efforts is \$250,000. However, the Office of Management and Budget has restricted agency authority to use the \$250,000 micro-purchase threshold to cases where exceptional circumstances justify its use. Agencies that require micro-purchase authority over \$15,000 to support Hurricane Katrina relief and recovery shall submit a request for

increased authority to the Senior Procurement Executive (SPE). The request shall describe the exceptional circumstances that require an increase to the micro-purchase threshold, and justify why use of other acquisition techniques would not adequately enable the agency to support recovery and relief efforts under the circumstances described. The request shall propose a maximum micro-purchase threshold not to exceed \$250,000. The request shall state the number of contracting officers proposed to exercise the increased authority, the geographical areas in which the authority will be exercised, the estimated time during which the authority will be needed, and the types of supplies and services to be acquired with the increased authority. If the SPE approves the request, the SPE will require additional information needed to prepare individual delegations of authority and will require controls over the authority granted.

5. Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5206) (Stafford Act).

The Stafford Act provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities, such as debris clearance, distribution of supplies, or reconstruction. A major disaster has been declared for the states of Louisiana, Mississippi, Alabama, and Florida. See FAR subpart 26.2.

6. Purchase Cards.

- a. Except as specifically provided below, DR 5013-6, Use of the Purchase Card and Convenience Check and AGAR Advisory 52, Prohibition on Using Convenience Checks for Purchases or Payments, apply to all card or check transactions made in support of Hurricane Katrina disaster recovery.
- b. Because of the need to ensure that cardholders have appropriate knowledge and expertise in making purchases over \$2,500, agencies shall follow the delegation procedure in Section 14, paragraph c of DR 5013-6 in authorizing cardholders to make micro-purchases between \$2,500 and \$15,000.
- c. By memorandum dated September 9, 2005, the SPE authorized, for a period of 180 calendar day from September 9, 2005:
 - (1) The use of convenience checks in direct support of Hurricane Katrina disaster recovery efforts.
 - (2) The use of convenience checks over \$2,500 by warranted contracting officers up to the limits of their warrants, for payment of new emergency contracts in direct support of Hurricane Katrina disaster recovery efforts.

These authorities issued by USDA SPE memorandum dated September 9, 2005 expired on March 8, 2006.

- d. Effective March 9, 2006, requests for waivers to DR 5013-6 or AGAR Advisory 52 for use of convenience checks for Hurricane Katrina disaster recovery will only be considered on a case-by-case basis. Requests for such waivers must be submitted to the SPE by the Agency Head of the Contracting Activity Designee.
 - e. Purchase cards and convenience checks may be used to acquire telecommunications equipment and services in support of Hurricane Katrina disaster recovery efforts. Hurricane Katrina disaster recovery is an emergency within the meaning of AGAR Advisory 58A, and the waiver for emergency acquisitions is applicable. Acquisitions must be reported to the Associate Chief Information Officer for Telecommunications in accordance with AGAR Advisory 58A, Emergencies (p. 4). Reports should be filed within 15 days, or as soon as possible if conditions related to disaster response make it impracticable to report within this timeframe.
7. USDA Information Technology (IT) Acquisition Approval Process (Reference AGAR Advisory No. 53) - Emergency Blanket Waiver Approval for Hurricane Related Information Technology Acquisitions

The USDA OCIO established an emergency blanket waiver to the USDA OCIO IT acquisition approval process for procurement of IT hardware, software and IT contractor support services in the wake of Hurricane Katrina. Refer to the attached copy of the USDA OCIO memorandum dated September 7, 2005 (waiver number 1323) for specific details concerning this waiver.

8. Labor Issues - Davis Bacon Act.
- a. By Proclamation 7924 of September 8, 2005 the President suspended the Davis Bacon Act for jurisdictions devastated by Hurricane Katrina. By Proclamation 7959, the President revoked that suspension effective November 8, 2005.
 - b. Except as provided in subparagraph b, below, solicitations issued on or after November 8, 2005, and contracts awarded based on bids opened, or negotiations concluded on or after November 8, 2005 must include all applicable Davis-Bacon Act provisions, clauses, and appropriate wages.
 - c. Prime contracts for construction within the jurisdictions listed in Proclamation 7924, awarded on the basis of bid openings, or negotiations concluded, between September 8, 2005 and November 7, 2005 are not subject to the prevailing wage requirements of the Davis-Bacon Act, and need not be modified. Any subcontracts awarded under such prime contracts should not contain prevailing wage determinations regardless of the date the subcontracts are entered into or the period in which they are performed.
 - d. The class deviation from FAR Subpart 22.4 dated October 20, 2005, remains in effect for construction contracts, within the jurisdictions listed in Proclamation

7924, awarded based on bids opened or negotiations concluded between September 8, 2005 and November 7, 2005. The deviation is not applicable to solicitations and contracts for which bids opened or negotiations concluded, on or after November 8, 2005. However, AGAR clause 452.222-70, Suspension of the Davis Bacon Act (OCT 2005), which was issued by AGAR Advisory 79A, is still applicable in contracts that included that clause (see class deviation of October 20, 2005 copy attached).

9. Other Labor Issues.

- a. Applicability of the Service Contract Act. The Service Contract Act still applies to acquisitions of services over \$2,500, including micro-purchases between \$2,500 and \$15,000.
- b. Minimum wage and overtime. Applicable minimum wage and overtime provisions of the Contract Work Hours and Safety Standards Act, the Walsh-Healy Act, and/or state law are still in effect for disaster recovery efforts.
- c. OFCCP Waiver.
 - (1) The Office of Federal Contract Compliance Programs, Department of Labor (OFCCP) waiver of certain affirmative action program requirements included in equal employment opportunity clauses at FAR 52.2226-26, FAR 52.222-35, and FAR 52.222-36 expired on December 9, 2005.
 - (2) The OFCCP waiver of the requirement for contractors to develop affirmative action programs, to provide notices required by OFCCP, and to report to OFCCP (e.g., Standard Form 100 (EEO-1 reports)), was effective for the period September 9, 2005 through December 9, 2005. This waiver did not relax or exempt contractors from nondiscrimination requirements. Contractors were still required to post "Equal Opportunity is the Law" notices; keep pertinent employment records; and list employment opportunities with the appropriate local employment service office. A copy of the waiver is attached.

10. Reporting.

AGAR Advisory 72 governs reporting of transactions between \$2,500 and \$25,000. All transactions above \$2,500, including purchase card transactions, shall be reported in FPDS-NG, regardless of whether such transactions are made using micro-purchase procedures. FPDS-NG includes a data element titled National Interest Action. Indicate Katrina when reporting actions related to Hurricane Katrina disaster recovery. Pending availability of that data element, AGAR Advisory 79A specified that "Katrina" was to be entered in the Description of Requirement field when reporting Hurricane Katrina disaster recovery actions in FPDS-NG.

Cardholders reconciling Katrina related transactions in PCMS shall enter “Katrina” in the Comment block.

11. Stewardship Action Plan.

A copy of USDA’s Stewardship Action Plan is attached. Agencies shall take action required by section V, Oversight, of the Stewardship Action Plan.

12. Attachments

The following documents are attached for contracting offices’ information and guidance:

- a. CAAC Letter 2005-04 dated September 7, 2005, subject: Hurricane Katrina Contingency Contracting Authorities
- b. USDA SPE Memorandum dated September 9, 2005, subject: Waiver for Use of Convenience Checks for Disaster Recovery
- c. USDA CIO Memorandum dated September 7, 2005, subject: Emergency Blanket Waiver Approval for Hurricane Related Information Technology Acquisitions (#1323)
- d. Proclamation 7924 of September 8, 2005
- e. Proclamation 7959 of November 3, 2005, Revoking Proclamation 7924
- f. Civilian Agency Acquisition Council Letter 2005-05, Supplement 1, Reinstatement of Davis Bacon Act
- g. Department of Labor Memorandum No. 200, November 17, 2005, Revocation of Proclamation 7924 Suspending the Davis-Bacon Act and Related Acts Provisions
- h. Department of Labor Guidance on the Reinstatement of the Davis-Bacon Act Provisions in Areas Impacted by Hurricane Katrina.
- i. USDA Class Deviation from FAR Subpart 22.4 dated October 20, 2005
- j. DoL, OFCCP, Memorandum, Subjects: Contracts for Hurricane Katrina Relief Efforts, dated September 9, 2005
- k. Stewardship Action Plan for Significant Acquisitions Related to Hurricane Katrina, September 30, 2005

If you have questions regarding this advisory, please contact Todd Repass, Chief, PPD via email at Todd.Repass@da.usda.gov or by phone at (202) 690-1060; or send an email to procurement.policy@da.usda.gov.

This advisory is available on the USDA Procurement Home Page at <http://www.usda.gov/procurement/policy/advisories.html>.

EXPIRATION DATE: Effective until canceled.

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