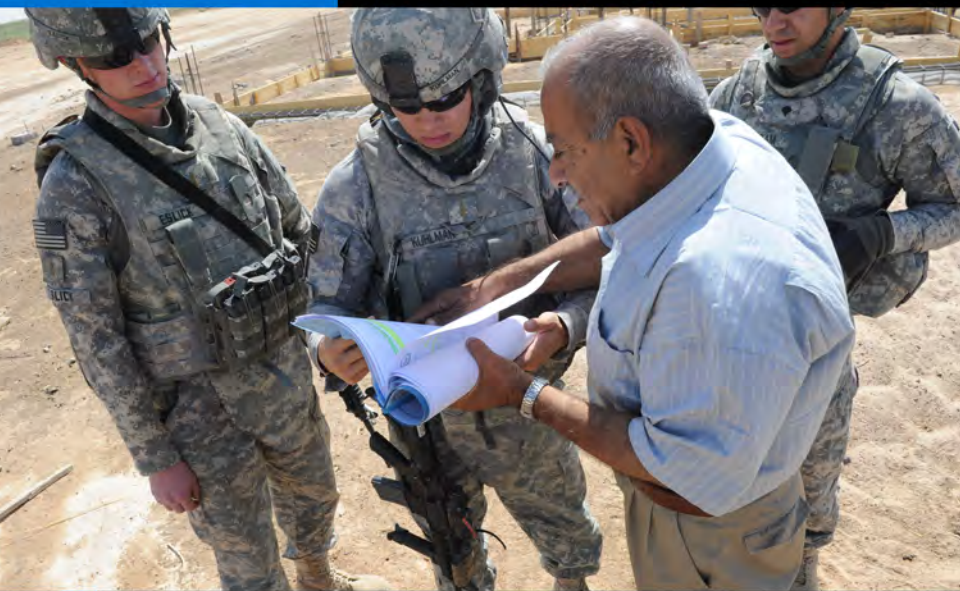




Defense Contingency Contracting Handbook

Version 4 – October 2012



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

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Table of Contents

Introduction and Foreword	5
Chapter 1. Ethics, Fraud Indicators, Standards of Conduct, and Procurement Integrity	9
Chapter 2. Authorities and Structure.....	27
Chapter 3. Contingency Funding and Requirements Process.....	41
Chapter 4. Planning and Guidance.....	75
Chapter 5. Contracting Processes.....	135
Chapter 6. Contract Administration.....	205
Chapter 7. Protests, Claims, Disputes, and Appeals	247
Chapter 8. Cultural and Situational Awareness	265
Chapter 9. Domestic Emergency Response.....	279
Appendix 1. Additional Resources Available on the DVD and Website.....	A1-1
Appendix 2. List of Acronyms.....	A2-1
Appendix 3. Book Index	A3-1
Appendix 4. Key Points of Contact.....	A4-1
Appendix 5. Critical Checklists.....	A5-1

Handbook Information

An online version of this handbook and its attached DVD can be found at <http://www.acq.osd.mil/dpap/ccap/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).

Foreword for Contingency Contracting Officers

During a deployment, contingency operation, or response to natural disasters, conditions can change in a hurry. One day you might be operating in a sustained operational environment, and the next you could be deployed to a bare base or supporting disaster relief operations in the field. The challenges you face might be very familiar or totally unprecedented. You might have little or no time to prepare, and you could have nothing but your own wits to guide you. The success of your mission might depend in part or completely on your ability to solve problems and think quickly.



**Mr. Richard Ginman, Director
Defense Procurement
and Acquisition Policy**

Your job as a contingency contracting officer (CCO) is locally acquiring the items needed to support the mission. While doing this job, you should be aware that many foreign business

cultures expect kickbacks, finder's fees, exchanges of gifts, or other gratuities that are illegal for US personnel to provide or accept. You should always ensure that 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 might violate standards of conduct. To help you successfully operate in a variety of mission environments, we 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 that you will face, regardless of the mission or environment.

Purpose

Our goal in producing this handbook is to give you a pocket-sized guide to help you meet the needs of the personnel and organizations that you support. This handbook is crucial to your success and that of the overall mission. No one can remember verbatim all of the relevant training, and this handbook is designed to fill in the gaps. However, it is by no means a standalone document and must be read together with the Federal Acquisition Regulations (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and Operational Contract Support in Joint Operations (Joint Publication 4-10). The Defense Contingency Contracting Handbook serves as a consolidated source of information for CCOs who are conducting contingency contracting operations in a Joint environment. The hard-copy handbook should be used with the attached DVD and also is available at the Defense Procurement and Acquisition Policy (DPAP) website at <http://www.acq.osd.mil/dpap/ccap/cc/jcchb/>. Both the handbook and DVD shall be used for training at home station, as a reference, and for training during deployment. The handbook and attached DVD provide useful tools, templates, and training that enable the CCO to be effective in any contracting environment.

Authority

The Defense Contingency Contracting Handbook is authorized by the Director of Defense Procurement and Acquisition Policy. DPAP prepared this handbook with the assistance of the Defense Acquisition University and representatives from the United States Army, Navy, Marine Corps, Air Force, and Defense Contract Management Agency. These organizations will help maintain the handbook and produce future updates.

Mr. Richard Ginman
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CHAPTER CONTENTS

Key Points	10
Introduction.....	10
Tenets of Government Service.....	11
Conflict of Interest.....	13
Gift Prohibition	14
Reporting of Gifts.....	16
Combating Trafficking in Persons.....	16
Identification of Fraud Indicators	18
Common Fraud Offenses	18
Interactions with Contractor Employees.....	23
Checks and Balances.....	24
Website and DVD Materials Related to Chapter 1	26

Chapter 1

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



Key Points

- Ethics are vitally important, particularly in the contingency environment because of the cultural differences.
- You must strictly avoid any conflict of interest—or even the appearance of a conflict of interest.
- You must not forget that your duty is to the US government, 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, potential contractor, or partnering contractor.
- There are very limited exceptions to the gift prohibition. You must document unavoidable violations and report them 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 local suppliers can be affected by varying cultural, political, and economic conditions.

1 Most of the information in this chapter was taken from Defense Acquisition University (DAU) CLC 114, Contingency Contracting Refresher Module, and DAU CLM 049, Procurement Fraud Indicators. Supplementary information was provided by the Office of Counsel for the Commandant of the Marine Corps and the Air Force Logistics Management Agency.

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 about the right way to conduct yourself and represent the US and DoD. Two of the biggest responsibilities of a contingency contracting officer (CCO) are as follows:

- Effectively communicate customer needs to the supplier.
- Establish a solid working relationship with the customer. Remember that CCOs and contractors can have competing interests. In some respects, the US government's interests may be directly opposed to the interests of the contractor. Therefore, as protectors of US government interests, you must remember that your duty is to the US government and DoD.

Most suppliers in the contingency environment, particularly in locations where US forces have an established presence, understand the ethics and integrity-related restrictions placed on DoD contracting officers. However, CCOs might be offered souvenirs to take home after their tours—or even a welcome gift when they arrive—in a possible attempt to gain favor. In these cases, CCOs must clearly understand the items that they can and cannot accept.

Tenets of Government Service

Executive Order 12731 establishes 14 basic tenets of government service, codified in 5 CFR 2635.101:

- 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 and shall not permit the release of such information for any improper use.
- You shall not solicit or accept any gift from any person or entity seeking official action from, or doing business with, DoD or its elements.
- 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 shall not give preferential treatment to any person or entity.
- You must protect and conserve government property, using it only for authorized purposes.
- You shall not seek outside employment or engage in outside activities that conflict with 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 from the perspective of a reasonable person.

Conflict of Interest

One of the most basic ethical and legal principles is that CCOs may not take official action on a matter that could affect their personal interests, as noted in Section 208 of Title 18 of the United States Code (*18 U.S.C. Section 208*). Thus, the ethics rule prohibits an employee from participating personally and substantially in an official capacity in any matter in which that employee—or any person whose interests are imputed (i.e. connected) to that employee—has a financial interest if that matter will have a direct and predictable effect on that interest. In other words, the ethics rule requires the following:

- 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 not act 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 considering that matter—or at a minimum seek legal advice.
- Conflicts of interest represent one of the very few areas of the law where you do not have to be guilty to find yourself in trouble—even the appearance of guilt can create problems, so appearances count.
- When conflicts of interest arise, the conventional ways of handling them, with advice from an ethics counselor, include (1) disqualification or recusal (i.e., stepping aside from decisions that could affect your financial interests); (2) waivers of disqualification (i.e., continuing your involvement, but only with full disclosure to, and permission from, agency officials); and (3) divestiture (i.e., 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 specified in Part 18 of the Federal Acquisition Regulation (FAR) (*FAR Part 18*) and *FAR 3.101-2*. CCOs must remember 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, including things such as discounts, favors, entertainment, hospitality, and loans. (*5 C.F.R. 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, including contractors, partnering contractors, prospective contractors, employees, agents, and representatives. (*5 C.F.R. 2635.203(d)*)

Several exceptions to these rules regarding gift acceptance are relevant to CCOs (other exceptions exist, but these are the most applicable).

First, 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 are detailed in *5 C.F.R. 2635.204(a)*. Deployed commanders may implement additional restrictions.

Second, 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 C.F.R. 2635.204(i)(1)-(4)*):

Chapter 1

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

- The market value, converted to US dollars, does not exceed the per diem rate for the foreign area, as specified in the Department of State maximum per diem allowances for foreign areas, available at http://aoprals.state.gov/web920/per_diem.asp.
- Non-US citizens or representatives of foreign governments or other foreign entities participate in the meeting or event.
- 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,” as specified in *41 U.S.C. Section 54 et seq.* Moreover, the U.S.C., Uniform Code of Military Justice (UCMJ), and US Department of Justice all specify, “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 U.S.C. Section 54; UCMJ Articles 92 and 134; US Department of Justice Criminal Resource Manual*)

CCOs must never solicit gifts of any type, regardless of their nature or dollar value. They 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 punishable by a fine, imprisonment, or both. (*18 U.S.C. Section 201; UCMJ Articles 92 and 134*)

Reporting of Gifts

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

- Attempt to persuade the contractor to take back the gratuity. Explain to the contractor that you cannot accept gratuities as a US procurement official, and note the repercussions you could face for accepting the gratuity.
- Pay the fair market value of the item.
- As a last resort, if the contractor appears to be offended, accept the gratuity, contact legal counsel immediately, and take the following actions: (1) once it is accepted, safeguard the gratuity and, if necessary, notify the finance officer to put it in a safe and ask for a receipt from the finance officer; (2) turn the gratuity over to legal counsel; and (3) write a memorandum for the record (MFR) that includes the circumstances and approximate value of the item. In addition, mention in the MFR that legal advice was obtained.
- If the gratuity is perishable (e.g., 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.

Combating Trafficking in Persons

CCOs might encounter situations in which local vendors are willing to supply escorts as a form of gratuity, kickback, bribery, or compensation. Human trafficking includes the act of recruiting, harboring, transporting, providing, or obtaining a person for labor

Chapter 1

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

services or commercial sex acts through force, fraud, or coercion, for the purpose of exploitation, involuntary servitude, peonage, debt bondage, or slavery. Sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” (*FAR 22.1702; 10 U.S.C. Section 7104*)

There are specific implications for CCOs. *FAR 22.17, 222.17* of the Defense Federal Acquisition Regulation Supplement (*DFARS 222.17*), and *DFARS Procedures, Guidance, and Information (PGI) 222.17 (DFARS PGI 222.17)* provide policy and guidance applicable to all contracts. If faced with a situation involving sex trafficking, CCOs should immediately inform the relevant 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 that fail to monitor the conduct of their employees and subcontractors with regard to trafficking in persons (TIP).

The US government does not tolerate any form of TIP or forced labor. As DoD *DFARS 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.”

The contractor is responsible for knowing its employees’ activities and for complying with US policy on combating trafficking in persons (CTIP). *FAR clause 52.222-50, “Combating Trafficking in Persons,”* is a required provision in all solicitations and contracts. The CCO holds responsibility for maintaining surveillance over contractor compliance with TIP requirements. (*DFARS 242.302*) Violations can be reported online at <http://ctip.defense.gov/>.

Identification of Fraud Indicators²

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

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

Fraud can be a single act or a combination of circumstances, can be the suppression of truth or the suggestion of what is false, or can occur by direct falsehood or through innuendo, speech, silence, word of mouth, or 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 violation or wrongdoing. Contracting officers should provide training on basic fraud awareness, identification, prevention, and reporting for contracting officer's representatives (CORs), quality assurance evaluators (QAEs), field ordering officers, and governmentwide commercial purchase card holders during their initial and refresher training classes. Training representatives on the front lines will increase the number of trained sensors to detect and prevent fraud.

Common Fraud Offenses

Common fraud offenses include the following:

- Bribery, kickbacks, and gratuities
- Making or use of a false statement
- False making or alteration of a document

² Content is taken from information produced by the Fraud Integrated Process Team and from the "DoD Fraud, Waste, and Abuse Hotline" trifold brochure.

- Making or presentation of a false claim
- Companies that conduct 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 (e.g., contractor use of one coat of paint instead of two, watered loads of concrete, inferior memory chips in computers, inferior automobile replacement parts), recognizing that not all failures to meet contract specifications constitute crimes and that a CCO therefore should seek legal counsel on any suspected contract fraud.

Common Fraud Schemes

Common fraud schemes include the following:

- Rigged specifications, such as the requesting organization tailoring specifications to meet the qualifications of one company, supplier, or product.
- Unvarying patterns in small purchases, such as a buyer awarding contracts to favored vendors without soliciting competitive offers from additional firms. The buyer also might be entering fictitious competitive quotations and consistently awarding to a favored vendor at inflated prices.

- Splitting of large requirements, such as contracting or requiring activity personnel dividing requirements into small purchase orders to avoid the scrutiny required for contracts with a larger dollar value.
- Duplicate payment, such as a vendor submitting 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, such as carriers defrauding the government by artificially inflating the weight of a shipment by using methods such as (1) fuel bumping, or getting the tare weight with less than a full tank of gas, but the gross weight with a full tank; (2) double billing on small shipments (500 to 3,000 pounds), or 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; and (3) false weights, or either paying the weight master to provide a false weight ticket or maintaining a supply of blank tickets (usually with a subsequently handwritten rather than printed weight) or a stock of false weight tickets.
- Counterfeit parts rather than genuine parts (a wide variety of counterfeit parts have been known to infiltrate the DoD supply chain, from tools to electronics).
- Emotional bribery, such as a government contracting specialist and a vendor representative becoming friends and the vendor using this friendship to unduly influence the CCO.

Situations that Enable Fraud

Acts of fraud are enabled by many situations, such as the following:

- Failure to properly monitor contract performance

- No acquisition checks and balances, such as personnel who control both the ordering and receiving functions and 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 and thus could have been ordered for personal use or resale, with the resulting paperwork destroyed.

Common Fraud Indicators

Common indicators of fraud include the following:

- Frequent complaints by users of supplies or services
- Government estimates and contract award prices that 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, such as (1) approved invoices altered with whiteout or similar correction fluid (which might indicate that the invoice had been copied and the original destroyed in an attempt to manipulate the audit trail or commit fraud via the alteration), which requires follow-up to secure external and internal copies for comparison; or (2) duplicate copies of supplier invoices, which could indicate the possibility of multiple payments of the same invoice and possibly diverted checks

- Less than adequate consideration, such as sale or transfer of assets for apparently less than adequate consideration, which might indicate a sham transaction that is not based in economic reality and thus should be questioned (because businesses exist to make a profit and should not contravene that goal).

The deployed office must have a list of contractors and vendors that have been identified as companies that CCOs should *not* do business with because of fraudulent behavior or performance discrepancies. CCOs must make an effort to update this list as needed.

CCOs have an obligation to report any suspected violation or wrongdoing to the appropriate chain of command and to the nearest investigative agency. Some of the lead investigators and contacts for reported fraud include the Air Force Office of Special Investigations (AFOSI); Naval Criminal Investigation Service (NCIS); US Army Criminal Investigation Command (CID), Major Procurement Fraud Unit (MPFU), 701st Military Police (MP) Brigade; Defense Contract Audit Agency (DCAA); Defense Contract Management Agency (DCMA); Defense Criminal Investigative Service (DCIS); and US Army Audit Agency. CCOs can contact these agencies as follows:

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

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

CID: <http://www.cid.army.mil/>

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

DCMA: <http://www.dcmamail.com/>

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

DoD Fraud, Waste, and Abuse Hotline:

Telephone: 800-424-9098

Email: hotline@dodig.mil

Web address: <http://www.dodig.mil/HOTLINE>

Interactions with Contractor Employees

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

CCOs or CORs who might interact daily with contractor employees 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, so CCOs must not do the following:

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

In addition, CCOs may *not* mandate any contractor personnel actions without specific contractual authority to do so, including the following:

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

However, *DFARS 237.104* (referencing *10 U.S.C. Section 129b*) provides limited authority to acquire the personal services of expert consultants if the following conditions are met and documented in a determination and finding document:

- 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 U.S.C. Section 3109*, and other legislation apply.
- Any other determination required by statute that has been made.

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

Chapter 6 addresses other ethical considerations relevant to contract administration.

Checks and Balances

It is of paramount importance that a system to ensure checks and balances is implemented in the daily routine to fulfill CCO obligations and prevent opportunities for fraudulent activity. To illustrate checks and balances that should be considered, CCOs should not be tasked to perform the following duties unless no other option is available:

- **Order and receipt of goods.** It is common practice for the person who orders goods to also receive the goods. This is not the ideal scenario, but it is common in deployed locations. You should take steps to ensure that documentation (including customer signatures and contact information) is obtained once you turn over possession of received goods, and you should immediately add this documentation to the contract file.
- **Paying agent duties.** In some situations, the CCO may be required to serve as both the CCO and the paying agent. In such a case, make sure that you logically track every cent spent (e.g., in a spreadsheet or log). Complete this tracking as soon as possible so that you do not have to rely on your memory of purchased items—and always file all receipts for transactions. You also must ensure that each day you reconcile the procurement instrument identification number (PIIN) log with the records of your finance organization counterpart to avoid discrepancies.
- **QAE and COR oversight.** You are responsible for many QAE and COR actions. It is important that a reporting system is in place to ensure fair and proper evaluation and that the contract representative provides direction.

Many other checks and balances could be discussed, but the preceding examples illustrate common-sense scenarios. You have an obligation to protect the taxpayer, the warfighters, and yourself. You protect the taxpayer by using sound judgment when spending taxpayer dollars. You protect the warfighters by providing goods, services, and awards that are sufficient to meet their needs. You protect yourself by preserving all the documentation necessary to back up your sound judgment and acquisitions.

Website and DVD Materials Related to Chapter 1

- [Chapter 1 PowerPoint Briefing](#)
- [Chapter 1 Test Questions](#)
- [Trainings Related to Chapter 1](#)
- [Scenarios Related to Chapter 1](#)
- [Additional Text Related to Chapter 1](#)
 - » [DoD Inspector General Report 2012-134 \(Sept. 2012\)](#)
- [Topical Index Webpages](#)
 - » [Conflicts of Interest](#)
 - » [Cultural Awareness](#)
 - » [Ethics](#)
 - » [Government Estimates](#)
 - » [Quality Assurance](#)
- [Publications and Regulations](#)
 - » [DoD 5500.07-R Joint Ethics Regulation](#)

CHAPTER CONTENTS

Key Points28

Introduction.....28

Contracting Authority and
Command Authority28

Contingency Contracting
Officer's Authority30

Contracting Structure.....31

Joint Staff and the
Joint Theater Support
Contracting Command.....35

Joint Subordinate
Organizations Overview ...38

Website and DVD Materials
Related to Chapter 240

Chapter 2 Authorities and Structure



Key Points

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

Introduction

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

Contracting Authority and Command Authority

Contracting authority is defined as the legal authority to enter into binding contracts and obligate funds on behalf of the US government. In contrast, command authority includes the authority and responsibility for effectively using available resources and for planning the employment, organization, direction, coordination, and control of 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.

Figure 1 illustrates both command and contracting lines of authority. Command authority does *not* include creating or implementing acquisition policy, guidance, or procedures and directing or authorizing deviations. Commanders at all levels must avoid improper command influence—or even the appearance of improper command influence—on the contracting process. The contracting officer must be able to independently exercise sound, unbiased business judgment and contract oversight in accomplishing the contracting mission.

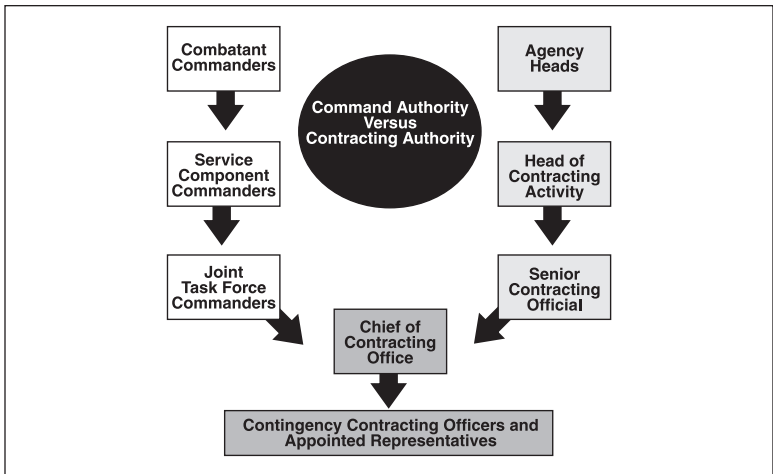


Figure 1. Lines of Authority

Contingency Contracting Officer's Authority

Contracting officers. The appointing authority shall give contracting officers clear instructions in writing regarding the limits of their authority. Information on the limits of contracting officer 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 and then successively to the Secretary of Defense; Service or agency head; head of the contracting activity (HCA); senior contracting official (SCO), also known as the principal assistant responsible for contracting (PARC); and contracting officer. This contracting authority is explicitly documented in the contracting officer warrant.

Selection and appointment of contracting officers. The HCA appoints SCOs, by name and in writing, and delegates certain authorities to the SCOs, including the appointment of CCOs under their control. If the HCA allows further redelegation, SCOs also may delegate certain authorities to regional contracting centers (RCCs), including appointment of CCOs under the control of the RCC chief.

Contracting warrant authority includes selecting, appointing, and terminating contracting officer warrants. The SCO shall appoint as contracting officers only personnel who are 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 minimum standards of the Defense Acquisition Workforce Improvement Act, as described in Section 1701 et seq. of Title 10 of the United States Code (*10 U.S.C. Section 1701 et seq.*).

Contingency contracting. CCOs can support CONUS and OCONUS contingencies, including 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 viewed as the only organizational structure, but rather as a template or example.

Head of contracting activity. The HCA (or SCO if authority is delegated) is responsible for oversight of contracting to ensure that it complies with applicable statutes, regulations, and sound business practices. For a small-scale contingency in which the Service components provide 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 (DoDI) 5101.1*, “e” 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, including:

- Managing administrative plans to control documents, maintain records, and conduct audit trails of procurement actions for simplified acquisitions (e.g., imprest funds, Standard Form 44, and governmentwide commercial purchase cards) and for 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 follow-up program
- Coordinating Defense Contract Audit Agency (DCAA) audit and financial advisory support with the appropriate DCAA point of contact (POC), depending on the site of the contingency or humanitarian operations taking place
- Managing suspension and debarment actions
- Coordinating intercommand agreements that detail contracting support relationships among US military services
- Coordinating operational plans or requirements originating with the Joint Staff and providing host nation support, status of forces agreements, assistance-in-kind agreements, or any treaties for CCO review.

Regional contracting center chief. The RCC chief (or chief of contracting office [COCO]) plans, directs, and supervises purchasing, contracting, administration, and closeout 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.

Additional key responsibilities of the RCC chief include:

- Maintaining the highest degree of integrity and setting the tone for the rest of the office
- Knowing the mission (RCC mission brief) and linking contract effects to the mission
- Engaging with the customer
- Setting priorities for requirements (per internal and external customers)
- Educating the customer
- Serving as business advisor
- Developing vendor base
- Encouraging contracting innovation while using sound business judgment
- Managing continuity of office.

Contingency contracting officer responsibilities.³ The goal of the CCO is to acquire the supplies and services needed by the warfighter to support essential missions in response to a crisis, contingency, or declaration of war.

Additional information about CCO responsibilities is available on the DVD and in the *Defense Contingency COR Handbook* available at <http://www.acq.osd.mil/dpap/ccap/cc/corhb/>.

The CCO has the following duties and responsibilities:

- Ensure that contract files are documented, prepared, maintained, and closed out

³ The Defense Acquisition University offers CON 334, Advanced Contingency Contracting Officer's Course.

- Maintain contract oversight over contract performance by the contractor
- Provide training and monitor performance of CCO-appointed representatives, including ordering officers and contracting officer's representatives (CORs)
- Ensure that 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 contract, in accordance with DoDI 5000.64, "Accountability and Management of DoD Equipment and Other Accountable Property"; request that the Joint force commander (JFC) establish policy, guidance, and a fragmentation order (FRAGO) on the tracking of government-furnished property and government-furnished equipment to ensure accountability of assets
- Ensure that contracts are competed among, and when appropriate awarded to, local bidders to the fullest extent possible to support the development of the local economy while ensuring fair and reasonable prices
- Regularly record and report on contractor performance
- Establish contact with local or reachback representatives of DCMA for contract administration support
- Engage DCAA auditors to provide audit support for CCOs in awarding contracts to responsible bidders that have acceptable business systems to deliver goods or services and hold sufficient capital to carry out contractual obligations
- Abide by host nation, inter-Service, status of forces, or other authoritative agreements that apply within the appropriate theater of operation

- Ensure that CCO efforts are synchronized with the guidance provided by the commander and contingency mission.

Contracting officer's representative. Described in 201.602-2 of the Defense Federal Acquisition Regulation Supplement (*DFARS 201.602-2*), CORs are the eyes and ears of the CCO. CORs are instrumental in ensuring that products and services provided to the warfighters comply with contractual requirements. The COR is a Service member (or a civilian assigned to the supported unit) who has specialized knowledge about 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 nominating CORs and shall do so by using the Contracting Officer's Representative Tracking (CORT) Tool. The CCO defines COR duties in writing in a letter of appointment. The COR conducts quality assurance inspections on the services and support that the contractor provides. If applicable, CORs make recommendations to the quality assurance representative (QAR), who delivers 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 make quality inspections of contractors, whose technical expertise and contributions ensure the safety and well-being of Service members.

The DVD includes additional information about the support organizations.

Joint Staff and the Joint Theater Support Contracting Command

Joint Theater Support Contracting Command. In larger or more complex contingency operations, the JFC may require more oversight than can typically be provided through the lead Service organizational

option. Operational conditions that drive this option can include, but are not be limited to, the following:

- Extremely complex operation that requires direct control of theater support contracting by the JFC commander
- Long-term mission
- Mission that is beyond the capability of a single Service
- Mission that requires significant coordination of contracting and civil-military aspects of the JFC campaign plan
- Significant numbers of different Service forces operating in the same area (or Joint bases served by the same local vendor base).

By design, the Joint Theater Support Contracting Command (JTSCC), is a Joint command that has command and control authority over designated Service component theater support contracting organizations and personnel in a designated support area. A JTSCC performs the same functions as a lead Service contracting organization, but reports directly to the JFC.

Because geographic combatant commanders (GCCs) do not have their own contracting authority, JTSCC authority flows from one of the Service components (normally the executive agency or lead Service component responsible for common-user logistics) to the operational area.

There is no formally approved, set model for a JTSCC; a typical example of a JTSCC organization is depicted in **Figure 2**. In general, a JTSCC will be stood up only for major sustained operations. As seen in recent operations, such sustained operations can include mission requirements for major reconstruction and the transition to civil authority (in addition to the standard Joint forces support mission requirements). In such major, long-term stability operations, it might be desirable to stand up a JTSCC with separate SCOs who are responsible

for supporting Joint forces, host nation forces or transition operations, and reconstruction work.

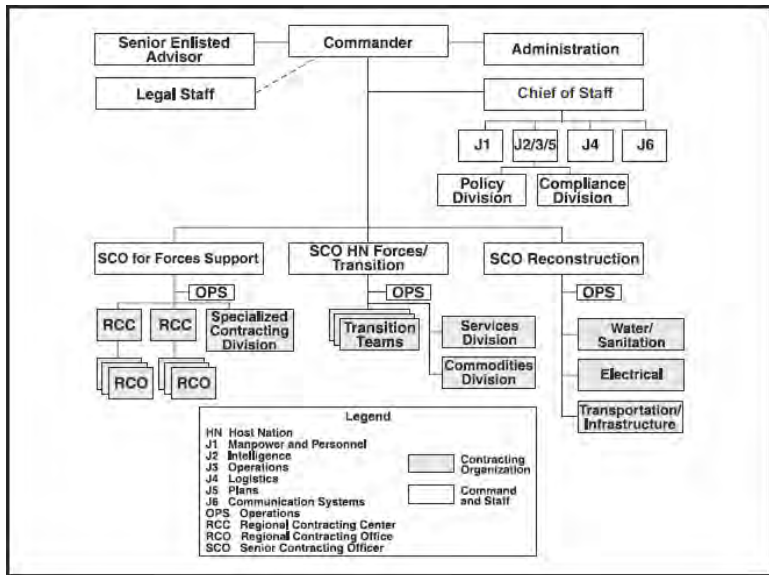


Figure 2. Typical Joint Theater Support Contracting Command Organization

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. A JTSCC-J1 performs personnel actions, including work on personnel assignments, Joint staffing document-related actions, awards, and ratings. The J1 officer 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 JTSCC does not normally need a separate J2 or J5 office. The J2/J3/J5 officer (normally an O-5 with contracting experience) is responsible for helping the commander and SCOs in synchronizing support to ongoing operations and planned future operations. A JTSCC–J2/J3/J5 focuses on supporting the JFC’s intent with effective and efficient contracting actions. As needed, a JTSCC–J2/J3/J5 could also contain separate policy and contract compliance divisions.

J4, Logistics Directorate. A JTSCC-J4 performs logistics actions, including general office supply actions, coordination of facility support, and other similar actions. The J4 officer normally is a logistics officer with no specific rank or contracting-related experience. The J4 officer is the main person with whom the CCO will work in operations.

J6, Communications System Directorate. A JTSCC-J6 performs communications support–related actions, including coordinating communications support, website management, and related functions. The J6 officer is a communications or signal officer with no specific rank or contracting-related experience.

Joint Subordinate Organizations Overview

Regional contracting centers. The specific makeup of RCCs depends on the specific mission support requirement; however, a typical RCC could consist of 10 to 25 warranted contracting officers, noncommissioned officers (NCOs), and DoD civilians. It is common practice to align these RCCs to a major land force (e.g., division, corps,

or Marine Expeditionary Force), headquarters, or air expeditionary wing or group. The key to the proper staffing 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 composed of two to eight warranted contracting officers, NCOs, DoD civilians, and possibly even contractors. The size and makeup of an RCO are based on actual mission support requirements. RCOs normally provide area support to specific forward operating bases and to designated areas in the Joint operations area.

The DVD includes additional information about JTSCC and subordinate organizations.



Website and DVD Materials Related to Chapter 2

- [Chapter 2 PowerPoint Briefing](#)
- [Chapter 2 Test Questions](#)
- [Trainings Related to Chapter 2](#)
- [Scenarios Related to Chapter 2](#)
- [Topical Index Webpages](#)
 - » [Command and Contracting Lines of Authority](#)
 - » [Contingency Contracting Officer Authority](#)
- [Additional Reading on:](#)
 - » [Combat Support Agencies](#)
 - » [DCAA Support](#)
 - » [JTSCC and Subordinate Organizations](#)

CHAPTER CONTENTS

Key Points	42
Introduction.....	42
Fiscal Law Constraints	42
Purchase Requests	47
Contracting-Related Boards	57
Types of Funding.....	62
Funding Procedures	69
Website and DVD Materials Related to Chapter 3	73

Chapter 3 Contingency Funding and Requirements Process



Key Points

- Appropriated funds are subject to three basic fiscal constraints:
 - » **Time.** Current 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, obligating or expending funds in excess of a specific appropriation, accepting voluntary services, and employing personal services in excess of authorized amounts.
- Contingency contracting officers (CCOs) should consult with their finance offices to ensure the proper use of each type of funding under their control. The customer is responsible for requirements generation, from definition through approval.
- The commander (or a designee) is responsible for the validation and approval of requirements.
- A funded commitment document such as a purchase request (PR) must include a complete description and the appropriate certified funds.

Introduction

Congress limits the authority of DoD and other executive agencies to use appropriated funds. This chapter initially discusses these limitations and the types of contingency contracting funding. The chapter also explains procedures for generating requirements through the use of PRs and contracting-related boards.

Fiscal Law Constraints

Appropriated funds are subject to three basic fiscal constraints: time, purpose, and amount.

Time

The time constraint includes two major elements. First, appropriations have a definite period of availability. Second, appropriations normally must be used for the needs that arise during the 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 (O&M) funds are available for 1 year, procurement appropriations for 3 years, and construction funds for 5 years. If funds are not obligated during their period of availability, they expire and are unavailable for new obligations (e.g., new contracts or changes outside the scope of an existing contract). Expired funds may be used to adjust existing obligations, such as paying for a price increase after an in-scope change to an existing contract. (as noted in Section 1552 of the United States Code [*31 U.S.C. Section 1552*]) However, obligation adjustment reporting (OAR) approval is required before contracting action can be executed.

Bona fide needs rule. The bona fide needs rule is an appropriations and fiscal law. (*31 U.S.C. Section 1502(a)*) It provides that the appropriations for one FY will only be obligated to meet a genuine need (i.e., a bona fide need) arising in (or sometimes before) the FY for that appropriation. This rule restricts the use of existing FY appropriated funds on requirements for the next FY. For example, annual funds appropriated for FY13 must be used to finance a legitimate FY13 need; the appropriation must not be used to fund a need that the customer will not genuinely have until FY14. However, the application of the rule may differ for supplies and services that overlap FYs. The bona fide needs rule also justifies the use of previous-year funding when a contract has been terminated.

Supplies. The bona fide need for supplies normally exists when the government actually will use the items. Thus, a command can

use a currently available appropriation to procure 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 as long as a current need is documented. There are lead-time and stock-level exceptions to the general rule governing the purchase of supplies.

Services. The application of the bona fide needs rule differs when services cross FYs. The difference is based on whether the services are considered severable or nonseverable and whether annual, multiple-year, or no-year funding is being used. 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 the services are provided, even if the contract is not 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 customer needs. According to *10 U.S.C. Section 2410a*, funding is permitted for a contract (or other agreement) for severable services using an annual appropriation for a period of as much as 12 months total when the contract is awarded, even if the period of performance begins in one FY and continues into a subsequent FY. (232.703-1 of the Defense Federal Acquisition Regulation Supplement [*DFARS 232.703-1*]) Conversely, nonseverable services represent a single undertaking that cannot feasibly be subdivided. If the services produce a single or unified outcome, product, or report, the services are considered nonseverable. In most cases, contracts or orders for nonseverable services must be funded in full at the time of award with a then-current appropriation. Examples include studies culminating in the delivery of

a final report, an engine overhaul, and the painting of a building. The lead-time exception can apply to the start date of service-type contracts.

Construction. Construction contracts obligated and awarded late in a FY (e.g., September) must have a performance start date within 90 days of award. (*DoD Financial Management Regulation (FMR) 7000.14-R*, Volume 11A, Paragraph 020510) For example, if a contract was awarded on September 15 with funds from that FY, performance must start and invoices must be submitted by December 13 of the new FY, as derived from DoD fiscal law. Typically, commencement of work can take the form of the contractor ordering materials and delivering them to the government and the government receiving (taking possession) of materials that will remain in its possession (and cannot be stored by contractors at their businesses), land surveys, groundbreaking activities, and other such functions. The key to defining and identifying performance of work is to include the elements of work on a progress schedule that will serve as the means of allocating a percentage of work performed and invoiced. The Defense Acquisition University (DAU) CON 244 Construction Contracting course includes additional details.

Purpose

In *31 U.S.C. Section 1301(a)*, commonly referred to as the purpose statute, the expenditure of funds on objects other than those specified in the appropriations is prohibited. Funds must be expended for the purpose established by Congress. A three-pronged test, known as the necessary expense doctrine, states that expenditures must have the following characteristics:

- **Be logically related to the appropriation.** The expenditure must be for a particular statutory purpose or must be 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.** A rationale for the necessity of a certain expenditure to carry out the mission of the agency is insufficient to overcome a statutory prohibition. In addition, agencies may presume that restrictions in an appropriations act are effective only for the FY covered unless the legislation clearly indicates that the restriction is permanent.
- **Not be otherwise provided.** Regardless of a logical relationship between the appropriation and the expense, if another specific appropriation applies to the given purpose of the expense, 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 submarines under construction to move to deeper water, because the US Army Corps of Engineers is specifically funded for that function. As another example, running out of money is an insufficient excuse for using another appropriation. If two appropriations are reasonably valid for a specific expenditure, the agency may choose either appropriation. However, once that selection is made, the agency must continue using the chosen appropriation, to the exclusion of any other.

Amount

Of paramount concern is ensuring that DoD complies with the ADA (31 U.S.C. Section 1341(a)), which prohibits obligating or spending money before it is appropriated (or in amounts that exceed the appropriation). 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. In addition, 31 U.S.C. Section 1342 prohibits accepting voluntary services and employing personal services that exceed authorized amounts. A knowing and willful violation of 31 U.S.C. Section 1341(a) or 31 U.S.C. Section 1342 is punishable by a

fine of up to \$5,000, 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 trigger ADA violations include:

- Without statutory authority, obligating current-year funds (i.e., awarding a contract) for the bona fide needs of a subsequent FY (e.g., when activities stockpile supply items in excess of those required to maintain normal inventory levels)
- Exceeding a statutory limit (e.g., 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 (e.g., improper funding of personal expenses).

Purchase Requests

Requirements from customers. Two main questions are involved with customer requirements during contingency situations:

- How do customers submit requirements?
- What information is needed from customers 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 will proceed to contracting without a prioritization status. However, at some point, requirements will need to be prioritized. The mechanism for this prioritization process may be a readiness center or a contingency support staff where senior base officials coordinate base recovery efforts. The readiness center or support staff is usually

composed of the combatant commander, comptroller, and appropriate customer commands. If not addressed, 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, the CCO should give the customer a suspense for receipt of backup paperwork. If verbal requests are received, the CCO should make sure to get an adequate description of the requirement. Generic descriptions usually will not be adequate. At some point during the contingency, verbal requests should be replaced by written requests with all of the required documentation. If the CCO permits verbal requests to continue too long, the tracking of requirements will become extremely difficult.

Purchase request documents. Without a properly prepared PR, an authorized purchase is almost impossible to make. 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:

- The request has been approved by the deployed commander or a designee.
- Funds have been certified through the appropriate budget office.
- The PR has a fund cite.
- The PR includes sufficient funds to cover the purchase.

During sustainment operations, an appropriate requisition document must be used to request supplies, services, or construction. Additional guidance and procedures will be provided to each organization after the deployed commander, in conjunction with the CCO, establishes them.

PR documents can be submitted on many forms, including the following:

- Air Force (AF) Form 9
- Department of the Army (DA) Form 3953
- Navy (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 noted previously, all PRs must include a good description of the required services or supplies and a certification of funding. For a small-dollar supply purchase, a good description might include a text summary, part number, picture of the item (if possible), sample of the needed item (if possible) so that the CCO can show it to potential vendors, name and organization of the customer, and 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 work statement (PWS) as well as the name of the customer contracting officer’s representative (COR) who will be providing technical support. A good PWS (or the probably more familiar SOW) should include a detailed description of customer expectations for the contractor. In other words, the PWS or SOW should be as *performance oriented* as possible. This approach will make it easier for the contractor to understand the document and easier for the CCO to point out deficiencies if performance does not meet specified standards.

Lines of approval. The first step in any requirement is identifying the activity that will serve as the office of primary responsibility (OPR)

for the need and determining whether that office has a mechanism to support the requirement. For example, if the requirement is for a vehicle, the CCO would contact the transportation OPR to confirm whether it can fill the need. If not, the CCO would prepare the appropriate documentation to locally lease or purchase the item needed for the requirement. In most cases, a senior official will be designated as the approving authority for all local PRs. The deployment commander may retain this authority or delegate it to the staff, depending primarily on the size of the deployed force. Either way, the CCO must obtain approval from the designated approval authority for any item bought locally.

Personnel 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, the deputy chief of staff will designate (in writing) specific personnel from each functional area to approve PRs for that area and to submit PRs to contracting.

Personnel who can obligate the government. When spending public funds, DoD must substantiate its requirements and strictly control its contracting function. Officially appointed people with express written authority to bind the US government to a contractual agreement accomplish this control. A warranted contracting officer is the only agent who represents the government in this capacity. Under defined procedures, a contracting officer can delegate this authority to noncontracting officers (e.g., in an ordering officer program).

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

Purchase descriptions and statements of work. Purchase descriptions or SOWs represent 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 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 that specifications reflect only those supplies, services, or construction needed to meet the mission requirements and that the SOW, SOO, or PWS will not unnecessarily restrict competition or innovation. In addition, commercial item descriptions will be used as often as practicable, and functional specifications will be used instead of detailed design specifications whenever reasonable.

Purchase descriptions. Purchase descriptions serve two purposes: (1) enable the buyer to determine what to buy and where and (2) allow the vendor to make quotes properly and deliver the correct item. Adequate item descriptions ensure that customers receive what they need at the best value possible. However, commonly accepted stateside standards and commercial practices are not the same as those that apply in contingency locations.

Item descriptions, specifications, and technical requirements should always be clear and concise. The requirement must be described in sufficient detail to leave no room for doubt. Ambiguous descriptions delay contracting actions and can lead to the purchase of the wrong product or service. Correcting discrepancies is expensive and wastes the valuable time of both the customer and the CCO. Item descriptions note 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, you should *not* confuse minimum requirements with minimum descriptive data—and should include as much information as possible to describe exactly what you need. The principal features of a purchase description can be determined by answering the following questions:

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

Preparation of a purchase description. A generic purchase description (like one for private purchases) is written in simple language, with one exception. Brand names are prohibited without a separate written justification. A generic description is most desirable because it clearly identifies the item that is required, yet encourages 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 is identifying a specific product followed by the words “brand name or equal,” as specified in 11.104 of the Federal Acquisition Regulation (*FAR 11.104*) and in 211.105 of the DFARS Procedures, Guidance, and Information (*DFARS PGI 211.105*).

Overly restrictive characteristics. A description that is unnecessarily strict can be just as undesirable as the opposite extreme. Whenever possible, a description should allow tolerances. For example, if an item must be painted, the color description should permit variances unless only one color is acceptable. Likewise, tolerances should be allowed for other characteristics, such as weight and if possible size.

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 the 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, further complicating and delaying the acquisition of the supplies or services. Poor descriptions contribute to misunderstandings among the government and contractors and can lead to inferior products, unnecessarily high prices, or both. One common problem is abbreviations. You should keep abbreviations to a minimum and only use them when they are universally understood and are not otherwise confusing. Careful screening of the PR item description by approving authorities will preclude delays in procurement actions.

Performance-based requirements. A PWS defines requirements in terms of results rather than the method of performing the work. The PWS should be developed by a multifunctional team. References (e.g., publications, regulations, and instructions) should be cited by specific process or procedure (e.g., paragraph or chapter) rather than the entire publication. PWS considerations include the following:

- At a minimum, a PWS should include (1) description of services and general information (including definitions) and (2) government-furnished property and services, if applicable.
- PWS training is described in the *Seven Steps to Performance-Based Service Acquisition Guide*, available at https://www.acquisition.gov/comp/seven_steps/home.html, and in DAU CLC013, Performance-Based Services Acquisition, available 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 if appropriate). For example, a comprehensive quality assurance surveillance plan (QASP) combined with a service delivery summary (SDS) may suffice.

A QASP will at a minimum include the following:

- Objective of the service
- Desired results (e.g., cost savings, improved customer service, or regular product deliveries)
- Method to assess contractor performance
- Method to validate when and if the objectives are met, with an SDS summary provided as a tool for identifying major contract requirements, their location in the SOW, and the performance standards that must be attained.

The CCO will include FAR clauses FAR 52.246-1 through FAR 52.246-16 in performance-based contracts as appropriate.

Services, contract repair, and construction buying. Unlike the straightforward nature of cash-and-carry supply acquisition, purchasing is somewhat more complicated for services, contract repair, and construction. The ongoing nature of services and construction complicates the creation of a purchase description for these types of services. Important considerations include the following:

- A SOW, SOO, or PWS must be prepared. In some cases, this document must be bilingual so that the contractor can fully understand requirements.
- A COR or contracting officer's technical representative (COTR) must be available from the requesting activity to answer questions from potential contractors.
- Some of these requirements will exceed the simplified acquisition threshold, which can limit CCO options.

Documentation that may accompany purchase requests. Documentation is submitted as required for specific types of PRs.

For construction projects, required documentation includes the following:

- Cost breakdown
- Drawings and specifications (which must be submitted to the contracting officer for review before 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.

For services requests, required documentation includes the following:

- The contracting officer will need a complete SOW, SOO, or PWS and contract information for the customer 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 government needs, not how the work should be accomplished. SOW, SOO, and PWS examples are included on the handbook DVD.

For contract repair service requirements, the following information should either accompany or appear on the PR:

- 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 onsite repair is required and, if so, the building number, room number, name, and telephone number of the contact point at the equipment location
- Brand name and sole-source requirements.

For all types of requirements, the point of contact, organization, and delivery location must be specified.

As the Deputy Secretary of Defense (DEPSECDEF) memorandum of August 22, 2008, noted, “where practicable, the requiring activity shall provide the COR nomination package to the contracting office as part of the purchase request.” In addition, CORs must be designated and trained before contract award (*DFARS PGI 201.6*).⁴

4 Additional information is available at www.acq.osd.mil/dpap/policy/policyvault/USA005569-09-DPAP.pdf.

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

Contracting-Related Boards

At some point, commanders in the field must prioritize requirements. Depending on the requirement and the source of funding, the appropriate commander must approve and prioritize the PRs. 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 request. Once approved by the individual-Service process, the requirement will be sent to the Joint Acquisition Review Board (JARB), as depicted in **Figure 3**.

Acquisition process and contracting-related boards. All common user logistics (CUL) support must 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 the priorities of this support are not contracting functions. The supported GCCs have directive authority for logistics, including the authority to issue directives to subordinate commanders and the peacetime measures necessary to ensure the following:

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

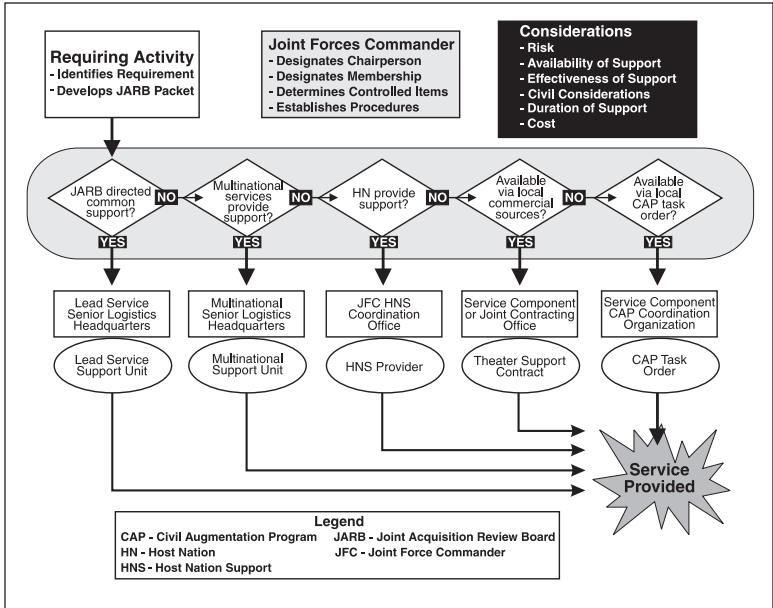


Figure 3. Joint Acquisition Review Board Process

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

To give the subordinate JFC the ability to enforce priorities and control CUL support efforts, the supported GCC should strongly consider directing the establishment of the following 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 depend 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 ensures 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 (Logistics) representative and includes representatives from each Service component command, combat support agency, and other military and US government agencies or organizations concerned with contracting matters. CLPSB functions are outlined in **Table 1**.

Joint Acquisition Review Board. The JARB is a review board, not a contracting board. The JARB coordinates and controls the requirements generation and prioritization of Joint CUL supplies and services that are needed to support the operational mission. The JARB is normally chaired by the subordinate JFC (at either the 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 requirements—and to include recommendations about the proper source of support for these requirements. The normal priority for CUL sources of support includes lead Service organic military sources, multinational support, host nation support (HNS), multinational military support, theater support contracts, and external support contracts such as military department, civil augmentation program, and Defense Logistics Agency (DLA) prime vendor contracts. The JARB is normally made up of representatives of the Service component logistics

CLPSB	JARB	JCSB
<ul style="list-style-type: none"> • Focus on general policies and area of responsibility-wide issues related to contracting support (combatant commander level). 	<ul style="list-style-type: none"> • Focus on what are requirements priorities and source of support (subordinate Joint force commander level). 	<ul style="list-style-type: none"> • Focus on how 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
<ul style="list-style-type: none"> • Coordinate with DoD and military departments on potential loss of contract support and risk management of same in accordance with DoD Instruction 1100.22, Manpower Mix Instruction. 		<ul style="list-style-type: none"> • 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

staffs, special operations forces (SOF), component staffs, DLA, Defense Contract Management Agency (DCMA), Joint force engineer, J6 (Command, Control, Communications, and Computers/Cyber), Joint force comptroller, staff judge advocate, and other JFC staff members as directed. The JARB also should include representatives from designated theater support and external support contracting organizations, whose main role in the JARB process is to inform other JARB members about the contracting mechanisms that are readily available for their particular acquisition, including the limits of the local vendor base for each type of support. This approach facilitates the decision to use external support contracts or theater support contracting assets. Specific JARB functions are outlined in Table 1.

Joint Contracting Support Board. The JCSB coordinates and deconflicts contracting actions in the Joint operations area (JOA). The JCSB reviews contract support requirements forwarded by the JARB and then makes recommendations on the specific contracting organizations and contract venues that are best suited to fulfill the requirements. The JCSB is normally chaired by the subordinate J4 acquisition officer or senior contracting official. It is composed up representatives from the Service theater and external support contracting organizations (including engineering and contracting), DCMA, DLA (including 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 in the operational area, which can be a significant challenge. J4 uses the JCSB to ensure a coordinated contracting support effort across the entire operational area. The JCSB goal is to maximize JOA contracting capabilities while minimizing the competition for limited vendor capabilities. The JCSB also establishes specific theater and external support contracting procedures and reporting requirements. Although 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 daily contracting support in a specific JOA. Additional details on the acquisition process are included in *Joint Publication 4-10, Appendix G*, “Requirements Development and Acquisition Review Processes.” Specific JCSB functions are outlined in Table 1.

Types of Funding

This section contains general descriptions of the typical types of funding that are used during contingencies. In any contingency, CCOs should consult with the relevant finance office to ensure the proper

use of each type of funding under their control. If non-DoD funding is provided (e.g., by the State Department), CCOs should consult with their HCA and finance office to ensure that it is properly handled and executed. Certain rules apply to each type of funding to prevent misuse.

Military construction.

Congress appropriates funds (under *10 U.S.C.*) for military construction (MILCON) of permanent improvements by using separate 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 U.S.C. Section 2801(a)*) The definition of a military installation is very broad and includes foreign real estate under the operational control of the 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 U.S.C. Section 2801(b)*) Construction projects that exceed \$1.5 million in value require specific approval by Congress (include each Service type of appropriation).

Operation and maintenance. O&M funds are appropriated under *10 U.S.C.* and are used for daily expenses incurred during training exercises, deployments, and the operating and maintaining of installations. Commands may use O&M appropriations for all necessary and incidental operational expenses.

Maintenance and repair are *not* MILCON. Maintenance is defined as recurring work to prevent deterioration (i.e., the work required to preserve or maintain a facility so that it is usable for its designated purpose). Repair is defined as the restoration of a facility so that it can be used for its designated purpose by overhauling, reprocessing, or replacing parts or materials that have deteriorated because of the elements (or wear and tear in use) and have not been corrected through maintenance. O&M (not MILCON) funds pay for maintenance and

repair work. 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 the separation of construction from maintenance or repair is not possible. In the latter case, all work is funded as construction.

Special rules applicable to construction. The following several funding sources are available for military construction in a contingency:

- Contingency construction funding is available up to an amount appropriated for that purpose when the Secretary of Defense (SecDef) authorizes a military construction project that is not otherwise authorized by law. The SecDef may delegate this authority for executing a project to the secretary of a military department if the SecDef determines that deferring the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interests. However, the SecDef must submit a report in writing to the appropriate congressional committees to provide a current estimate of cost and a justification for using the contingency construction section. The project cannot begin until 14 days after Congress receives the notification. (*10 U.S.C. Section 2804*)
- The SecDef may carry out emergency construction projects not otherwise authorized by law in the Military Construction Authorization Act by using unobligated funds for the purpose of protecting health, safety, or the environment, but must notify Congress and abide by a 21-day waiting period. (*10 U.S.C. Section 2803*)
- O&M funds may be used to perform an unspecified minor military construction project costing \$750,000 or less. If the project will correct conditions that present a threat to life, health, or safety, then as much as \$1.5 million in O&M funds are available. These

limitations do not apply if the project will use funds that are available to enhance the deployment and mobility of military forces and supplies. Such funding is referred to as deployment and mobility funds (or mobility enhancement funds) to enhance deployment and mobility at a cost of as much as \$1.5 million. However, O&M funds are **not** available for exercise-related unspecified minor construction projects. (*10 U.S.C. Section 2805*)

- Title XXVIII of each National Defense Authorization Act (NDAA) contains MILCON program parameters applicable to a given FY. For the past several years, Congress has granted a 1-year extension of the Department's authority to fund temporary facilities by using O&M funds during declared contingency operations. The authorized dollar thresholds and contingency locations are specific to each NDAA. CCOs should ask a higher authority in the organization if interested in using this authority.

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

Funding issues using nonappropriated funds. Any available NAF can be used to purchase plaques, mementos, coins, organizational mugs, and t-shirts (i.e., items that may not in general be purchased with appropriated funds).

However, coins, mementos, and unauthorized personal gifts pose

a recurring challenge. If the coins are merely mementos to build goodwill with local officials, they cannot be purchased with O&M funds. In general, an agency may not use appropriated funds to purchase mementos such as coins for distribution because they 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 U.S.C. Section 1125*) These awards could be 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 member morale, or accomplish other unauthorized purposes. Commanders should try to differentiate between tokens of appreciation and mementos (personal gifts), which cannot be purchased with appropriated funds, and awards that may be funded by appropriated funds. In addition, coins purchased with appropriated funds must not contain the name of a specific commander.

Bottom line. Commanders may use O&M funds to purchase unit coins to recognize outstanding contributions, but not to give awards as mementos or to create goodwill with the local community.

Mixed funding. For construction and architecture-engineer (A&E) contracts that cite both appropriated funds and NAF, these contracts should be written as appropriated-fund contracts, with all appropriated-fund requirements. Additional information on mixed funding is available in Air Force Manual 64-302 (paragraph 4.2.1) and in Office of the Chief of Naval Operations Instruction (OPNAVINST) 11010.20G at <http://doni.daps.dla.mil/OPNAV.aspx>.

Official representation funds. Another funding option is the commander’s official representation funds (ORF), with a legal basis in *10 U.S.C. Section 127*, “Emergency and Extraordinary Expenses.” Commanders have some discretion to use these funds without the

normal statutory controls, but strict regulatory controls govern their use, as noted in 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 Instruction (SECNAVINST) 7042.7, “Guidelines for Use of Official Representation Funds.” Basically, ORF may only be used to provide 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 engraving an individual’s name on the coin also applies to ORF-funded coin purchases. 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.

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

Emergency and extraordinary expenses. Service secretaries may use emergency and extraordinary expense (E&EE) funds for unanticipated emergencies or extraordinary expenses. Such funds can be expended on unanticipated, short-notice construction, but typically are not. The amount appropriated for E&EE is fairly small, and if the project cost exceeds \$500,000, the SecDef must notify the appropriate congressional committees.

Procurement appropriation. These funds are used for new obligations, but only for the three FYs 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 October 1, 2012, through September 30, 2013, but then expires for new obligations. When the appropriation expires, it may be used only to liquidate obligations and make authorized obligation adjustments for an additional 5 years under its original Treasury symbol. If the CCO cannot obligate specific programs in the period for which funds were justified and approved, the CCO must budget any additional funding required to complete them in future years under new requirements, as explained in *DoD Financial Management Regulation (FMR) 7000.14-R*, available at <http://comptroller.defense.gov/fmr/>.

The rules on using procurement funds are complicated, especially regarding the purchase of any kind of system. Whenever an item of equipment or a system has a unit cost of more than \$250,000, legal counsel should be consulted to determine whether procurement funds may be used. O&M funds should not fill the role of procurement funds, so legal counsel is needed to ensure their appropriate use.

Overseas humanitarian, disaster, and civic aid. Funding for overseas humanitarian, disaster, and civic aid (OHDACA) is used to provide such relief to foreign countries. The use of OHDACA funds requires DoD to provide 15 days advance 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. Additional guidance is available at <http://www.dsca.mil/programs/ha/ha.htm>.

Humanitarian and civic assistance. Humanitarian and civic assistance is the DoD term for relief and development activities that take place in the context of an overseas military exercise, training event, or operation. Under the Humanitarian and Civic Assistance program, US military personnel participating in overseas deployments also 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 assistance of host-country civilian and military personnel. US National Guard or reserve units also perform many humanitarian and civic assistance activities. Additional information on humanitarian and civic assistance funds is available at http://www.dsca.mil/hama_cd/hca/.

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

Commanders' Emergency Response Program. The Commanders' Emergency Response Program (CERP) is designed to enable local commanders in Iraq and Afghanistan to respond to urgent humanitarian relief and reconstruction requirements in their AORs by implementing programs that immediately help the indigenous population. The CERP must be used to help the Iraqi and Afghan people without direct or indirect benefit to the United States, coalition, or other supporting military personnel (as specified in *DoD FMR 7000.14-R*, Volume 12, Chapter 27).

CERP funds are typically used for small-scale, low-dollar, short-term, employment-oriented, emergency, and high-visibility projects that benefit the Iraqi and Afghan people. CERP funds shall not be commingled with NAF and shall be separately executed, managed, recorded, and reported. The local finance office can provide information on CERP funds in the CCO's area.

Additional information on the CERP, including the process and examples of authorized uses, are included in the handbook DVD.

Funding Procedures

Bulk funding. If a bulk funded PR is issued to the contracting office, that office is responsible for maintaining a record of obligations

and the remaining balance of funds. Under the bulk funding concept and system, 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 that funds are available and records them as commitments in the accounting records. The approved amount is an estimate of the funds that the recipient may obligate. 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 the need for the budget officer or certifying officer to certify that funds are available for each requisition. If a bulk funding document is issued to the contracting organization, the CCO will be responsible for keeping a record of obligations and the remaining balance of funds (on the reverse of the form). Because the accounting classifications for supplies and services are different, separate bulk funding documents are required for each.

Other funding procedures. The CCO or the customer should contact the budget office for applicable procedures to fund other types of purchases, such as the following:

- Vehicle rentals for recreational activities (e.g., trips and tours) and recreational supplies (e.g., balls, bats) that will be used for morale, welfare, and recreation (MWR) or NAF (after consulting with the NAF fund manager, if available)
- Medical supplies and services (e.g., medicine, doctor services, and hospitalization)

- Food (e.g., fresh fruits, vegetables, and bread) that require a subsistence fund cite
- Legal claims payable to the host government, foreign companies and citizens, and other US government agencies
- Equipment, services, and facilities that are provided by the host government, normally under an HNS agreement that contains the methods of payment (or, if no HNS is in effect with the country in which the CCO is deployed, the disbursing office, which will still be the agency that the CCO contacts 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 before processing by the contracting office under peacetime conditions. The approved funds are an estimate of the amount that the requesting activity may obligate for a specific period of time and designated purpose. During contingencies, the issue of funding becomes more complicated 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 fund certification should be noted.

Fund cites. Accounting classification codes, also known as lines of accounting or as fund cites, are required on all PRs. The CCO must understand how to read a fund cite. Because different DoD units maintain their own accounting systems and variations occur in the structure of fund cites, CCOs must check with the relevant finance office for details. However, the most important components of a fund cite are universal and are not Service specific.

Contingency Funding and Requirements Process

The first several components of a fund cite are the most important for CCOs. The first two digits represent the federal agency or military department. The next field indicates the period of availability or FY for which the funds are available to spend. The next segment notes the type of appropriation, such as O&M or MILCON. Lines of accounting for most contingencies will have an additional code, usually called the national interest action code, to track all spending related to that contingency. All lines of accounting must be validated and certified by the deployed finance office before a contract is awarded.

For a more detailed explanation of this example, or for more information, review the funding topic on the website or handbook DVD.

Example: 57 0 3400 310 67A2 231010 01 59290 503300 ESP 8Z	
Agency Code (57) (Common codes at right)	17: Navy & Marine Corps 21: Army 57: Air Force 97: DoD
Fiscal Year Code (0) (Common codes at right)	0: FY10 funds X: No year funding Two numbers indicate start and end dates, such as 3/8, meaning funds are appropriated in FY03 and available until FY08
Appropriation Type (3400) (Common codes at right)	0100: DoD, OSD, and DLA 1106: for the Marine Corps 1107: for Marine Corps Reserve 1804: Navy 1806: Navy Reserve 2010: Army Military Personnel 2020: Army 2080: Army Reserve 2065: National Guard 3400: AF active-duty O&M 3500: AF Military Personnel 3700: AF Reserve Military Personnel 3740: AF Reserve 3840: Air National Guard 3850: Air National Guard Military Personnel
Emergency & Special Program Code (8Z)	Tracks expenses for specific contingency operations. DoD assigns the alphanumeric code. All contingency expenses should include a code.

Table 2. One example of how to read a fund cite

Website and DVD Materials Related to Chapter 3

- [Chapter 3 PowerPoint Briefing](#)
- [Chapter 3 Test Questions](#)
- [Trainings Related to Chapter 3](#)
- [Scenarios Related to Chapter 3](#)
- [Topical Index Webpages](#)
 - » [Construction](#)
 - » [Funding](#)
 - » [Nonappropriated Funds](#)
 - » [Purchase Requests](#)
 - » [Services](#)
 - » [Supplies](#)
- [Additional Reading on](#)
 - » [The Commander's Emergency Response Program \(CERP\)](#)
 - » [Fund Cites and Lines of Accounting](#)

CHAPTER CONTENTS

Key Points	76
Introduction.....	77
Types of Contingencies	78
Predeployment Planning ..	82
Plugging In Downrange	90
NATO Tasking	93
Additional Planning Considerations.....	93
Civil Augmentation Programs.....	97
Contingency Contracting Support Phases.....	111
Exhaustion of Logistics Supply and Required Sources of Supply	121
Types of Contract Support.....	124
Service Theater Support Contracting Organizations and Capabilities.....	129
DoD Combat Support Agencies.....	132
Website and DVD Materials Related to Chapter 4	134

Chapter 4 Planning and Guidance



Key Points

- Advance planning and preparation are critical to effective contracting support.
- Working with J4, each contingency contracting officer (CCO) has the ability to influence and affect the tactical or operational outcome.
- CCOs must be familiar with the four phases of contracting support.
- CCOs must always be prepared to forward-deploy if the mission changes.
- CCOs must get as much information as possible about the country or domestic disaster area before deployment.
- Part of a CCO's job is to locate sources and become familiar with local conditions, security, and force protection matters.
- Within 30 days after redeployment, the CCO must submit an electronic after action report (AAR).
- CCOs should coordinate with their operational planners, the Defense Contract Management Agency (DCMA), and the Defense Logistics Agency (DLA) about redeployments and the drawdown of equipment, personnel, and services.
- CCOs must be familiar with the statutes, directives, treaties, and agreements that will affect contracting operations when they are deployed.
- Seek guidance from the host nation support team, Command J4, and the US embassy.

Introduction

Joint force commanders (JFCs) 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. The JOPP applies to both supported and supporting JFCs and to Joint force component commands (including the Joint Contracting Command) and is designed to facilitate interactions among 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 the commander's intent, and develop effective plans, orders, and contracts. Additional information is available in *Joint Publication (JP) 5-0*, "Joint Operation Planning."

In the JOPP, contingency contracting is addressed in Annex W to Combatant Command (COCOM) deliberate and crisis action planning products. Annex W includes two primary plans, the contract support integration plan (CSIP) and the contractor management plan (CMP). The CSIP provides a broad concept of operational contract support (OCS) integration and oversight for the planned operation. The CSIP includes a general overview of how contracting supports the operation. The CSIP articulates the commander's priorities, intent, and specific

OCS command guidance (by phase of the operation). The CSIP should also address overall contract support arrangements. The CMP identifies theater-specific contractor management requirements, including key staff and subordinate command responsibilities. These requirements include contractors authorized to accompany the force (CAAF), in-theater management, and government-furnished support coordination and support requirements. The CMP also addresses certain contractor management requirements for non-CAAF contracted employees. The office of primary responsibility for Annex W and OCS planning is the COCOM J4. In general, a chief of the contracting office (COCO) or CCO should review the applicable Annex W before deploying. The handbook DVD includes a template for the CSIP.

This chapter discusses types of contingencies, predeployment, and phases of deployment. The chapter also addresses how to plug in downrange and provides relevant information from *JP 4-10*, “Operational Contract Support,” on support phases, types of support, contract organizations, and capabilities and support agencies.

Types of Contingencies

Contingency contracting encompasses all contracting performed in a contingency environment. A contingency can be declared or nondeclared, occur domestically or overseas, and fall anywhere on the broad range of military operations, from major wars to emergency responses. No two contingencies are alike, but the main elements that define the overall contingency contracting environment include the urgency of requirements, possible austere or limited business infrastructure, and possible cultural or ethical differences that the CCO might face.

From a legal standpoint, there are two types of contingencies: declared and nondeclared.

Declared contingency. The formal declaration of a contingency

operation is very significant for the CCO (as shown in Figure 6 in Chapter 5), triggering an increase in the micropurchase threshold and simplified acquisition threshold (SAT). (Subpart 18.2 of the Federal Acquisition Regulation [*FAR Subpart 18.2*]) In accordance with Section 101(a)(13) of Title 10 of the United States Code (*10 U.S.C. Section 101(a)(13)*) and *FAR 2.101*, a declared DoD contingency operation may be established as follows:

- 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 Congress when members of the uniformed forces are called to active duty (a reserve component mobilization) under 10 U.S.C. or any provision of law during a declared war or national emergency.

Figure 4 summarizes the contingency process requirements.

Nondeclared contingency. In a nondeclared contingency operation, the micropurchase threshold and the SAT are unchanged (\$3,000 and \$150,000, respectively), except for the acquisition of supplies or services that, as determined by the head of the agency, will be used to facilitate defense against (or recovery from) chemical, biological, radiological, or nuclear attack. (*FAR 13.201(g)(1)*) Nondeclared contingencies generally do not benefit from the legal flexibilities conferred to a declared contingency.

Types of operational designations. CCOs might support several types of military operations, including major operations, smaller-scale contingencies, noncombat contingency operations, and domestic disasters or emergency relief operations. CCOs also might support military training exercises, routine installation and base operations, and CONUS or OCONUS systems or inventory control point contracting. *JP 3-0*, “Joint Operations,” includes additional information on types of operations.

Summary Contingency Process Requirements

Threshold	Small Business requirement	Sole Source Justification	Contractor Review	Sole Source Negotiation	Competitive Source Just.	Pricing	Solicitations	Contracts	Comm. Contracts	Labor Standards	Notice
Micro Purchase \$3,000 ² (FAR 2.101) \$15,000 ² Contingency (FAR 2.101) \$30,000 ² Contingency Outside US (FAR 2.101)	No requirement						Request for Quote Document (RFQ) Use "Q" in solicitation #	Simplified Acquisition/ Purchase order Non-commercial (if informal)	Simplified Acquisition (commercial if informal)	Davis Bacon (\$2,000 (FAR 2.101)) Contract Work Hours & Salary (FAR 22.603)	\$15,000 (FAR 5.101) Public Display of Solicitation (FAR 5.101)
\$3,000 to \$190,000 (FAR 2.102)	SS Contract, req. to Solic./NT. OCONUS Embroptd	USA for required			Abstract (Contract) if competitive	May request if needed	Use "Q" in solicitation #	Non-commercial (if informal)	commercial (if informal)	\$2,500 Service Contract Act & 52 CFR 22.10 \$15,000 Written Ready to Perform Contracts (FAR 22.603)	\$4M Public amount. of award (5.303)
BAT \$1,500,000 ² (FAR 2.101) \$300,000 ² Contingency Inside US (FAR 2.101) \$1,000,000 ² Contingency Outside US (FAR 2.101)	Open competition	USA required	JO18 Contractor selection & pre-award	Price Negotiation Memorandum (P/NM) if sole source	Price Comparison Memorandum (PCM) if competitive	DD Form 350 Certified cost data required (FAR 42.709) If sole source (not commercial)	Request for Proposal Document (RFP) Use "R" in solicitation #	Non-commercial (if informal)	Formal Contract (if formal)	\$150,000 Miller Act (FAR 28.102)	

(D&F req. to waive proposals due to urgency)

Termination for Convenience: Contracts under \$5,000 will 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 \$650,000 (Construction); \$1.5M (FAR 19.702)
Note: A formal contract cannot accept proposals

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

Figure 4. Summary of Contingency Process Requirements

Major operations and campaigns. In some conflicts, hostilities are ongoing, imminent, or likely, and there is a substantial commitment of US military forces. Operation Enduring Freedom and Operation Iraqi Freedom are examples of major operations and campaigns. During such operations, contracting usually supplements robust combat support and combat service support infrastructures.

Smaller-scale contingencies. Some conflicts involve ongoing, imminent, or likely hostilities with the US military, but smaller-scale contingencies involve fewer places and usually a more restricted time schedule (e.g., Operation Just Cause in Panama). Contracting often supplements combat support and combat service support capabilities that are limited by the location, strategic lift, or staffing ceilings.

Humanitarian or peacekeeping operations. Contingency contracting may be performed to support humanitarian or peacekeeping operations, defined as a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. (*10 U.S.C. Section 2302(8)* and 218.270 of the Defense Federal Acquisition Regulation Supplement (*DFARS 218.270*)) The term does not include routine training. Recent humanitarian missions include Operation Tomadachi (Japan) and Operation Unified Assistance (Thailand).

Domestic disaster and emergency relief. According to *JP 3-28*, domestic disaster and emergency relief operations can range from domestic natural and man-made disasters to civil disturbances or terrorist incidents in the United States. DoD disaster relief missions 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 efforts are DoD support for relief efforts following Hurricanes Isabel, Floyd, Hugo, and Katrina. Chapter 9 includes additional information on domestic disaster and emergency relief operations.

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

Predeployment Planning

Personnel and administrative preparations. The following generic list of documents and equipment that a CCO might need to initiate a contingency contracting operation is useful not only for CCOs, but also for the requesting unit, which should reference the need for such information in the line remarks of individual deployment tasking letters (or tasking orders) and may modify the list as necessary to meet deployment location mission support requirements:

- Official passport and 6 to 10 extra photographs for visas. Visas might be required to move from country to country. Official passports might be required for each CCO designated to support no-notice deployments that demand immediate departure to countries requiring a passport for entry. Each unit shall determine whether the CCO needs to obtain an official passport when initially designated as a CCO.
- Travel orders prepared through the Defense Travel Service.
- *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 might not be advisable. The regional contracting center (RCC) chief will provide additional instructions regarding the wearing of uniforms.
- Governmentwide commercial purchase card (GCPC) that is bulk-funded to the level possible, enabling immediate expenditure upon arrival.
- List of unit-assigned procurement instrument identification numbers (PIINs), in accordance with DFARS 204.7003 and the uniform PIIN issued by the senior contracting official (SCO).
- Where possible, advance registration for any applicable systems, such as the Contracting Officer's Representative Tracking (CORT) Tool, Federal Procurement Data System–Next Generation (FPDS-NG), Contractor Performance Assessment Reporting System (CPARS), Joint Contingency Contracting System (JCCS), and Electronic Data Access (EDA) system.
- Department of Defense (DD) Form 1833, "Isolated Personnel Report (ISOPREP)." The ISOPREP contains data elements that have personal data, photographs, and other information to help in the recovery of US military, civilian, or DoD contractor personnel who are isolated, missing, detained, or captured. The ISOPREP and the evasion plan of action are the most important tools for executing timely rescue and recovery. Once DD Form 1833 is completed, it becomes classified confidential and therefore should be submitted electronically, not carried on the person. Army Graphic Training Aid (GTA) 80-01-001 provides additional information on personnel recovery.

Mature versus immature contracting environments. CCOs must consider the maturity factor when planning for contingency operations because different contracting tools will be needed based on maturity and the contingency phase, as follows:

- **Mature.** A mature contracting environment is characterized by a sophisticated distribution system that can rapidly respond to changing requirements and priorities; sufficient vendors that can comply with FAR requirements to meet contingency contracting demands and have previous experience contracting with the US government; and, in the best case, an in-place DoD contracting office or structure. 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. Moreover, of the available vendors, few if any have previous experience contracting with the US government. An example of an immature contracting environment is the Horn of Africa.

Contracting during hostilities. Hostilities can break out during any phase of a contingency operation. The more rapidly the CCO matures the contracting operation, the better support that CCO can provide if hostilities do occur. However, some problems are unavoidable, such as the following:

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

As a CCO, you will have a significant opportunity to observe the local community. CCOs are responsible for interacting with the intelligence unit to identify any threats and for reporting any suspicious activity. If you cannot perform the CCO contracting mission, you must advise supported units so that they can plan to perform essential contracted tasks with military personnel. If a contractor refuses to perform, you need to find another contractor (and prevent lapses in service), seek alternate arrangements, or do without the service. CCOs must keep customers informed about contracting activities so that they can plan accordingly.

Research as the key. If you know that you are going to deploy, you should get as much advance information as possible about the country or domestic disaster area. As a high priority, CCOs must review site surveys that other advance echelon (ADVON) teams have performed and then use this information to develop a site survey checklist. CCOs should read relevant acquisition guidance—such as acquisition instructions for the US Central Command (USCENTCOM)—for the area of responsibility (AOR) to be supported. CCOs should become familiar with the currency, conversion rate, and local business customs. In addition, cultural and social differences, such as language or literacy barriers, can further compound the difficulties that the CCO must include in planning (as described in Chapter 8). Good sources for investigating a country include the following:

- AARs (unclassified reports available at <https://www.acc.dau.mil/contingency>).
- Central Intelligence Agency *World Factbook*, available at <https://www.cia.gov/library/publications/the-world-factbook/>.
- Websites of US embassies, consulates, and diplomatic missions, available at <http://www.usembassy.gov/>

- Department of State website, available at <http://www.state.gov/countries/>.
- United States Agency for International Development (USAID), which has a website at <http://www.usaid.gov/>. USAID is an excellent source of country-specific information. One of the USAID missions is support for economic growth and trade (e.g., the USAID Trade for African Development and Enterprise and the USAID economic opportunity projects in Jordan), making it an excellent source for locating vendors and contractors. USAID typically has offices in each US embassy.
- US Navy husbanding contracts to support fleet port visits, which might be able to support an initial response for humanitarian assistance or disaster response, helping the CCO at the very beginning of an event. One of the following regional Fleet Logistics Centers (FLCs) can help determine whether a contracting vehicle is in place to support critical needs for an emergency response, but orders must be placed by the applicable FLC contracting officer:
 - FLC Yokosuka, United States Pacific Command (USPACOM) AOR, with a website at <https://www.navsup.navy.mil/navsup/ourteam/navsupgls/navsupfley>
 - FLC Sigonella, United States European Command (EUCOM), USCENTCOM, and US Africa Command (AFRICOM) AOR, with a website at <https://www.navsup.navy.mil/navsup/ourteam/navsupgls/navsupflesi>
 - FLC Norfolk, United States Southern Command (USSOUTHCOM) and US Northern Command (USNORTHCOM) AORs, with a website at <https://www.navsup.navy.mil/navsup/ourteam/navsupgls/navsupflcn>

Afteraction reports. Lessons learned, or AARs, should be forwarded through the responsible SCO within 30 days after redeployment to home station. AARs should include follow-on plans for contracts issued in support of the contingency mission. The recommendation is that CCOs should start writing the AAR as soon as they arrive and should leave a copy of the AAR in the continuity book before leaving the area. To access sample AARs, take the following steps:

- **Step 1.** To join the acquisition community connection, go to <https://acc.dau.mil/join>. After you receive membership notification, you must request access to AARs.
- **Step 2.** Send a message to msc@dau.mil noting the reason for access. When your access is approved, you will receive a confirmation message. AAR lessons learned are available at <https://acc.dau.mil/contingency>.

Contingency contracting officer continuity book. When the CCO arrives at the deployed location, one of the first requirements is reviewing information in the CCO continuity book. The CCO will maintain and continually update the CCO continuity book for follow-on CCOs. When a deployment is terminated, the last CCO will forward the continuity book to the applicable J4 supporting the AOR. The book should include the following at a minimum:

- Current vendor or contractor source listing, including vendor names, addresses, telephone numbers, points of contact (POCs), and type of supplies or services provided
- Current list of vendors and contractors willing to provide emergency support 24 hours a day
- Copies of all headquarters policy letters, acquisition instructions, and guidance messages received to date

- Minutes of all meetings attended by CCO personnel, including open action items impacting the contracting function
- List 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, including names, grades, duty title units, telephone numbers, and after-hours POCs, if available
- Lessons learned during the deployment to date
- Copies of weekly reports of actions and dollars spent to date
- Reconciliation reports
- Bulk-funding logs showing remaining balance
- List of local contractors and vendors not to do business with
- Disposition of purchase records
- AAR, submitted electronically within 30 days after redeployment by each CCO to the parent command, which in turn will forward the report to the theater command supporting the AOR, with select AARs forwarded to the Defense Acquisition University (DAU) for inclusion in the contingency contracting community of practice
- Current list of enduring contract vehicles with contingency clauses.

Advance echelon teams. Within the first 30 days after 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 legal representative. The size and number of teams will depend on the contingency, humanitarian assistance or peacekeeping operational requirements, and operational requirements of the mission, as determined by the head of the 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, before arrival of unit personnel, 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 also personnel recovery matters. In addition, the CCO should consult with the embassy regional security officer to identify any existing interfaces with interagency or host nation recovery procedures. Plans should provide for adequate security arrangements and disbursing officer support during advanced deployments. Bulk funds (and a means to replenish those funds) also should be provided. The CCO or ordering officer (OO) should carry an approved GCPC to facilitate the procurement process whenever and wherever possible.

In addition, 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 (JOCSTs). These JOCSTs are intended for use as an intact staff augmentation element, not as individual augmentees.

Additional information on JCASO and JOCSTs is available in the concept of operations.

Site surveys. In general, the ADVON team will conduct the site survey, which should include sources, business customs, maps, interpreter sources, and other important information. The CCO should take a camera on the site survey and document 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. Photographs will also refresh the CCO's memory for subsequent requirements. However, the CCO must check with the US embassy or host nation to confirm whether permission is needed to take pictures.

Plugging In Downrange

Once the CCO's feet hit the ground, the next task is to learn how to plug in to the new environment. The CCO must quickly find the support structure (J4) and meet with the onsite commander to accomplish the following:

- Discuss purchase request (PR) control procedures, including funds accountability, PR validation and approval, inspection, acceptance, quality assurance procedures, and disposition of purchased assets
- Inform the onsite commander that additional duties might impede contracting responsibilities or create a conflict of interest
- Advise the onsite commander that only the CCO is authorized to obligate the US government for local purchases, and offer to present a briefing on this topic at the first commander's call
- Have the onsite commander create policy that no one should place undue pressure or command influence on CCOs to purchase any goods and services that violate laws or regulations.

The CCO must promptly locate customers, obtain finance support, and identify POCs at the local embassy. As part of an early deployment, one of the first CCO actions should be contacting the US embassy in the respective host nation. Specifically, two embassy contacts are of major importance from a contingency contracting perspective—the government services officer (GSO) and the executive coordinating agency (ECA). The GSO is essentially a contracting officer within the embassy who would know the support agreements that are in place. It is important to know that if an embassy is asked to assist with contracting actions, an international cooperative and administrative support service fee is charged. If the country hosting the deployment has an acquisition and cross-servicing agreement (ACSA) in place, it could provide the

force with logistics support, supplies, and services. The CCO should check the Department of State website (under Treaties in Force) with the command to determine whether an ACSA is in effect for a given country.

Food, water, fuel, transportation, and facilities quite possibly might be provided, eliminating many problems (such as having to procure such services at startup). Embassies have important country-specific knowledge and can help guide the CCO in what to do and what not to do—and can serve as a prime resource for locating vendors and contractors. The CCO should also know whether the Surface Deployment and Distribution Command or the Navy has port contracts. Some embassies have an ECA, which might provide greater support than the GSO. Like other organizations, embassies differ in how much and how well they can support a CCO, depending on the location and the attitudes of their staff members. A list of US embassies is available at <http://www.usembassy.gov/>.

Acquisition and cross-servicing agreements. Per *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 U.S.C. Section 2341-2350*. Key aspects of an ACSA include the following:

- Transactions that may be cash reimbursements, 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 that 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

- Additional ACSA information is available at <https://ca.dtic.mil/jcs/j4/projects/acsa/>.

Host nation support. It is essential that the CCO establish a link with the host nation support (HNS) teams and obtain cooperation from HNS authorities and personnel to enhance the contracting officer's ability to fulfill contingency contracting obligations. It is also important for the CCO to understand support that can be obtained through HNS. Contact with local US authorities and higher-level headquarters officials will help determine whether HNS is available. Before deployment, coordination with legal assistance, civil affairs units, intelligence, and the US embassy will prove useful for identifying information on contractors in the area. A liaison officer should have knowledge of HNS laws, regulations, and military command structures and should 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 the support that the host nation can provide.

Status of forces agreement. A status of forces agreement (SOFA) is intended to clarify the terms under which the foreign military is allowed to operate. Typically, purely military issues such as the location of bases and access to facilities are covered by separate agreements. SOFAs are more concerned with the legal issues associated with military individuals and property, including issues such as entry into, and exit from, 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 cover procedures for the determination and payment of civil damages caused by the forces.

NATO Tasking

There are two situations when a CCO might be deployed for NATO: a national tasking (US troop contribution), when the FAR and a normal warrant would be used; and a NATO tasking against a crisis establishment staffing document, normally supporting a NATO headquarters, when NATO rules apply. For example, CCOs stationed at Camp Bondsteel in Kosovo use US rules, while CCOs stationed at KFOR Headquarters (HQ) in Pristina use NATO rules. The application of rules comes down to funding: if US funds are used, then US rules and US warrants apply; if NATO funds are used, NATO rules and NATO warrants apply. If tasked to support a NATO operation, CCOs should be aware that the contracting rules are vastly different from US rules. You will work as a procurement and contracting (P&C) officer and will be assigned to a regional Allied contracting office. You will not be required to comply with the FAR, but rather must comply with *Bi-Strategic Command (Bi-SC) Directive 60-70*, available at http://www.aco.nato.int/resources/20/finance/dir60_70.pdf.

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

Additional Planning Considerations

CCOs should consider a number of additional planning elements. For example, the impacts of agreements and operation plans can affect how work is performed under the contract, including the following:

- Applicability of any international agreements such as SOFAs to the acquisition. Check with the relevant command, or see the

Department of State website (under Treaties in Force) for a list of these agreements

- Security requirements applicable to the AOR
- All contractor personnel authorized to be armed who must be fully briefed on US laws, host nation laws, SOFAs, and JFC policies regarding the circumstances in which they may use force
- 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 (e.g., lodging, meals, medical, and office supplies; physical inventory of all government-furnished property, which the contractor shall perform periodically in accordance with *FAR clause 52.245.1*)
- Information on taxes and duties and possible government exemption from them (including information available from the local embassy)
- Applicability of ACSAs (*DoDD 2010.9*, “Acquisition and Cross-Servicing Agreements”), available at <http://www.dtic.mil/whs/directives/corres/pdf/201009p.pdf>.

SOFAs and other international agreements and treaties also can affect contract work, including the following:

- For work performed in Japan, US-Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. United States Forces Japan, component policy, and US-Japan bilateral agreements govern logistics 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 logistics support and base privileges of contractor employees.

The state of the local banking system and its impact on contract business arrangements also can affect contract work.

Referrals and reachback. There might be PRs that cannot be fulfilled through the local market. The CCO should not overlook or underestimate the usefulness of the referral system for fulfilling requirements. Requirements may be referred to another contracting activity for action or may be returned to a CONUS location for reachback support. Usually many sources of contracting expertise that are geographically separated from the deployed CCO could be used, such as the following:

- US embassy or consulate
- Nearest permanent military installation contracting office
- Theater J4
- CONUS contracting offices
- DLA.

At times, CONUS contracting offices may be asked to support OCONUS contingencies for one of several reasons. In some cases, the forward-deployed assets might not be able to process the deluge of requirements for large-scale contingencies. In some cases, conditions in the contingency area of operations might be so dangerous that a large contracting footprint cannot be maintained. In other cases, the complexity of the contract requirement might lead to its assignment to a contracting center of excellence for the pre-award and contract

award phases and then its transfer to the CONUS activity for contract administration. No matter what factors have driven the current situation, the following ground rules govern supporting an OCONUS contingency from a CONUS site:

- It is important for the OCONUS CCO who will administer the contract to participate in the contract award process and to be informed about the development of the acquisition strategy. The OCONUS CCO is the person who understands the environment in which the contract must be executed. The requiring activity might not recognize all the ins and outs of delivering supplies or people to the AOR or might not understand the basic facts of contracting life at the OCONUS site. An unexecutable contract is not helpful to anyone. The OCONUS CCO thus must be contacted early and often.
- The CONUS office must be aware of any established memorandum of understanding or memorandum of agreement with the OCONUS partner to ensure that the operation-specific issues are clearly specified and that the CCO knows which SOFAs and other international agreements apply.

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

For CCOs using reachback buying units, basic funding and shipment information will be useful. In most cases, the vendor will be asked to deliver to a specified AOR buying office—the normal free on board (FOB) destination point. Approximately \$100 should be included 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 might be needed. An accurate estimate of required funding will help the reachback buying unit complete the CCO's order without the need to ask the CCO for additional funds. Because it will normally take 3 to 6 weeks from the time the CCO forwards a request to the reachback buying unit to the time that the CCO receives the items, delays in requesting additional funds will only frustrate the customer who requires the item. The CCO must know that the more preferred purchasing method is through the local AOR to prevent customs and delivery nightmares. The CCO should check the local market before resorting to reachback solutions or Internet purchases.

Civil Augmentation Programs

Civil augmentation programs (CAPs) plan 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. CCOs need to understand the capabilities of each type of contract. All three CAPs support US Joint operations worldwide and prevent the dilution of military forces that would occur if the military provided the required services and support. However, these contracts are expensive, so 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 easily become inflated, particularly when changes or additions are made late in the execution phase. However, these civilian augmentation contracts often are the only means for obtaining the skilled people and services needed to quickly construct and repair buildings and equipment.

Logistics Civil Augmentation Program. The Army Logistics Civil Augmentation Program (LOGCAP) is a peacetime program to preplan

and train for the use of contractor support of emerging requirements. The LOGCAP contracts are designed to provide general logistics and minor construction support to deployed Army, Joint, multinational, and interagency forces. The Army is currently on its fourth LOGCAP contract iteration, LOGCAP IV, which differs from LOGCAP I through III because it now has one support and three performance contractors rather than just one contractor. LOGCAP is characterized by the following elements:

- **Capabilities.** In general, LOGCAP can be used to provide logistics services and minor construction support for any scale of operation.
- **Planning.** The LOGCAP Program Management Office (PMO) helps requiring activities by engaging in deliberate strategic planning. LOGCAP planners participate in designated planning conferences and prepare both general and operationally specific plans. In conjunction with various operational commands, the LOGCAP PMO has created a library of plans that cover a range of scenarios, from support plans for contingency operations in developed or undeveloped countries to plans supporting specific regional contingency plans or operation plans across the range of potential military operations. Event planning can begin with an initial discussion between a requiring activity and the LOGCAP PMO. This discussion is generalized and entails an initial assessment of scope, location, and duration and helps both the LOGCAP PMO and the requiring activity in determining whether LOGCAP is an appropriate course of action. After the determination to use LOGCAP is approved, focused planning begins, with the participation of the LOGCAP PMO, Army Contracting Command—Rock Island, requiring activity, and LOGCAP contractors.
- **Management.** The Army LOGCAP is a Headquarters, Department of the Army (HQDA) program. The HQDA G4 holds primary

responsibility for program policy, guidance, and direction and serves as the LOGCAP Management Decision Package (MDEP) program manager proponent and approval authority for the use of LOGCAP services. The Army Materiel Command, through its subordinate Army Sustainment Command, serves as the principal agent responsible for LOGCAP administration, management, and execution. The Army components supporting field support brigade—augmented by a LOGCAP forward team consisting of a LOGCAP deputy program manager and planning team, including DCMA, Defense Contract Audit Agency (DCAA), US Army Corps of Engineers (USACE), elements of the LOGCAP PMO, LOGCAP support contractors, and an element of the LOGCAP Support Group—provide the JFC and Army forces commander with a single focal point for centrally managing LOGCAP planning and execution in the theater of operation. In the operational area, the LOGCAP forward team helps with incorporating LOGCAP requirements into operation plans and fragmentary orders and will provide other assistance to requiring activities with validated LOGCAP requirements.

Air Force Contract Augmentation Program. As described at <http://www.afcesa.af.mil/shared/media/document/AFD-111202-015.pdf>, the Air Force Contract Augmentation Program (AFCAP) is a worldwide contingency contract tool available to support the Air Force, Joint forces, and any US government agency in need of urgent logistics assistance to support contingency operations. Like all CAP programs, AFCAP 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 meet contingency

operations requirements. Unlike the other Service CAPs, AFCAP can be used to procure and expeditiously ship just-in-time (JIT) commodities. Depending on urgency, degree of requirements definition, and task stability, contracts can be tailored as firm-fixed-price, cost-plus-fixed-fee, or cost-plus-award-fee task orders as necessary to best match government needs. AFCAP is characterized by the following elements:

- **Capabilities.** AFCAP can provide, at a minimum, 72 core general engineering and other logistics services and associated commodity procurement and shipment capabilities. The scope of the AFCAP contract requires contractors to furnish the personnel, equipment, materials, services, travel, and all other services necessary to provide a quick response, worldwide planning, and deployment capability. The contract offers additional capabilities to allow military missions to continue despite facility or service support constraints. AFCAP contractors can provide personnel to complete or augment tasks, a full range of JIT logistics (e.g., acquisitions, deliveries, procurement of commercial off-the-shelf items, heavy equipment leases, bulk materials, war reserve materiel augmentation), and expedient design and build construction. Whenever possible, the AFCAP contractor draws on significant in-place expertise and worldwide commercial vendors with readily available assets. A major contributing effort for AFCAP is the sustainment and maintenance of the deployed forces and the initial force projection. AFCAP can also be used 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 used to help transition and upgrade bare bases from initial austere support to temporary standard facilities and utilities. This approach allows the recovery and reconstitution of critical war reserve materiel resources for use at other locations or for the support of additional expansion for a specific mission. AFCAP also can be

used for general equipment support, but is not intended for in-depth equipment maintenance or depot-level overhaul at contingency locations because 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 performed by the HQ Air Force Civil Engineering Support Agency (AFCESA) staff. Task orders for planning by AFCAP contractors can be awarded to help customers with their requirements.
- **Management.** HQ AFCESA performs program management functions, and the Air Force Education and Training Command (AETC) provides contracting support for AFCAP requiring activities. HQ AFCESA is located at Tyndall Air Force Base, FL, 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 in accordance with the specific needs of that task order. DCMA will furnish administrative contracting officer (ACO) support and, in consultation with the auditor, will monitor, review, and approve the contractor business systems (such as accounting, purchasing, and estimating systems). DCMA will also provide property administration and quality assurance support as required. DCMA ACOs have the authority to execute no-cost change orders to task orders. If DCMA experiences a staffing shortfall for field support during the execution of AFCAP, AFCESA will provide field assessment surveillance teams (FASTs). The AFCESA FASTs are based on a multifunctional deployable team concept that can be tailored as needed by task order, location, and region—first-class boots-on-the-ground oversight to ensure cost, schedule, and quality task order performance by the AFCAP contractors. The AETC

contracting staff will retain all contracting functions not delegated to DCMA, including all PCO functions (and 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 Naval Facilities Engineering Command (NAVFAC) has awarded two worldwide contingency theater support contracts, the Global Construction Capability Contract (GCCC) and the Global Contingency Services Contract (GCSC). The GCCC focuses on construction, while the GCSC addresses facilities support; both are described in more detail in this section. Any GCCC or GCSC orders must be coordinated through a NAVFAC coordinating officer.

Global Construction Capability Contract. The GCCC is a competitively solicited, multiple-award, cost-reimbursable contract with award fee. This acquisition vehicle has three prequalified sources to provide a maximum of \$1 billion of construction over 5 years. The contract furnishes construction, design and build construction, and related engineering services in response to natural disasters, humanitarian assistance needs, conflicts, or situations with similar characteristics. This scope includes occasional projects to ensure readiness to perform during emergency situations and military exercises. NAVFAC also uses the GCCC as an acquisition tool to support *DoDD 4270.5*, “Military Construction.” The GCCC is characterized by the following elements:

- **Capabilities.** The GCCC provides the Navy—or the Navy on behalf of DoD or other federal agencies when authorized—an immediate response for civilian construction capability needs. The scope includes the capability to provide general mobilization services for personnel, equipment, and material to support naval construction

forces (NCF) mobilization 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 in response to natural disasters, military conflicts, or humanitarian aid needs.

- **Planning.** Each contractor is required by contract to maintain an in-place contingency response plan, available to facilitate responses 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.
- **Management.** NAVFAC Atlantic in Norfolk, VA, manages the GCCC. Other NAVFAC components also may be given ordering office authority under this contract.

Global Contingency Services Contract. The Navy GCSC is an indefinite delivery, indefinite quantity (IDIQ) cost-plus-award-fee contract designed to quickly provide short-term facilities support services with incidental construction at other locations (including remote sites) throughout the world. The GCSC is characterized by the following elements:

- **Capability.** This performance-based contract is designed to respond to natural disasters, humanitarian effort needs, contingencies, or other requirements (e.g., nonperformance by an incumbent contractor or instances where unanticipated lapses in service occur). The contract has a ceiling of \$450 million over 5 years.
- **Planning.** The contractor is required by contract to maintain an in-place contingency response plan, available to facilitate responses 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.** NAVFAC Pacific manages the GCSC. 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 tracking will support the CCO in knowing referral status and the finance officer and resource manager in tracking outstanding commitments. Before sending a requirement to another location, usually via email or fax, the CCO should ensure that the acquisition package is complete. The package should include, as appropriate, a PR, full item description, commitment of funds (including stock funds), brand name or sole-source justification, depot waivers, customs clearances (if required), transportation control number, and transportation account codes. In addition, the complete mailing address and telephone number for a single POC (preferably the customer or requester) must be provided. For contract repair items, a DD Form 1149 or other hand receipt also should be included with the item for repair. Funds should be transferred 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, a contracting office is always 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. DoD unified commands and associated contact information are as follows:

- USCENTCOM: 813-827-6420; <http://www2.centcom.mil/sites/contracts/Pages/Default.aspx>

- US PACOM: <http://www.pacom.mil/organization/staff-directorates/j4/j46.shtml>
- EU COM: <http://www.eucom.mil/policies-and-compliance/eucom-operational-contract-support>
- USSOUTHCOM: <http://www.southcom.mil/workwithsouthcom/Pages/Contracting-Support.aspx>
- USNORTHCOM: <http://www.northcom.mil/ocs/>
- AFRICOM: <http://www.africom.mil/ocs.asp>.

Fleet Logistics Centers. The regional Fleet Logistics Centers (FLC) structure provides contracting support for Navy units. The regional FLC can offer details on potential existing contract support for noncombative contingency operations. FLC Norfolk is the lead for the 2nd and 4th Fleets (US East Coast and USSOUTHCOM); FLC San Diego is the lead for the 3rd Fleet (US West Coast); FLC Sigonella is the lead for the 5th and 6th Fleets (USCENTCOM, EU COM, and AFRICOM); and FLC Yokosuka is the lead for the 7th Fleet (Far East).

Defense contractors outside of the United States. The contractor support option is available to field commanders to augment available military support resources and HNS. In the initial stages of an operation, the 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 services such as interpreters, communications, or infrastructure support. Such contractor support allows the commander to minimize the number of combat personnel used for such noncombat functions and to maximize the number of combat personnel focused on combat operations. At the conclusion of operations, contractors can also facilitate early redeployment of military personnel.

DoDI 1100.22, “Policy and Procedures for Determining Workforce

Mix,” sets restrictions on those functions that contractors can provide and those functions that are inherently governmental. Activities that are restricted at least in part include security furnished in hostile or volatile areas as well as procurement functions.

Functions that may be provided by private security contractors (PSCs) include the protection of fixed facilities, assets, personnel and the use of mobile convoy security to protect personnel and materiel movements in the insecure areas outside US bases. PSCs must be employed cautiously when major combat operations are ongoing or imminent. Several factors should be weighed when considering specific security contracts, including the location where contract security personnel will operate; anticipated threat; property or personnel to be protected; manner in which the contractor will be operating in areas of increased risk, including command and control, sharing of threat information, and communication with forces; and the training and qualifications of contract security personnel.

DoDI 3020.50, “Private Security Contractors (PSCs) Operating in Contingency Operations,” establishes policy for the use of PSCs in contingency operations and is implemented through DFARS clause 225.370 and DFARS clause 252.225-7039, both entitled “Contractors Performing Private Security Functions.” Policies and procedures already implemented require that PSCs are 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, which must be defensive in nature and carefully supervised, and for the use of deadly force, which is allowed only as a last resort in response to imminent threats and for 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.

DoD provides overarching guidance regarding the integration of defense contractor personnel into contingency operations. (*DoDI 3020.41*, “Operational Contract Support”) This instruction applies to all DoD components, combatant commanders, and contingency contractor personnel. The instruction does not apply to contracts performed within the United States or at any location that is not part of a contingency, humanitarian assistance, or peacekeeping operation. The requirements in *DFARS clause 225.7402-5* ensure the incorporation of *DFARS clause 252.225-7040* when the contract authorizes contractor personnel to accompany US armed forces deployed outside the United States (CAAF). In addition, other specific requirements apply: *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 52.228-4*, “Workers Compensation and War-Hazard Insurance Overseas,” and *FAR clause 52.228-3*, “Workers Compensation Insurance (Defense Base Act).” Information on the Defense Base Act (DBA) is available at <http://www.dol.gov/owcp/dlhwc/DBAFaqs.htm>. Note that *FAR clause 52.228-3* is required in all contracts for services, even if the personnel performing under such contracts are not CAAF or are required to be included in the Synchronized Predeployment and Operational Tracker (SPOT) database.

General deployment procedures. All CAAF personnel shall report to the deployment center designated in the contract before departing for a contingency operation to complete the following general deployment procedures:

- Validate entry of accountability information in the 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 (e.g., against anthrax, smallpox, and typhoid)
- Validate or complete required training on topics such as the Geneva Conventions; law of armed conflict; general orders; standards of conduct; force protection; personnel recovery; medical issues; operational security; antiterrorism efforts; nuclear, biological, and chemical protective gear; country briefing and cultural awareness; combating trafficking in persons (CTIP); and other appropriate subjects.

After completing deployment processing, certified by annotation of the letter of authorization or provision of a separate deployment processing certification letter, CAAF personnel receive deployment process certifications to bring with them to the Joint reception center (JRC). The contractor certification documentation for CAAF personnel deploying as part of a specific unit will be included in the appropriate unit manifest. CAAF personnel deploying individually are required to carry this certification 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 addressed in other sections of this chapter.

Personnel accountability. JFCs view the proper establishment and maintenance of the accountability of all CAAF personnel as extremely important. Without such information, it is impossible to properly plan for and integrate contingency contractor personnel into the overall operation. Personnel accountability is critical 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 of incorporating contractor personnel information into existing personnel accountability systems, the Office of the Under Secretary of Defense (OUSD) for Acquisition, Technology, and Logistics (AT&L) has recently designated SPOT as a DoD enterprise system for managing and maintaining accountability (by name) of contractor personnel when they are deployed to an operational area. SPOT is a Web-based application that allows authorized users to view, enter, and manage contractor personnel predeployment, accountability, and location data. In addition, 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 they meet all theater entrance requirements. Contractor personnel who do not satisfy established theater entrance requirements may be returned to the point of origin or placed in a holding area until these requirements are met. Geographic combatant commanders (GCCs) 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. After the JRC fully verifies that the contractor is included in the SPOT database and that all theater entrance requirements are met, the required operationally specific identification documents should be issued to contractor personnel. The JRC will arrange for transportation of the contractor and contractor equipment to the point of performance. The arrangement of intratheater transportation of CAAF personnel will include appropriate force protection and security

measures, commensurate with the 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 risk assessment of the local threat level. On the basis of this risk assessment, the JFC or subordinate area commanders may place specific restrictions on the location and timing of contract support; however, care must be taken to coordinate such restrictions with component commanders, applicable DoD agencies, and contracting officers. In addition, contractor personnel location reporting and equipment movement must be incorporated into the JFC movement control, personnel accountability, and force protection plans.

Synchronized Predeployment and Operational Tracker registration. Registration is required to access SPOT at <https://spot.altess.army.mil>. The required registration cannot be completed until a designated organizational sponsor sends an approval email to spot.registration@us.army.mil. Additional information on SPOT registration and contractor personnel letters of authorization is available at <https://www.us.army.mil/suite/kc/12559209>. An Army Knowledge Online logon is required to visit this website.

CCOs, their designated representatives, and contractors must be aware of the personnel recovery architecture that is designed to support their recovery. Isolated personnel training provides information on the processes and actions required if someone is isolated from friendly control. This training includes individual survival, evasion, resistance, and escape (SERE) training, as specified by the requiring activity and supported by JFC and the 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 (as depicted in **Figure 5**).

Phase I: mobilization and initial deployment. This phase is normally the first 30 to 45 days of a deployment and is characterized by an extremely high operations tempo, confusion, and controlled chaos. CCOs should take care of themselves first. CCOs should be prepared to procure and request the items needed to set up contracting operations immediately upon arrival. CCOs should take the following actions immediately after entering the theater because such actions are essential in supporting an effective contingency contracting organization:

- Obtain a low-profile security vehicle (assigned or rented) for the CCO's dedicated use in making purchases, establishing supply sources, and picking up supplies in the local market.
- If necessary, at the earliest opportunity, obtain an interpreter or guide who not only is bilingual, but also is familiar with the local culture and market area. If possible, contact the local US embassy for assistance. In addition, contact the local CID, OSI, and NCIS to conduct a brief background check or to interview the interpreter candidate, thereby increasing antiterrorism protection and determining whether any risks are associated with the local interpreter and associated ties to the community. Host nation business schools are an excellent source of qualified translators.
- Identify an approved medical authority (e.g., veterinarians, public health office, and medical doctors) for all ice, water, and food purchases. The Approved Food Sources link on the US Army Veterinarian website provides locations by theater at <http://vetcom.amedd.army.mil/>.

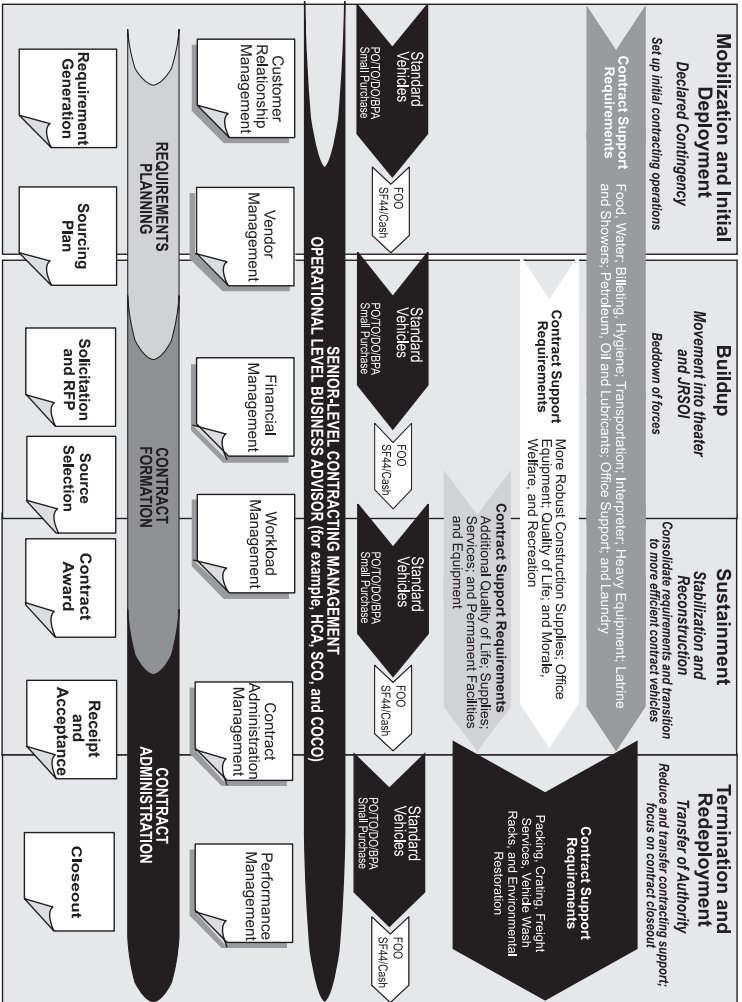


Figure 5. Four Phases of a Contingency

- Establish contact with the nearest component personnel recovery coordination center (PRCC) or the Joint Task Force's Joint Personnel Recovery Center (JPRC). Fill out DD Form 1833, and submit it electronically to the PRCC or the JPRC.
- Establish suitable communications (such as mobile radios and telephones for the office and mobile unit), including at least one Class A telephone with Defense Switched Network (DSN) and off-base access to ensure that customers and vendors can contact the CCO.
- Identify a paying agent to accompany the CCO with currency for local purchases when necessary.
- Review applicable COCOM policies and procedures.
- Contact the HCA designee, existing military installations in 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, the staff judge advocate, and logistics activities. Give consideration to the location of contracting offices with respect to vendor accessibility. The main contracting office should be separate from individual billeting and should be located near the J4 or G4 personnel from whom the CCO typically obtains the majority of relevant requirements and planning guidance. If this is not possible, consider establishing the contracting office in a local hotel with appropriate business amenities, which facilitates access to fax services, computer services, translators, telephones, copiers, and Internet access; provides a certain degree of security; and also helps 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 the availability of necessary items, supplies, and services. Mark maps and prepare source lists, as discussed at <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 those contractors that will provide a 24-hour emergency response.
- Work with the JFC to establish good working relations with local officials, and keep the JFC informed about contracting matters.
- Identify personnel, by name or position, who are authorized to approve PRs as well as 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 logistics procurement support board or some type of system for customers to submit PRs for local acquisitions to (1) update customer training to orient customers to the purchasing system as soon as practical and (2) 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 IDIQ contract, requirements contract, or blanket purchase agreement (BPA).
- Train OOs, field ordering officers, and GCPC holders in the use of simplified acquisition procedures and funds accountability.
- Train procurement purchasing officers about 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 about local market conditions, limitations, and statement reconciliation procedures.
- Contact DCMA, the CAP liaison, USACE, and JCASO forward-deployed team.

Initial requirements. The CCO should be able to determine initial requirements without any great effort. One of the CCO's first priorities is basic life support requirements because the CCO provides contracting support for the arrival of initial forces. These forces will require supplies and services for the initial beddown, including food, potable water, shelter, transportation, communications, office supplies, computer and fax equipment, power adapters, ground fuel, heavy equipment rentals, laundry and bath services, refuse and sanitation services, utilities, interpreters, force protection measures, and quality-of-life services. During this phase, CCOs may find themselves in the undesirable position of serving as the requestor, approving official, certifying officer, and transportation office for deliveries because the CCO must be prepared to award contracts immediately upon arrival at the deployment site. Consequently, it is important for the CCO to have access to boilerplate statements of work (SOWs), PIIN logs, contracting forms, and other documents as required. Boilerplate items should be preloaded onto the CCO's laptop and included in hard copy in the contingency contracting kit. SF 44s, purchase orders, the GCPC, and BPAs will be the primary contracting methods that the CCO uses in this

phase. The contracting statements that are incorporated in a solicitation and award are defined as follows:

- **Statement of objectives.** The statement of objectives (SOO) is a government-prepared document that is incorporated in the solicitation that states overall performance objectives. The government uses a SOO in solicitations when it intends to provide maximum flexibility to each offeror to propose an innovative approach.
- **Statement of work.** The customer provides the SOW to explain the work to be accomplished on a requested project. Details might include the general scope of work, complexity, purpose of the supplies or services that the government will acquire under the contract, place of performance, standards to be followed, procedures for evaluating the results, and other pertinent requirements.
- **Performance work statement.** The performance work statement (PWS) is a SOW for performance-based acquisitions that describes the required results in clear, specific, and objective terms with measurable outcomes. The PWS should be written concurrently with a quality assurance surveillance plan (QASP). The QASP is a government-prepared document that defines the process for evaluating contractor performance.

Phase II: Joint reception, staging, onward movement, and integration. The Joint reception, staging, onward movement, and integration (JRSOI) phase is characterized by a reception and beddown of the main body of deploying forces. In this phase, additional contracting, contract support, and DCAA audit support personnel generally will arrive with their units, although not necessarily at a rate commensurate with the number of troops to be supported. CCO 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 action 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 address consolidating requirements, if 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 in-theater environment, mission, and procedures to expedite purchasing and service contracting.
- Coordinate with the deployed unit commander, who will identify personnel, by name or position, who are authorized to approve PRs and the name of the individual or office providing the funding source. In addition, 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 should direct all personnel that no undue pressure or command influence should be placed on CCOs or appointed representatives to purchase any goods or 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. Related instructions should identify any restrictions on equipment or services that are not properly chargeable to the appropriations cited.

- Comply with the policy that 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.
- Confirm that security personnel shall be notified when a significant amount of cash (\$10,000 or more) will be moved (as described in *DoD Financial Management Regulation*, Volume 5, Chapter 3).
- Continue working with the JFC to establish good working relationships with local officials and local vendors and to keep the JFC informed about contracting matters.
- Continue to appoint and train 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, subordinate commanders, logisticians, and engineers.
- Establish contact and coordination with finance, comptroller, host nation liaison, civil affairs, legal, logistics, contract support, and audit support personnel.
- Establish nonappropriated funds (NAF) contracting procedures to support quality-of-life programs. Implement procedures acceptable to the assigned commander and the chief of morale, welfare, recreation, and services that address (1) formats for NAF contracting and NAF orders for supplies or services, (2) approval and signature authority for NAF contracting, (3) approval and signature authority for NAF contracting, (4) use of SF 44s or cash to make local purchases of supplies and resale merchandise, and (5) use of BPAs and concession contracts.

- Establish BPAs that consolidate requirements into purchase orders and contracts rather than using high-volume and physically time-consuming cash transactions.
- Help in establishing property books and accountability.

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

Sustainment. The contracting activity during this phase will expand into contracts for enhanced quality of life, more permanent facilities and equipment, and 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. CCO priorities during the sustainment phase are as follows:

- Establish long-term contracts (IDIQ requirements contracts and additional BPAs), and consolidate requirements wherever possible to achieve economies of scale, reduce costs, and mitigate risks. Emphasize the use of performance-based SOWs to avoid unnecessary costs as well as 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 (e.g., transportation, laundry, other functions).
- Establish procedures to acquire local purchase items that are not available in the AOR. Consider alternatives such as (1) stateside

support from the unit home base; (2) contracting offices in the vicinity of the deployment, but outside the AOR; (3) stateside location to receive, process, and forward items to the deployment site; (4) Army Air Force Exchange Service or Navy Exchange Service if available at the deployment site; and (5) DLA.

- Minimize the use of letter contracts and undefinitized contract actions. Verify that documentation is sufficient for 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 for 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 operations are 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 overseeing contracts and ensuring that US commanders deployed in foreign countries are able to secure contract support rapidly. Oversight may be needed to ensure Joint and cross-service coordination. Contracting support for stability operations can be a tremendous challenge to the JFC, especially when the JFC mission requires significant contracting support for major reconstruction actions and restoration of essential government services. Normally, this reconstruction-related contracting effort will

be performed in support of the chief of mission, but in some cases may be conducted in direct support of the JFC. Additional information is provided 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 that service. The CCO will be required to terminate and close out existing contracts and orders. Ratifications and claims must be processed to completion. Contracting for life support services must continue until the last troops leave. 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 personnel to leave the area. A list of common items that a CCO should consider—and some valuable lessons learned once a CCO is notified about a contingency termination or redeployment—is included on the handbook website and DVD (under the Additional Text topic and the Redeployment topic).

Exhaustion of Logistics Supply and Required Sources of Supply

Many supplies and services for any contingency operation can be obtained through the logistics supply pipeline established for the operation. (**Table 3** lists the basic supply classes.) Therefore, before initiating any local acquisition for supplies and services, the 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.

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

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

- **Basic deployment kits and prepositioned items.** CCOs should check with the J4 network to determine whether basic deployment kits and prepositioned items are readily available before making a local purchase. Harvest Eagle and Harvest Falcon are two examples of deployment kits that, combined, are known as the Air Force Basic Expeditionary Airfield Resources (BEAR) program. The BEAR program is designed and sized to support simultaneous major theater wars. The equipment provided in these two kits gives theater warfighters the capability to support a total of 68,200 combat troops and 822 aircraft at austere locations, working from the ground up to build complete bases.
- **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 (via federal supply schedules), and other agencies. Legal advisors to an operation also must become familiar with FAR Part 8 and DFARS Part 208 to ensure that contracting officials in any operation must fully use these sources.
- **Host nation and allied forces supply sources.** CCOs also must become familiar with the supplies and services that the host nation has agreed to supply under any applicable HNS agreements for the operation. Allied forces that are contingency partners might have agreed to provide supplies or services pursuant to implementing an arrangement to an ACSA. A memorandum of understanding (MOU) or protocol to the implementing arrangement might have been

executed for the contingency. However, 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 agreements cover actions by one military Service or element to provide logistics or administrative support to another military Service or element. Such actions can be recurring or nonrecurring on an installation, in an area, or even worldwide.
- **Contingency (coalition) partners.** Allied forces who are contingency partners might have agreed to provide supplies or services pursuant to an implementing arrangement to an ACSA. An MOU or protocol to the implementing arrangement might have been executed for the contingency.

Types of Contract Support

Types of contracted support. It is important for CCOs to understand the different types of contracts that are commonly used to support contingency operations. Support contracts can be broken down into three categories: theater support contracts, systems support contracts, and external support contracts. These three categories are key to adequately describing the numerous contracting and contract administration authorities that provide support in the operational area and to outlining the limits on the JFC's ability to control or influence these different types of contracted support (also discussed in Chapter 5 and Chapter 8). The characteristics of these three contract categories are described in this section.

Theater support contracts. Theater support contracts are awarded by contracting officers in the operational area, serving under the direct contracting authority of the Service component, special operations forces command, or designated Joint HCA for the specific contingency

operation. During a contingency, theater support contracts are normally executed under expedited contracting authority and provide supplies, services, and construction from commercial sources that, in general, are in the operational area. Theater support contracts are typically associated with contingency contracting. Also important from the contractor management perspective are the local national personnel who make up the bulk of the theater support contract employees.

Theater support contracts 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. In addition, theater support contracting can be used to acquire commercially available supply items from both local and global sources.

Additional details on Service theater support contracting organizations and capabilities are furnished in *JP 4-10, Appendix C*, “Services’ Theater Support Contracting Organizations and Capabilities.”

Systems support contracts. Systems support contracts are awarded by a military department acquisition PMO that provides 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 support newly fielded weapons systems, including aircraft, land combat vehicles, and automated command and control systems. Systems support contracting, contract management, and program management authority reside with the military department systems materiel acquisition program offices. Systems support contractor employees, mostly 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 is maintained either partially or fully through contracted logistics support. Often there is no military or other support alternative for the support provided by

the original equipment manufacturer (OEM) through field service representatives (also 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 main JFC concern with the use of systems support contracts in military operations is related to contractor personnel management issues.

Individual Services need to ensure that their systems support contracts contain appropriate deployment clauses in accordance with the FAR and DFARS and also adhere to DoD and Service policies. Before 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. In addition, the supported GCC and subordinate JFC must confirm that the theater entrance requirements and other operationally specific contractor management directives are published, updated, and readily available so that the systems support contractor personnel, contracting officer, and supported units are aware of these requirements. This logistics support requirement and the 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. In addition, an overview of Service systems support contracts and management capabilities is included in JP 4-10, Appendix A, “Services’ Systems Support Contract Overview.”

External support contracts. External support contracts are awarded by contracting organizations with a contracting authority that does not derive directly from the theater support contracting HCAs or from systems support contracting authorities. External support contracts provide a variety of logistics and other noncombat-related services and supply support. External support contracts are illustrated by the Services' CAP contracts, including the Army LOGCAP, Air Force AFCAP, Navy GCCC and GCSC, DLA prime vendor contracts, and Navy 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 logistics support and selected nonlogistics support to the Joint forces. The type and scope of this support vary among operations, but can be very extensive depending on a variety of operational factors. In addition, in some operations, DLA may use existing contracts or award new prime vendor contracts to furnish selected supply support (primarily subsistence and bulk fuels) during contingency operations. Other examples of external support contracts include fuel contracts awarded by the Defense Energy Support Center, construction contracts awarded by USACE, contracts awarded by the Air Force Center for Engineering and the Environment, and translator contracts awarded by the Army Intelligence and Security Command.

Similar to the authority for systems support contracts, external support contracting authority does not directly result from the contingency operation. In general, these contracts are issued during peacetime for use during contingencies. The Army 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 (AMC). For the GCC, this means that

contracting authority, and therefore the ability to modify LOGCAP task orders, resides with AMC (or designated DCMA ACOs), 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 know that CAP support contracts are generally more expensive than theater support contracts because of the overhead, management, general, and administrative charges associated with external support contracts. Although logistics planners must make allowances for CAP contracts early in the contingency, every effort should be made to transition 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 the number of these CAP task orders that can be transferred to theater support contracts and how rapidly that transfer occurs. Additional details on the Service CAP organizations and capabilities are included in *JP 4-10, Appendix B*, “Services’ External Support Contract Overview.”

Coordination of theater support and external support contracting effort. It is very important for the J4 staff to ensure that the CSIP synchronizes the theater support, Service CAP, and any DLA contracting efforts to avoid 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 for governmental actors as well as international bodies such as the United

Nations and nongovernmental organizations (NGOs) 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 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.

In many operations, interagency support can be limited in scope and might not pose a significant challenge to the JFC; however, in some stability operations, this support can be much more significant, as discussed in the next section. 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 the success of interagency support is establishing clear communication channels to the supported organization and collecting requirements as early as possible in the planning cycle.

Service Theater Support Contracting Organizations and Capabilities

Theater support contracting organization capabilities differ among military Services. On the basis of the 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 must have its contracting personnel meet the Defense Acquisition Workforce Improvement Act certification requirements. However, knowing the organizational approaches, capabilities, strengths, and weaknesses of each Service can help the JFC maximize the capabilities provided by each Service.

Air Force. The Air Force has a large theater support contracting capability and meets its needs for such support as follows:

- Develop enlisted and officer military contracting professionals, who are expected to spend the majority of their careers in the contracting field

- Augment the Air Force home-base contracting experience with contingency training and exercises
- Organize all military personnel for potential deployment, using flexible modular skills packages called unit type codes (UTCs)
- Employ staff members in a predictable, structured, and managed aerospace expeditionary force deployment process.

Air Force policy is that military contracting officers spend the majority of their careers gaining expertise through a progression of home-based contracting assignments. These assignments 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 skills are applicable to the contracting requirements they will face during contingencies.

The Air Force organizes and deploys CCOs via skill and capability mixes called unit type codes (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 give combatant commanders a highly modular, flexible contracting force. The Air Force deployment packages are generally skill based, not rank dependent. Because of the rigorous Air Force training requirements, the Air Force maintains a large and experienced group of enlisted contracting officers.

Army. The Army recently moved to a modular approach in its contingency contracting structure. The Army's core of military commissioned officers and noncommissioned officers (NCOs), trained as CCOs, is now part of a separate, O-6-level Contracting Support Brigade (CSB). These CSBs are assigned to the Expeditionary Contracting Command, a major subordinate command of the Army Contracting

Command, but are regionally aligned to the existing Army Service component command headquarters. The Army CSBs are composed of contingency contracting battalions and contingency contracting teams. CSB commanders are responsible for the training and readiness of their subordinate units. The CSB is the primary contracting support planner, advisor, and contingency contracting command commander for the theater Army. Senior contingency contracting teams (SCCTs) fall under the CSB commander's acquisition authority.

Each of the Army's modular contracting units trains and deploys as a unit and provides general support to better meet and address contingency operation requirements.

In addition to its uniformed CCOs and NCOs, the Army has two other methods to supplement its formal contingency contracting force structure, by deploying Department of the Army civilian contracting specialists and by using 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 the following 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 CCOs 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 staffing through the

Joint staffing document process, contracting officer billets sourced by the Navy would result in the assignment of a uniformed contracting officer as an individual augmentee or as a Global War on Terrorism support assignment staff member; both personnel assignments are currently managed at the Navy-wide level by the Fleet Forces Command, with recommendations by the Navy Personnel Command. Civilian contracting officers are not used in either the individual augmentee or the Global War on Terrorism support programs.

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 logistics support plan, which includes the number of personnel to be deployed. In general, the Marine Corps does not deploy civilian contracting professionals to support contingency operations. In addition, Marine Corps contracting officers do not contract for construction and do not possess the necessary skill sets to support major reconstruction efforts. The Marine Corps Institute *Contingency Contracting Manual* is available at <https://cmpg.hqi.usmc.mil/>.

DoD Combat Support Agencies

Defense Logistics Agency. DLA is responsible for providing effective and efficient worldwide logistics support to military departments and COCOMs under conditions of peace and war; 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. DoD established DLA JCASO to advance

acquisition management of OCS and, when requested by the combatant commander, to deploy as an enabling Joint staff organization to augment the combatant commander staff for OCS support.

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

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

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

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

Website and DVD Materials Related to Chapter 4

- [Chapter 4 PowerPoint Briefing](#)
- [Chapter 4 Test Questions](#)
- [Trainings Related to Chapter 4](#)
- [Scenarios Related to Chapter 4](#)
- [Topical Index Webpages](#)
 - » [Acquisition Planning](#)
 - » [After Action Reports \(AAR\)](#)
 - » [Agreements: ACSAs and SOFAs](#)
 - » [Contractors Authorized to Accompany the Force \(CAAF\)](#)
 - » [Host Nation Support](#)
 - » [Initial Setup Actions](#)
 - » [NATO Taskings](#)
 - » [Predeployment Planning](#)
- [Additional Reading on](#)
 - » [Combat Support Agencies](#)
 - » [DCAA Support](#)
 - » [Phase Zero Contracting Operations](#)
 - » [Strategic Planning for Contracting Operations](#)
 - » [Redployment and Demobilization Concerns](#)

CHAPTER CONTENTS

Key Points	136
Introduction.....	136
Simplified Acquisition Procedures	137
Micropurchases	140
Contract Types	141
Considerations for Contract Type Selection and Risk Assessment	150
Determinations and Findings.....	153
Justifications and Approvals	155
Lease or Purchase	158
Publicizing Contract Actions	160
Domestic Source Restrictions	162
Other Unique Contracting Considerations.....	166
Payment Information	169
Pre-Award Determinations and Memorandums.....	171
Contract Forms.....	174
Blanket Purchase Agreements ...	179
Source Selection Process	185
Paying Agent Duties	192
Field Ordering Officers and Ordering Officers	195
Contract Tracking and Reporting.....	199
Unauthorized Commitments and Ratifications	202
Website and DVD Materials Related to Chapter 5	204

Chapter 5 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 to provide the needed flexibility in acquiring required supplies and services. Most contingency purchases can be accomplished through simplified acquisition procedures (SAPs).
- Contingency contracting officers (CCOs) should emphasize price negotiations, even where competition exists, 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 on the contractor and provides the contractor with the greatest incentive to perform efficiently and economically.

Introduction

CCOs and all DoD officials have an ethical obligation to abide by laws and regulations. However, in an absence of clear-cut directions, 1.102-(4)(e) of the Federal Acquisition Regulation (*FAR 1.102-(4)(e)*) encourages personnel to think outside of the box.

This chapter summarizes the limitations on, and exceptions to, contracting operating procedures in a contingency environment. Specific augmentation programs that are common to the contingency environment are explained, including SAPs. Frequently used contract types, instruments, and appointed personnel (such as ordering officers)

are also described. CCOs can refer to this chapter for a discussion of determinations and findings (D&Fs), justifications and approvals (J&As), and equipment lease-or-purchase decisions that can apply to the contracting process. The chapter notes the tools for organizing and tracking contracts and the means of providing oversight through the contracting officer's representative (COR) to ensure accountability. The CCO's job is to facilitate the purchasing needs of customers. This chapter also explains the duties of a paying agent and the execution of ratification procedures when unauthorized commitments are made. **Figures 6 and 7** outline and review basic contracting processes and contract formats, respectively.

Simplified Acquisition Procedures

Once contingency contracting is selected, most purchases can be accomplished using SAPs, as described in *FAR Part 13*, which include procedures for the acquisition of supplies and services, including military construction (MILCON), as long as the aggregate amount does not exceed the simplified acquisition threshold (SAT) for declared contingency or peacekeeping operations.

Competition requirements under simplified acquisition procedures. The CCO must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is fair, reasonable, and most advantageous to the government. Maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources in the local trade area. Unless the contract action requires a synopsis pursuant to *FAR 5.101* and an exception under *FAR 5.202* is not applicable, the CCO should consider a solicitation with responses from at least three sources to promote competition to the maximum extent practicable. Whenever possible, the CCO should request quotations or offers from two sources not included in the previous solicitation. The requirement

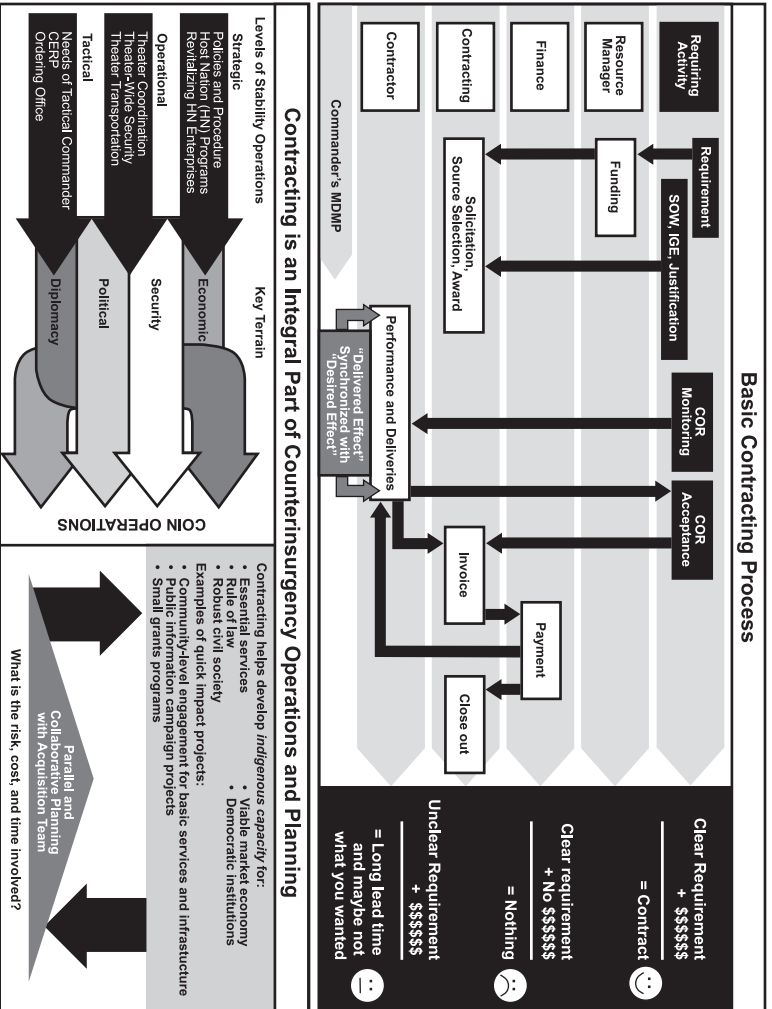


Figure 6. Basic Contracting Processes

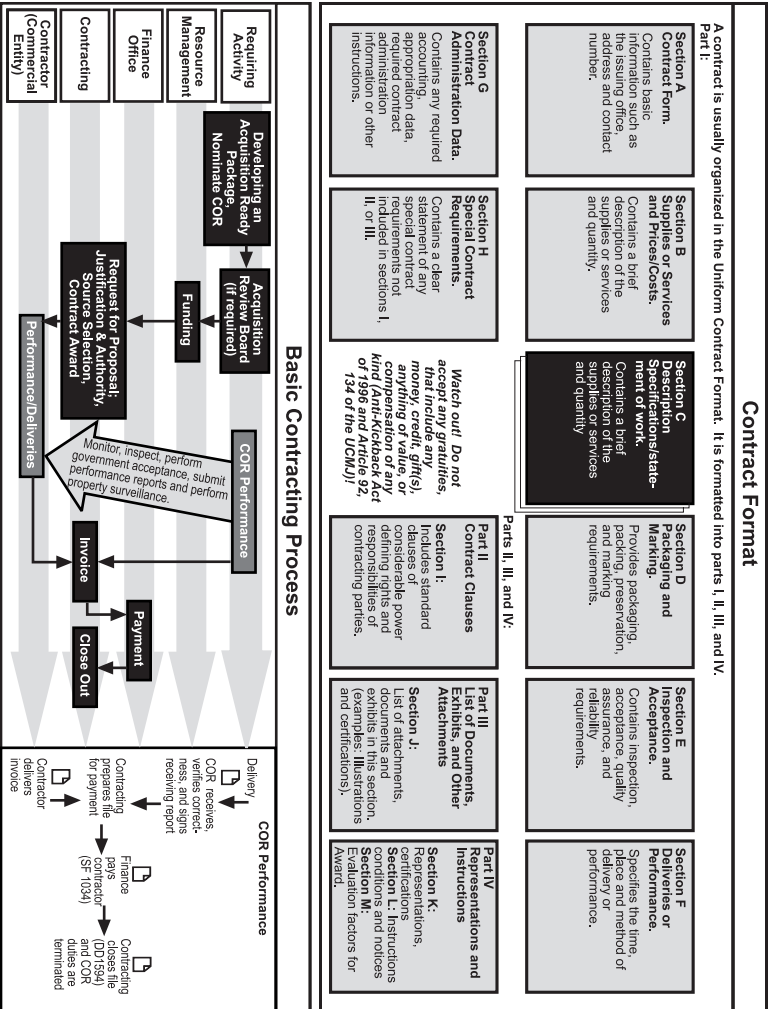


Figure 7. Contract Format

for competition is not waived when using SAPs. In addition, to make micropurchases outside of the United States to support a contingency operation, the CCO needs to support price reasonableness. To the extent practicable, micropurchases shall be distributed equitably among qualified suppliers, and micropurchases may be awarded without soliciting competitive quotations if the contracting officer or the person appointed in accordance with *FAR 1.603-3(b)* concludes that the price is reasonable.

Micropurchases

Governmentwide commercial purchase card. A governmentwide commercial purchase card (GCPC) is the preferred method of purchasing supplies and services within the micropurchase threshold. All purchases that are made or paid for by using GCPCs are subject to all applicable provisions of *FAR Subpart 13.2* and of 213.270 of the Defense Federal Acquisition Regulation Supplement (*DFARS 213.270*) and must be authorized and documented accordingly. Although the benefits associated with using the GCPC are well known, the card might 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 that does not exceed the CCO single-purchase limit. The GCPC can be used for over-the-counter purchases (as permitted by the local banking infrastructure). The GCPC also is frequently used (when local infrastructure supports the technology) over the telephone and the Internet. Training materials are available at <https://acc.dau.mil/CommunityBrowser.aspx?id=18895>. If the GCPC is not accepted, Standard Form (SF) 44 may be used.

Contracting officer use of the governmentwide commercial purchase card. 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 and do not exceed the applicable SAT. (*DFARS 213.301(3)*)

Imprest fund and third-party drafts. (*FAR 13.305* and *DFARS 213.305*) These instruments are cash funds of a fixed amount (established by a funds advance 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 DoD instruments, but they can be established for contingencies if a waiver is received. CCOs should use these instruments as a last resort given the significant security requirements for obtaining 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 outlined in *FAR 13.305*.

Contract Types

Selection of contract types. As described in *FAR 16.101*, a wide selection of contract types is available to the government and contractors, providing the flexibility needed to acquire the large variety and volume of supplies and services required by agencies. Contract types vary according to the following factors:

- Degree and timing of the responsibility assumed by the contractor for the costs of performance
- 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 three broad categories: fixed-price contracts, (*FAR Subpart 16.2*) cost-reimbursement contracts (*FAR Subpart 16.3*), and time and materials (T&M) or labor-hour (LH) contracts. (*FAR Subpart 16.6*)

Specific contract types range from firm fixed price (FFP), in which the contractor has full responsibility for the performance costs and the resulting profit or loss; to cost plus fixed fee, in which the contractor has minimal responsibility for performance costs, and the negotiated fee (or profit) is fixed; to T&M or LH, in which the contractor is paid at preestablished fixed hourly rates, differentiated by the types of labor actually provided, and is reimbursed for materials or other direct costs of performance. In addition, in a number of incentive contracts (*FAR Subpart 16.4*), the contractor's responsibility for performance costs and for the offered profit or fee incentives is tailored to the uncertainties involved in contract performance. Moreover, in some situations, it is beneficial for the government to negotiate master indefinite-delivery contracts for supplies or services, with specific requirements detailed later in specific task orders or delivery orders. (*FAR Subpart 16.5*)

Noncompetitive contracting, cost-reimbursable contracts, and T&M and LH contracts pose special risks of overspending. DoD has received specific guidance to reduce the use of these high-risk contract authorities, as specified in *Office of Management and Budget (OMB) Memorandum M-09-25*, "Improving Government Acquisition."

Fixed-price contracts. As described in *FAR Subpart 16.2*, under a fixed-price contract, the government must describe exactly the required contract results and give the contractor the flexibility to plan, manage, and execute the work to achieve those results. This type of contract has tremendous advantages because the performance and cost risks lie with the contractor. Contract types commonly used in a contingency environment are as follows:

- FFP contract
- Fixed-price contract with an economic price adjustment
- Fixed-price incentive contract, with determination and finding (D&F) required.

Firm-fixed-price contracts. As described in *FAR 16.202-1*, an FFP contract specifies a price that is not subject to any adjustment based on the contractor's cost experience in performing the contract. This contract type specifies that the contractor assumes maximum risk and full responsibility for all costs and resulting profit or loss. An FFP contract provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden on 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 is still an FFP contract when such incentives are used. FFP contracts are suitable under the following conditions:

- There is adequate price competition.
- There are reasonable price comparisons with previous purchases of the same or similar supplies or services that were 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; reasonable estimates of their cost impacts can be made; and the contractor is willing to accept an FFP contract and the associated assumption of the risks involved.

Cost-reimbursement contracts. As described in *FAR Subpart 16.3*, in general, the CCO will not be involved in cost-type efforts unless deployed as an administrative contracting officer with the Defense Contract Management Agency or deployed into security, sustainment, relief, or reconstruction activities. Under a cost-reimbursement contract, the contractor agrees to provide its best effort to complete the required

contract effort. Cost-reimbursement contracts specify the 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 of the contractor's cost accounting system. CCOs should use these types of contracts when uncertainties in contract performance do not permit costs to be estimated with sufficient accuracy to justify the use of any type of fixed-price contract. Consequently, these types of contracts generally entail large dollar values and external support. When awarding cost-reimbursement contracts, CCOs should ensure that the allowable cost and payment clause specified in *FAR 52.216-7* is included and flows down to cost-type subcontracts. The Defense Contract Audit Agency supports deployed support personnel in a contingency operation and is available to assist the CCO in awarding and administering cost-type contracts.

The handbook DVD includes additional information about incentive type contracts.

Time-and-materials and labor-hour contracts. As described in *FAR Subpart 16.6*, under a T&M or LH contract, the contractor agrees to provide its best efforts to accomplish a specific requirement for services at predetermined hourly rates for the categories of labor to be performed. In T&M contracts, but not LH contracts, the contractor is reimbursed for the actual costs of any materials or other direct costs required to perform the work. T&M and LH contracts call for periodic payments for the actual labor performed, using the labor category rates in the contract, which include all direct labor, associated indirect costs, and an amount for profit. In addition, to the extent that materials or other direct costs are incurred in providing the services, the contractor will be reimbursed at actual cost, up to the ceiling amount noted in the

contract or order. T&M and LH contracts can be particularly useful and appropriate in contingency contracting situations when the need for services is clearly understood, but the particular parameters of the required labor or materials cannot be definitively established at the time of contract award. In such situations, the use of T&M and LH contracts can be the most appropriate way to acquire the necessary services while limiting the potential obligations of both the contractor and the government. Because the contractor will be paid for each hour of services provided (up to the ceiling amount established in the contract or order), the CCO and the designated COR must take great care in performing contractor oversight and overall administration. CCOs should ensure that the inspection clause (*FAR 52.246-6*) is included in all T&M and LH contracts and should be prepared to reduce the labor category hourly rates paid to contractors that must reperform work that was unacceptable to the government when initially performed. This labor category rate reduction is designed to remove potential contractor profit in the hourly rates when the government must require unacceptable work to be reperformed.

Indefinite-delivery contracts. The three types of indefinite-delivery contracts are definite-quantity, indefinite-quantity, and requirements contracts, as described in *FAR Subpart 16.5* and *DFARS Subpart 216.5*.

Definite-quantity contracts. As described in *FAR Subpart 16.502*, a definite-quantity contract provides for the delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance scheduled at a designated location, time, and date after the order is placed. A definite-quantity contract may be used when the following can be determined in advance:

- 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 contracts. As described in *FAR Subpart 16.5* and *DFARS Subpart 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 it will require during a fixed contract period, so it is inadvisable for the government to commit itself to procuring more than a minimum quantity. Such quantity limits can be stated as number of units or as dollar values. The contracting officer should use an indefinite-quantity contract only if a recurring need is anticipated. Indefinite-quantity contracts are characterized as follows:

- The contract must require the government to order—and the contractor to furnish—at least a stated minimum quantity of supplies or services. If an order is placed, 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 order or delivery order and the maximum quantity that it may order during a specific period of time.

A solicitation and contract for an indefinite quantity must address the following:

- Specify the period of the contract, including the number of options and the period during which the government may extend the contract under each option
- Specify the total minimum and maximum quantity of supplies or services that the government will acquire under the contract
- Include a statement of work, specifications, or other description that reasonably explains the general scope, nature, complexity, and purpose of the supplies or services that the government will acquire under the contract and thereby enables 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, note the procedures and selection criteria that the government will use to give awardees a fair opportunity to be considered for each order (*FAR 16.505(b)(1)*)
- Include the name, address, telephone number, fax number, and email address of the agency task order 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, specify that variable units or amounts (such as the number of meals served beyond the minimum guaranteed) require subsequent verification and audit by the COR.

Requirements contracts. As described in *FAR 16.503*, a requirements contract is an indefinite-delivery contract that provides for filling all of the actual purchase requirements for specific supplies or services of

designated activities during a specified contract period, with deliveries scheduled by the timely placement of orders with the contractor. Requirements contract advantages include the following:

- Requirements contracts have the flexibility needed to support deployment without the financial risk and administrative burden that an indefinite-delivery contract imposes. Under a requirements contract, the activity only orders the needed supplies or services when they are 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 (DD) Form 1155 and contain information similar to that in a purchase order, with some minor differences.
- The contract price can be based on an FFP or cost-reimbursement determination. The agreed-to prices can be derived from either catalog or market prices.
- If the government no longer has a requirement for the supplies or services covered by the contract, the contractor has the burden of proving whether 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, permitting the contractor to provide economic quantities in keeping with local market conditions. Orders that fall outside the applicable range will be treated as separate purchases. The better the customer defines its needs up front, the better the resulting competition and prices.
- The CCO should perform a spend analysis of known requirements to determine the categories of supplies and services that might be suitable for a centralized contract. One approach would be reviewing the number of simplified acquisition actions for the same items.

Letter contracts and undefinitized contract actions. As described in *DFARS 217.74*, undefinitized contract actions (UCAs) are defined as any contract action for which the contract terms, specifications, or prices are not agreed upon before performance begins. Examples include letter contracts, basic ordering agreements, and provisioned item orders when the price is not agreed upon before performance begins. The head of contracting activity (HCA) shall approve a UCA before award. The regional contracting center (RCC) chief will forward a request for approval to award a UCA through the senior contracting official (SCO) to the HCA. UCAs shall be accomplished in accordance with *DFARS 217.74*. UCA approval authorities shall establish procedures for RCC chiefs to track UCAs and to 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 shall prepare a new milestone schedule if the DFARS definitization schedule milestones are improved. 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 the reasons why the government would be seriously injured if the action is 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 another external support contract—of a flexibly priced nature should include the clauses specified in *FAR clause 52.216-24*, “Limitation of Government Liability”; *DFARS clause 252.217-7027*, “Contract Definitization”; and *DFARS 217.7404-4*, “Limitations on Obligations.” These clauses 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 is 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 decides which type of contract to use depending on the facts surrounding the individual acquisition. The objective is to select the contract type that places a reasonable degree of risk on the contractor and also provides the contractor with the greatest incentive to perform efficiently and economically. The CCO must consider the factors in *FAR 16.104* as well as the stability and predictability of the requirement, specificity of the work description, known track records of available contractors, and general acquisition environment. The CCO must document in the contract file the rationale for the contract type selected.

Commerciality of the requirement. As described in *FAR 12.207*, when acquiring a commercial item, the CCO should consider a number of factors, including the following:

- The CCO should normally use an FFP contract or fixed-price contract with an economic price adjustment. (*FAR 12.207(a)*)
- To protect the government's interests, each purchase of commercial items and services should be assessed to determine whether it should use a unilateral or bilateral contractual instrument.
- CCOs may use a T&M or LH contract under certain circumstances if the determination is made that no other authorized contract type is suitable. (*FAR 12.207(b)*)

When assessing unilateral and bilateral options, the CCO should consider factors such as the following:

- Business and cultural environment. Commercial practices vary among countries. Market research will clarify the risk associated with local commercial practices and the level of protection required to maintain 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. A bilateral signature makes the agreement binding on both parties. (*FAR 13.004(b)*)
- Order amount, contractor financial capabilities, and potential impact on mission (if order is not filled).

Acquisition method. As described in *FAR 16.102* and *DFARS 216.104-70*, the acquisition method selected for a particular acquisition can limit the available choice of contract type as follows.

- **Simplified acquisition.** When using SAPs, purchase orders are normally FFP.
- **Unpriced orders.** An unpriced order can be used in certain situations when it is impossible for the CCO to obtain firm pricing before issuing the purchase order. Whenever the CCO uses an unpriced order, it must include a dollar limit on the government's obligation, and the contracting officer must follow up to ensure timely pricing.
- **Negotiation.** When using the negotiation procedures prescribed in *FAR Part 15*, the CCO may use any contract type (or combination of contract types) that will promote the best interests of the government, as long as the specific limitations in *FAR Part 16* are met. CCOs must not use any contract type not specified in the FAR unless authorized by agency regulation or a FAR deviation.

- **Cost risk.** (*FAR 16.103(a)*) CCOs must 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, CCOs must consider the proper allocation of cost risk. At a minimum, the 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, the appraisal of cost risk should begin with an appraisal of performance risk. For larger, more complex contracts, the CCO likely will need assistance from other members of the government acquisition team (e.g., representatives from the requiring activity, engineering staff, contracting, and program or project management). Relevant considerations include the following:
 - » 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
 - » Previous 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 affect contract costs. Preferred acquisition practice calls for forward pricing of contract efforts because forward pricing provides a baseline that the CCO 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 extends several years. What will material and labor cost years from now? Will material shortages occur years from now? If these unknown costs are significant, the length of the contract becomes an important consideration in the selection of contract type. A fixed-price contract with an economic price adjustment is designed specifically to reduce this market risk for contractors.

Determinations and Findings

Definition. As described in FAR 1.701, a D&F is 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 the findings, which are statements of fact or rationale that are essential to support the determination and must cover each requirement of the statute or regulation.

General. As described in 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, as reasonably described in that D&F. D&Fs may provide a reasonable degree of flexibility. Furthermore, in the application of D&Fs, 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 level of the increase permitted by the option.

Some of the more common general D&Fs address type of contracting action, exercising of an option, extension of period of performance, and ratification.

Class determination and finding. As described in *FAR 1.703*, CCOs shall be aware of any class D&Fs for their areas of responsibility (AORs). 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). Important D&F considerations include the following:

- 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 fall 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. As described in *FAR 1.704*, each D&F shall detail sufficient facts and circumstances to clearly and convincingly justify the specific determination made. At a minimum, each D&F shall include, in the required agency format, the following information:

- Specific identification of the document as a D&F
- Identification of the agency and the contracting activity
- Nature and description of the action being approved
- Citation of the appropriate statute or regulation that is the basis for the D&F
- Findings that detail the particular circumstances, facts, or reasoning essential to support the determination, with necessary supporting documentation that shall be obtained from appropriate requirements and technical personnel

- 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*)
- Signature of the official authorized to sign the D&F (*FAR 1.707*) and the date signed.

Supersession and Modification. As described in *FAR 1.705*, D&Fs function as follows:

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

Signatory authority. As described in *FAR 1.707*, when a D&F is required, the appropriate official shall sign it in accordance with agency regulations. Authority to sign (or delegate signature authority for D&Fs) is specified in the applicable parts of the FAR.

Justifications and Approvals

Justification and approval for other than full and open competition. When using procedures other than those for full and open competition, the contracting officer must complete a thorough written justification in accordance with *FAR 6.303*, explaining the reasons for proceeding with the award of a contract without full and open competition. The CCO must also ensure that a fair and reasonable price is achieved. This justification must be approved by the approval authorities, as specified in *FAR 6.304*. The CCO should be familiar with the deployed agency's thresholds and should know when legal review of the J&A is required.

New contracts and modifications are exempt from the requirements for full and open competition (so no J&A is required) if the following apply:

- Acquisitions are made under the SAP of FAR Part 13.
- Contracts are awarded under procedures expressly authorized by statute, except for those specifically addressed under the authority of Section 2304(c)(5) of the United States Code (10 U.S.C. Section 2304(c)(5)).
- Contract modifications are within the scope and under the terms of an existing contract.
- Orders are placed under requirements contracts or definite-quantity contracts, as noted in FAR Part 16.5.
- Orders are placed under indefinite-quantity contracts when (1) the contract was awarded under the procedures of FAR Part 6.1 or Part 6.2 and all responsible sources were realistically permitted to compete for the requirements in the order; or (2) the contract was awarded under FAR Subpart 6.3 and the contract's J&A adequately covered the requirements in the order.

If the contract action or modification is not exempt from the requirements for full and open competition (as previously described), there are several exceptions to the requirements. The most commonly used exception in a deployed environment is unusual and compelling urgency, but the CCO must be familiar with the complete list of FAR exceptions, noted as follows in FAR 6.302:

- Only one responsible source (sole source) and no other supplies or services will satisfy agency requirements. (FAR 6.302-1)
- The unusual and compelling urgency (FAR 6.302-2) authority to use procedures other than those for full and open competition applies in

those situations when an unusual and compelling urgency precludes full and open competition and a delay in contract award would result in serious financial or injury to the government. It is important to note that (1) unusual and compelling requirements are not to be confused with sole source requirements (FAR 6.301 (c)(1)); and (2) CCOs are warned against contracting without providing for full and open competition because of a lack of advance planning by the requiring activity or because of concerns related to the level of funds available (for example, funds will expire).

- Industrial mobilization, engineering, developmental or research capability, or expert services. (FAR 6.302-3)
- International agreement. (FAR 6.302-4)
- Statutory authorization or requirement. (FAR 6.302-5)
- National security. (FAR 6.302-6)
- Public interest. (FAR 6.302-7)

When unusual and compelling urgency is the basis for using procedures other than those for full and open competition, the written J&A may be made after contract award if the preparation and approval of the J&A before 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.

Class justifications and approvals. (FAR 6.303-1(d)) Class justifications and international agreement competitive restriction (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 AORs.

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. At a minimum, the following factors should be considered (in addition to applying *10 U.S.C. Section 2401* statutory authorization requirements to the lease of a vessel, aircraft, or combat vehicle or a commercial vehicle and associated equipment):

- Estimated length of the period that the equipment will be used and the extent of use during 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 ends
- Trade-in or salvage value

- Imputed interest
- Availability of a servicing capability, especially for highly complex equipment (i.e., the ability of the equipment to 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* (available at <http://comptroller.defense.gov/fmr>). Leases are either capital leases or operating leases. (*FMR 7000.14-R*, Volume 4, “Accounting Policy and Procedures,” Chapter 6, “Property, Plant, and Equipment,” Section 060206) Procurement funds are used for capital leases, which are essentially installment purchases of property. Note that if a lease is justified, a lease with option to purchase is the preferred acquisition method, as specified in *FAR 7.402(b)(2)*.

Nontactical vehicle lease or purchase. The lease-or-purchase decision is especially important in the acquisition of nontactical vehicles (NTVs). A recent DoD Inspector General report on the management of NTVs (available at <http://www.dodig.mil/audit/reports/fy10/10-022.pdf>) discusses the cost trade-offs in different acquisition methods. **Figure 8** (taken from that report) illustrates the average cost over time of different acquisition approaches. This figure is an example of the insights that the required analyses can offer with regard to the lease-versus-purchase decision. The report also identifies another important issue—the management of NTVs and the problems associated with improperly managing them and failing to centralize their purchase. Such actions could lead to unnecessary and more expensive leases and purchases. If the requirement is for procuring or leasing vehicles versus transportation services, CCOs should review procurement restrictions with the General Services Administration.

Publicizing Contract Actions

Publication of contract actions. Pursuant to *FAR Part 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 to support the contingency operation. (*FAR 5.101(a)(2)*) In addition, contracting officers should advise potential vendors about all unclassified solicitations that have been released to request proposals and should encourage vendors to submit proposals.

Synopsis of requirements in *Federal Business Opportunities*. A CCO can unilaterally decide that a particular requirement does not need to be synopsized in *Federal Business Opportunities (FedBizOps)* under 14 specific exceptions specified in *FAR 5.202(a)*. In a contingency

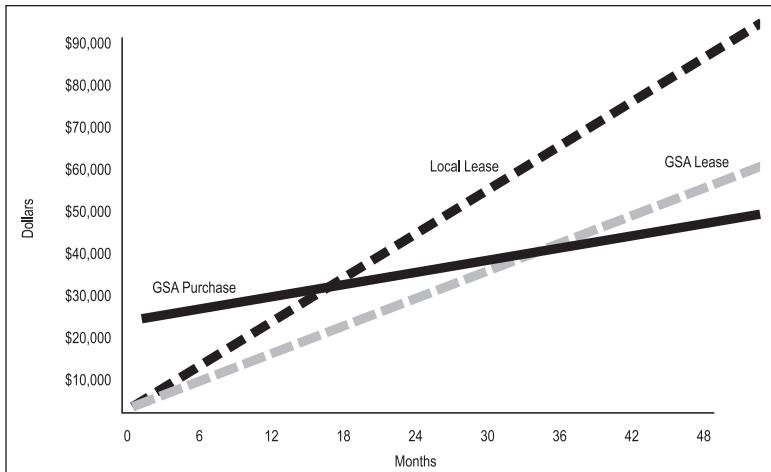


Figure 8. Average Cost of NTVs Over Time Using Different Acquisition Approaches

or humanitarian situation, the most commonly used exception applies when the proposed action will be made and performed outside the United States and its outlying areas and only local sources will be solicited. However, the CCO should carefully consider whether one of the other exceptions might apply to the proposed action before proceeding with a synopsis. Local contracting organization policies might require some form of posting or prior notification to potential offerors or bidders, even if the proposed action does not require a synopsis in *FedBizOps*.

Oral solicitations. Oral solicitations or verbal requests for proposals (RFPs) 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 a last resort because of potential associated problems, and they require immediate follow-up in writing. CCO documentation also must provide a sufficient rationale for the use of an oral solicitation. The contract file includes the following:

- Justification for use of an oral solicitation
- Item description, quantity, and delivery schedule
- Sources solicited, including the date, time, name of the person contacted, and prices quoted
- Solicitation number provided to prospective offerors.

Once the CCO completes the oral solicitation and selects a successful offeror, a contract will be prepared as quickly as possible for the contractor's signature. Delay might require a further explanation in the contract file that describes 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.

Domestic Source Restrictions

Foreign acquisitions. *FAR Part 25* and *DFARS Part 225*, “Foreign Acquisition,” establish regulations implementing the Buy American Act, Balance of Payments Program, and Trade Agreements Act.

Buy American Act. The Buy American Act restricts the purchase of supplies that are not domestic end products for use in the United States. The Buy American Act does not apply to articles, materials, and supplies for use outside of the United States, its possessions, Puerto Rico, and other sites 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-cost domestic offer is unreasonable. In view of this exception, most acquisitions conducted overseas to support a foreign contingency operation will not be subject to the Buy American Act and the implementing regulations at *FAR Subpart 25.1* and *Subpart 25.2*.

Balance of Payments Program. This program applies to purchases of supplies or construction for use outside of the United States. The program institutes a preference for domestic (US-made) products and construction materials. Exceptions to the program are specified: (*DFARS 225.75*) A foreign end product may be acquired for use outside of the United States—or a foreign construction material may be used in construction outside of the United States—without regard to the restrictions of the Balance of Payments Program if the following conditions are met:

- The estimated cost of the end product does not exceed the SAT.
- The end product or construction material is listed at *FAR 25.104*, or the HCA determines that the requirement (1) can only be filled by a

foreign end product or construction material (*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 (e.g., 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 petroleum products or products for commissary resale.
- The end products are eligible products subject to the Trade Agreements Act, North American Free Trade Agreement (NAFTA), or 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.
- 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 U.S.C. Section 2501 et seq.* and *FAR Subpart 25.4*) 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 holding least developed nation status. The President has delegated this waiver authority to the US trade representative.

FAR 25.401 lists all designated countries to which the Trade Agreements Act will apply. The Trade Agreements Act does *not* apply to the following:

- Purchases of supplies below the dollar threshold established by the US trade representative, with current dollar thresholds listed in FAR 25.402(b)
- Purchases of arms, ammunition, or war materiel
- Construction contracts valued at less than established dollar threshold
- Some service contracts, per FAR Section 25.403(c)
- Purchase from foreign sources that is restricted by the DoD Annual Appropriations or Authorization Act, with all products to which the act applies identified in DFARS 225.401-70.

Berry Amendment. (DFARS 225.7002) CCOs must comply with the Berry Amendment. Unless a specific exception in law applies, the following products, components, or materials must be grown, reprocessed, reused, or produced wholly in the United States if they are purchased with funds made available (but not necessarily appropriated) to DoD: (DFARS clause 252.225-7012)

- Food
- Clothing and the materials and components thereof, except for sensors, electronics (an exception that 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 Berry Amendment exceptions. Several of these exceptions may apply in a deployed environment as follows:

- Acquisition at or below the SAT
- Acquisition of any of the items in DFARS 225.7002-1(a) or 225.7002-1(b) if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired when needed at a satisfactory quality and in a 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 United States in support of combat operations
- Acquisition of perishable foods by or for activities located outside of the United States for their personnel

- Acquisition of food, specialty metals, or hand or measuring tools in support of contingency operations or for which the use of procedures other than competitive ones has been approved based on unusual and compelling urgency (*FAR 6.302-2*)
- Emergency acquisition by activities located outside of the United States for their personnel
- Acquisition of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced, and acquisition of specialty metals when the acquisition furthers an agreement with a qualifying country (*DFARS 225.872*)
- Acquisition of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country (*DFARS 225.872*), with a requirement for synopsis within 7 days after contract award when using this exception (*DFARS 205.301*)
- Acquisition of commercially available off-the-shelf items containing specialty metals, an exception that 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.

The DFARS clauses pertaining to the Berry Amendment must be included in DoD solicitations (invitations for bids [IFBs] or RFPs) 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 *FAR Subpart 25.5 et seq.*

Other Unique Contracting Considerations

Synchronized Predeployment and Operational Tracker. The Synchronized Predeployment and Operational Tracker (SPOT) is the US government system of record for contractor and contractor

Subpart	Supplies for Use		Construction		Services Performed	
	Inside US	Outside US	Inside US	Outside US	Inside US	Outside US
25.1 Buy American Act—Supplies	X	—	—	—	—	—
25.2 Buy American Act—Construction Materials	—	—	X	—	—	—
25.3 Contracts Performed Outside the United States	—	X	—	X	—	X
25.4 Trade Agreements	X	X	X	X	X	X
25.5 Evaluating Foreign Offers— Supply Contracts	X	X	—	—	—	—
25.6 American Recovery and Reinvestment Act—Buy American Act—Construction Materials			X			
25.7 Prohibited Sources	X	X	X	X	X	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
25.8 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

personnel accountability and visibility. Per *DFARS clause 252.225-7040(g)*, SPOT is mandated for all contractors authorized to accompany the forces (CAAF) serving in a declared contingency, humanitarian, or peacekeeping operation (or in other military operations or exercises) when designated by the combatant commander. CAAF may include US citizens, US legal aliens, third-country nationals, local nationals who reside with US forces, or others as required by each combatant command (COCOM). Additional information on SPOT is available at <http://www.resource.spot-es.net/>.

Theater business clearance. (*DFARS 225.74* and *DFARS Procedures, Guidance, and Information [PGI] 225.74*) Theater business clearance (TBC) and contract administration delegation (CAD) refer to Office of the Secretary of Defense policies that give the COCOMs both visibility and a level of control over all external support, systems support, and theater support contracts that execute or deliver contracted support.

Defense Base Act insurance. Defense Base Act (DBA) insurance is required in all contracts for services to be performed outside of the United States, regardless of whether the personnel performing those services have CAAF status. In addition, before an employee who has CAAF status can deploy, the DBA insurance information block in SPOT must include a valid policy or binder number. Additional information on DBA is available at www.dol.gov/compliance/guide/defense.htm and <http://www.dol.gov/owcp/dlhwc/DBAFaqs.htm>.

Payment Information

Wide Area Workflow (WAWF).

The Wide Area Workflow (WAWF) system, described at <https://wawf.eb.mil/>, is a secure Web-based system for government contractors and authorized DoD users for generating, capturing, and processing receipt and payment documents. It enables electronic submission of contractor invoices as well as 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 GCPC;
2. Awards to foreign vendors for work performed outside of 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 U.S.C. Section 101(a)(13)*; humanitarian or peacekeeping operations, as defined in *10 U.S.C. Section 2302(8)*; or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or to 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 who administers the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the contractor.

Payment in local currency. As described in *FAR 25.1002*, local currency is the preferred payment method for contracts entered into with local foreign firms and performed outside of the United States, unless an international agreement provides for payment in dollars or the contracting officer concludes that the use of local currency is inequitable or inappropriate, as described at <http://fxtop.com/>. It is a preferred practice to use electronic funds transfer (EFT) when making payments to vendors and contractors. Currency exchange rates are available from the local finance office or at <http://www.fms.treas.gov/>.

Contingency contracting officer currency declaration. As noted in *FAR 25.1002* and *DoD FMR 7000.14-R*, Volume 5, 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 that CCOs must include in the contract the exchange rate to be used for converting the contract price from US dollars to the local currency, as available at <http://www.xe.com>.

One of the CCO functions is to help stabilize the local economy. An

influx of US dollars often works against this goal by further devaluing the local currency. Before placing overseas contracts in US dollars, the CCO should discuss the subject with the embassy, host nation liaison office, staff judge advocate, and accounting and finance office.

Choice of law. (*DFARS 233.215-70*) Each contract awarded in a foreign country in support of a contingency operation should contain a contract clause stating that US laws apply to the contract, the contract will be interpreted in accordance with US laws, and 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 accomplished through negotiation. When setting the price of an item, CCOs should keep in mind that the first price quoted is usually only a starting position for negotiations. CCOs who deal with foreign contractors know that most of them can be shrewd negotiators. CCOs should consider negotiating for lower prices as a normal and necessary business practice. Two or three rounds of negotiating exchanges can be the most prudent and effective way to reduce proposed prices. For supplies, services, and construction, experience in the US Central Command (USCENTCOM) theater has shown that the price drops dramatically whenever discussions are initiated 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. However, if the reverse is true and the contractor is aware that the product or service is unavailable or the requirement is urgent, the CCO might be hard pressed to negotiate a better deal.

Price negotiation memorandum. The business culture in most deployed locations relies on price negotiations. CCOs should emphasize price negotiations, even if competition exists, at sustained or established

locations. In awarding negotiated contracts, contracting officers should always engage in aggressive negotiations based on renegotiation objectives. (*FAR 15.405*) All negotiation results must be documented in a price negotiation memorandum (PNM). (*FAR 15.406-3*)

Fair and reasonable prices. The CCO shall include in the contract file a CCO memorandum that explains how fair and reasonable prices were obtained by the government and the basis for the price reasonableness determination. (*FAR 15.402*)

Certified cost or pricing data. The award of any negotiated contract (or the modification of any contract) that exceeds \$700,000 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)*) The CCO can seek a waiver if there is a reasonable basis for it. When the certificate of cost or pricing data is required, offerors must complete the certificate form available at *FAR 15.403-4(b)(2)*.

Exceptions 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 under the following conditions:

- Acquisition is at or below the SAT.
- Prices are based on adequate price competition (i.e., two or more responsible offerors responded).
- Commercial items are being acquired.
- A contract or subcontract for commercial items is being modified.
- Prices are set by law or regulation.
- A waiver has been obtained (only for contracts in excess of \$700,000).

Independent government estimate. An independent government estimate (IGE) is generally used for commercial items, supplies, equipment, and simple services that are routinely available on the open

market at competitive prices. The price estimate is required on all contract requirements that exceed the SAT and must be independently developed based on a comparison and analysis of factors such as historical prices paid and market survey information. The IGE is usually developed by the requiring unit and is used to establish a realistic price or cost.

Responsible prospective contractor. (*FAR 9.103(a)*) Contracts may be awarded only to responsible prospective contractors. A responsible contractor is defined as an entity that meets the criteria in *FAR 9.104-1*. The CCO is responsible for researching a contractor and determining whether that contractor is deemed responsible. The Contractor Performance Assessment Reporting System (CPARS) and the Federal Awardee Performance and Integrity Information System (FAPIS) can aid the CCO in researching contractor responsibility. The following general standards apply:

- Adequate financial resources (or the ability to obtain the resources) needed to perform contract work (*FAR 9.104-1(a)*)
- Ability to comply with the delivery schedule (*FAR 9.104-1(b)*)
- Satisfactory performance record (*FAR 9.104-1(c)*) and, for construction contracts, the specific requirement for the agency to review performance evaluation reports (*DFARS 236.201*)
- Satisfactory record of integrity and business ethics (*FAR 9.1041(d)*)
- Necessary organization, experience, accounting, operational controls, and technical skills required to perform contract work (*FAR 9.104-1(e)*)
- 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)*)

Check for excluded, debarred, and restricted sources. CCOs shall check the Excluded Parties List System and should check the Embassy Business Restrictions List and the Department of Treasury website, available at <https://www.epls.gov/>. CCOs should check these exclusions before opening proposals or bids and again before award.

CCOs are responsible for safeguarding contractor information. In some cases, the safety of contractor personnel depends on you and your vigilance to keep their information safe. In certain deployed locations, CCOs must not advertise contractors that have won awards, including email address, physical address, and names of employees. Upon arrival in the AOR, the CCO will be informed whether this type of strict information safeguards applies to the deployed location.

Host-nation-first programs. The Iraqi First and Afghanistan First programs were implemented to leverage contracting resources for the creation of economic expansion, employment, and skills development for the people of Iraq and Afghanistan. Contracting agencies are encouraged to partner with local vendors to develop effective production and distribution systems that will help procure quality products and supplies. Section 886 of the 2008 National Defense Authorization Act (NDAA) provided enhanced authority to acquire products and services produced in Iraq and Afghanistan. (*DFARS 225.77*, “Acquisition Support of Operations in Iraq and Afghanistan”) Congress may implement similar programs for future contingencies. A recent comparable initiative is the Central Asian States Procurement Initiative, established by the USCENTCOM commander in September 2011.

Contract Forms

Contractual instruments for contingency. Most contingency requirements can be met by using SAPs such as manual or electronic versions of 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 (BPAs); and GCPC. (*DFARS 253.213*)

SF 44, “Purchase Order-Invoice-Voucher.” SF 44, described in *FAR 13.306* and *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. SF 44 can be used as a purchase order, receiving report, invoice, and public voucher. Because SF 44 contains no written terms and conditions, its use is authorized only when no other simplified acquisition method is more economical or efficient and all of the following conditions 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 micropurchase threshold.
- If an item is below the micropurchase threshold for a contingency operation, a competitive procurement is not needed.

Warranted CCOs may use SF 44 for overseas transactions in support of declared contingencies and undeclared contingencies, such as humanitarian assistance or peacekeeping operations (*10 U.S.C. Section 2302(8)*) and the purchase of aviation fuel and oil. When using SF 44, a purchase cannot exceed the SAT.

The buyer is responsible for ensuring that funds are available, the form is properly processed, and only authorized items are purchased. Care should be exercised to maintain physical control over, and accountability of, the forms. In addition, there should be a separation of functions to the maximum extent possible when using SF 44. Four separate signatures should appear on SF 44 from the individual receiving supplies or nonpersonal services, CCO or field ordering officer (FOO), contractor or supplier receiving payment, and person

certifying the voucher (paying agent). At no time should the CCO/FOO and certifying official functions be combined.

The SF 44 execution and clearing process can now be automated by using a new tool. The 3in1 Tool will record and electronically transmit purchase, receipt, and payment information to a central database for automated clearing of orders and will give the CCO visibility into remote purchases for oversight and analysis. Additional information on the 3in1 Tool is available at http://www.acq.osd.mil/dpap/pacc/cc/contingency_tools.html.

DD Form 1155, “Order for Supplies or Services.” As described in *FAR 13.302*, purchase orders are self-contained, onetime contracts that typically result in one delivery and one payment. When DD Form 1155 is used as a purchase order, it is authorized for purchases that do not exceed the SAT. Vendors are solicited orally or in writing. DD Form 1155 content includes appropriate information such as shipping details, prompt payment discounts, financial data, vendor, quantities, price, and additional relevant data. The completed form is 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 is received or the requested service is performed, the bottom of the front page may be used as a receiving report for the government. DD Form 1155 details include the following:

- **Clauses.** Use of alternative I to subparagraph (l) of the disputes clause at *FAR clause 52.233-1* is recommended.
- **Modification of purchase orders.** 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 under the changes clause. In addition, a unilateral contract may be changed to a bilateral contract by using SF 30. Additional guidance on the use of unilateral

modifications is provided in *DFARS PGI 213.302-3*, “Obtaining Contractor Acceptance and Modifying Purchase Orders.”

- **Unilateral action.** A unilateral agreement is defined as a promise in return for performance (or 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. After the contractor performs, the government is obligated to pay. However, the contractor is under no duty to perform because the government’s DD Form 1155 is merely an offer that the contractor may accept by performance or may 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 because no contract existed.
- **Bilateral action.** After the contractor signs the acceptance, a bilateral contract is in place, and the government has the right under the termination-for-default clause to terminate the contract if the contractor fails to perform according to contract terms and also to charge the defaulted contractor with the excess costs of addressing the requirement with a new procurement. The form is used as a bilateral contract when there is a relatively long lead time, a more complex contract calls for a higher level of contract administration, or 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 specify:

- **Contract termination.** Contract termination may be for the convenience of the government (or for default) under the contract clause authorizing the termination. A contract termination will include the effective date of termination, extent of termination, and any special instructions. It also will discuss steps that 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 workforce (*FAR 49.601-2(g)*) and, if the termination notice is by telegram, inclusion of these steps in the confirming letter or modification.

Once the contractor begins 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 that prevents the incurring 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.”

As described in *FAR 53.212* and *53.213*, the use of SF 1449 is required in solicitations and contracts for commercial items. SF 1449 is required for the purchase of commercial items that exceed the SAT if a paper solicitation or contract is being used and the streamlined procedures of *FAR 12.693* are not being used. SF 1449 is encouraged, but is not required, for purchases of commercial items that fall below the SAT. (*FAR 12.204*) Agencies can require additional detailed instructions

for use of the form to acquire commercial items. SF 1449 can also be used to acquire items that fall below the SAT, establish BPAs, and issue orders under basic ordering agreements.

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

Table 5 summarizes basic contract forms.

Blanket Purchase Agreements

Blanket purchase agreements. As described in *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. BPAs shall contain all clauses required in accordance with *FAR 13.303-4* and *13.303-8* and relevant statutes and executive orders. CCOs follow procedures for preparing BPAs in accordance with *FAR 13.303-3*. CCOs may establish BPAs when a broad class of goods or services includes a wide variety of items (e.g., hardware or consultant services) that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and can vary considerably. BPAs have the following characteristics:

- BPAs should be prepared without a purchase requisition.
- BPAs shall not cite accounting and appropriation data.

Contract Instrument	Threshold/ Transaction Limit	Use	Limitations
Governmentwide commercial purchase card	\$3,000/Up to simplified acquisition threshold in a contingency operation if conditions from Defense Federal Acquisition Regulation Supplement 213.301(3) are met.	–Up to simplified acquisition threshold as payment in conjunction with other purchase methods –No cash advance –No rental/lease or real estate	– No clauses – Up to simplified acquisition threshold for General Services Administration – No incrementation – No telecommunications
Convenience checks	\$2,500	–(Federal Acquisition Regulation [FAR] 13.3) Commercial items without technical specifications –Simultaneous order placement and item delivery	–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 Contingency up to simplified acquisition threshold	–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	–No clauses –Commercial items without technical specs –FAR Part 12 does not apply –One delivery, one payment –Can decentralize ordering officer

Table 5. Basic Contract Forms, Part 1

Contract Instrument	Threshold/ Transaction Limit	Use	Limitations
DD Form 1155	>\$100K	– Order supplies or services – Purchase order/ delivery order	–Commercial purchase only
DD Form 25		–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 5. Basic Contract Forms, Part 2

- BPAs should be made with firms from which numerous individual purchases likely will be made during a given period. For example, if past experience shows 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 in the portfolio of BPAs for that service or supply must be given a fair opportunity to respond to the government's requirement.

- If the determination is 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, making advantageous business arrangements such as packaging ancillary services together for a cheaper price, and documenting 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 can furnish.
- BPAs shall be prepared and issued on DD Form 1155 or SF 1449.
- BPAs are not contracts; they are agreements. The CCO should always consider whether transitioning BPAs to more formal contract vehicles is in the best interests of the government as the stage of the contingency environment changes.
- For chief of contracting offices (COCOs), proper oversight of the BPA program is essential to ensure compliance with *FAR 13.303*. This oversight is especially important for decentralized BPAs because they carry greater risks, such as splitting of requirements, exceeding of spending limits, and unauthorized purchases.
- Each year, the CCO should review and document the strategy of using a BPA versus a contract. In addition, the CCO should ensure that all BPA vendors receive a fair share of award opportunities and should verify that the prices are fair and reasonable.

The FOO and ordering officer sections of this chapter explain the procedures for 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 that 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, minus applicable discounts
- Date of delivery or shipment
- Invoicing method options.

The following types of invoices are commonly used:

- 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 for which payment has not been received. The summary invoice shall also identify the delivery tickets covered, noting the total dollar value and including supporting receipt copies of the delivery tickets. In coordination with the requiring activity, the CCO 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 for which payment has not been received. These invoices need not be supported by copies of delivery tickets. In coordination with the requiring activity, the CCO will verify the 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, as long as a consolidated payment will be made for each specified period—and the period of any discounts will start on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period.

Blanket purchase agreement authorized caller. The responsibility for placing calls under a BPA rests with the CCO, who may authorize individuals assigned to the contracting office to place calls in any dollar amount within the limitations under established BPAs. CCOs who authorize personnel to place calls under BPAs shall perform the following:

- Instruct the BPA authorized caller in the proper use of BPAs.
- Furnish copies of BPAs to each individual authorized to place BPA calls.
- Ensure that authorized BPA 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 authorized BPA callers equitably distribute calls among suppliers that have in-place BPAs.
- Ensure that authorized BPA callers do not split purchase transactions to evade monetary limitations.
- Require authorized BPA callers to refer all cases to the contracting officer for determination if prices are not considered to be reasonable.
- If appropriate, at the end of each billing period, obtain from authorized BPA callers copies of delivery tickets or sales slips so that supplier invoices may be promptly paid.

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

Source Selection Process

Figure 9 summarizes the acquisition process.

Source selection processes and techniques (competitive). As described in *FAR 15.302* and *DFARS Subpart 215.3*, the objective of a source selection is to choose the proposal that represents the best value to the government. For competitive contract actions not using SAPs, source selection procedures must be followed. (*FAR Subpart 15.3*) Likewise, applicable Service guidance and procedures on source selection also must be followed. For competitive contract actions using SAPs, the procedures at *FAR 13.106* apply, providing broad contracting officer discretion in fashioning evaluation procedures. It is important to know the various review thresholds at each deployed location (e.g., 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 characteristics include the following:

- **Best value and trade-off.** Best value can be obtained by using any one source selection approach (or a combination of them). The relative importance of price may vary depending on the acquisition.

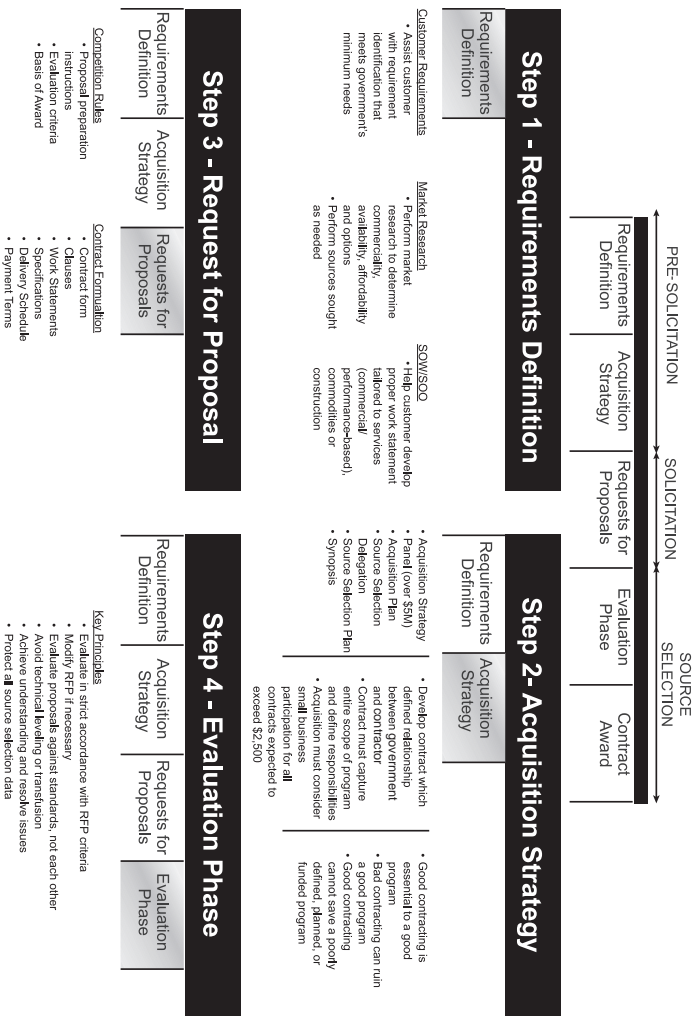


Figure 9. Acquisition Process, Part 1

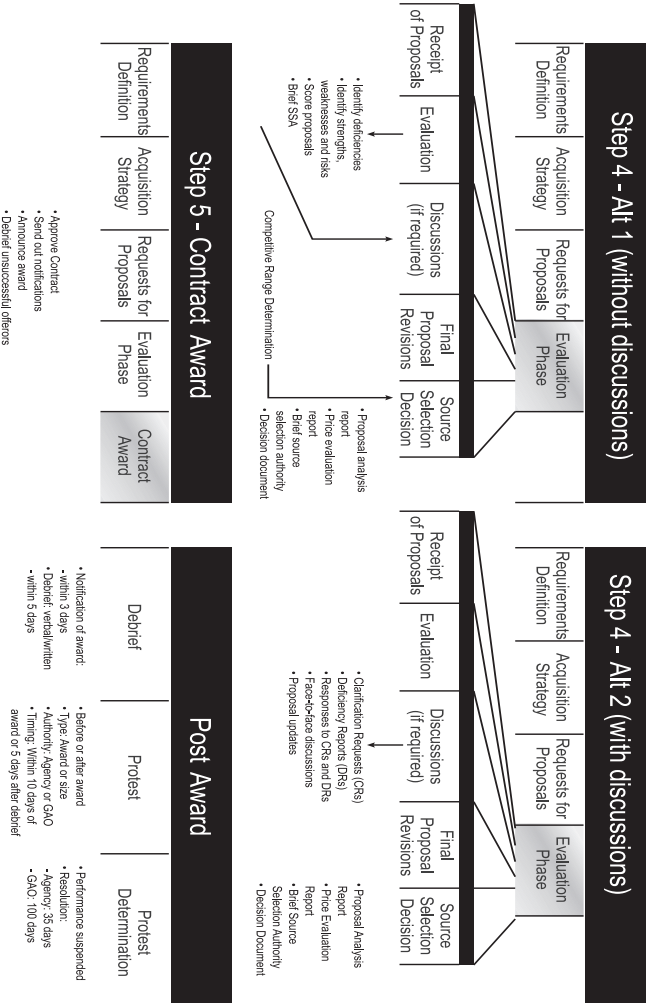


Figure 9. Acquisition Process, Part 2

Therefore, the evaluation factors and their relative importance (when not using SAPs) must be clearly stated in the solicitation and otherwise must 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: (1) the lowest price technically acceptable (LPTA) source selection process is appropriate when the expectation is that best value will result from selection of the technically acceptable proposal with the lowest evaluated price; and (2) the performance price trade-off (PPT) source selection process allows performance as the only trade-off for price.

- **Evaluation factors for award.** *FAR 15.304* specifies the principles associated with crafting sound evaluation factors. Although it permits latitude in methods, it clearly states that evaluation factors must be qualitative in nature (e.g., adjectival, colors, or other indicators, but not numbers) and must represent the key areas of importance for consideration in the source selection process, including past performance. Commercial requirements might derive evaluation criteria from the clause at *FAR clause 52.212-2*, “Evaluation—Commercial Items,” established by the contracting officer. In addition, past PPT methods might be appropriate. When using SAPs, the inclusion of these elements in the RFP is optional (*FAR 13.106-1(a)(2)*), but they 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 non-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 they are necessary. If the contracting officer

decides that 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 clause 52.215-1.

- **Source selection decision and documentation.** A source selection decision (SSD) that adheres to FAR 15.3 must be prepared for all source selections when not using SAPs. The SSD will be composed of the background of the acquisition, evaluation criteria, summary of the technical and past performance evaluations, and summary of the proposed prices. The source selection authority (SSA) will document an independent, integrated assessment and will approve the SSD. The SSA shall not receive a recommendation from any individual or body about 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.

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

- Establish or appoint a source selection evaluation board (SSEB). Appoint source selection advisory council if necessary. (FAR 15.303(b)(1))
- Approve strategy and acquisition plan before the solicitation release. (FAR 15.303(b)(2))
- Approve source selection plan. (DFARS 215.303(b)(2))
- Approve the RFP before its release. Ensure consistency among 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 that the 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, per 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)*)

Selection of sources through sealed bidding procedures. As noted in *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.** IFBs 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 IFB includes all documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.
- **Publicizing of the invitation for bids.** IFBs must be publicized by distribution to prospective bidders, posting in public places, and any other means that might be appropriate. This publicity process must give prospective bidders sufficient time to prepare and submit bids before the public opening of submitted bids.

- **Submission of bids.** Bidders must submit sealed bids, which will 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.
- **Contract award.** After bids are publicly opened and evaluated, an award will be made with reasonable promptness to the responsible bidder whose bid conforms to the IFB and will be most advantageous to the government, considering only price and the price-related factors included in the IFB.

Advance and partial payments. The full spectrum of government financing should be considered to facilitate business partnerships in any contingency, including 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 dismissed. An advance payment business strategy (commercial and noncommercial), will consider (1) conditions that warrant the request (e.g., lack of an established or robust banking system, unstable commercial environment, or hostilities), (2) other financing options (e.g., progress payments or partial payments), (3) tangible risks and mitigation plan, and (4) adequate security to protect the government's interests. Such payments can be used for the following purposes:

- Experimental projects 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
- Financially weak contractor

- Vendor when a private loan is not practicable
- Other exceptional circumstances.

Paying Agent Duties

DoD FMR 7000.14-R, Volume 5, Chapter 2, paragraph 020604, describes the duties of paying agents. The commander appoints (in writing) paying agents to make payments for purchases by using cash or other negotiable instruments. Ideally, a CCO should not be designated as a paying agent because this violates the concept of checks and balances. However, in extreme circumstances, a CCO can be dual-hatted, serving as both 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 CCO should be thoroughly briefed on duties and responsibilities by the financial services officer or local deputy disbursing officer. The paying agent appointment will describe the type of payments to be made, quantity of funds to be advanced, and period of time covered by the appointment and will include an acknowledgment of acceptance of the appointment, including a statement that the member has been counseled about the pecuniary liability of the duties.

Cash advances. The quantity of cash that the disbursing office gives to the paying agent is governed by the following considerations:

- Facilities available for replenishment of funds
- Anticipated mission requirements
- Capability to safeguard funds.

The maximum sum to be advanced to the paying agent will be specified in the appointing order. The CCO might need to advance cash to others for payment of orders. When advancing cash, the CCO should obtain a receipt on DD 1081, "Statement of Agent Officers Account," or

SF 1165, “Receipt for Cash Subvoucher.” The name of the person paying for the 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 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 informed about any losses or shortages as soon as possible.

Noncommercial advance and partial payments. As noted in *FAR Subpart 32.4*, these payments can be used under the following conditions:

- The contractor gives adequate security.
- The payment does not exceed the unpaid contract price.
- The agency head or designee determines that such a payment is in the public interest or facilitates national defense.
- The payment does not exceed interim cash needs.
- The CCO submits the request to a higher-level headquarters official and must ensure that findings, determinations, and authorizations are provided.

Commercial advance and interim payments. As noted in *FAR Subpart 32.2*, these payments can be used under the following conditions:

- The HCA determines whether the terms and conditions are appropriate.
- The commercial practice in the local market is to use buyer financing.
- The purchase is for a commercial supply or service.
- The price exceeds the SAT.
- The CCO concludes that advance payments are appropriate for the market.

- The determination is that advance payments are in the best interests of government.
- Adequate security is obtained.
- The advance payment does not exceed 15 percent of price, before performance.
- Competitive or normal financing is not available.
- The CCO obtains a concurrence from finance and must ensure that a D&F is completed for advance payments.

Options instead of advance payments. Other payment options include the following:

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

Considerations. When using advance payments, personnel have the following responsibilities:

- Recognize that advance payments are used as a last resort and are the least preferred contracting payment arrangement.
- Use SF 44 or DD 1155. Explain to the vendor how to obtain prompt payment by using these forms.
- Try to convince the vendor to accept SF 44 or SF 1449, explaining 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 then will look for other sources.

Advance payments are acceptable for subscriptions, as noted in FAR 32.404(a) and the clause in FAR 52.213-2.

Partial payment. The CCO will place a statement on the invoice so that the finance officer knows that the invoice is a partial payment, not a final payment. The partial payment statement will comply with the following relevant regulations:

- Finance guidance for partial payment in *DoD FMR 7000.14-R*, Volume 10, Chapter 10, Section 1003
- Exceptional circumstances only, as noted in *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 and complete 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. The SF 44 may be used by personnel other than the CCO, such as the FOO, provided that the individual has the following characteristics:

- **Has written authorization from the contingency contracting officer.** 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 contingency contracting officer 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 micropurchases by using SF 44. The CCO needs to exercise

strict operational control and oversight of FOOs 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. Commanders should have a point of contact for each FOO team.

Nomination, appointment, and termination. Commanders must formally nominate FOO candidates, by name, to the CCO for appointment; this responsibility cannot be delegated. The FOO candidate must be a DoD employee; contractor employees cannot be FOOs. The CCO must determine the validity of the requirement and must formally appoint personnel as FOOs via official appointment letters. 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 CCO terminates the individual's duties. The CCO (or higher authority) reserves the right to revoke a FOO appointment at any time. Such a revocation must be made in writing.

Qualification and training. At a minimum at least annually, the FOO candidate must review the standards of conduct as specified in *Department of Defense Directive 5500.7-R*, "Joint Ethics Regulation." The CCO will develop an effective FOO training program. The FOO candidate must complete training before official appointment as a FOO. Refresher training will be conducted whenever the CCO deems it necessary. In larger contingencies, the COCO (rather than individual CCOs) would be responsible for management and oversight of FOO and ordering officer decentralized purchasing programs.

Authority and responsibilities. The scope of the delegated authority limits all FOOs in terms of the dollar limitation that a FOO may obligate. The FOO must review the written appointment to ensure a complete understanding of the scope and limitations of FOO authority. Before making any purchases, the FOO must receive written

appointment orders from the CCO and a funded document from the comptroller, showing a fund cite with a specific dollar amount. The FOO cannot exceed the amount specified in the document. If additional funds are required, the FOO must request and receive more funds from the comptroller before proceeding with any purchases. After the FOO receives a valid purchase request (PR), the FOO must answer the following questions:

- 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 from another government source?
- Is this the most efficient purchase method?

After considering these questions, the FOO must record all PRs 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 receipt for property received (RPR). If the vendor cannot provide an automated receipt, a handwritten receipt may be substituted. The FOO is responsible for providing all RPRs to the appropriate office to ensure the accountability of acquired items. When the 3in1 Tool is used, it records all information and documents it electronically. FOO characteristics include the following:

- **Limitations.** FOOs may not redelegate their authority. The CCO may set additional limitations to maintain an effective and efficient FOO program.

- **Separation of functions.** To ensure the integrity of the procurement process, the FOO shall avoid, if possible, being a paying agent, certifying official, or individual receiving the products or nonpersonal services.
- **Evaluation, documentation, and reconciliation.** The CCO shall supervise the FOO. At least monthly, or as otherwise determined by the CCO, the CCO shall review and reconcile the FOO's purchase documents. This review will be documented on the FOO clearance letter, which can be done electronically when using the 3in1 Tool. After receiving this letter, the FOO will reconcile the account with the paying agent. The CCO will immediately forward any potential case of waste, fraud, or abuse to the appropriate legal office for review.
- **Revocation of authority.** When a FOO appointment is terminated for any reason, the FOO will give the CCO (1) a copy of the appointment letter; (2) copies of all previously filed reports; (3) a complete report for any period between the last audit and termination date; (4) receipts, PRs, and RPRs; and (5) 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 the appointment. One copy each will be provided to the terminated FOO, FOO's commanding officer, and appropriate disbursing office; one copy will be maintained on file with the contingency contracting office. Any additional purchases or business agreements by the FOO after revocation of this authority will be considered unauthorized commitments for which the former FOO may be held liable.

Field ordering officer violations. The CCO may revoke the FOO appointment for any violation of regulations, orders, or statutory authority. The administration of decentralized purchasing programs

carries an increased risk of becoming problematic. Typical violations include, but are not limited to, the following:

- Unauthorized commitments
- Splitting of requirements to stay below authorized thresholds
- Purchases above authorized limits
- Purchases outside the purpose of the appropriated funds
- Purchasing items not authorized under local programs or BPA price lists or not authorized by the CCO
- Delinquent reconciliation with the CCO
- Training delinquencies
- Circumvention of Competition in Contracting Act (CICA) requirements.

Violations may result in revocation of the FOO appointment 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 officials to determine whether disciplinary action is recommended. For other violations, the CCO may reinstate the FOO appointment after correcting the deficiency.

Contract Tracking and Reporting

Procurement instrument identification numbers. *DFARS 204.70* specifies policies and procedures for assigning procurement instrument identification numbers (PIINs) to all solicitations, contracts, and related instruments. The PIIN is designed to help track all actions. **Table 6** shows an example of a PIIN from *DFARS 204.7003* and *204.7004*.

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

Table 6. Sample PIIN N00062-10-D-0001-0005

Procurement instrument identification number logs. Establishing and maintaining accurate PIIN logs in accordance with *DFARS 204.70* is essential in the contingency environment. In general, terminations, claims, and contract closeouts have been a recurring problem in all recent contingency operations. A contributing factor in many cases is the lack of accurate records, duplicative contract and purchase order numbers, and similar issues. In fixed installation and systems contracting offices, standard contracting automated systems are typically used to perform the PIIN log function. In the contingency environment, this capability is usually unavailable. Therefore, CCOs must ensure that they have appropriate blocks of PIINs assigned for their use and also must design and implement a log system for local use. Commercial off-the-shelf software such as Microsoft Excel or Lotus 1-2-3 can be used to automate the PIIN generation system in contingency environments. A well-thought-out PIIN log can also capture and track other key data such as the PR number, dollar value of request and award, delivery data, payments data, and more.

Contract action report. As noted in *FAR 4.601*, a contract action report (CAR) is required for all contract actions that obligate or deobligate more than \$3,000 in funds and must be submitted within 3 business days of executing an action. In addition, all modifications, regardless of price, must be reported. However, in a contingency, OCONUS reporting might not be possible because of the lack of Internet connectivity. Therefore, actions that require reporting shall be accomplished after arrival in an area where Internet connectivity

is available, which may be upon redeployment to CONUS bases or stations. (*DFARS PGI 204.606(1)(iii)*) CARs can be created on the Federal Procurement Data System-Next Generation (FPDS-NG) website. The CAR replaces reports using DD Form 350, “Individual Contracting Action Report,” and DD 1057, “Monthly Summary of Contracting Actions.”

The CAR process is as follows:

- The contract is complete, through approval by the CCO.
- The CCO creates the CAR from the unreleased contract, through validation and approval. The CAR is created directly on the FPDS-NG website, 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 contract actions may be reported on an express CAR instead of an individual CAR:

- Indefinite delivery, indefinite quantity (IDIQ) contract vehicles, requirements contracts, BPAs, and basic ordering agreements
- Contracts from foreign vendors not registered in the Central Contractor Registration.

The CAR is created before the release of the contract action. In FPDS-NG, much of the CAR data is prepopulated with data in the contract (e.g., data from the North American Industry Classification System, Service Contract Act). Creation of the CAR before release of the contract enables correction of the contract so that the CAR can pass the validation process in FPDS-NG. Training for FPDS-NG is available at <https://www.fpds.gov>.

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

Unauthorized Commitments and Ratifications

An unauthorized commitment is defined as an agreement that is nonbinding solely because the government representative who made it lacked the authority to enter into that agreement, as explained in FAR 1.602-3. An unauthorized commitment typically occurs in a contingency environment when a well-meaning individual believes that immediate action is necessary to support the mission. Ratification occurs when an official who has the appropriate authority approves an unauthorized commitment to pay for supplies or services provided to the government as a result of an unauthorized commitment. (FAR 1.602-3(a)) The need for ratification can be avoided if the CCO is involved in 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 SCO or the RCC office.

In accordance with FAR 1.602-3(c), unauthorized commitments may be ratified if the following conditions are satisfied:

- Supplies or services were 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 concludes that the price is 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. After it is determined that the actions were in the government's best interests, funds were available, the ratification is approved at the required level, and the customer was counseled, the CCO should put a memorandum in the file and pay the vendor. At least quarterly, the RCC chief shall publish to the base populace 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 associated specific thresholds are granted by the HCA to the SCO, who may delegate that authority to a level no lower than the RCC chief. If the CCO anticipates a high likelihood for substantial unauthorized commitments, the CCO might want to request a waiver of policy to increase the RCC chief's ratification authority level.

The processing of a ratification involves determining whether the action should be ratified into a contract and then creating the contract document. Actions that do not meet the criteria are deemed nonratifiable and are subject to resolution by the Government Accountability Office under its claim procedures.



Website and DVD Materials Related to Chapter 5

- [Chapter 5 PowerPoint Briefing](#)
- [Chapter 5 Test Questions](#)
- [Trainings Related to Chapter 5](#)
- [Scenarios Related to Chapter 5](#)
- [Topical Index Webpages](#)
 - » [Blanket Purchase Agreements \(BPA\)](#)
 - » [Contracting Instruments](#)
 - » [Contract Options](#)
 - » [Determinations and Findings \(D&F\)](#)
 - » [Field Ordering Officers \(FOO\) and Ordering Officers \(OO\)](#)
 - » [Government Purchase Card \(GPC\)](#)
 - » [Imprest Funds](#)
 - » [Lease or Purchase](#)
 - » [Letter Contracts](#)
 - » [Pricing](#)
 - » [Purchase Requests](#)
 - » [Ratifications](#)
 - » [Receiving Reports](#)
 - » [Request for Proposals \(RFP\)](#)
 - » [Simplified Acquisition Procedures \(SAP\)](#)
 - » [Sole Source Contracting](#)
 - » [Source Selection](#)
 - » [Un definitized Contract Actions \(UCA\)](#)

CHAPTER CONTENTS

Key Points	206
Introduction.....	206
Administration	
Documentation	207
File Management.....	209
General Contract Administration.....	213
Construction Contract Administration.....	218
Government Property	222
Contract Monitoring	223
Contract Modifications	229
Transferring Contract Functions.....	234
Terminations	235
Contract Closeout.....	240
Redeployment and Demobilization Considerations.....	242
Common Systems and Tools	243
Website and DVD Materials Related to Chapter 6	245

Chapter 6 Contract Administration



Key Points

- All administrative record-keeping and file management requirements in the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) 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 ensures that customer needs are satisfied.
- Fast and accurate reporting is the key to satisfactory contract performance. Timely identification and documentation of deficient contractor performance are critical.
- Contracting officer's representatives (CORs) must be appointed and properly trained.
- When the contractor satisfactorily completes performance of the terms of the contract and final payment is made, the contract file should be closed out as soon as possible.
- Redeployment and demobilization place demanding requirements on the contingency contracting officer (CCO). It is imperative to coordinate with the operational planners, Defense Contract Management Agency (DCMA), and Defense Logistics Agency (DLA) in the associated reduction of equipment, personnel, and services.

Introduction

This chapter discusses the actions that a contracting officer should take to administer a contract, covering actions and documentation from contract award to contract closeout. Such

administration includes monitoring, transferring, terminating, and closing out contracts.

Administration Documentation

Contract administration documentation involves performing record keeping and ensuring that documentation is adequate to provide an audit trail. The importance of accurately documenting all purchases, especially in a contingency environment, cannot be overemphasized. Because normal checks and balances might not exist during contingency situations, CCOs can be assured that auditors will be interested in all paperwork when the unit returns home.

Problems and high-risk areas. The nature of contingency contracting presents unique challenges. Effective contract administration and a healthy situational awareness of certain contracting risks can help prevent problems, both now and in the future. The establishment of effective administrative procedures, audit capabilities, and maintenance protocols early in a contingency situation can greatly enhance supportability and minimize potential fraud, waste, and abuse problems. Areas of concern include the following:

- **Difficulty in obtaining detailed documentation from contractors.** The problem of incomplete contractor documentation holds true not only for documents supporting contractor claims, but also for general purchases because 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 record keeping is provided by *FAR Subpart 4.8* and *DFARS Subpart 204.8*.
- **Field ordering officer operations.** The use of field ordering officers (FOOs) allows maximum flexibility in supporting field operations. However, the use of FOOs entails a greater risk of fraud, so very strong oversight is required. Any FOOs who deviate

from the regulations or misuse their authority must be immediately terminated.

- **Blanket purchase agreements.** Although blanket purchase agreements (BPAs) are easy to set up and use, decentralized BPAs carry high potential risks that periods of performance are exceeded, price ceilings are broken, or misuse occurs on other important factors.
- **Relief in place/transfer of authority.** When military units replace each other during the relief in place/transfer of authority (RIP/TOA) process, the contracting office must coordinate with the incoming and outgoing forces to ensure that all operational contracting assignments are turned over to the new unit. Such responsibility transfers include property books and the assignment of CORs and FOOs.
- **Advance payments.** Advance payments and progress payments are normal procedures in the continental United States. However, in a contingency, these procedures can be risky. Vendors might not return to complete the agreed-upon work.
- **Contract administration.** The importance of thoroughly documenting activities cannot be overstated. Especially in a contingency or during the turnover of contracting officers, well-documented contract files are extremely important. The lack of documentation leads to higher risks while processing claims and closing out contracts.
- **Redeployment and demobilization.** The risks associated with redeployment and demobilization decrease dramatically with the timely involvement of the various commands associated with Phase IV, including DLA, operational commanders, DCMA, and the United States Transportation Command (USTRANSCOM).

File Management

Contract files. All FAR and DFARS administrative record keeping 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 BPAs, purchase cards, and other expenditures.

Documentation in files shall execute the following:

- 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 in contract files, if applicable, as noted in *FAR 4.803*:

- Purchase request (PR), acquisition planning information, and other presolicitation documents
- Justifications and approvals (J&As), determinations and findings (D&Fs), price negotiation memorandums, and supporting documents
- Evidence of availability of funds
- List of sources solicited
- Independent government estimate (IGE)
- 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 contingent fee representations 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
- Records of negotiation
- Required approvals of award and evidence of legal review
- Notice of award
- Original signed contract, all contract modifications, and documents supporting modifications
- Notices to unsuccessful bidders or offerors and records of any debriefings
- 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
- Records of payments or receipts
- Receiving documentation
- Contract completion documents.

Format, numbering, and transfer. CCO contract tracking responsibilities include the following:

- 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, and other changes.
- Establish a file tracking system that permits close monitoring of file locations as the files are used by the contracting office and eventually closed out or transferred to another activity for administration. Locate files quickly to support efficient contracting operations and potential audits or reviews.
- Whether they are in an automated system or manual logs, maintain logs to identify PRs that are open, completed, and closed, thus providing a common PR number reference point among the customer, finance, comptroller, and contracting records. In addition, use these logs to develop reports and graphs to present production status.

Status of procurement action database. A simple database reporting system to provide visibility into, and the status of, procurement actions is required and should be implemented upon CCO arrival at the contingency location. Automation, including laptop computers, will help establish a more efficient system that will coincide with CONUS systems. To prevent total data loss, all procurement actions should also be stored in a backup system. The contracting office will collect and maintain procurement action data and will transfer them to the senior contracting official (SCO) per theater guidance. The system should include the following data fields:

- Date of receipt of requisition
- Requisition number

- Customer organization
- Committed funds
- Type of construction, service, or commodity
- Unit of measure
- Quantity (e.g., job, lot, or each)
- Item description
- Uniform procurement instrument identification number (PIIN) of the contract or order (if placed under an indefinite-delivery contract [IDC] or BPA, also include that PIIN)
- Type of contracting action (e.g., contract, purchase order, BPA, delivery order, or modification)
- Date of award
- Contract end date
- Obligated funds
- For services, option periods
- For construction, notice to proceed date, completion date
- Contractor name
- Contractor nationality, such as United States, host nation, third country
- Contracting officer name
- Date of report receipt
- Date of final payment
- Date of contract closeout
- Location of contract file
- Remarks (including pertinent e-mails).

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 customer requirements could potentially be meaningless without effective administration of the resulting contract. The role of contract administration is to complete the cycle, ensure that customer needs are satisfied, and confirm that the contractor is fully compensated for services or supplies rendered, per the contract terms and conditions.

Purchase, pickup, receipt, and delivery. CCO 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. The unreliable communications in many contingency environments make it necessary to travel to the vendor's location. No policy or procedures are set in stone regarding the site where merchandise will be received. The CCO should expect frequent changes and some possibly cumbersome procedures during deployment.

Follow-up. Deployed CCOs might not have the benefit of interconnected computer information systems. Therefore, follow-up with the customer is a must. Giving the customer as much available information as possible along the way will prevent later problems. If the delivery date passes or the customer receives the wrong item, part of an item, or a broken or damaged item, the CCO will hear about it. The customer should be prepared to describe the item received versus the item in the order. The best method is to instruct the 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 the CCO as soon as practical (if possible, while the delivery truck is still there) so that the CCO can help with the problem. Written

follow-up is essential to keep the facts straight when dealing with vendors. The customer should never deal with the vendor directly in resolving a discrepancy. It is the CCO's job to take care of the customers.

Receipt, inspection, and payment. The customer inspects goods and services. Once the item is delivered or the service is performed, the customer must sign a receiving report acknowledging receipt and authorizing payment. The contractor invoice is then submitted to the contracting office, which will ensure that the invoice is correct. This receiving report must accompany the invoice so that the vendor can 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 is then sent to finance personnel, who will issue payment to the vendor. Finance personnel will not pay without a signature acknowledging that the government received the goods or services.

The handbook DVD includes additional information about receipt and inspection of goods and services.

Typical problems encountered. Many problems are associated with the proper receipt of goods. For example, there may be no central control point where contractors can deliver goods. Vendors might deliver directly to the user, but the user might fail to notify the contracting activity upon receipt. In addition, someone at the site might accept the delivery, but no one accepts responsibility for receiving the goods when it is time to verify delivery and quantity. Consequently, payments to the vendor are ultimately delayed. Without all the key support members involved in, and coordinating on, purchases, accountability is quickly lost. Spending a little time and effort in planning and refining the processes will significantly improve CCO tracking of ordered goods and services.

Tracking of initial vendor deliveries will be difficult; however, a failure to take the time to organize for receipt of vendor goods will

present several long-term problems. Two CCO 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 to ensure that all goods are accounted for and support timely payments to vendors.
- Have supply personnel provide a receiving officer to accompany the CCO on all initial buys, establishing accountability and control from the onset. However, note that this approach has limited application and will only resolve the problem for government pickup items. Direct vendor deliveries to the base will still require proper receipt.

Regardless of the system that is used, advance coordination with base supply personnel is necessary to ensure accountability for all emergency goods delivered. A reliable accountability system can ensure quick and accurate payments to vendors.

Contract payments. Although 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. Payments might typically be made by check, electronic funds transfer, or cash. Some installations make payments once a week or even once a month. In such a case, contractors bring their invoices to a specified location at a given time and are paid on the spot. In other cases, finance personnel might 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 concern for foreign vendors, who often will insist on being paid in cash on delivery, at least for the first transaction.

Payment in local currency. (*DoD Financial Management Regulation [FMR] 7000.14-R, Volume 5, Chapter 13; FAR 25.1002.*) Unless otherwise directed in a host nation agreement or status of forces agreement, payment can be made in the local currency. Currency

exchange rates are available from the local finance office or at <http://www.xe.com>. Additional information is provided in Chapter 5.

Customer and contractor training. The CCO must not just issue an order or contract and assume that the customer and contractor understand the receiving report and invoice procedures. It is critical for the CCO to ensure that both parties understand their responsibilities because receipt of the goods and payments are of paramount interest to both parties.

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

Installation access. The host nation installation or headquarters commander usually determines the type of credentials required for installation access, so requirements can vary not only from country to country, but also from base to base within a country. In addition, some nationalities are not allowed on any military installation. CCOs must pay particular attention to this issue in the Middle East, where virtually all normal laborers and truck drivers are third-country nationals. Regardless of location, solicitations and contracts shall contain a provision identifying the credentials that are required for base entry.

In general, contractors submit requests for passes for their employees and vehicles in coordination with the contracting officer or designated representative. As with bases in the United States, the CCO must ensure that passes are returned whenever one of the following conditions occurs:

- The contract is complete.
- A particular individual is no longer working on the contract.

- A vehicle or piece of equipment is no longer needed for the work required by the contract.

Security personnel must establish clear procedures for local installation authorities to facilitate access to the base. In some cases, deliveries and shipments were held at the gate for hours or not made at all because of 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 overseas location.

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

CCOs must be aware of local customs clearance procedures and must contact the proper authorities for expeditious clearance of inbound goods. Advance coordination with proper customs officials is critical, particularly when clearing personal equipment and baggage. Military transportation, whether by 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 the following:

- Port of embarkation, or the geographic point in a routing scheme from which cargo or personnel depart
- Port of debarkation, or the geographic point at which cargo or personnel are discharged.

In addition, the reachback buying office can obtain a transportation control number for the shipment. If contractors use commercial

transportation, they must understand that preference shall be given to US-flag vessels and air carriers.

Construction Contract Administration

Full administration is used on construction contracts. Additional policy and guidance on unspecified minor construction are provided in Section 2805 of Title 10 of the United States Code (*10 U.S.C. Section 2805*) and *DoD Directive 4270.5*, “Military Construction.” The Army Corps of Engineers also recently produced a handbook to help with construction, architect-engineer, and contingency contracting, which can be found online or as part of this handbook’s website and DVD (Army Engineer Pamphlet 715-1-8, September 2011).

The CCO needs to ensure that all pre-award actions (as described in the rest of this section) are accomplished.

Preconstruction conference. Construction contracts can require a preconstruction conference. This conference gives the government one more opportunity to inform the contractor about obligations, discuss safety and fire precautions, emphasize the personnel who are authorized to obligate the government, and organize everyone for the start of work. The user or building occupant is usually invited to these conferences. This conference is not an appropriate occasion for deciding how the work really should be performed (such details are all in the contract), but rather is a time for reviewing the terms, conditions, and specifications to ensure that all contract personnel understand the upcoming work. The contracting officer chairs the preconstruction conference.

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

Before work begins on a construction contract with a value that exceeds \$25,000, a notice to proceed (NTP) should be issued in compliance with *FAR clause 52.211-10*, “Commencement, Prosecution, and Completion of Work.” The contractor will use the period between contract award and NTP to meet bond, insurance, and other administrative requirements. The contracting officer or COR must accept all submittals.

For contracts valued at more than \$1 million, Unified Facilities Guide Specification 01451, “Contractor Quality Control,” should be included in the contract to furnish guidelines for the quality management program. The specification also provides for development of a quality control (contractor) and quality assurance (government) program and notes the requirement for daily construction logs to support the quality evaluations.

As with other contract types, all construction contract modifications are issued pursuant to standard clauses in the contract. Construction contracts have some clauses unique to a construction environment, including the differing site conditions clause, which allows modifications to account for site conditions that vary from those represented in the solicitation. (*FAR clause 52.236.2*) The clause specifies that the government assumes the risk associated with a differing site condition and that contractors should not include contingencies in their bids to cover those risks.

CCOs should also consider the following:

- *FAR 36.203* requires an IGE for modifications exceeding \$150,000. IGEs are prepared without knowledge of the contractor’s proposal, but are used in negotiations to help establish whether the contractor proposal is reasonable. Cost engineering personnel typically prepare IGEs; however, CCOs should check local policy to determine whether cost engineering personnel or experts from another discipline prepare IGEs for construction modifications.

- In evaluating a contractor proposal for a construction contract modification, the administrative contracting officer (ACO) or contracting officer may choose to use either a cost analysis or a price analysis. Price analysis involves evaluation of the total price without regard to its elements; cost analysis is a far more detailed assessment of the contractor proposal and involves the review and evaluation of each cost element.
- When negotiating construction contract modifications, CCOs must keep in mind that basic pricing policy requires that an equitable adjustment is equitable to **both** the contractor and the government. In seeking a fair and reasonable price, the negotiator should seek a price that gives the contractor an incentive to perform well while protecting the interests of the government.
- Contracts may be terminated for the convenience of the government or for default.
- Claims made by a contractor under the disputes clause (FAR clause 52.233-1) may involve entitlement (i.e., a situation in which the government disputes the merit of a claim) or quantum (when the government may admit that the claim has merit, but dispute the amount of the claim).
- CCOs must monitor theater business clearance (TBC), Synchronized Predeployment Operational Tracker (SPOT), and Defense Base Act (DBA) systems.

Liquidated damages.

Although liquidated damages (LDs) are most commonly used in construction contracts, CCOs need to be aware that LDs can be used in other types of contracts, except for cost-plus-fixed-fee contracts. LDs are described in FAR 11.501 and DFARS 211.503 and include the following characteristics:

- LD clauses are mandatory on construction contracts with a value that exceeds \$650,000. (*DFARS 211.503*)
- LD clauses on construction contracts valued at less than \$650,000 should be used only when both (1) the time of delivery or performance is such an important factor in the contract award that the government may reasonably expect to suffer damage if the delivery or performance is delinquent; and (2) the extent or amount of such damage would be difficult or impossible to ascertain or prove.
- The rate of LDs used must be reasonable and must be considered case by case.
- The contracting officer shall take all reasonable steps to mitigate LDs.

Liquidated damages procedures. As described in *FAR 11.502*, LD procedures include the following:

- If an LD clause will be used, the applicable clause and appropriate rates of LDs shall be included in the solicitation.
- If an LD clause is used in a construction contract, the rates of LDs to be assessed against the contractor should be specified for each day of delay, and the rates should, at a minimum, cover the estimated cost of inspection and supervision for each day of delay in completion. Whenever the government will suffer other specific losses because of the failure of the contractor to complete the work on time, the LD rates should also include an amount for these items. Examples of specific losses are (1) the cost of substitute facilities, (2) rental of buildings and equipment, and (3) continued payment of quarters allowances.
- If appropriate to reflect the probable damages, considering that the government can terminate for default or can take other appropriate

action, the rate of assessment of LDs may be in two or more increments that 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 LDs may be assessed, thus ensuring that the result is not an unreasonable assessment of LDs.

- Other forms of monetary or other consideration may be used in lieu of assessing LDs.

Government Property

Government property means all property owned or leased by the government and includes both government-furnished property (GFP) and contractor-acquired property to which the government has title. Normally, contractors furnish all equipment and materials necessary to perform government contracts. Contracting officers shall provide property to contractors only when it is clearly demonstrated to be in the best interests of the government.

A property administrator is an authorized representative of the CCO who is appointed in accordance with agency procedures and is responsible for administering the contract requirements and obligations relating to government property in the possession of the contractor.

DoD Instruction 5000.64, “Accountability and Management of DoD Equipment and Other Accountable Property,” establishes policy, assigns responsibilities, and provides procedures for DoD-owned equipment and other accountable property. Instructions for contract property management are available at <http://guidebook.dema.mil/34/>.

FAR Part 45 specifies policies and procedures for the provision of government property to contractors; contractor management and use of Government property; and reports on, redistribution of, and disposal of contractor inventory. *FAR Subpart 45.6* establishes policies and

procedures for reports on, reuse of, and disposal of contractor inventory that is excess to the contract. *FAR 45.603* addresses abandonment, distribution, or donation of excess personal property, and *FAR 45.604* describes the disposal of surplus property.

DFARS Subpart 225.3, “Contracts Performed Outside the United States.” and *DFARS Procedures, Guidance, and Information (PGI) 225.7401*, “Defense Contractors Outside the United States,” describe unique in-theater contractual and technical requirements, country-to-country agreements, host nation requirements, memorandums of agreement, and treaties.

The COR may be asked to assist the contracting officer in administering contractor use of GFP. If available, the property administrator acts on behalf of the contracting officer to oversee government property in the possession of a contractor.

If a commander is seeking disposal support, one of the following appropriate e-mail addresses should be used:

- Air Force: DLADispositionServicesAirForceHelp@dla.mil
- Army: DLADispositionServicesArmyHelp@dla.mil
- Navy: DLADispositionServicesNavyHelp@dla.mil
- Marines: DLADispositionServicesMarineHelp@dla.mil
- Coast Guard: DLADispositionServicesCoastGuardHelp@dla.mil

CCOs and other officials can contact the DLA Customer Interaction Center (CIC) at 877-DLA-call (877-352-2255), which is accessible 24x7, or can e-mail the CIC at DLAContactCenter@dla.mil regarding customer support inquiries about programs, products, or services; status of requests; or general information.

Contract Monitoring

As a representative of the contracting officer, the COR is responsible for ensuring that the contractor has performed at least the minimum contract requirements. Any perceived deviations from the statement

of work (SOW), statement of objectives (SOO), or performance work statement (PWS) 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) substantial sums of 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 (CPARS) and Construction Contractor Appraisal Support System (CCASS) compose the contract monitoring system used in peacetime, which is often too complex or time consuming for the contingency environment; however, efforts should be made to use it when reasonable. CPARS is frequently replaced with an informal contractor compliance system as the method for contractor surveillance. If the customer is satisfied and the contractor is performing sufficiently, this approach also should satisfy the CCO. Paperwork could be a simple handwritten statement from the COR asking 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 incorporated in the record in the contract file.

Contracting officer's representatives. Contractor surveillance by contracting personnel under contingency conditions can be difficult because of ongoing military operations, local threat conditions, remote locations, broad customer bases, and time involved for performance and delivery. Therefore, it is important to establish a properly trained cadre of CORs within the organization's major customers that the CCO supports. CORs are qualified personnel who are appointed and trained by the CCO to help with the technical monitoring or administration of a contract. If the plan is to use a COR for a procurement, the CCO

should include *DFARS clause 252.201-7000*, “Contracting Officer’s Representative,” in the solicitation and the resulting contract. **Figure 10** shows a summary of key COR duties, file content, and important forms. The *Defense Contingency COR Handbook* provides additional information, available at www.acq.osd.mil/dpap/ccap/cc/corhb/.

Relevant additional information on COR characteristics and duties includes the following:

- Both commanders and CORs must understand that they do not have contractual authority to issue directions about, or make changes to, any contract or purchase order. If unauthorized personnel make

<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: 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 10. COR Key Duties, File Content, and Important Forms

changes, the CCO must be immediately notified. The CCO will then determine whether the work performed falls within the scope of the original contract. If the determination is that the work is not within the contract scope, corrective action will be taken through the ratification process.

- CORs shall forward to the CCO any correspondence received from the contractor. Because the COR is an authorized representative of the CCO, COR records are part of the official post-award contract files and shall be forwarded to the CCO for retirement (in conjunction with the official contract file) after completion of the contract. Documents that pertain to the contract shall be clearly identified when forwarded to the CCO.
- The CCO will appoint CORs through the Contracting Officer's Representative Tracking (CORT) Tool or in writing, including the rank or grade of the COR and the applicable contract number.
- The appointment letter will define the scope and limitations of COR responsibilities and will specify the period for which the appointment is effective.
- The CCO will normally appoint a COR and an alternate COR. Ideally, both should be identified and trained before deployment.
- All service and construction contracts require CORs. Some contracts for highly technical goods may also require a COR. CCOs must ensure that COR personnel have the technical experience and ability to monitor contractor performance.
- The COR appointment must state that the COR authority cannot be redelegated.
- The COR appointment must state that the COR may be personally liable for unauthorized acts.

- The CCO should appoint the COR before contract award, if practical, identifying the COR in the PR.

CORs will *not* do any of the following:

- Obligate funds
- Direct the contractor by words or actions (or failure to act) to take on new work
- Interfere with contractor performance
- Supervise contractor employees
- Authorize the contractor to obtain property or use GFP from another contract
- Modify contract terms and conditions by words, actions, or failure to act.

COR training is critical to COR performance. COR training is available before deployment from the Defense Acquisition University (DAU) at <https://acc.dau.mil/cor>, including:

- CLC 106, COR with a Mission Focus
- COR 206 and CLC 206, CORs in a Contingency Environment
- COR 222 and CLC 222, COR's Course and Online Training.

To the maximum extent practicable, CORs must receive COR training, including theater-specific training, before deployment so that they are ready upon arrival. COR training should focus on the duties of a COR, ethics training, and specific issues, terms, and conditions of the SOW associated with the contract to which the COR will be assigned.

The following additional courses are 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, Services Acquisition
- CLC 055, Competition Requirements
- 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 March 29, 2010, the Under Secretary of Defense for Acquisition, Technology, and Logistics issued *DoD Standard for Certification of Contracting Officer's Representatives (CORs) for Service Acquisitions*.⁵ This 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 the following 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

⁵ A new DoD instruction is expected in the near future to address the COR Certification Standards.

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 compared to actual requirements. *FAR Subpart 43.1* and *FAR clause 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. Contract terms and contractor performance can be changed in three ways: change orders, administrative changes, or constructive changes. Contracts can be modified either bilaterally or unilaterally.

Change orders. Contract modification is a generic term defined as any written change in the terms and scope of the contract. Contracts may be modified by using a change order. A clear distinction must be made between the terms change and change order and between the terms in scope and out of scope, as follows:

- 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 that directs the contractor to make changes under the various change clauses. If the change order results in 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, delivery schedule, or both. The contractor is required to comply with the change order immediately after it is issued.

Note that the changes clause is not applicable to *FAR Part 12*, “Commercial Item Contracts.”

- The question of whether work is in scope or out of scope is critical. Oral agreements, letter contracts, and the rapid pace of acquisition can lead to loosely worded arrangements for contractual actions. However, this reality should not be construed to mean that CCOs can make broad interpretations about items that are in the original scope of the contract. The process for issuing an out-of-scope modification is not complicated. Only three general rules must be followed: (1) the modification must be bilateral; (2) a J&A is required; and (3) approval from an official above the CCO level is needed if the value of the modification exceeds \$650,000.
- CCOs should verify that proper change order authority is used on Standard Form (SF) 30 before issuing a modification.
- CCOs should ensure that supplemental agreements containing an equitable adjustment as the result of a change order also include a statement of release. (*FAR 43.204(c)(2)*)

Administrative change. Administrative changes are defined as 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 a change in 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. All constructive changes have two essential change and order elements as well as other common characteristics, as follows:

- The change element is determined by examining the actual performance to decide whether it went beyond the minimum standards demanded by the terms of the contract.

- The order element also must be present for the change to be compensable. The government must order the change. That is, the government representative, by words or deeds, must require the contractor to perform work that is not within the scope of the contract.
- Several common actions often lead to a constructive change, including (1) directing a particular method of performance, (2) providing late or defective government-furnished equipment (GFE), (3) requiring higher quality than specified in the contract, and (4) failing 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.

Unilateral and bilateral modifications as a method to incorporate contract changes. For the protection of all parties, unilateral and bilateral contract actions should be priced before execution of the modification. In accordance with *FAR clause 52.212-4(c)*, commercial item contracts require bilateral modifications. However, the magnitude of some changes and the contingency environment can make this difficult as follows:

- Unpriced orders are risky business because, during the time that negotiations are being conducted and performance is proceeding, the contractor has no incentive to minimize costs. 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 contractor consent is needed before modifying the contract. All supplemental agreements to contracts for commercial items must be bilateral. Details on such agreements include the following:

- Circumstances that require a supplemental agreement include examples such as (1) incorporating substantive contract changes that both parties agreed to accept or (2) negotiating an equitable adjustment resulting from a change order.
- The issue of prepriced versus unpriced services must be considered. The more formal regulatory terms for this concept are definitized versus undefinitized services. 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 are detailed in *DFARS 217.74*. Additional information on undefinitized contract actions is provided 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, make changes authorized by clauses other than the changes clause (e.g., the option, property, or suspension of work clause), change GFP, or incorporate a value engineering proposal into the contract. (*FAR 43.103(b)*)

Changes clause. In general, 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 the

item being purchased (i.e., supplies, services, or construction) and the type of contract awarded (fixed price or cost reimbursable), as described in *FAR Subpart 43.2*. However, the following elements are common to all changes clauses:

- A change order must be within the general scope of the contract.
- The change order must be in writing.
- The contracting officer must issue the change order.
- Quantities may not be unilaterally adjusted by use of the changes clause. A decrease in quantity can be effected 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 specified quantity (including the variation allowed) that exceed a value of \$250. These items may, however, be returned at the contractor's expense. (*FAR 11.701*)

Request for equitable adjustments. Government policy is to try to resolve all contractor requests for equitable adjustment (REAs) at the contracting officer 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 on the contractor claim (as described in Chapter 7).

A valid final decision by the contracting officer must meet the following conditions (*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 for 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 its bags to return to the home station, another unit arrives to assume the mission.

Delegation of contract administration. As described in *FAR Part 42*, delegation most commonly occurs in large contingencies. The responsibility for contract administration can be assigned to DCMA. The team that assumes the mission will either be the onsite DCMA theater area operations organization (for locations that have a permanent DCMA office) or a deployable DCMA team. Although the DCMA teams typically only deploy to support major contingencies, the theater chief administrative officer might be able to provide limited support to smaller operations.

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

- Transition of requiring activities.
- Transition of CCO authority.
- Transfer of COR responsibilities from one unit to another as units rotate in and out of theaters of operation.
- Transition from one contractor to another contractor, from the incumbent to new awardees.
- 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 must make a judgment call about which option is better suited to the particular circumstances.

- 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 contracting atmosphere has been largely based on mutual trust and a personal relationship between the government and the contractor, the contractor might view a new player with suspicion.

Terminations

There are basically two options for terminating contracts, T4C and termination for default (T4D) or cause. After deciding which method to use, the CCO should be prepared to negotiate a fair and reasonable settlement. Termination implies a breach of contract, and adequate compensation is appropriate. The CCO must follow local procedures for reporting and reviewing any termination actions.

The handbook DVD includes additional information about terminations.

The notice of termination should be in writing and will specify the following:

- Termination of the contract
- Extent of the termination
- Any special instructions
- Steps that 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 workforce.

After receipt of a termination notice, the contractor should take the following actions (*FAR 49.104*):

- Stop work immediately

- Terminate all subcontracts
- Immediately advise the termination contracting officer of any special circumstances that preclude the stoppage of work
- Perform any continued portion of work
- Submit a request for equitable adjustment if necessary
- Protect any GFP
- Notify the termination contracting officer about any legal proceedings arising from terminated subcontracts
- Settle any outstanding liabilities (subcontracts)
- Submit a settlement proposal
- Dispose of termination inventory.

Termination for convenience. The rapid pace of changing requirements can often result in the government no longer needing the supplies or services for which it has contracted. A request for the contractor to stop providing such supplies or services can often be met with confusion from the contractor. Regardless of the reason for not wanting contract performance to continue, the contractor might perceive that the CCO simply is not satisfied with contractor performance. If less than \$5,000 remains on the contract, the CCO should not terminate the contract. (*FAR 49.101(c)*)

The general procedures for T4C include the following actions (not necessarily in the exact sequence listed):

- Issue a suspension-of-work order for construction or architecture and engineering, which specifically excludes profit (*FAR 42.1302* and *clause 52.242-14*)
- Issue a stop-work order for the service or supply, which does not exclude profit (*FAR 42.1303* and *clause 52.242-15*) and is usually in

effect for 90 days (but if no notice after 90 days, contractor work restarts)

- Negotiate a settlement or, if no settlement is reached, unilaterally make a determination and notify the contractor that the changes are under the disputes clause.

When a T4C is requested, the CCO should take the following actions:

- Request or recommend a meeting with contractor
- For construction, obtain an estimate of the contractor cost incurred from engineering
- Establish and negotiate a cost settlement
- Prepare a stop-work or suspension-of-work order, consulting if necessary with the head of contract activity (HCA)
- Prepare an SF 30, using the T4C clause. (*FAR clause 52.249-2*)

When the CCO uses a partial contract cancellation or a total contract cancellation, the following should be considered:

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

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

The general procedures for T4D include the following actions (not necessarily in the exact sequence listed):

- Reference the appropriate default clause, *FAR clause 52.249-8* for a supply or service and *FAR clause 52.249-10* for construction
- Issue a cure notice and give the contractor a minimum of 10 days to cure (using the format in *FAR 49.607*)
- After 10 days (or if fewer than 10 days remain in the performance schedule), issue a show-cause notice (using the format in *FAR 49.607*)
- Ask an engineer to verify the extent of completion of work and to give an estimated value of the completed work
- Consult with the HCA before issuing the modification
- Report on the steps taken. (*FAR 42.1503(f)*)

Termination or cancellation of purchase orders. As described in *FAR 13.302-4*, if a purchase order accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with *FAR clause 52.212-4(l)* or *clause 52.212-4(m)* for commercial items or *FAR clause 52.213-4* for noncommercial items.

If a purchase order not 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. If the contractor does not accept the cancellation or claims that costs were incurred under the purchase order, the contracting officer should process the action as a termination, as previously detailed.

Termination for cause. The government may terminate for cause after any default by the contractor if the contractor fails to comply with the terms and conditions of the contract or fails to provide the government, on request, with 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 Part 49* (T4C) and *FAR Subpart 49.4* (T4D) do not apply. Procedures for termination of commercial item contracts are detailed in *FAR 12.403*.

Delinquency notices. The formats of the delinquency notices described in *FAR 49.607* and 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. Procedures for stop-work orders are addressed in *FAR 42.1303*.

Cure notice. If a contract is to be terminated for default before the delivery date, a cure notice, as described in *FAR 49.607(a)*, is required by the default clause. Before using this notice, it must be confirmed that an amount of time equal to or greater than the period of the 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, the following actions are taken:

- Negotiate changes
- Prepare a modification to the T4D
- Document the negotiations
- Obtain the 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, as described in *FAR 49.607(b)*. The show-cause notice should be sent immediately after expiration of the delivery period.

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

Contract Closeout

Contract closeout process. When the contractor satisfactorily completes performance of the terms of the contract and the final payment is 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.
- Address release of claims. On a final invoice with a payment amount that is subject to contract settlement actions (release of contractor claims), acceptance shall be deemed to occur 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 complete DD Form 1597, “Contract Closeout Checklist,” or agency-specific form such as Air Force Form 3035 for contracts that exceed the simplified acquisition threshold (SAT) after receiving proof that work or delivery is complete.
- Place the completed and certified DD Form 1594 in the contract file, write the word Closed on the file (preferably in large bold letters),

remove the file from the active contracts, and retain the completed contract file as required by FAR or the relevant agency.

- Use DD Form 1597 as the primary document for initiating a systematic contract closeout. When all necessary and applicable actions are completed, the contracting officer will sign and attach this form to DD Form 1594.
- Identify physically completed contracts that involve government property in the possession of the contractor. In such cases, the contracting officer will forward DD Form 1593, “Contract Administration Completion Record,” to the property administrator to request the actual or estimated dates for completion of property administration. DD Form 1593 should be used to verify that other functional activities have completed their required closeout actions.
- Address remaining funds. The contracting officer will review the status of funds on physically completed contracts to determine whether funds are available for removal before final payment.
- Address all contracts that fall below the SAT. In such cases, 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.
- Manage closeout of contracts administered by the purchasing office. In such cases, that office is responsible for ensuring that all required purchase actions and contract administration are completed, using as necessary DD Form 1597 and DD Form 1593.
- Complete DD Form 1594. When all required actions are completed, the purchasing office shall prepare DD Form 1594 for all contracts that exceed the SAT. The contract completion statement shall be added to the official contract file. DFARS 204.804 requires the use of DD Form 1594.

Contingency contracting officer closeout of field ordering officer and blanket purchase agreement authorized caller accounts.

When FOO and BPA authorized callers are ready to redeploy, the CCO must be sure that they return their original appointment orders, all completed forms and documents, updated PIIN logs, and unused forms (especially SF 44s). Throughout the contingency, the CCO should be receiving Joint Uniformed Lessons Learned System and after action report input from ordering officers.

FAR 4.804-5 describes procedures for closing out contract files, including the following main issues:

- Contractor release of claims
- Final invoice that has been submitted and paid
- Completed contract funds review and deobligated excess funds
- Storage, handling, and disposal of contract files.

Abandoned or unclaimed property. One issue that might arise is the disposal of abandoned contractor-owned property in accordance with *FAR Subpart 45.6*, “Reporting, Reutilization, and Disposal.” The CCO should consult with the local judge advocate about the disposition of contractor property left behind by the contractor before using or appropriating the asset.

Redeployment and Demobilization Considerations

Redeployment is defined as the transfer of forces, personnel, equipment, and materiel to home or demobilization stations for reintegration and out-processing. Whenever possible, the CCO should become part of the Joint contingency planning staff that is planning the redeployment or demobilization phase of the operation. It is imperative that the CCO communicates with operational planners, DCMA, and DLA in the drawdown planning.

A list of common redeployment considerations is available on the website (<http://www.acq.osd.mil/dpap/ccap/cc/jcchb/>) and the handbook DVD (under the Additional Text and Redeployment topic).

Common Systems and Tools

The entire contracting process involves many systems, tools, and interfaces. Many systems are becoming web-based, providing greater functionality and wider access, but also possibly creating accessibility issues in a contingency environment. The following brief list notes common systems and tools that CCOs might use, but such use can vary case by case, so the CCO should check with the local command for additional guidance:

- **Federal Procurement Data System (FPDS)**, which allows millions of procurement transactions from across the government to be recorded and reported in real time. The system contains detailed information on contract actions that exceed \$3,000 (FY04 and later). The system can identify who bought what, from whom, for how much, when, and where. Contract action reporting is discussed in Chapter 5. Additional information on FPDS is available at <http://www.FPDS.gov>.
- **Wide Area Work Flow (WAWF)**, which is a paperless contracting DoD-wide application designed to eliminate paper records from the receipts and acceptance process of the contracting life cycle. The WAWF systems allows government vendors to submit and track invoices and also receipt and acceptance documents over the web and enables government personnel to process those invoices in a real-time paperless environment. WAWF is the only application that will be used to capture the unique identification (UID) of tangible items information. Payment information is discussed in Chapter 5. Additional information on the WAWF system is available at <https://wawf.eb.mil>.

- **Joint Contingency Contracting System (JCCS)**, which gives procurement professionals a source of data entry for contracting and financial data to support mission spend analysis, strategic sourcing, and staffing requirements. JCCS produces contract and financial reports to support the warfighter's overall acquisition forecasting. Additional information on JCCS is available at <https://www.jccs.gov/>.
- **Procurement Desktop Defense (PD2)**, which provides automated strategic and streamlined contract management support for the procurement professional as part of a complete workflow management solution. PD2 is an integral part of the DoD Standard Procurement System (SPS), which is integrating acquisition, logistics, and financial management in one end-to-end enterprise business system. Additional information on PD2 is available at <http://www.caci.com/business/PD2.shtml>.
- **Contractors Performance Assessment Reporting System**, which is a web-enabled application that is used to document contractor and grantee performance information required by federal regulations. CPARS supports the FAR requirement to consider past performance information before making a contract award (as discussed in *FAR Part 15*, *Part 36*, and *Part 42*). *FAR Part 42* identifies requirements for documenting contractor performance assessments and evaluations for systems, nonsystems, architect-engineer, and construction acquisitions. Contract monitoring is discussed in Chapter 6. Additional information on CPARS is available at www.CPARS.gov/.
- **Electronic Document Access (EDA)** system, which is an online document access system designed to provide acquisition-related information for use by all of DoD. The EDA system offers two concurrent operating sites (in Ogden, UT, and Columbus, OH). If one site is down or unavailable, the alternate site can be used. Additional information on the EDA system is available at <http://eda.ogden.disa.mil/>.

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- [Chapter 6 PowerPoint Briefing](#)
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- [Topical Index webpages](#)
 - » [After Action Reports](#)
 - » [Claims](#)
 - » [Contract Administration](#)
 - » [Contract Closeout](#)
 - » [Construction](#)
 - » [CORs](#)
 - » [File Management](#)
 - » [Modifications](#)
 - » [Receiving Reports](#)
 - » [Terminations](#)
 - » [Transportation and Shipping](#)
- [Additional Reading on](#)
 - » [Considerations on Reducing Footprint](#)
 - » [Receipt and Inspection](#)
 - » [Terminations](#)

CHAPTER CONTENTS

Key Points	248
Introduction.....	248
Protests	248
Contract Claims.....	256
Seizures.....	258
Contract Disputes and Appeals.....	260
Contract Settlements and Alternative Dispute Resolution.....	262
Website and DVD Materials Related to Chapter 7	264

Chapter 7

Protests, Claims, Disputes, and Appeals



Key Points

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

Introduction

Effective lines of communication between the contingency contracting office and the supporting legal office are critical to successfully dealing with a bid protest or appeal. As part of deployment preparations, the CCO must identify and know how to work with supporting legal counsel. In addition, protests can sometimes be averted by frank and open communications with the vendors, who might recognize significant errors in solicitations and evaluations overlooked by the CCO because of the pace of the operation. The CCO should encourage vendors to attempt to resolve their concerns with the CCO, pursue an agency protest if the issue is not resolved by the CCO, and then file a protest 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 that a contracting officer should take when notified of a possible protest, claim, dispute, or appeal.

Protests

Protests. As described in Part 33 of the Federal Acquisition Regulations (*FAR Part 33*) a protest is defined as a written objection by an interested party to any of the following:

- Solicitation or other request by an agency for offers of a contract for the procurement of property or services
- Cancellation of the solicitation or other request
- Award or proposed award of the contract
- 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 orders and task orders under multiple award contracts that exceed \$10 million, as specified in *FAR 16.505 (a)(9)(B)*.

Protests to the agency

Executive Order 12979, “Agency Procurement Protests,” establishes policy on agency procurement protests. Before submission of an agency protest, all parties should use their best efforts to resolve concerns raised by an interested party at the CCO level by undertaking 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 (ADR) techniques, third-party neutrals, and personnel from another agency.

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, including a description of resulting prejudice to the protester
- Copies of relevant documents

- Request for a ruling by the agency
- Statement about the form of relief requested
- All information establishing the protester as an interested party
- All information establishing the timeliness of the protest.

Failure to substantially comply with these requirements 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 decision on the protest, it will not extend the GAO timeliness requirements. Therefore, any subsequent protest to GAO must be filed within 10 days of knowledge of an initial adverse agency action, as specified in Section 21.2(a)(3) of Title 4 of the Code of Federal Regulations (*4 C.F.R. 21.2(a)(3)*). If a party wishes to have the case classified as an express option (*4 C.F.R. 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 that the express option is appropriate even though no party formally requests it.

Action after receipt of protest. If a protest is received before the award of a contract, the contract may not be awarded until the protest is resolved. Unless urgent and compelling reasons exist for contract award, the justification should be submitted in writing and determined to be in the best interests 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 offerors whose proposals or bids may

become eligible for the contract award. If appropriate, the offerors should be asked to extend the time for acceptance to avoid the need for resolicitation.

After receipt of a protest, the CCO shall immediately suspend performance pending resolution of the protest by the agency. This resolution includes any review by an independent high-level official unless continued performance is justified. Additional information on receipt of protests is available in *FAR 15.505* and *15.506*.

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 shall explain the agency position. The protest decision shall be provided to the protester by using a method that furnishes evidence of receipt.

Protests at the Government Accountability Office

Receipt of protest. As described in *4 C.F.R. 21*, this guidance focuses on protests before GAO, where the vast majority of protests are filed. After receipt of a protest, the CCO should immediately contact the supporting legal counsel. GAO protests are fast-moving actions, with a government report due to 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 on bid protests may be a remote reachback asset. If the CCO has local legal counsel available, chances are that the local counsel will be working with a reachback legal office.

Such reachback offices frequently work on bid protests and can rapidly understand protest issues.

Protest before award. As described in *FAR 33.104(b)*, when the agency receives notice from GAO of a protest filed directly with 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, after a written finding of the following:

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

A contract award shall not be authorized until the agency has notified GAO of the finding, as discussed in *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 proposals or bids might become eligible for award after the protest.

Protest after award. As discussed in *FAR 33.104(c)(1)*, when the agency receives notice of a protest from GAO within 10 days after contract award, or within 5 days after a debriefing date offered to the protester for any debriefing 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 HCA, on a nondelegable basis, may authorize contract performance, notwithstanding the protest, upon a written finding of the following:

- Contract performance will be in the best interests of the United States.

- Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO decision.

Contract performance (or continued performance) shall not be authorized until the agency has notified GAO of the aforementioned finding. When a decision is made 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 GAO after the dates in *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 might be invalidated and a delay in receiving the supplies or services is not prejudicial to the government's interests.

Response to a protest, the first 24 hours. The actions that the CCO should accomplish within 24 hours of receipt of a written protest include the following:

- 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 (e.g., the awardee or offerors) until you discuss the release with the assigned attorney.
- Confirm the identity of the attorney assigned to work on the protest, and obtain contact information (email address and telephone numbers). Ensure that the attorney has the CCO's contact information.
- Discuss the allegations with the attorney, and explain 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 the awardee that a protest has been filed and that contract award or contract performance has been stayed. Ensure that the assigned attorney informs GAO of the status of the delay.
- If the HCA authorizes contract performance, discuss this development with the attorney. (*FAR 33.104*)
- Identify the key people who are knowledgeable about the allegations in the protest, and obtain their contact information to give to the attorney. These people might be technicians, evaluators, or personnel at the requiring activity. Inform these key people about 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 people will be necessary.

Response 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 GAO and the protester within 30 days. This time period gives 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 the best way to assemble the agency report.
- The CCO should immediately coordinate with, and begin transmitting key contract documents to, the supporting legal counsel. This approach enables the government counsel to understand the relevant

facts and issues and to assess the merits of the protest early in the process. Such an approach also allows the legal office to begin assembling the agency report to GAO.

For an agency report to GAO, the required documents include:

- CCO statement of relevant facts
- Bid or proposal submitted by protester
- Bid or proposal of the awardee
- 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 communications between the attorney and the CCO regarding the status of the protest.

Corrective action. For a GAO protest, Day 30 (Day 20 under the express option) is a significant milestone because the government must file its agency report with GAO by this deadline. In addition, 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 help get the acquisition back on track toward award, but also are key to avoiding the payment of potentially significant legal expenses.

Actions 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). On occasion,

to clarify the record or the issues involved, GAO requests a hearing and requires testimony from government officials.

Contract Claims

Several aspects of contingency contracting produce an environment ripe for contract claims. A CCO can do little to eliminate the likelihood of claims. The key is focusing on actions that will ease the resolution of the claim. Such actions include monitoring contractor performance (to create a clear record of exactly what the contractor did) and performing ongoing market research (to monitor 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) arises, the CCO should contact the supporting legal counsel for assistance and advice. If an agreement cannot be reached with a contractor, the CCO must issue a final decision on the contractor claim. During a contingency, the CCO must strike a balance between expeditious settlement of contract claims and protection of government interests.

Contractor claims. Because of the high operational tempo usually associated with contingency contracting, responding to contractor claims and disputes can divert precious time from the mission at hand. The CCO 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 might be able to dispose of such requests relatively quickly. Unlike requests for adjustments, the submission of a contract claim begins accrual of interest on the claim.

- The administrative burden that contractor claims can place on the CCO and the overall contingency contracting mission can be mitigated by a working understanding of the flexibility that exists under FAR and the Defense Federal Acquisition Regulation Supplement (DFARS); an understanding of what is (and is not) a contract claim; assignment of, and maintenance of communications with, a trained contracting officer's representative (COR); the existence and quality of contract file documentation; and application of ADR techniques. To help alleviate this burden, the CCO should seek early and frequent counsel from the supporting legal office.
- After receiving a claim that exceeds \$100,000, the CCO should ensure that the claim is certified by the contractor, consistent with FAR 33.207.
- Any suspected fraudulent claim or other misrepresentation of fact should be reported to the supporting legal office and the chief of the contracting office (COCO).

Contingency contracting officer final decision. The CCO should make the final decision as follows.

- The CCO should use the specialized skills of the functional representatives (e.g., the COR) when addressing the facts and issues in dispute.
- Final decisions for a claim of \$100,000 or less must be issued within 60 days after receipt of the claim.
- For claims exceeding \$100,000, 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 in the contract.

- The CCO's final decision to deny a contractor claim (either in part or in whole) can result in a dispute by the contractor under the applicable contract disputes clause.

Seizures

Under the principle of military necessity and subject to restrictions, commanders may seize private property during hostilities. Seizing private or public property for mere convenience is unlawful. Commanders may *not* leave civilians without adequate food, clothing, shelter, or medical supplies as a result of a seizure of civilian property. Legal assistance must be obtained before the seizure of any property.

Property control record book. The property control record book (PCRB), which may be issued to any level, confers no authority, but merely facilitates the ability to document seizures under the law of war.

Procedures for the property control record book. PCRB procedures are as follows:

- Each PCRB should be numbered and should contain a minimum of 10 sets of 4 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 for the commander on the use of the forms, including 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 Office should be responsible for the issuance of PCRBs to the commanders. Hand receipts can be used to issue PCRBs to the units. It should be emphasized that the staff judge advocate is only issuing the books and that accountability for the books and seized property is a command responsibility.

Payment for seizures. The following procedures are available to provide compensation for seized property:

- **Ratification.** The act of approving an unauthorized commitment by an official who has the authority to do so. Additional information on ratifications is included in Chapter 5.
- **Retroactive leases.** The US Army Corps of Engineers may negotiate retroactive leases in accordance with Army Regulation 405-15.
- **National defense contracts.** Defense agencies may enter into and modify contracts—without regard to other provisions of law related to making, performing, amending, or modifying contracts—whenever the Secretary concerned decides that such action would facilitate the national defense. (Section 1431–1435 of Title 50 of the United States Code [*50 U.S.C. Section 1431–1435*] and *Executive Order 10789*, as amended)
- **Claims adjudication in accordance with 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 Section 1431–1435 of Title 50 of the United States Code (*50 U.S.C. Section 1431–1435*) and *FAR Part 50*.

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 (*41 U.S.C. Section 7101-7109* and *FAR 33.202*), 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 probably will be provided by a reachback attorney. Experience shows that early involvement by legal counsel can help avoid an appeal altogether. However, if an appeal is received, legal counsel should be extremely effective in assessing and orchestrating a government response to the contractor appeal. The underlying record of evidence related to any contract dispute is critical to crafting the government's response. By applying a few simple practices, the CCO can greatly enhance the underlying contract record and the government's position in a contract appeal. Contractors should send appeals to the following address:

Civilian Board of Contract Appeals
1800 F Street, NW
Washington, DC 20405

Additional information is available at <http://www.cbca.gsa.gov/>.

A few best practices. In general, 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 the following simple tools in the contingency contracting office:

- **Digital and video images.** As so often noted, 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 begins. The CCO should ensure that inspectors, quality assurance personnel, CORs, and other representatives make it a standard practice to use digital cameras. This approach is particularly valuable for vehicle leases in the area of responsibility (AOR). Pictures and videos should immediately be emailed to the CCO for review and should be included as part of the contract file. Such pictures are especially useful for assessing, if not enhancing, the strength of the government's case.

- **Accounting for personnel turnover.** The turnover of government personnel involved in contingency contracting actions represents a significant impediment to developing the government's case in an appeal. The CCO should work with J1, Manpower and Personnel, to ensure that key witnesses, past and present, can be located. The CCO must employ a personnel locator process that permits the CCO and successors to identify and locate witnesses, including personnel who redeploy away from the contingency. At a minimum, the CCO should inform key personnel about the appeal and their associated roles and should 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 the documentation that underlies a contract action.
- **Storage and retrieval.** The CCO should consider developing an electronic contract file where documents, digital pictures, charts, and other records can be readily stored and retrieved. Note that CCOs also should make an electronic copy of all emails pertaining to

claims and should include them with the contract file before leaving the AOR. This documentation might be needed later to assist with claims.

- **Appeals.** As appropriate, the CCO should use the reachback legal office to assemble the underlying record for any contract appeal, referred to as the Rule 4 file. (*28 U.S.C. Appendix Rule 4*) At this point, the CCO practice of establishing an electronic contract file pays significant dividends.

Contract Settlements and Alternative Dispute Resolution

If a dispute cannot be resolved between the parties, 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 ADR procedures, as described in *FAR 33.214*. 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 help negotiate settlements or pursue ADR measures, thereby expediting the resolution of contractor disputes. Note that a timely agreement developed by the parties—rather than a decision resulting from litigation—might be more valuable in maintaining a continuing business relationship with the contractor during a contingency.

Alternative dispute resolution elements. The essential ADR elements are (1) existence of an issue in controversy, (2) voluntary election by both parties to participate in the ADR process, (3) 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 the dispute. If ADR is used, The CCO should consider the following few tips before beginning:

- Know your facts.
- Avoid using words and body language that might produce an angry reaction.
- Be professional, and observe local customs at all times.
- Develop an appreciation for the other side's viewpoint.
- Diffuse anger when it first appears.
- If using a mediator or facilitator, talk to the other side, not the mediator, who is there to help, not to judge.
- Use simple, clear, and concise language, and recognize that most people want to settle a dispute.

Claims under alternative dispute resolution. If a claim has been submitted, ADR procedures may be applied to all or only part 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 a determination is made under agency procedures that continued performance is necessary pending resolution of any claim arising under (or relating to) the contract, the contracting officer shall use the disputes clause described in FAR clause 52.233-1 (and its Alternate I).

Reminder. In preparing contracts and solicitations, The CCO must remember to insert the disputes clause in FAR 52.233-1 unless the conditions in FAR 33.203(b) apply and to insert applicable law for the breach of contract claim clause in FAR 52.233-4.



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- [Chapter 7 PowerPoint Briefing](#)
- [Chapter 7 Test Questions](#)
- [Trainings Related to Chapter 7](#)
- [Scenarios Related to Chapter 7](#)
- [Topical Index Webpages](#)
 - » [Alternative Dispute Resolution \(ADR\)](#)
 - » [Claims](#)
 - » [Disputes](#)
 - » [Protests](#)

CHAPTER CONTENTS

Key Points	266
Introduction.....	266
Cultural Awareness.....	266
Situational Awareness	272
Communication with Vendors (Elicitation, Espionage, and Subversion)	273
Antiterrorism and Security.....	274
Personnel Recovery	276
Website and DVD Materials Related to Chapter 8	277

Chapter 8 Cultural and Situational Awareness



Key Points

- Contingency contracting officers (CCOs) must be familiar with the statutes, directives, treaties, and agreements that will affect contracting operations when they are deployed.
- Much of the business conducted by contractors overseas is by negotiation. Therefore, negotiating for lower prices should be considered a normal business practice.
- CCOs should be aware of antiterrorism countermeasures and security.
- CCOs should maintain information operations security during all activities.
- CCOs must be aware of the risks associated with contracting in an austere or contingency situation.

Introduction

As a CCO, you will travel to many places around the globe. With that in mind, this chapter provides an understanding of foreign acquisitions, business advisor considerations, antiterrorism and security, antiterrorist countermeasures, and operations security (OPSEC) issues that are inherent in doing business in a foreign country.

Cultural Awareness

Cultural awareness. CCOs should try to learn as much as possible about the country to which they will be deployed. Cultural orientation modules are available at <http://fieldsupport.dliflc.edu/lp/co.html>. CCOs should perform the following:

- Make an effort to understand the culture and customs.
- Try to understand the business environment and infrastructure.

- Recognize that an informed visitor is a safer visitor.
- Recognize that other nations might not have lifestyles and habits similar to those of the United States. Resist the temptation to make value judgments.
- Establish a rapport with local nationals, who can forewarn you about suspicious activities, might help ward off impending attacks, and also can prevent you from making grave social errors that offend other local nationals.
- Try to learn as much of the local language as possible, but especially key phrases such as “I need a policeman,” “help,” “fire,” and “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 the local environment as much as possible. For example, rather than going to popular restaurants and bars frequented by US personnel, try local establishments suggested by trusted local national friends, avoiding tourist attractions that 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 US procurement officials. All personnel should be conscious of the fact that many business cultures

expect kickbacks, finder's fees, exchanges of gifts, or other gratuities that are illegal for US personnel to provide or accept. In addition, many business cultures encourage the use of deceptive techniques during negotiations; the rule of law and corruption levels influence outcomes. Furthermore, in austere areas, contractors might promise more than they can deliver or faster timelines than are actually possible. CCOs should conduct site inspections and view the products whenever possible. CCOs must be vigilant in advising US commanders, requirements personnel, and CCO-appointed representatives about practices that might violate the standards of conduct specified in *DoD Regulation 5500.7-R*, "Joint Ethics Regulation." Personnel should seek the assistance of the legal office to obtain guidance about ethics matters. Additional information on ethics is included in Chapter 1.

Negotiating practices. Much of the business conducted overseas by contractors is by negotiation. When setting the price of an item, CCOs should keep in mind that the first price quoted is usually only a starting position for negotiations. Most of the foreign contractors with whom CCOs deal can be shrewd negotiators. Negotiating for lower prices should be viewed as a normal business practice. Two or three rounds of exchanges might be the most prudent and effective way to reduce the proposed prices. For supplies, services, and construction, experience in the United States Central Command (USCENTCOM) theater has shown that the price drops dramatically whenever discussions are initiated 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 that the product is hard to find or the requirement is urgent, 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, feasibility of meeting the need from outside the local area,

ability to secure delivery within the requested time frame, urgency of the requirement, and need to build the local economy are all part of the determination of a fair and reasonable price. Because the contingency environment is dynamic, documenting conditions is important to support the determination of fair and reasonable prices. Additional information on negotiating practices is included in Chapter 5.

Oral agreements. The prevalent practice in many countries is to conclude an agreement or contractual understanding with nothing more than a handshake. This approach may be used at the outset of the contingency, humanitarian assistance, or peacekeeping operation, but should be quickly followed with a written contract. Vendors can view contracts written in English with suspicion and sometimes anger. Obtaining a vendor's signature on a contract can become a challenge. When a local businessman or provider refuses to sign contractual documents, the ordering officer (OO), field ordering officer (FOO), and CCO must either document the file with a memorandum for the record or annotate the unsigned contractual document. CCOs, OOs, and FOOs should ensure that another US government official countersigns the document. Once a contract is performed and the contractor is paid, relations between vendors and government representatives (i.e., the CCO and the government team) should improve. CCOs should remember to always 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 payment procedures might require contracting officers to arrange for immediate payment after completion and acceptance of work. Chapter 5 describes 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. The contracting officer, in consultation with the requiring activity, deems some interpreters as

mission-essential contractor employees. These employees are considered to be 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 the absence of embassy support, CCOs may check with hotels, find a telephone book, or ask bus drivers for tour operations. The CCO will probably be successful in contacting local schools to find interpreters (e.g., teachers, senior students). CCOs should be cautious about using interpreter services from unapproved sources.

Limitations. Deployed CCOs do not have the authority to negotiate or enter into agreements with foreign governments. If an agreement is already in existence, the CCO may obtain authority through the head of the contracting activity (HCA) to work with the host nation support office to write priced delivery orders against the agreement. If a new agreement is needed, the CCO may request the creation 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. The CCO should know that the international environment is governed by a myriad of statutes, directives, treaties, and implementing arrangements for conducting transactions. Guidance on these matters should be sought from the host nation support team, combatant command J4 (Logistics), and US embassy. For contingency and exercise operations in a foreign country (and acquisition under provisions of mutual support logistics between the US and the government of eligible countries), options include host nation support agreements, assistance-in-kind agreements, status of forces agreements (SOFAs), and acquisition and cross-servicing agreements. CCOs must understand the role of each of these agreements, their functioning, and their advantages.

Customs and taxes. Many times, SOFAs will address contracting support related to legal obligations (e.g., taxes and customs) and the process and documentation needed for an exemption. If procedures have not been established, the CCO should 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 when hosting international visitors from other countries or when visiting these countries. In addition, several websites are available to help CCOs become familiar with the host culture, including:

- <https://www.cia.gov/library/publications/the-world-factbook/>
- <http://www.globalbusinessleadership.com/worldsmart.asp>.

Additional guidance on cultural awareness is provided by the following sources:

- The Defense Language Institute Foreign Language Center offers culturally based education in more than 40 languages. The center's website offers downloadable products for predeployment training, deployment use, or refresher training, available at <http://www.dliflc.edu/products.html>.
- The US Marine Corps Center for Advanced Operational Culture Learning (CAOCL) provides information about regional cultures and languages to support planning and operations in a Joint expeditionary environment. The CAOCL website <http://www.tecom.usmc.mil/caocl/> provides specific cultural links related to Operation Iraqi Freedom, Operation Enduring Freedom, United States Africa Command (AFRICOM), United States Pacific Command (USPACOM), United States Southern Command (USSOUTHCOM), and USCENTCOM.
- The Air Force offers sociocultural and language resources, available at <http://www.culture.af.mil/>.

Situational Awareness

Operations security awareness. Awareness of the security fundamentals allows CCOs to focus their attention on the 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 falling into the wrong hands. Such information can be extremely valuable to adversaries of the United States. It can provide intelligence indicators of daily operations and, more important, future plans and activities.

Definition of operations security. OPSEC is defined as the process of identifying critical information and subsequently analyzing friendly actions attendant to military operations and other activities to accomplish the following:

- Identify those actions that can be observed by adversary intelligence systems
- Determine indicators that an adversary's intelligence operatives might obtain that could be interpreted or pieced together to produce 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.

Operations security process. OPSEC is a continuous, systematic process involving security and common sense. OPSEC is used to analyze operational plans or programs to detect any weakness that could give useful information to adversaries or potential adversaries. The most important steps in the process are as follows:

- Knowing the unit's mission
- Recognizing the adversary's intelligence threat to the unit
- Being aware of the unit's critical information (essential elements of friendly information)
- Identifying indicators that might disclose or point to this information
- Developing protective measures to eliminate these indicators
- Being constantly alert for vulnerabilities in the unit.

Communication with Vendors (Elicitation, Espionage, and Subversion)

Over time, CCOs will develop a rapport with most of the foreign vendors with whom they deal. However, CCOs must be wary of statements to even the most trusted of contractors. A CCO might find that contractors are soliciting information of possible intelligence value. For example, a CCO might be asked about the likelihood that an exercise will be conducted soon, number of people on the base, or possibility that additional personnel will arrive soon. CCOs must immediately report any suspicious activities to the Army Criminal Investigation Division (CID), Air Force Office of Special Investigation (OSI), Naval Criminal Investigation Service (NCIS), or local security unit.

CCOs must always be wary of what is said when corresponding with the vendor base, either directly or indirectly, because it could be overheard by someone else. In addition, information in contract requirement documents could disclose operational information (e.g., completion dates, troop movement, and delivery locations).

CCOs should be cautious when using satellite communications, cellular phones, and email. These methods of communication are generally not secure.

Local national 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. In addition, CCOs should consider the possibility that local contractors might need to be billeted on the base to reduce the security risk to themselves and their families, thus changing their status to CAAF. Before publicizing award notifications and other contracting data, CCOs should check the local policy on the information that needs to be posted.

Antiterrorism and Security

Threat factors. CCOs should ask the following eight questions to understand threats in the local environment:

- Do terrorist groups operate in the area?
- Are the terrorist groups violent?
- Do these groups attack US personnel?
- How active are the terrorist groups?
- How sophisticated are these groups?
- How do the terrorist groups operate?
- What is the level of popular support that these groups enjoy?
- Do these terrorist groups use common tactics?

The Department of State publishes annual country reports that identify terrorist groups and describe their actions against US citizens and personnel, available at <http://www.state.gov/s/ct/rls/crt/>. CCOs should ask the relevant intelligence officer or chain of command for information on terrorist groups in the area. CCOs also should monitor stories in the newspaper, on radio, or on television.

If terrorist groups are operating in the area, the CCO needs to know their level of sophistication—whether they use highly targeted, carefully planned attacks or simply explode bombs randomly in public places. Knowing how the terrorist groups operate will enable the CCO 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 the CCOs know how to detect this type of surveillance, steps can be taken to protect the CCO and report the information to the intelligence officer.

It is important to know whether a terrorist group has local popular support. If not, the local population is more likely to warn US personnel about events leading up to an attack. DoD and agencies of the US government study these factors to increase the protection of US forces. The CCO's personal awareness can contribute to these efforts by the US government. CCOs must always be attentive to their surroundings and be ready to react at the first sign of danger.

Target selection and target identification. A useful exercise for the CCO is trying to take the terrorist's view and determining whether the CCO stands out as a US military official, spends time with large groups of US troops in public, behaves (individually or in groups) in a way that draws attention, or appears to be an important person. Large groups of US personnel can be an inviting target. Terrorists also identify and target specific individuals by name, so personal CCO information must be protected to minimize exposure. Moreover, terrorists might target people who appear to be important, whether those individuals agree with that assessment or not. Before launching an attack, terrorists must perceive the CCO, associates, or location as a target. CCOs must make every effort not to be an easy target.

Personnel Recovery

Definition of personnel recovery. Personnel recovery is defined as the sum of military, diplomatic, and civil efforts to prepare for and execute the recovery and reintegration of isolated personnel.

Isolated personnel. Isolated personnel are defined as US military personnel, DoD civilians, and contractor personnel (and others designated by the President or Secretary of Defense) who are separated from their units (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 the Joint Operation Planning and Execution System (JOPES), subordinate operational orders and plans, and contractor integration plans. Regardless of the threat environment, contracts should require contractors to complete training in personnel recovery; prepare DoD Form 1833, “Isolated Personnel Report (ISOPREP)”; and prepare an evasion plan of action. The contract should also clearly identify the organization and responsibility for (1) ensuring that personnel recovery training is accomplished and ISOPREPs and evasion plans of action are included in the theater personnel recovery plan and (2) recovering and reintegrating isolated contractors.

Joint Publication 3-50, “Personnel Recovery,” provides additional information on personnel recovery planning and on the development of ISOPREPs and evasion plans of action.

Chapter 4 includes additional information on personnel recovery as related to planning.

Website and DVD Materials Related to Chapter 8

- [Chapter 8 PowerPoint Briefing](#)
- [Chapter 8 Test Questions](#)
- [Trainings Related to Chapter 8](#)
- [Scenarios Related to Chapter 8](#)
- [Topical Index Webpages](#)
 - » [Antiterrorist Countermeasures](#)
 - » [Contractors Authorized to Accompany the Force \(CAAF\)](#)
 - » [Cultural Awareness](#)

CHAPTER CONTENTS

Key Points	280
Introduction.....	281
Domestic Emergencies...281	
Emergency Acquisition Authorities.....	286
Lessons Learned to Avoid Common Pitfalls	290
Advance Planning for Emergencies at the Home Station.....	293
On-Scene Operations.....	300
Website and DVD Materials Related to Chapter 9	310

Chapter 9 Domestic Emergency Response



Key Points

- The Federal Emergency Management Agency (FEMA), a branch of the US Department of Homeland Security (DHS), is the lead federal agency responsible for coordinating contracting support for domestic 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 the Secretary of Defense.
- Military forces working on domestic support operations should minimize contracted support to the deployed force 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 under Title 32 of the United States Code (*32 U.S.C.*) control.
- Acquisition and emergency acquisition flexibilities are identified in Part 18 of the Federal Acquisition Regulation (*FAR Part 18*) and Part 218 of the 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.

Introduction⁶

Domestic emergencies can affect the public welfare, endanger life and property, or disrupt the usual process of government. Domestic emergencies can result from an enemy attack, natural disaster (e.g., hurricane, earthquake, flood, fire), or a man-made disaster (e.g., insurrection or civil disturbance). The more rapidly contingency contracting officers (CCOs) can establish a robust contracting support network, the better. Efficient use of time can contribute to saving the lives of disaster victims. The effectiveness of domestic contracting operations after a disaster such as an earthquake, hurricane, tornado, flood, or other severe weather conditions depends on advance planning and preparation.

This chapter discusses actions that a contracting officer should take when assigned to support relief and recovery operations after a domestic emergency. The chapter also provides guidance to help contracting offices that support the mission before, during, and after an emergency at their home stations. Although this chapter discusses many topics covered elsewhere in the handbook, it does so from the perspective of domestic emergency responses. Additional information on domestic emergencies is included in the *Emergency Acquisitions Guide* issued by the Office of Federal Procurement Policy (OFPP).

Domestic Emergencies

The Secretary of Homeland Security is responsible for coordinating federal operations in the United States to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. For most emergency operations in the United States, FEMA serves as the lead federal agency and provides support to local, tribal, or state

⁶ Portions of this chapter were developed based on the *Emergency Acquisitions Guide* issued by the Office of Federal Procurement Policy (January 2011).

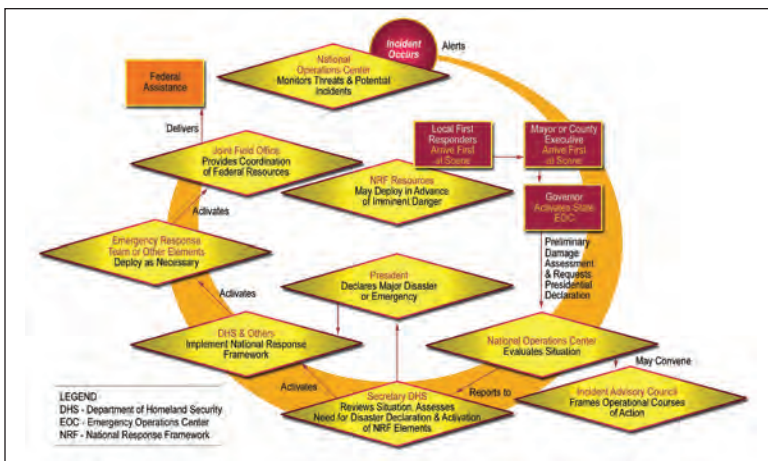


Figure 11. Federal Response

authorities under the provisions of the Stafford Act and the guidance in the National Response Framework (NRF). DoD supports these missions by providing Defense Support of Civil Authorities (DSCA). The federal response to domestic emergencies is depicted in **Figure 11**.

Defense Support of Civil Authorities. Contracting support for homeland security operations is similar to the support provided for foreign contingency contracting.

Homeland security operations. Planning and executing contracting support for homeland security operations are very similar to planning and executing contracting support for foreign contingencies, but do have some nuances that can make it very different.

National Response Framework. 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 applies to all federal departments

and agencies that have primary jurisdiction for, or participate in, operations requiring a coordinated federal response. The NRF specifies how federal departments and agencies will respond to state, tribal, or local requests for assistance (RFAs). FEMA coordinates and manages the NRF. The Secretary of Homeland Security executes overall coordination of federal incident management activities. Additional information is available at <http://www.fema.gov/emergency/nrf/>.

Robert T. Stafford Act. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (*42 U.S.C. Section 5121–5206*) authorizes the federal government to help state and local governments alleviate the suffering and damage caused by disasters. Requests for DoD assistance can occur under Stafford Act or non–Stafford Act conditions. A Stafford Act incident is defined as 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 that do not necessarily overwhelm state and local authorities, but would benefit from federal assistance and coordination. The Secretary of Homeland Security is responsible for the overall coordination of federal Stafford Act and non–Stafford Act incident management activities.

Overview of disaster response and incident management. This overview illustrates actions that federal agencies will likely take to assist state and local governments that are overwhelmed by a major disaster or emergency. Figure 11 shows a graphic display of a federal response under the Stafford Act.

Request for assistance process. Federal agencies or state governors can request DoD capabilities to support their emergency response efforts by using a formal RFA process. DoD handles RFAs based on factors

such as its categorization as a Stafford Act or non-Stafford Act event, 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 (e.g., incident command, state, regional, or national).

Contracting support for domestic emergency operations. For domestic emergencies, the NRF (available at <http://www.fema.gov/emergency/nrf/>) defines the key principles, roles, and structures that organize the nation's response. The NRF describes how communities, tribes, states, the 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 personnel assist FEMA or other lead federal agencies, as directed by DoD. In general, this military support takes the form of organic military forces with limited operational contract support (OCS). The US Army Corps of Engineers (USACE) contingency response team (CRT) deploys to support the FEMA response team. USACE contingency contracting personnel may deploy in support of the USACE CRT and will contract for services and supplies as the mission dictates and as authorized by the USACE head of contracting activity (HCA) and the principal assistant responsible for contracting (PARC). Additional information on disaster and emergency response contracting is available at https://www.acquisition.gov/emergency_contracting.asp. The following key principles govern the provision of 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 minimize contracted support to the deployed force to avoid competing with state and federal agencies for limited local commercial resources.

National Guard operations (Title 32). National Guard support operations are described in National Guard Regulation 500-1. Many domestic support operations are handled at the state level. In these cases, Army and Air National Guard units provide military support under 32 U.S.C., “National Guard or State Active Duty.” When National Guard units deploy within CONUS, they normally receive contracting support from their home state. In these situations, the National Guard unit will usually have several governmentwide commercial purchase card (GCPC) holders with the unit and, when required, warranted contracting officers. Such deployments are generally short term, such as a disaster response. When the National Guard experiences contracting personnel shortages in a particular state, the National Guard Bureau (NGB) Joint Task Force–State (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 who are capable of soliciting, awarding, and administering large service and military construction contracts. Similar in concept to the National Guard tiger teams, the Office of Management and Budget (OMB) may deploy members of the Contingency Contracting Corps to help during an emergency situation, as noted in 41 U.S.C. Section 2312.

Incident Command System. The Incident Command System (ICS) is a standardized on-scene incident management tool designed specifically to allow responders to adopt an integrated organizational structure that is equal to the complexity and demands of a single incident or multiple incidents without hindrance by jurisdictional

boundaries. ICS was developed to manage and address the following problems:

- Too many people reporting to one supervisor
- Differing 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*, “Emergency Acquisitions,” and *DFARS Part 218*.

Overview. *FAR Part 18* identifies generally available flexibilities as well as flexibilities that are available only for the following specified circumstances:

- Contingency operation (as described in *FAR 18.201* and Chapter 5)
- Defense or recovery from chemical, biological, radiological, or nuclear (CBRN) attack (*FAR 18.202*)
- 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 micropurchases and simplified acquisitions do not automatically increase. However, such increases 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. CCOs should 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)*) Contracting officers facing emergency situations should seek legal assistance to identify their options.

Emergency acquisition flexibilities. In **Table 7** is a quick-response summary of emergency acquisition flexibilities for defense against, or recovery from, a CBRN attack. In addition, the following authorities are available during any of the types of emergency situations described in this section:

- **Relief from registration in the Central Contractor Registration.** Contracting officers may make an award to contractors not registered in the Central Contractor Registration (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)*)⁷
- **Relief from the use of electronic funds transfer.** Contract payments are exempt from electronic funds transfer (EFT) requirements when it is not known whether EFT is possible or when an EFT payment would not support the objectives of the operation.
- **Defense or recovery from specific attacks.** **Table 7** shows a quick reference to the flexibilities available to support acquisitions that are made when the agency head determines that they will facilitate defense against, or recovery from, a CBRN attack or a declared contingency.

⁷ The General Services Administration is updating many acquisition-related systems into a single System for Award Management (SAM). Please check <https://www.sam.gov/> for more details.

Micro-Purchases**(Normally under \$3K) See definition at FAR 2.101**

- \$15K per transaction within the United States
- \$30K per transaction outside the United States

**Small Dollar Acquisitions Under the Simplified Acquisition
Threshold (Normally \$3K to \$150K)****See definition at FAR 2.101**

- \$300K for purchases inside the United States
- \$1M for purchases outside the United States

**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 FAR Part 12. This allows noncommercial items to be purchased using the policies and practices applicable to commercial items. See FAR 12.102(f)(1).

Caution: Cost accounting standards are generally inapplicable to commercial item acquisitions. However, a contract in an amount greater than \$17.5M 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 costaccounting standards or cost or pricing data requirements, (See FAR 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 DFARS Supplement 211.274-2(b)).

**Table 7. Quick Reference: Emergency Acquisition Flexibilities
for Defense against, or Recovery from, a CBRN Attack**

Incidents of national significance, emergency declaration, or major disaster declaration. The flexibilities described in this section are available when one of the following is declared:

- Incident of national significance
- Emergency declaration
- National emergency
- Major disaster.

Limited use of full and open competition. Contracting officers may limit the use of full and open competition when a statute authorizes (or requires) an acquisition through another agency or from a specified source. Such statutes include the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Local area preferences. The Stafford Act further requires that preference be given to local organizations, firms, and individuals when contracting to support 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 that reside or do 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 (but *not* larger than) the area defined by the disaster or emergency declaration or to small business concerns in the restricted area. (*FAR 26.202*) Note that 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 that preference be given to US-flag vessels when transportation by ocean vessel is necessary. *FAR 47.502(c)* allows a waiver of this requirement

when Congress, the President, or the Secretary of Defense declares that an emergency justifying a temporary waiver exists and then notifies the appropriate agency or agencies.

Lessons Learned to Avoid Common Pitfalls

Sourcing. CCOs should be careful not to overload construction contractors and should limit the number of short-term emergency projects for each contractor. Some small contractors will promise the world, but might overextend themselves and then not make progress on all work. CCOs should watch for contractor workers who jump from one construction site to another—a sure sign that a contractor does not have adequate personnel and resources to complete all work on time. CCOs also should consider the following issues:

- **Contractor qualifications.** CCOs might not have the time to do a full background check on all contractors. In addition, because of the emergency, the CCO will probably waive the bid bond, further increasing the risk when dealing with an unknown contractor. Although CCOs cannot exclude sources simply because they are unfamiliar, they should consider limiting sources to known contractors as much as possible. During planning, CCOs can identify several contractors that respond to natural disasters and specialize in all-purpose emergency recovery contracting.
- **Bid and other bonds.** The increased risk of contract termination during an emergency is partially explained by not requiring bid bonds on short-term solicitations. A bid bond can weed out the less qualified contractors; however, the use of emergency procurement procedures might not give the contractor enough time to secure a bid bond. Unfortunately, CCOs might not find out that a contractor is unqualified until after contract award, when the contractor cannot 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 because of the emergency circumstances; however, no provisions are available for 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 extensively damages the installation, recovery can take a long time. Although most long-term support involves administering construction contracts, there are other long-term issues. This section discusses long-term contracting issues and offers suggestions to avoid the following and other common pitfalls:

- **Prolonged emergency use.** The contracting office must inform senior leadership that emergency buying procedures do not last forever. It becomes increasingly difficult to justify emergency projects when they are identified several weeks or months after the disaster. Because of the short turnaround involved with emergency contracting procedures, customers will try to stretch emergency work to the limit. CCOs also should watch for companion contracting projects to emergency repairs (e.g., adding garages to damaged units). Emergency procedures can only be used for emergencies. CCOs must be prepared to play hardball on this issue.
- **Contract administration.** Contract administration for emergency projects may be very challenging. Specifications and solicitations will be rushed, resulting in a potentially loosely written contract. CCOs can expect a significant increase in change orders if a contract is loosely written. CCOs should consider assigning more contract administrators than normal to the affected parts of the contracting office or seeking assistance from the Defense Contract Management Agency for complex service contracts.

- **Service contracts.** Several major service contracts could be altered significantly during and after an emergency. For example, the grounds maintenance contract will probably see a large increase in work orders for services such as clearing debris, removing stumps, and trimming trees. The military family housing contract also might be significantly affected by an increased need for interior minor damage repair work. CCOs should monitor new work closely and promptly return service contract terms to their original scope after the recovery-related work is satisfactorily completed.
- **Custodial contracts.** If the installation suffers major structural damage, organizations may move into temporary facilities. This approach will require the modification of custodial service contracts to temporarily add and delete services for buildings, which can be both costly and administratively burdensome. Some janitorial contracts are paid based on square footage serviced, so moving organizations into smaller quarters or trailers will result in overpayment unless the contract is modified. When taking the approach of swapping building square footage, the CCO must review the entire scope of the contract changes to ensure that the government only pays the contractor for work being performed. Tasks that were required in one building (e.g., high dusting, window cleaning) might not be required in the temporary facilities.
- **Construction contracts.** Depending on the extent of damage to the installation, the construction contract administration workload will increase and might continue for a prolonged period. If so, the CCO should consider detailing more administrators to the construction branch until workload levels return to normal.
- **Contractor employees.** Existing contractor support also might be impacted because employees either have evacuated or are responding to personal needs.

Advance Planning for Emergencies at the Home Station

Successful domestic contracting operations after a disaster depend on advance planning and preparation.

The remainder of this chapter covers topics of interest to personnel involved in domestic emergency response operations. The primary focus is readiness and response for installations and home stations. This focus is consistent with the current DoD role in domestic emergencies—providing organic military forces with limited operational contract 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 advance in contingency and emergency contracting procedures. The rest of this section addresses some issues that contracting offices can prepare and train for before an emergency event.

Topics to consider. The CCO should develop a plan that best suits the particular operating location (or area of deployment). If the office is located in an area susceptible to hurricanes or tornadoes, the plan should reflect these possibilities. The plan discussed in this section is a generic outline of what to do in an emergency, but it should be further tailored to fit the specific needs of the operating location. This plan should also be coordinated and integrated into local support plans. The plan should communicate the following to senior leadership:

- Role of contracting during contingency conditions
- Use of contracting to support installation recovery
- Tools required to provide this support.

The CCO should consider the following when drafting the office plan:

- Contingency support for local emergencies.
- Review of installation operation plans (OPLANs).
- Defense Logistics Agency (DLA) capabilities and sources. DLA is formally designated as the DoD executive agent for specific commodities: subsistence goods, bulk fuel, construction and barrier materials, and medical materials. DLA contracts contain surge clauses for added flexibility to meet increased demands, including those associated with emergency responses. The plan should include using DLA to the fullest extent possible.
- Prepositioned contractors. Agencies are encouraged to seek out prepositioned contractors to facilitate a timely emergency response. Prepositioned contractors that have products and services often needed for emergency responses are available at websites such as:
 - GSA Disaster Relief Program: www.gsa.gov/disasterrelief/
 - GSA Wildland Fire Program: <http://www.gsa.gov/portal/content/104500>
 - Interagency Contract Resource List: <https://www.contractdirectory.gov/>
- Pre-identified contractors. When contractors complete CCR, they can designate their potential availability to provide disaster response products and services. CCOs should consult the Disaster Response Registry available at www.ccr.gov for information on these firms. (*FAR 26.205*)

In addition to developing and maintaining the local support plan, the chief of the contracting office 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 as follows:

- Determine the types of supplies and services that might be needed, but have a 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, including geological conditions, industrial hazards, weather conditions and associated problems, and civilian emergency services.
- 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*, “Policy and Procedures for Determining Workforce Mix.”
- 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 occurs, recognizing the importance of having an authority outside of contracting decide which competing customer requirements are the most critical. Avoid considering everything as important, because nothing will get done. Suggest that the installation commander form a requirements review board drawn

from the senior requirements officials on the installation, ensuring that the relative importance of the requirements is established fairly and effectively.

Local contracting support plans.

Contracting offices will develop a comprehensive local support plan (usually as an annex to the logistics chapter of the installation plan) to ensure contingency contracting support for tasks assigned by the installation OPLANs. Local contracting support plans will provide the following at a minimum:

- Capability for commanders to contact contracting personnel on short notice through the unit emergency action center or command post and to account for all contracting personnel when emergencies occur during duty hours.
- Identification of CCOs, who may be identified on unit recall rosters) and consideration of how contracting officers in tenant organizations can assist recovery efforts.
- Instructions on where to relocate the contracting office if the primary contracting facility is not usable, considering alternate locations on and off the installation.
- 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 record keeping.

- Guidance for use of the GCPC for emergency purchases, including keeping a manual purchase log in the absence of connectivity to the automated log available at <https://access.usbank.com/cpsAppl/index.jsp>.
- Procedures for using alternate data automation facilities to restore automated purchasing support and records.
- Instructions for use of the unit deployment kit, which must include a global positioning system (GPS), even for local disasters.
- Current telephone listings for key regional contracting offices, local suppliers, and other nearby installations as well as grid maps of the installation and local areas.
- 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. The lists should be updated quarterly to ensure that the sources will be available to help address the contingency or emergency.
- Advance strategy to address surge capability for supplies with contractors to source critical supplies outside of the local area, such as lumber and roofing materials, because these supplies will quickly be consumed or destroyed in a natural disaster. If there is 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. One of the best ways to plan and prepare for local emergencies is to review applicable after action reports (AARs) from previous emergencies. The AAR website is available at <https://acc.dau.mil/contingency>.

When reviewing AARs, the CCO should consider the following:

- Type of emergency involved and the associated needs for each phase of the emergency (such as initial response and recovery)
- 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
- Process for, and type of, funding for the acquisitions
- Types of logistical challenges encountered in delivering products and services and also the 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 ICS for all contracting officers who may be deployed during an emergency. Current course offerings and updates to these supplementary contracting courses are available at <http://training.fema.gov/EMICourses/> or <http://www.fai.gov/drupal/>.

Power. For planning purposes, CCOs 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. CCOs should procure these

requirements quickly (if not already acquired) because they will be bought quickly and will be 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 approval for a generator is not possible, CCOs should consider relocating the operation to a site where generators will be available (e.g., hospital, commander's office, command post). These arrangements must be made in advance and detailed in the contingency plan.

Offsite location. CCOs might need to work from an alternate location, so this option should be included in the continuity of operations plans. If the installation is severely damaged, the establishment of an offsite location should be considered. Each CCO should designate proposed on- and off-installation alternative contracting sites in advance and incorporate them into the installation contingency plan. When an emergency or disaster event occurs, senior management must quickly decide how and from where the CCO will operate.

Buying procedures. CCO plans should include the buying procedures that the contracting officers will use during an emergency. CCOs can avoid many buying problems by maintaining a current and accurate emergency support source list for commodities, services, and construction. This list should include the following:

- Multiple vendors for all required goods and services
- Telephone numbers (business and home) for each vendor
- Accurate address for each vendor (in case telecommunications are out)
- 24-hour point of contact for each business.

One critical lesson learned is that local vendors might not be able to support the installation in an emergency. If the installation is trying to recover, chances are that local civilian contractors and support agencies

also are in recovery mode. CCOs should develop a list of contractors or vendors outside the local area. If other installations are nearby, exchanging vendor lists for wider coverage might be a good idea. CCOs also must make sure that vendor listings are current by reviewing them quarterly to update the list and supplement it with new sources based on market research.

Reachback. In a catastrophic disaster or an 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 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 support capabilities are assessed and how widespread the damage is will set the tone for the entire recovery process.

Activating recall procedures. The CCO's first priority during an emergency is to get personnel to work. Fortunate CCOs will be able to contact them by telephone or by recall announcements over the radio or television. However, CCOs might have to go house to house to recall personnel. The more personnel that can be recalled, the more comprehensive support will be.

Assessing damage to the contracting office. The CCO must quickly assess the contracting office's physical appearance and its overall functioning capabilities and then decide whether to stay or

relocate to the alternate site. At a minimum, the CCO must find a site where personnel can safely access tables, desks, and telephones. CCOs should consider the following when evaluating the contracting office and alternate sites:

- Telephone capabilities
- Electricity
- Extent of the damage
- Safety and other aspects of suitability for operations.

Organizing the contingency staff. Once the personnel recall is complete, an assessment of division support capabilities is needed. If personnel are experienced, a flat organization should be established that allows experts to buy and administer supply, construction, and service requirements with as little supervision as possible. If personnel are inexperienced, a more structured, centralized support organization is appropriate. The next step is designating the roles that personnel must perform, including dedicating staff members to order from preestablished blanket purchase agreements (BPAs) or federal schedules and assigning another group to acquire other requirements (such as equipment rentals, specialized parts, and supplies from the open market). CCOs also might need to take the following actions:

- For major construction and service contracts, evaluate construction sites for damage, identify any new construction requirements, and assign staff members to coordinate with major service contractors to restore sanitation, refuse, and grounds maintenance support as quickly as possible.
- Assign staff members as runners to pick up needed goods in the local area; however, if local area vendors are unable to support the installation, send a runner to a CCO outside the local area to procure needed goods and services.

Completion of initial setup actions. Once the support organization is established, the following immediate actions need to be addressed:

- Identify initial requirements that will need to be procured.
- Contact the local commander to provide an update on status and the plan of operations.
- Establish communications by determining what is available. If telephone lines are up, the CCO is in business; if not, access to mobile radios or cellular phones, if available, should be obtained.
- Contact finance personnel to make sure that money is not a problem, and have them send over a single obligation authority, if possible.
- Seek lateral support, if long-distance communications are possible, by contacting the HCA and neighboring installations to put them on standby for possible support.
- Assess power capabilities and consider relocating to a building on the installation that has power if necessary. If power is limited, CCOs must make sure that contracting personnel are in line to receive a portable generator. With limited power, CCOs should not try to activate the standard procurement system or other automated contract writing system; a PC with word processing capability is all that is needed.
- Obtain transportation and make sure that enough vehicles are available to support CCO needs. Most initial purchases will be government pickup, so at least one vehicle should be 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, the CCO should get

organized by making sure that a purchase request tracking list is set up and that all personnel are aware of the procedures. The simplest and best method is starting with a separate block of purchase order numbers. It is also a good idea to appoint a requisition control point (RCP) monitor who can manually, or through the use of a PC or laptop, track requests throughout the acquisition process. The RCP monitor will also be able to detect duplicate requisitions, which are common in the first few days. CCOs also should take the following actions:

- **Establish one focal point for each customer.** The local commander will have the majority of initial inputs, and some might not be properly coordinated. CCOs should communicate to the commander the need for one point of contact for all requests.
- **Establish comprehensive procedures for receiving goods.** CCOs should have a central receiving point for all goods brought into the installation. If the goods are delivered directly to the customer, a point of contact must be established, and the customer must receive instructions on the proper method of receiving goods. CCOs should give the customer responsibility for the timely submission of paperwork.

Response to rental requests. During the first week of recovery, numerous requests might be made for equipment and vehicle rental and for temporary living and office quarters. A number of factors should be considered before filling customers requests.

Heavy equipment. Before renting, the CCO must first confirm that the equipment cannot be borrowed from other bases, posts, military installations, or federal agencies. During hurricane recovery operations at Charleston and Shaw Air Force Bases (AFBs), several pieces of equipment were received from other installations and from the Southwest Asia (SWA) transportation unit at Seymour Johnson AFB. The SWA unit alone transported 42 pieces of heavy equipment and

vehicles to Shaw AFB and 17 pieces to Charleston AFB. The following two reasons justify exhausting all internal sources before renting:

- It is very expensive to rent heavy pieces of equipment and vehicles. Many companies insist that their operators accompany the equipment, creating an additional expense.
- If disaster recovery is extensive, rental periods can be long, increasing the risk of damage. If forced to rent heavy equipment or vehicles, CCOs must ensure that they are returned immediately when no longer required.

Leasing trailers and temporary buildings. If installation facilities are damaged extensively, the CCO might need to lease trailers or temporary buildings. However, CCOs must be very careful when leasing trailers and must set minimum acceptable requirements (e.g., size, amount of functional office space, outlets, doors, windows). The CCO must stress to commanding officials that time is needed to ensure procurement of a quality product. CCOs should suggest a site visit before leasing a trailer or temporary building because site preparation might be problematic. Electrical distribution needs must be considered early. Another problem common with trailer leases is that the tenants might want to make extensive alterations to make it similar to the permanent facility they previously occupied. This problem should be avoided by leasing trailers strictly for office use. If major alterations are allowed, the installation may end up buying the trailers, which later become a real property nightmare, causing funding problems because the lease-for-purchase approach must use capital investment or construction funds. CCOs must 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 should not be more than 3 years. In all cases, CCOs should coordinate requirements through civil engineering or real property management.

Management of other service requirements. Grounds maintenance, refuse, and mess attendant contractors could significantly help installation recovery with appropriate modifications to their contracts. The grounds maintenance contractor might have the equipment and staffing needed to help clear debris from the installation. The refuse contractor can play a similar role by increasing the frequency of pickups and providing several large dumpsters. The mess attendant contractor can offer support by shifting to a 24-hour food service operation.

Such increased contractor efforts represent changes to their contracts, so compensation will be due; however, the CCO will be dealing with known and likely reliable sources. Contracting officers can issue change orders (with the appropriate funds) and can negotiate the changes when the situation eases. In some cases, the CCO might have already established unit prices for the increased work. By going to reliable contractors, the CCO will save time and avoid emergency contracts with unknown sources. Tree removal will be one of the largest service requirements for high-wind-related emergencies (e.g., tornados or hurricanes).

Procurement of key commodities. Several supply items will be in high demand during disaster recovery. The CCO should consider establishing BPAs with multiple suppliers within and outside the local area for commodities such as the following if the installation is located in an area with a high risk of disaster:

- **Ice.** Ice might be a hard commodity to find. If the power is out, the commissary, food service, and installation residents will need ice to preserve their food. CCOs should develop at least one source outside the local area because of competition with the local community during a disaster. The person who is receiving the ice monitors the quantity carefully. All ice and water purchases must be authorized by an approved medical authority (e.g., an Army veterinarian). The

Approved Food Sources link on the US Army Veterinarian website notes their locations by theater, available at <http://vetcom.amedd.army.mil/food.html>.

- **Paper products.** With the power off, on-base dining facilities will use paper products to feed the troops. Because personnel might be working 24 hours a day, paper product usage will increase substantially.
- **Other common items.** Items such as lumber, plastic sheeting, and chain saws probably will be scarce in the local market because the CCO will be competing with the demands of local residents.

Evaluation of construction needs. Hurricane Hugo recovery efforts had the largest impact on the construction branch of each contracting office. Construction work involved assessing and modifying ongoing construction projects damaged by the storm and rapidly procuring new construction projects to repair installation damage. Taking the following steps will help minimize construction issues encountered during installation recovery:

- The CCO should evaluate current construction sites by using a team approach, with a construction contract administrator and an inspector evaluating the damage at each construction site. After an initial government assessment, the CCO should meet with the contractor to develop a plan of action. Resolving any storm damage assessment differences among contractors and inspectors early in the process will go a long way to prevent future contract claims.
- After all parties agree on the extent of damage, liability must be addressed. Natural or man-made disasters are created by an act of God or external source, and neither is the responsibility of the contractor. The contracting officer must determine how much additional time is due to the contractor and who is liable to pay for any damages to the construction project or site.

- The CCO should be careful when negotiating time extensions. Lost productivity, staging of work, and availability of subcontractors all must be considered. If behind schedule at the time of the disaster, the contractor might try to pad the estimate to catch up with other work commitments. CCOs must remember that time is money.
- The liability issue is more involved. As a general rule, the contractor is liable for damage caused to the construction site. As *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 that the government is self-insured and will automatically pay for any rework—for this reason, contractor’s insurance is required. Enforcement of the permits and responsibilities clause has been upheld in several Armed Services Board of Contract Appeals (ASBCA) decisions. Leitner Construction Company, Inc. (ASBCA 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. The contracting officer might need to consider mitigating circumstances. 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. Charleston AFB encountered this problem during recovery from Hurricane Hugo. The construction contractor would have completed

the project before the disaster but for project delays caused by government design deficiencies. The contracting officer negotiated a settlement to share the risk with the contractor and to pay for half of the construction rework caused by the hurricane. One suggestion is that installations in areas susceptible to natural disasters should stress the permits and responsibilities clause in all construction solicitations and in preconstruction meetings.

- The CCO can expect several new construction requirements after a natural disaster. Most short-term emergency efforts involve repairing existing facilities. Initially, local senior leadership may push hard for issuing letter contracts to local contractors. Although in some cases this option might be unavoidable, the use of alternate emergency procedures is preferable for installation construction recovery. The CCOs will use letter contracts or cost-reimbursement contracts only as a last resort. The CCO should coordinate with the relevant HCA.
- If the CCO can locate two or more sources, use of a short-term request for proposals can increase competition and avoid a cost-reimbursement contract. Shaw AFB and Charleston AFB used this method very effectively during the Hurricane Hugo recovery. After civil engineering personnel developed the statement of work, a government team (composed of the 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 contractors were given one day to turn in proposals. Bid bonds (bid guarantees) were waived; however, performance and payment bonds (which respectively secure performance and fulfillment of contractor obligations and ensure that 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 preestablished indefinite delivery, indefinite quantity or requirements-type contracts (e.g., job order contracts or simplified acquisition for installation engineering requirements contracts). These contracts are ideal for small limited-design, repair, and high-priority projects. The CCO can expand the role of these contracts by using them to repair minor damage to housing units. CCOs must be careful not to use these contracts as a cure-all for installation emergency construction needs. The contractors might not be able to keep up with the work demands.

Website and DVD Materials Related to Chapter 9

- [Chapter 9 PowerPoint Briefing](#)
- [Chapter 9 Test Questions](#)
- [Trainings Related to Chapter 9](#)
- [Scenarios Related to Chapter 9](#)
- [Topical Index Webpages](#)
 - » [After Action Reports \(AARs\)](#)
 - » [Emergency Response](#)
 - » [Initial Setup Actions](#)

Appendix 1

Additional Resources Available on the DVD and Website

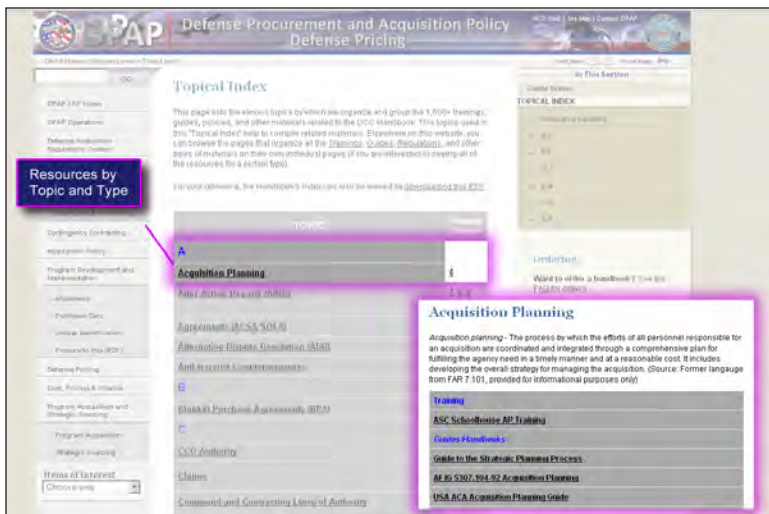
The *Defense Contingency Contracting Handbook* is designed to provide general guidance on contracting in a contingency environment. However, the contingency contracting world is extremely complex and requires an understanding that is much more extensive than the scope of the handbook. The website and DVD are designed as a supplement to the handbook, furnishing additional resources for the contingency contracting officer (CCO).

More than 1,000 additional resources are available on the DVD and website, including checklists, trainings, role-based scenarios, guides, games, tools, policies, forms, templates, and weblinks to other resources. **Figure 12** highlights the most commonly used resources available on the *Defense Contingency Contracting Handbook* webpages.

The DVD is an exact copy of the website (in content) for users with no Internet capability. The DVD is enclosed in an envelope as Attachment 1. Note that you must click the file labeled Start.html to launch the DVD. The *Defense Contingency Contracting Handbook* website is available at <http://www.acq.osd.mil/dpap/ccap/cc/jcchb/>.

General Organizational Structure

Figure 12 depicts a screenshot of the website homepage. The navigation bar on the right side outlines the resource pages. The most important thing to know is that the DVD and website organize resources in two ways: (1) type of resource (e.g., training, checklists) and (2) topic (e.g., protests, ethics). For example, if you are looking for training on



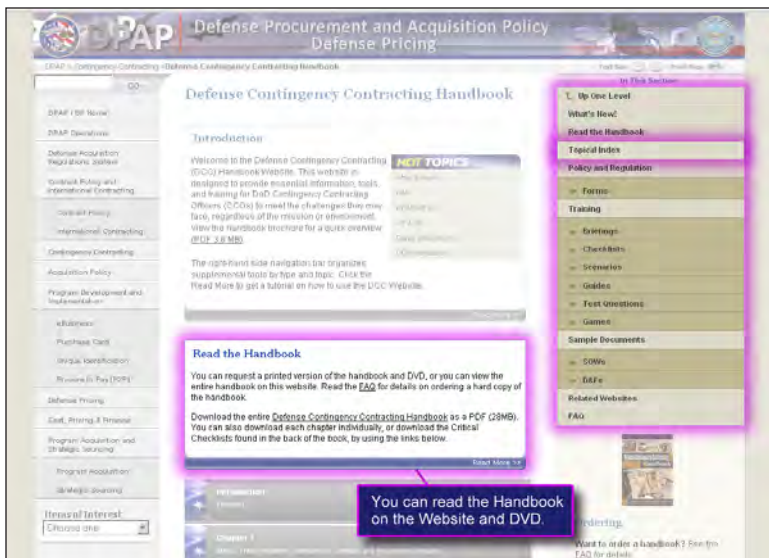
ethics, click on the Training section and search for *ethics*. You can also click on the Topical Index section and click on the *Ethics* page.

The quickest way to get a sense of the information available on the website is to click on the Topical Index section of the navigation bar. This resource page provides a comprehensive list of all topics and additional resources. **Figure 13** shows a screenshot of the Topical Index webpage. Topics are organized alphabetically, and the webpage provides granularity on the type of resource available. The website also identifies the associated topic for each chapter.

The *Defense Contingency Contracting Handbook* chapters are also available on the DVD and the website. Although the actual handbook

Appendix 1

Additional Resources Available on the DVD and Website



is invaluable as a transportable resource, there are some advantages to accessing the chapters online if mobility is not an issue. **Figure 14** depicts a screenshot of the Chapter 1 section, “Gift Prohibition.” the text of the handbook includes hundreds of hot links that allow you to quickly access relevant information such as a specific Federal Acquisition Regulation, other rules and regulations, references, forms, websites, and much more.

DPAP Defense Procurement and Acquisition Policy

DPAP > Program Acquisition and Contingency Contracting > Contingency Contracting > Contingency Guide Introduction > Chapter Overview

DPAP Home
 DPAP Operations
 Defense Acquisition Regulations System
 Contract Policy and International Contracting
 Contract Policy
 International Contracting
 Contingency Contracting and Acquisition Policy
 Acquisition Policy
 Contingency Contracting
 Cost, Pricing & Finance
 Program Acquisition and Strategic Sourcing
 Program Acquisition
 Strategic Sourcing
 Program Development and Implementation
 eBusiness
 Purchase Card
 Unique Identification

Items of Interest
 Choose one

Defense Contingency Contracting

Introduction

Welcome to the Defense Contingency Contracting (DCC) Handbook designed to get you and your team up to speed on the latest policies and procedures for DCC. This handbook is intended for all DCC participants, including:

- Contractors
- Contracting Officers (COs)
- Contracting Officer Representatives (CORs)
- Contracting Officer Assistants (COAs)
- Contracting Officer Supervisors (COSs)
- Contracting Officer Technical Assistants (COTAs)
- Contracting Officer Liaisons (COLs)
- Contracting Officer Liaison Assistants (COLAs)
- Contracting Officer Liaison Supervisors (COLS)
- Contracting Officer Liaison Technical Assistants (COLTAs)
- Contracting Officer Liaison Supervisors (COLS)
- Contracting Officer Liaison Technical Assistants (COLTAs)

The right-hand side of the page contains a list of chapters and sections. A "Hot Links" callout box highlights the following items:

- 1. Introduction
- 2. Tenets of Government Contracting
- 3. Conflict of Interest
- 4. Gift Prohibition
- 5. Proprietary Information
- 6. Combat Trafficking in Persons
- 7. Identifying Fraud Indicators
- 8. Interacting with Contractor Employees
- 9. Checks and Balances
- 10. Chapter Announcements

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

Read More >>>

Hot Links

Gift Prohibition

The following rules apply to all DCC participants. These rules are intended to ensure that all DCC participants are held to the same high standards of conduct. These rules are intended to ensure that all DCC participants are held to the same high standards of conduct. These rules are intended to ensure that all DCC participants are held to the same high standards of conduct.

Gift Prohibition

The following rules apply to all DCC participants. These rules are intended to ensure that all DCC participants are held to the same high standards of conduct. These rules are intended to ensure that all DCC participants are held to the same high standards of conduct. These rules are intended to ensure that all DCC participants are held to the same high standards of conduct.

Appendix 2

List of Acronyms

Acronym	Term	Chapter
a&E	Architecture-Engineer	3
AAR	after action report	4, 9
ACC	Army Contracting Command	4
ACO	administrative contracting officer	4, 6
ACSA	acquisition and cross-servicing agreement	4
ADA	Antideficiency Act	3
ADR	alternative dispute resolution	7
ADVON	advance echelon	4
AETC	Air Force Education and Training Command	4
AF	Air Force	3
AFB	Air Force Base	9
AFCAP	Air Force Contract Augmentation Program	4
AFCESA	Air Force Civil Engineering Support Agency	4
AFI	Air Force Instruction	3
AFOSI	Air Force Office of Special Investigations	1, 4, 8
AFRICOM	US Africa Command	4, 8
AMC	US Army Materiel Command	4
AOR	area of responsibility	3, 4, 5, 7
ASC	Army Sustainment Command	4
AT&L	Acquisition, Technology, and Logistics	4
BEAR	Basic Expeditionary Airfield Resources	4
Bi-SC	Bi-Strategic Command	4
BPA	blanket purchase agreement	4, 5, 6, 9
CAAF	contractor authorized to accompany the force	4, 5, 8
CAD	contract administration delegation	5

Acronym	Term	Chapter
CAOCL	Center for Advanced Operational Culture Learning (US Marine Corps)	8
CAP	civil augmentation program	4, 5
CAR	contract action report	5
CBRN	chemical, biological, radiological, or nuclear	9
CCAS	contingency contract administration services	4
CCASS	Construction Contractor Appraisal Support System	6
CCIF	Combatant Commander Initiative Fund	3
CCO	contingency contracting officer	1, 2, 3, 4, 5, 6, 7, 8, 9
CCR	Central Contractor Registration	9
CERP	Commanders' Emergency Response Program	3, 4
CFR	Code of Federal Regulations	1, 7
CIC	Customer Interaction Center	6
CICA	Circumvention of Competition in Contracting Act	5
CID	US Army Criminal Investigation Command	1, 4, 8
CLPSB	Combatant Commander Logistic Procurement Support Board	3
CMP	contractor management plan	4
COCO	chief of the contracting office	2, 4
COCOM	combatant command	4, 5
COR	contracting officer's representative	1, 2, 3, 5, 6, 7
CORT Tool	Contracting Officer's Representative Tracking Tool	4, 6

Appendix 2

List of Acronyms

Acronym	Term	Chapter
CPARS	Contractor Performance Assessment Reporting System	4, 6
CRT	contingency response team	9
CSB	Contracting Support Brigade	4
CSIP	contract support integration plan	4
CTIP	combating trafficking in persons	1, 4
CUL	common user logistics	3
D&F	determination and finding	5, 6
DA	Department of the Army	3
DAU	Defense Acquisition University	1, 3, 4, 6
DBA	Defense Base Act	4, 5, 6
DCAA	Defense Contract Audit Agency	1, 2, 4
DCIS	Defense Criminal Investigative Service	1
DCMA	Defense Contract Management Agency	1, 3, 4, 6
DD	Department of Defense (documents)	3, 4, 5, 6
DFARS	Defense Federal Acquisition Regulation Supplement	1, 3, 4, 5, 6, 7, 9
DHS	Department of Homeland Security	9
DLA	Defense Logistics Agency	3, 4, 6, 9
DoD	Department of Defense	1, 4
DoDD	Department of Defense Directive	4
DoDI	Department of Defense Instruction	4, 9
DPAP	Defense Procurement and Acquisition Policy	
DPAS	Defense Priorities and Allocations System	
DSCA	Defense Support of Civil Authorities	9
DSN	Defense Switched Network	4

Acronym	Term	Chapter
E&EE	emergency and extraordinary expenses	3
ECA	executive coordinating agency	4
EDA	Electronic Data Access (system)	4, 6
EEDAC	Emergency Essential Department of the Army Civilian	4
EFT	electronic funds transfer	5, 9
ESP	Emergency and Special Project	3
EUCOM	United States European Command	4
FAPIIS	Federal Awardee Performance and Integrity Information System	5
FAR	Federal Acquisition Regulation	1, 2, 3, 4, 5, 6, 7, 9
FAST	field assessment surveillance team	4
FedBizOpps	Federal Business Opportunities	5
FEMA	Federal Emergency Management Agency	9
FFP	firm fixed price	5
FLC	Fleet Logistics Center	4
FMR	Financial Management Regulation (DoD)	3, 5, 6
FOB	free on board	4
FOO	field ordering officer	5, 6, 8
FPDS	Federal Procurement Data System	6
FPDS-NG	Federal Procurement Data System—Next Generation	4, 5
FPI	Federal Prison Industries, Inc.	
FRAGO	fragmentation order	2
GAO	Government Accountability Office	7
GCC	geographic combatant commander	2, 3, 4

Appendix 2

List of Acronyms

Acronym	Term	Chapter
GCCC	Global Construction Capability Contract	4
GCPC	governmentwide commercial purchase card	4, 5, 9
GCSC	Global Contingency Services Contract	4
GFE	government-furnished equipment	6
GFP	government-furnished property	6
GPS	Global Positioning System	9
GSA	General Services Administration	
GSO	government services officer	4
GTA	Graphic Training Aid (document)	4
HCA	head of contracting activity	2, 4, 5, 6, 7, 8, 9
HNS	host nation support	3, 4
HQ	headquarters	4
HQDA	Headquarters, Department of the Army	4
HUBZone	Historically Underutilized Business Zone	
IACR	international agreement competitive restriction	5
ICS	Incident Command System	9
IDC	indefinite-delivery contract	6
IDIQ	indefinite delivery, indefinite quantity	4
IFB	invitation for bid	5
IGE	independent government estimate	5, 6
ISOPREP	Isolated Personnel Report	4, 8
J&a	justification and approval	5, 6
JAG	Judge Advocate General	
JARB	Joint Acquisition Review Board	3
JCASO	Joint Contingency Acquisition Support Office	4

Acronym	Term	Chapter
JCCS	Joint Contingency Contracting System	4, 6
JCSB	Joint Contracting Support Board	3
JFC	joint force commander	2, 3, 4
JIT	just in time	4
JOA	joint operations area	3
JOCST	Joint operational contract support team	4
JOPES	Joint Operation Planning and Execution System	8
JOPP	Joint operation planning process	4
JP	Joint Publication	4
JPRC	Joint Personnel Recovery Center	4
JRC	Joint reception center	4
JRSOI	Joint reception, staging, onward movement, and integration	4
LD	liquidated damage	6
LH	labor-hour	5
LOGCAP	Logistics Civil Augmentation Program	4
LPTA	lowest price technically acceptable	5
MAGTF	Marine air-ground task force	4
MDEP	Management Decision Package	4
MFR	memorandum for the record	1
MILCON	military construction	3, 5
MIPR	Military Interdepartmental Purchase Request	3
MOU	memorandum of understanding	4
MP	Military Police	1,
MPFU	Major Procurement Fraud Unit	1

Appendix 2

List of Acronyms

Acronym	Term	Chapter
MWR	morale, welfare, and recreation	3
NAF	nonappropriated funds	3
NAFI	nonappropriated funds instrumentalities	3
NAFTA	North American Free Trade Agreement	5
NAVFAC	Naval Facilities Engineering Command	4
NAVSUP	Naval Supply Systems Command	3
NCF	naval construction forces	4
NCIS	Naval Criminal Investigation Service	1, 4, 8
NCO	noncommissioned officer	2, 4
NDAAs	National Defense Authorization Act	5
NGO	nongovernmental organization	4
NRF	National Response Framework	9
NTE	not-to-exceed	5
NTP	notice to proceed	6
NTV	nontactical vehicle	5
O&M	operation and maintenance	3
OAR	obligation adjustment reporting	3
OCS	operational contract support	4, 9
OEM	original equipment manufacturer	4
OFPP	Office of Federal Procurement Policy	9
OHDACA	overseas humanitarian, disaster, and civic aid	3
OMB	Office of Management and Budget	5, 9
OO	ordering officer	4, 8
OPNAVINST	Office of the Chief of Naval Operations Instruction	3
OPR	office of primary responsibility	3

Acronym	Term	Chapter
OPSEC	operations security	8
ORF	official representation funds	3
OUSD	Office of the Under Secretary of Defense	4
P&C	procurement and contracting	4
PARC	principal assistant responsible for contracting	2, 9
PBAC	Program and Budget Advisory Committee	
PCO	procuring contracting officer	4
PCRB	property control record book	7
PD2	Procurement Desktop Defense	6
PGI	Procedures, Guidance, and Information	1, 3
PIIN	procurement instrument identification number	1, 4, 5, 6
PMO	Program Management Office	4
PNM	price negotiation memorandum	5
POC	point of contact	2, 4
POL	petroleum, oil, and lubricants	4
PPT	performance price trade-off	5
PR	purchase request	3, 4, 5, 6
PRCC	personnel recovery coordination center	4
PSC	private security contractor	4
PWS	performance work statement	3, 4, 6
QAE	quality assurance evaluator	1
QAR	quality assurance representative	2
QASP	quality assurance surveillance plan	3, 4
RCC	regional contracting center	2, 4, 5
RCO	regional contracting office	2
RCP	requisition control point	9

Appendix 2

List of Acronyms

Acronym	Term	Chapter
REA	request for equitable adjustment	6
RFA	request for assistance	9
RFP	request for proposal	5
ROM	rough order of magnitude	4
RPR	receipt for property received	5
SAP	simplified acquisition procedure	5
SAT	simplified acquisition threshold	4, 5, 6
SCCT	senior contingency contracting team	4
SCO	senior contracting official	2, 4, 5, 6
SDS	service delivery summary	3
SDVOSB	Service-disabled Veteran-owned small business	
SecDef	Secretary of Defense	3
SECNAVINST	Secretary of the Navy Instruction	3
SERE	survival, evasion, resistance, and escape	4
SF	Standard Form	4, 5
SOF	Special Operations Forces	3
SOFA	status of forces agreement	4, 8
SOO	statement of objectives	3, 4, 6
SOW	statement of work	3, 4, 6
SPOT	Synchronized Predeployment and Operational Tracker	4, 5, 6
SPS	Standard Procurement System	6
SSA	source selection authority	5
SSD	source selection decision	5
SSEB	source selection evaluation board	5

Acronym	Term	Chapter
SWA	Southwest Asia	9
T&M	time and materials	5
T4C	termination for convenience	6
T4D	termination for default	6
TBC	theater business clearance	5, 6
TIP	trafficking in persons	1
JTSCC	Joint Theater Support Contracting Command	2
U.S.C.	United States Code	1, 3, 4, 5, 6, 9
UCA	undefinitized contract action	5
UCMJ	Uniform Code of Military Justice	1
UID	unique identification	6
USACE	US Army Corps of Engineers	4, 9
USAID	United States Agency for International Development	4
USCENTCOM	US Central Command	4, 5, 8
USNORTHCOM	US Northern Command	4, 8
USPACOM	United States Pacific Command	4, 8
USSOUTHCOM	United States Southern Command	4, 8
USTRANSCOM	United States Transportation Command	4, 6
UTC	unit type code	4
WAWF	Wide Area Workflow (system)	5, 6

Appendix 3

Book Index

A

Abandoned or Unclaimed Property 242
Acquisition and Cross-Servicing
Agreements 91, 94
Acquisition Method 151
Acquisition Process 186, 187
Acquisition Process and Contracting-
Related Boards 57
Action after Receipt of Protest 250
Additional Planning Considerations 93
Administration Documentation 207
Administrative Change 230
Administrative Requirements for
Referrals 104
ADR Elements 262
Advanced Echelon Teams 134
Advance Echelon Teams 88
Advance Planning for Emergencies at the
Home Station 293
After Action Reports 87, 134, 245,
298, 310
Air Force Contract Augmentation
Program 99
Alternative Dispute Resolution Elements
262
Antiterrorism and Security 274
Antiterrorist Countermeasures 277

B

Balance of Payments Program 162, 163
Basic Contracting Processes 138
Berry Amendment 164, 165, 166
Best Value and Trade-Off 185
Bilateral Modifications 232
Blanket Purchase Agreement Authorized
Caller 184
Blanket Purchase Agreement Authorized
Caller Accounts 242

Blanket Purchase Agreements 179, 204
Bona Fide Needs Rule 43
Bulk Funding 69
Buy American Act 162, 163

C

Cash Advances 192
Change Orders 229
Changes Clause 232
Checks and Balances 24
Choice of Law 171
Civil Augmentation Programs 97
Class Determination and Finding 154
Class Justifications and Approvals 157
Closeout of Field Ordering Officer 242
Combatant Commander Initiative
Fund 67
Combatant Commander Logistics
Procurement Support Board 59
Combating Trafficking in Persons 16, 17
Command Authority 28
Commanders' Emergency Response
Program 69
Commercial Advance and Interim
Payments 193
Commerciality of the Requirement 150
Common Fraud Indicators 21
Common Fraud Schemes 19
Competition Requirements Under
Simplified
Acquisition Procedures 137
Conflict of Interest 13
Construction Contract
Administration 218
Constructive Change 230
Contingency Contracting Officer
Continuity Book 87
Contingency Contracting Officer Final
Decision 257

- Contingency Contracting Officer
 - Responsibilities 33
 - Contingency Contracting Support
 - Phases 111
 - Contingency Operations 106
 - Continuity *See* Turnover
 - Contract Action Report 200
 - Contract Administration 206, 213, 218, 241, 245
 - Contract Claims 256
 - Contract Closeout 240, 245
 - Contract Disputes and Appeals 260
 - Contract Files 209
 - Contract Forms 174
 - Contracting Authority 28, 30
 - Contracting During Hostilities 84
 - Contracting Officer's
 - Representatives 224
 - Contracting Officer Use of the
 - Governmentwide Commercial Purchase Card 140
 - Contracting Processes 136
 - Contracting-Related Boards 57
 - Contracting Structure 31
 - Contracting Support for Domestic
 - Emergency Operations 284
 - Contract Modifications 229
 - Contract Monitoring 223
 - Contract Monitoring System 224
 - Contractor Claims 256
 - Contract Payments 215
 - Contract Provisions.
 - See* Terms and Conditions
 - Contract Repair 55
 - Contract Settlements and Alternative
 - Dispute Resolution 262
 - Contract Tracking and Reporting 199
 - Contract Types 141
 - Contractual Instruments
 - for Contingency 174
 - Coordination of Theater Support and
 - External Support Contracting Effort 128
 - COR Key Duties 225
 - Corrective Action 255
 - Cost-Reimbursement Contracts 143
 - Cultural and Situational Awareness 277
 - Cultural Awareness 26, 266, 277
 - Cure Notice 239
 - Currency Declaration 170
 - Customer and Contractor Training 216
 - Customs and Taxes 271
- D**
- DD Form 1155 174, 176, 177, 179, 182
 - Debarred 174
 - Declared Contingency 78
 - Defense Base Act Insurance 169
 - Defense Contract Audit Agency 22, 32, 99, 133, 144
 - Defense Contract Management Agency 22, 61, 76, 133, 143, 206, 291
 - Defense Contractors Outside of the
 - United States 105
 - Defense Logistics Agency 59, 76, 132, 206, 294
 - Defense Support of Civil Authorities 281, 282
 - Definite-Quantity Contracts 145
 - Delegation of Contract
 - Administration 234
 - Delinquency Notices 239
 - Delivery Tickets 183
 - Determinations and Findings 153, 204
 - Disaster 68

Disaster Response and Incident Management 283
Documentation That May Accompany Purchase Requests 55
DoD Combat Support Agencies 132
Domestic Disaster and Emergency Relief 81
Domestic Emergencies 281
Domestic Emergency Response 280
Domestic Source Restrictions 162
Drawdown. *See* Redeployment

E

Elicitation, Espionage, and Subversion 273
Emergency Acquisition Authorities 286
Emergency Acquisition Flexibilities 287, 288
Emergency and Extraordinary Expenses 66, 67
Emergency and Special Project 72
Ethics 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 196, 267
Evaluation Factors for Award 188
Exceptions to Certified Cost or Pricing Data 172
Excluded 174
Exhaustion of Logistics Supply and Required Sources 121

F

Fair and Reasonable Prices 172
Federal Response 282
Field Ordering Officers 195, 204
Field Ordering Officers and Ordering Officers 195
File Management 209, 245
Finance and Contracting Relationship 57

Firm-Fixed-Price Contracts 143
Fiscal Law Constraints 42
Fixed-Price Contracts 142
Fleet Logistics Centers 105
Foreign Acquisitions 162
Foreign Disaster Assistance. 69
Fund Cites 71
Fund Cites 73
Funding Issues Using Nonappropriated Funds 65
Funding Procedures 69
Funds Certification Officer 71

G

General Contract Administration 213
General Deployment Procedures 107
Gift Prohibition 14
Government Property 222
Governmentwide Commercial Purchase Card 140

H

Head of Contracting Activity 31
Homeland Security Operations 282
Host-Nation-First Programs 174
Host Nation Support 92, 134
Humanitarian and Civic Assistance 68
Humanitarian or Peacekeeping Operations 81

I

Identification of Fraud Indicators 18
Imprest Fund and Third-Party Drafts 141
Inadequate Specifications and Descriptions 53
Incident Command System 285
Increased Funding Requirements 216

Indefinite-Delivery Contracts 145
Indefinite-Quantity Contracts 146
Independent Government Estimate 172
Inspection 214
Installation Access 216
Interactions with Contractor
 Employees 23
Interagency Support 128
Interpreter Services 269
In-Theater Contractor Personnel
 Management 108

J

J1 38, 261
J2 38
J3 38
J4 38, 59, 62, 76, 78, 87, 90, 95, 104, 113,
 123, 128, 270
J5 38
J6 38, 61
Joint Acquisition Review Board 32, 57,
 58, 59
Joint Contracting Support Board 62
Joint Reception, Staging, Onward
 Movement, and Integration 116
Joint Subordinate Organizations
 Overview 38
Joint Theater Support Contracting
 Command 35
Justifications and Approvals 155

L

Lease or Purchase 158
Letter Contracts 204
Limited Use of Full and Open
 Competition 289
Lines of Approval 49
Liquidated Damages 220
Liquidated Damages Procedures 221

Local Area Preferences 289
Local Business Practices 269
Local Contracting Support Plans 296
Logistics Civil Augmentation
 Program 97

M

Major Operations and Campaigns 81
Mature versus Immature Contracting
 Environments 84
Methods to Incorporate Contract
 Changes 231
Micropurchases 140
Military Construction 63
Military Construction 64, 102, 218
Military Exercises 82
Mixed Funding 66
Mobilization and Initial Deployment 111
Mobilization and Initial Deployment 111
Multinational Programs 270

N

National Response Framework 281, 282
NATO Tasking 93, 134
Negotiating Practices 171, 268
Nonappropriated Funds 65, 73
Noncommercial Advance and Partial
 Payments 193
Nondeclared Contingency 79
Nontactical Vehicle Lease or
 Purchase 159

O

Official Representation Funds 66
Operation and Maintenance 63
Operations Security 272
Operations Security Awareness 272
Operations Security Process 272
OPSEC 266, 272

Options Instead of Advance
Payments 194
Oral Solicitations 161
Other Contracting Offices
in the AOR 104
Other Funding Procedures 70
Overly Restrictive Characteristics 53
Overseas Humanitarian 68

P

Partial Payment 195
Paying Agent Duties 192
Payment for Seizures 259
Payment Information 169
Payment in Local Currency 170, 215
Performance-Based Requirements 54
Period of Availability 43
Personnel and Administrative
Preparations 82
Personnel Recovery 113, 276
Personnel Recovery Requirements 276
Phases of a Contingency 112
Pickup 213
Planned Sampling.
See Inspection:periodic
Plugging in Downrange 90
Pre-Award Determinations and
Memorandums 171
Preconstruction Conference 218
Predeployment Planning 82, 134
Preparation of a Purchase Description 52
Price Negotiation Memorandum 171
Procedures for the Property Control
Record Book 258
Procurement Instrument Identification
Number 199
See Contract Number
Property Control Record Book 258

Proposal Evaluation and Discussions 188
Protest after Award 252
Protest Before Award. 252
Protests 247, 248, 249, 251, 264
Protests at the Government
Accountability Office 251
Protests, Claims, Disputes,
and Appeals 248
Protests to the Agency 249
Publicizing Contract Actions 160
Purchase 213
Purchase Descriptions 51
Purchase Descriptions and Statements
of Work 50
Purchase Orders 177
Purchase Request Documents 48
Purchase Requests 47, 73, 204

R

Receipt 213, 214
Receipt of Protest 251
Referrals and Reachback 95
Regional Contracting Center Chief 32
Regional Contracting Offices 39
Reporting of Gifts 16
Request and Authority to Cite Funds 70
Request for Equitable Adjustments 233
Requirements Contracts 147
Requirements From Customers 47
Requiring Activity.
See Requiring Organization
Requiring Unit.
See Requiring Organization
Response to a Protest 253, 254
Responsible Prospective Contractor 173
Risk Assessment 150
Robert T. Stafford Act 283

S

Seizures 258
Selection and Appointment of Contracting Officers 30
Selection of Contract Types 141
Selection of Sources through Sealed Bidding Procedures 190
Senior Contracting Official 31
Services 55
Service Theater Support Contracting Organizations and Capabilities 129
SF 44 115, 118, 141, 174, 175, 176, 194, 195, 197, 198, 242
SF 1449 174, 178, 179, 182, 194
Shipment of Supplies and Equipment to Overseas Location 217
Show-Cause Notice 239
Simplified Acquisition Procedures 137, 204
Situational Awareness 266, 268, 270, 272, 274, 276, 278
Situations that Enable Fraud 20
Smaller-Scale Contingencies 81
Source Selection Decision and Documentation 189
Source Selection Processes and Techniques (Competitive) 185
Special Rules Applicable to Construction 64
Stability and Reconstruction Operations 120
Status of Forces Agreement 92
Status of Procurement Action Database 211
Supersession and Modification 155
Supply Classes 122
Sustainment 99, 119, 127

Synchronized Predeployment and Operational Tracker 166
Synopsis of Requirements in Federal Business Opportunities 160

T

Task Order or Delivery Order 179
Temporary Waiver of Cargo Preference Act Requirements 289
Tenets of Government Service 11
Termination and Redeployment 121
Termination for Cause 238
Termination for Convenience 236
Termination for Default 237
Termination or Cancellation of Purchase Orders 238
Terminations 228, 235, 245
Theater Business Clearance 169
The First 24 Hours 253
The First 30 Days 254
Threat Factors 274
Time-and-Materials and Labor-Hour Contracts 144
Title 32 National Guard Operations 285
Trade Agreements Act 162, 163, 164
Transferring Contract Functions 234
Type of Appropriation 72
Types of Contingencies 78
Types of Contract Support 124
Types of Funding 62
Types of Operational Designations 79

U

Unauthorized Commitments and Ratiications 202
Undefinitized Contract Actions 149, 204
Unilateral and Bilateral Modifications 231

Unilateral Modifications 232
Unique Contracting Considerations 166
U.S. Navy Global Contingency
Contracts 102

W

Who Can Obligate the Government 50
Who May Submit Purchase Requests 50
Wide Area Workflow 169

Appendix 4

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:

Contingency Contracting

Critical Checklists



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

An online version of this handbook and its attached DVD
can be found at <http://www.acq.osd.mil/dpap/ccap/cc/jcchb/>.

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

Defense Procurement and Acquisition Policy Contingency Contracting
3060 Defense Pentagon Room 3C152 Washington, DC 20301-3060

Commercial: 571-256-7003 Fax: 571-256-7004 E-mail: ContingencyContracting@osd.mil

Critical Checklist Table of Contents

Note: checklists are arranged in alphabetical order.

Blanket Purchase Agreement (BPA) Checklist	A5-5
Construction Contract Checklist	A5-7
Contract Administration Checklist	A5-13
Expedited Contracting Procedures in Contingency Operations	A5-19
Gratuities Checklist	A5-27
Justification and Approval (J&A) Checklist	A5-29
Letter Contracts Checklist	A5-33
Contingency Micropurchase Checklist	A5-35
Modification Checklist	A5-37
Ratification Checklist	A5-43
Requiring Activity Checklist	A5-47
SF 44 Checklist	A5-57
Simplified Acquisition Checklist	A5-59
Site Activation Checklist	A5-67
Terminations Checklist	A5-73

Blanket Purchase Agreement (BPA) Checklist

Item Number	Reference: FAR 13.303, BPAs/16.7 Agreements	Applicable and Present
1	Does it meet the circumstances noted in FAR 13.303-2?	
2	Is it prepared in accordance with FAR 13.303-2?	
3	Are the proper clauses incorporated into the BPA (e.g., 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 the individuals identified who are authorized to purchase under the BPA (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 that specifies who is authorized to place calls on the BPA and explain how that process works?	
9	Before placing a call on an authorized procurement request, did you ensure that funds are available?	
10	Are you regularly (monthly) reconciling orders and invoices with the using organization?	
11	Are you conducting annual inspections on BPA files?	

Construction Contract 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
Pre-Award Documents		
1	Are there a certified purchase request and an 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 may fund unspecified minor construction up to \$750,000 (10 U.S.C. Section 2805)?	
3	Have CE and contracting reviewed the project and determined whether a standalone construction contract or an ID/IQ contract (e.g., for roofing, asbestos removal, paving) is most appropriate?	
4	Does the requirements package include a SOW, specifications, drawings, performance period, and liquidated damages?	
5	Are a source list and market research results included?	
6	If other than a full and open competition, are the appropriate justification, approval, and related correspondence included?	
7	Did the solicitations state the magnitude of the construction project, that is, the requirement in terms of physical characteristics and estimated price range (FAR 36.204 and DFARS 236.204)?	
8	Were competitive proposals used to allow for discussions (FAR 6.401(b)(2)?	

9	Are the appropriate approvals and determinations and findings included (e.g., liquidated damages, Buy American Act, construction materials exception) (FAR 11.501 and FAR 25.202)?	
10	Are the invitation for bid, request for proposal, and amendments (as appropriate) included in the file?	
11	Are a pre-bid, prenegotiation conference and site visit required and documented?	
12	Were late bids and proposals handled appropriately (FAR 14.304 and FAR 15.208)?	
13	Are unsuccessful bids and proposals and related correspondence filed?	
14	<p>Are the proper FAR construction clauses included in the solicitation?</p> <p>52.236-2, Differing Site Conditions</p> <p>52.236-3, Site Investigation and Conditions Affecting the Work</p> <p>52.236-5, Material and Workmanship</p> <p>52.236-6, Superintendence by the Contractor</p> <p>52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements</p> <p>52.236-11, Use and Possession Prior to Completion</p> <p>52.246-12, Inspection of Construction</p>	

15	<p>Are the following DFARS construction clauses included in the solicitation?</p> <p>252.236-7000 Modification Proposals—Price Breakdown</p> <p>252.236-7001 Contract Drawings and Specifications</p> <p>252.236-7002 Obstruction of Navigable Waterways</p> <p>252.236-7003 Payment for Mobilization and Preparatory Work</p> <p>252.236-7004 Payment for Mobilization and Demobilization</p> <p>252.236-7005 Airfield Safety Precautions</p> <p>252.236-7006 Cost Limitation</p> <p>252.236-7007 Additive or Deductive Items</p> <p>252.236-7008 Contract Prices—Bidding Schedules</p> <p>252.236-7009 Option for Supervision and Inspection Services</p> <p>252.236-7010 Overseas Military Construction—Preference for United States Firms</p> <p>252.236-7011 Overseas Architect-Engineer Services—Restriction to United States Firms</p> <p>252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers</p>	
16	<p>Are the contractor's proposal and revisions, representations and certifications (RFP Section K), and correspondence filed?</p>	
17	<p>Was an evaluation of transportation cost factors completed (DD Form 1654)?</p>	
18	<p>Was a price negotiation memorandum or price competition memorandum completed?</p>	
19	<p>Was a legal review obtained if the price exceeded the simplified acquisition threshold?</p>	

20	Did the appropriate approval authority review the solicitation reviewed?	
Award Documents (Contract and Modifications)		
21	Were appropriate performance and payment bonds and waivers (and alternative payment protections for construction contracts) accomplished?	
22	Did the appropriate approval authority review the contract?	
23	Was the contractor informed not to start work until a notice to proceed was issued? Was a notice to proceed issued?	
24	Was SF 1442 (or Optional Form 347 under the SAT) used, properly executed, and distributed for construction contracts?	
25	Was the appropriate automated system documentation completed (e.g., SPS, FPDS-NG)?	
26	Were letters sent to unsuccessful bidders or offerors?	
27	Are copies of the contract and contract modifications included in the file?	
Post-Award Documents		
28	Are the contract bonds (payment and performance bonds, consent of surety/contract bond) completed (FAR Subpart 28.1)?	
29	Was a post-award orientation conference or preperformance 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 the progress reports separately submitted by both the contractor and the contracting officer's technical representative? 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 for each construction contract of \$550,000 or more (or more than \$10,000 if the contract was terminated for default) (FAR Subpart 42.15)?	
34	Was a list of punch list discrepancies provided and resolved before final inspection and acceptance?	
35	Does the file include final inspection and acceptance documentation from the requiring activity?	
36	Did the contractor submit and sign a release of claims after contract completion?	
37	Was a contract completion statement completed (DD Form 1594)?	

Contract Administration 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
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 after contract award and within 5 days after the contracting office received a request for debriefing (FAR 15.506)?	
4	Does the contract file contain (1) all documents required to organize and sufficiently document the actions taken and (2) the supporting rationale for the entire procurement process (FAR 4.803)?	
4a	<ul style="list-style-type: none"> • 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 abstracts 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"> • Original of the signed contract, all contract modifications, and documents supporting modifications • Notice to unsuccessful bidders or offerors and a record of any debriefing • Post-award conference records • Orders issued under the contract • Quality assurance records • Bills, invoices, vouchers, and supporting documents • 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 that the government receives and accepts only products that fully conform to contract requirements?	
5b	Are CORs appointed in writing, including 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, and a statement that the COR may be personally liable for unauthorized commitments?	
5c	<p>Do CORs understand the scope of their duties (DFARS 201.602-2)?</p> <ul style="list-style-type: none"> • Monitor contractor performance in accordance with the terms and conditions of the contract and notify the CCO about performance • Perform inspections • Verify corrected deficiencies • Perform government acceptance (in accordance with contractual requirements) • Liaison with the CCO and the contractor • Submit performance reports 	

5d	<p>Are COR files properly documented with the appropriate documents?</p> <ul style="list-style-type: none"> • Copy of the commander's nomination letter • Copy of the appointment letter from the CCO • Copy of the quality assurance surveillance plan • Any correspondence from the CCO that amends the letter of appointment • 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 	
6	If the need arose for changes in the contract, were all policies and procedures followed?	
6a	Were changes in the 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	<p>Was SF 30 used for specified purposes (FAR 43.301)?</p> <ul style="list-style-type: none"> • Any amendment to a solicitation <ul style="list-style-type: none"> • 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 or bilateral modification (FAR 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 \$100,000 (FAR 33.207(c)), stating: "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."	
7d	Did the CCO review the claim for accuracy (e.g., math errors, wrong quantities)?	
7e	Did the CCO attempt to negotiate the contractor final price (FAR 33.204)?	
7f	<p>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 appropriate content (FAR 33.211)?</p> <ul style="list-style-type: none"> • Description of the claim or dispute • Reference to the pertinent contract terms • Statement of the factual areas of agreement and disagreement • Statement of the contracting officer's decision, with supporting rationale • Statement informing 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 that have been closed out and fall 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

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 interests of the government, is not specifically addressed in the FAR, and is not prohibited by law (statute or case law), executive order, or other regulation, government members of the acquisition team should not assume that it is prohibited. Rather, an absence of direction should be interpreted as permitting the team to innovate and to use sound business judgment that is otherwise consistent with law and within the limits of the team's 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 considering the possibility of expediting a contract action, the CCO should review the authorities and tools described below and should refer to FAR Part 18 and DFARS Part 218.	

1	Contractors are not required to be registered in the Central Contractor Registration (CCR) for contracts that are awarded (1) by deployed contracting officers in contingency, humanitarian, or peacekeeping operations or in emergency operations; (2) by contracting officers in emergency operations; (3) for the support of unusual or compelling needs; (4) to foreign vendors for work performed outside the United States; or (5) for micropurchases that do not use electronic funds transfer (EFT) (FAR 4.1102, FAR 26.205, and www.ccr.gov for the Disaster Response Registry).	
2	Exceptions may be made for issuing synopses of proposed contract actions when this approach would delay award and seriously injure the government (FAR 5.202(a)(2)).	
3	Sources may be limited in solicitations to less than full and open competition for urgent and compelling requirements if the government would be seriously injured if it did not limit competition to the maximum extent practicable (FAR 6.302-2, DFARS 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), 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 is not required when changes in Ability One specifications or descriptions are required to meet emergency needs (FAR 8.712(d)).	
7	A determination may be made to suspend the enforcement of qualification requirements when an emergency exists (FAR 9.206-1).	
8	The Defense Priorities and Allocations System (DPAS) was established to facilitate rapid industrial mobilization during a national emergency (FAR Subpart 11.6).	
9	Oral solicitations may be used (FAR 13.106 and FAR 15.203(f)). Note that this option does not relieve the contracting officer from complying with other FAR requirements.	
10	To award 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	Under certain conditions, interagency acquisition under the Economy Act may be used (FAR Subpart 17.5).	
12	Contracts may be awarded to the Small Business Administration on a sole-source or competitive basis for performance by eligible 8(a) firms (FAR Subpart 19.8).	
13	Contracts may be awarded 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	Overtime approvals may be justified retroactively in emergency circumstances (FAR 22.103-4(i)).	

15	Applications of policies and procedures of FAR 25.4, "Trade Agreements," may not apply to acquisition awarded using other than full and open competition (FAR 25.401(a)(5)).	
16	A waiver of the requirement to obtain authorization before use of patented technology may be obtained in circumstances of extreme urgency or national emergency (FAR 27.204-1).	
17	Bid guarantees may be waived (FAR 28.101-1).	
18	Advance payments may be authorized to facilitate the national defense for actions taken under Public Law 85-804 and other conditions (FAR Subpart 50.1 and FAR 32.405).	
19	A no-setoff provision may be appropriate to facilitate the national defense in a national emergency or natural disaster (FAR 32.803(d), "Assignment of Claims").	
20	An exception may be made for providing payment through EFT (FAR 32.1103(e)(1) and DFARS 232.7002(a)(4)).	
21	Protest overrides may be used for urgent requirements when the government will be seriously damaged if the award is delayed (FAR 33.104).	
22	Rental requirements do not apply to Government production and research property that is part of an approved Federal Emergency Management Agency (FEMA) program (FAR 45.301).	
23	Policies and procedures for amending contracts may be used to facilitate the national defense under the extraordinary emergency authority of Public Law 85-804 (FAR 50.103-2(a), (b), and (c)).	

24	An advance Military Interdepartmental Purchase Request (MIPR) may be used (DFARS PGI 208.7004-3).	
25	A written job order for emergency work may be issued to a contractor (if it has previously executed a master agreement) to avoid endangering a vessel or its cargoes or stores—or when military necessity requires such an order (DFARS 217.7103-4, 252.217-7010, and PGI 217.7103-4).	
26	An urgent immediate buy for spare parts should not be delayed (DFARS PGI 217.7506, paragraph 1-105(e)).	
27	Exceptions may be made to prohibition of the storage or disposal of non-DoD-owned toxic or hazardous materials on DoD installations (DFARS 223.7102(a)(3) and 223.7102(a)(7)).	
28	Exceptions may be made to the Berry Amendment requirement for items produced in the United States (DFARS 225.7002-2).	
29	Exemptions may be made 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 \$15,000 (DFARS 225.701-70).	
30	Exceptions may be made to rights in technical data restrictions for emergency repair or overhaul during urgent or compelling circumstances (DFARS Subparts 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	Exception may be made for foreign vendors to submit payment requests in electronic form for awards of work performed outside the United States or for the support of unusual or compelling needs (DFARS 232.7002(a)(2) and 232.7002(a)(5)).	
32	Mortuary services may be obtained in an epidemic or other emergency (DFARS 237.7003(b) and clause 252.237-7003).	
33	The micropurchase threshold may increase to support a contingency operation or to facilitate defense against, or recovery from, a chemical, biological, radiological, or nuclear attack (FAR 2.101 and 13.201 (g)).	
34	The simplified acquisition threshold (SAT) may support a contingency operation or facilitate defense against, or recovery from, a chemical, biological, radiological, or nuclear attack (FAR 2.101), with a limit of \$300,000 inside the United States and \$1 million outside the United States.	
35	SF 44 may be used for higher-dollar purchases to support a contingency operation (FAR 13.306 and DFARS 213.306(a)(1)(B)).	
36	A set-aside for local organizations, firms, and individuals may be used when contracting for major disaster or emergency assistance activities (FAR 6.208 and FAR Subpart 26.2).	
37	The provisions of the Cargo Preference Act of 1954 may be waived in emergency situations (FAR 47.502(c)).	
38	Contracting officer qualification requirements may be waived for DoD employees or members of the armed forces who are in a contingency contracting force (DFARS 201.603-2(2)).	

39	Exceptions may be made to the normal limitations on price ceilings, definitization schedules, and obligation percentages for letter contracts and other forms of undefinitized contract actions (DFARS 217.74)	
40	Exception may be made for DoD-unique identification for items used to support a contingency operation (DFARS 211.274-2(b)).	
41	The governmentwide purchase card may be used for an overseas transaction in support of a contingency operation or training exercises in preparation for an overseas contingency, humanitarian, or peacekeeping operation (DFARS 213.270(c)(3) and 213.270(c)(5)).	
42	The governmentwide commercial purchase card may be used 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)).	
43	The use of imprest funds and third-party drafts at or below the micropurchase threshold may be authorized in support of a contingency operation or a humanitarian or peacekeeping operation (DFARS 213.305-3(d)(iii)(A)).	
44	The HCA may make determinations in lieu of the head of the agency (FAR Subparts 2.101, 12.102(f), 13.201(g), 13.500(e), and 18.2).	
Note: Additional information is available in the topical index of the DVD and website.		

Gratuities 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
1	Reference: FAR 3.101-2, "Solicitation and acceptance of gratuities by government personnel"	
2	Use persuasion: Attempt to persuade the contractor not to give the gratuity to the CCO. Explain to the contractor or individual the restrictions that are placed on US procurement officials (e.g., a gratuity violates the Joint Ethics Regulation and gives the impression of violating the principles of competition and fair and impartial evaluation of offers).	
3	Do not offend contractors. If the contractor is offended by the use of persuasion (discussed above), accept the gratuity, but make a mental note of what is given (e.g., cash, gold), when it is given (date and time), where it is given (location), who gave it (name of individual or contractor and any witnesses), and how much (quantity and value of gratuity) for subsequent documentation.	
4	Safeguard the gratuity. Once you accept the gratuity, it must be safeguarded. If necessary, ask finance personnel to put the gratuity in their safe, but be sure to get a receipt if this method is used).	
5	Work with legal personnel. Turn the gratuity over to the Judge Advocate General (JAG) as soon as possible. Obtain some sort of receipt in writing, stating that the item was turned over to them.	

6	Maintain documentation. Write a memorandum for the record, specifying as much information as possible (including all of the information in item 2 above), any legal advice obtained, and approximate value of the item (referring to the example below).	
7	Buy the item. If the CCO wants the item, check with legal personnel about the possibility of buying the item at a reasonable cost.	

MEMORANDUM FOR RECORD

Date _____

SUBJECT: Received gratuity from _____

1. On _____ 201X, _____ at approximately _____ hours, subject contractor attempted to give me _____ as a gratuity. I attempted to not accept this gratuity and explained to the contractor the restrictions placed on US procurement officials, in accordance with the Joint Ethics Regulation (DoD 5500.7-R). In addition, I explained how accepting such a gratuity gives the impression of violating the principles of competition and fair and impartial evaluation of offers (in accordance with FAR Part 6 and FAR 13.104).
2. Subject contractor became greatly offended (perhaps expand on cultural issues 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 personnel to be placed in their safe. A receipt was obtained for the record (if applicable, refer to attachment).
3. Legal advice will be obtained regarding this matter at the earliest possible time. Further questions concerning this unsolicited gratuity should be directed to the undersigned at extension XXX-XXXX.

Contracting Officer
Attachment
Receipt from Finance/Legal

Justification and Approval (J&A) 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
1	Each justification must contain sufficient information to justify the use of the cited exception (FAR 6.303-2(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 that opposes the agency action.	
2	Does the J&A specifically identify the document as a “justification for other than full and open competition”?	
3	Does the J&A identify the agency and the contracting activity (FAR 6.303-2(b)(1))?	
4	Does the J&A describe the supplies or services required to meet the agency’s need with the estimated dollar amount (FAR 6.303-2(b)(2))?	
5	Does the J&A list the contemplated contract type (FAR 6.303-2(a)(2))?	

6

Does the J&A determine which of the cited statutory authorities apply?:

- Only one responsible source and no other supplies or services that will satisfy agency requirements (FAR 6.302-1)
- Unusual and compelling urgency, which applies when an unusual and compelling urgency precludes full and open competition and a delay in award would result in serious injury (financial or otherwise) to the government (FAR 6.302-2)
- Industrial mobilization; engineering, developmental, or research capability; or expert services (FAR 6.302-3)
- International agreement (FAR 6.302-4)
- Statutory authorization or requirement (FAR 6.302-5)
- National security (FAR 6.302-6)
- Public interest (FAR 6.302-7).

Note: Other than full and open competition shall not be justified based on either:

- Lack of advance planning by the requiring activity
- Concerns related to available funds or funds expiring.

7	<p>Does the J&A provide reasons for the cited authorities and describe how this action requires the use of the authority cited?</p> <ul style="list-style-type: none"> • If the authority in FAR 6.302-1 is cited, identify the proposed or potential contractors and discuss the proposed contractor's unique qualifications for fulfilling the contract requirements. In addition, explain how and why no other type of supplies or services will satisfy agency requirements. • If the authority in FAR 6.302-2 is cited, include the required delivery schedule and lead time involved, a discussion of the serious injury to the government that would result if the contract award is delayed, and an explanation that the government would be seriously injured or harmed unless permitted to limit the sources. J&As for FAR 6.302-2 may be made and approved after contract award when their preparation and approval before award would unreasonably delay the acquisition (FAR 6.302-2(c)(1)). 	
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 practicable, including whether a notice was or will be publicized as required by FAR 5.2 and, if not, which exception under FAR 5.202 applies (FAR 6.303-2(b)(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(b)(7))?</p>	
10	<p>Does the J&A provide a market survey or a reason for market research not being conducted (FAR 6.303-2(b)(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(b)(9))?</p>	

12	Does the J&A list sources, if any, that expressed an interest (in writing) in the acquisition (FAR 6.303-2(b)(10))?	
13	Does the J&A provide a statement of actions, if any, that the agency took to increase competition (FAR 6.303-2(b)(11))?	
14	Does the J&A have a contracting officer certification that confirms the justification is accurate and complete to the best of the contracting officer's knowledge and belief (FAR 6.303-2(b)(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) are complete and accurate (FAR 6.303-2(c))?	

Letter Contracts Checklist

Item Number	Reference: FAR 16.603, "Letter Contracts"	Applicable and Present
1	Use a letter contract when either:	
1a	The government's interests demand that the contractor be given a binding commitment so that work can start immediately.	
1b	Negotiation of a definitive contract is not possible in sufficient time to meet the requirement.	
2	Do you have approval and authority from the head of the contracting activity to enter into letter contracts?	
3	Is FAR Clause 52.216-23, "Execution and Commencement of Work (Mandatory)," included in the contract?	
4	Is FAR Clause 52.216-24, "Limitation of Government Liability (Mandatory)," included in the contract? Note that the liability limit shall not exceed 50% of the estimated cost.	
5	Is FAR Clause 52.216-25, "Contract Definitization (Mandatory)," included in the contract?	
6	Do you have a negotiated definitization schedule in accordance with FAR Clause 52.216-25?	
7	Is the definitization completed within 180 days after the date of the letter contract or before 40% of the work has been completed, in accordance with FAR 16.603-2(c)(3)?	
8	Is the definitization performed with a modification (SF 30)?	

Contingency Micropurchase 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
1	Is the funding certified and available (FAR 32.702)?	
2	Did the CCO verify that the requirement cannot be met through the required sources of supplies/ services (FAR 13.201(e) and 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, a chemical, biological, radiological, or nuclear attack (FAR 13.201(g)(1)), per the thresholds cited in item 3a?	
3a	<ul style="list-style-type: none">• \$15,000 for any contract to be awarded and performed, or any purchase to be made, inside the United States (FAR 13.201(g)(1)(i))• \$30,000 for any contract to be awarded and performed, or any purchase to be made, outside the United States (FAR 13.201(g)(1)(ii))	
4	To the extent possible, did the CCO distribute micropurchases equitably among qualified suppliers (FAR 13.202(a)(1))?	
5	If a micropurchase contract was awarded without soliciting competitive quotes, did the CCO determine that 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 the purpose of scope determination should be evaluated case by case; however, a change of 25% in dollar value can be used as a guide.	
3	If the work, dollar values, or both were determined to be out of scope, a J&A has been executed (FAR 6.304).	
4	Funding for the modification is consistent with the work being performed (e.g., correct fund type, year, purpose). If applicable, bona fide 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 agreement that violates the Antideficiency Act.	
6	An independent government technical assessment of the impact of the modification (in terms of staffing, labor hours, and other direct costs) is accomplished by the functional personnel and provided to the contracting officer for use in developing the prenegotiation objective.	
7	The contracting officer has developed a prenegotiation objective.	

8	The legal review has been accomplished for all actions that require legal review.	
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 are presented in a format that indicates the nature and impact of the dollar change by noting that the dollar value changed from _____ to _____ for a total change of _____. This format applies to other areas of the contract (such as Section H, Award Fee Plan) where dollar values change.	
11	If the dollar value of the modification increases a threshold to a level that requires the inclusion of required clauses that were not previously in the contract, the required clauses are included in the modification.	
12	For bilateral modification actions, the contractor's signature was obtained before execution by the contracting officer (FAR 43.103).	
13	For change order actions, a release statement substantially the same as that available at FAR 43.204(c)(2) was included in the modification.	
14	SF 30 cites the proper authority for the modification action (FAR 43.301(a)(1)).	
15	A determination has been made that the price is fair and reasonable (FAR 13.106-3 and 15.4).	
16	A DD 350 or DD 1057 (when applicable) was completed and filed (DFARS 204.6).	
17	The contract file includes a price negotiation memorandum if the price changed.	
18	A memorandum for record was created to explain the purpose of the change.	

19	For bilateral modifications, the contractor's statement of release was 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 Clause 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 Clause 52.217-9?	
23	Did the contracting officer 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 contracting officer make the determinations in accordance with FAR 17.207 (c-f)?	
25	Is a dated and signed determination and finding (D&F) in the file that reflects exercising or nonexercising of options by the contracting officer?	
26	Did the contracting officer receive written coordination from the functional commander indicating the desire to exercise the option?	
27	For contracts under a collective bargaining agreement, was the union notified before the option was exercised?	
28	Was the option exercised within the appropriate time frame?	

29	Was the option to extend services clause exercised by the time specified in FAR Clause 52.217-8?	
30	If the contracting officer elects to extend services in accordance with the option to extend services clause, was the total of all extensions 6 months or less?	
31	Was this a not-to-exceed option? If so, was the effort covered by the option synopsis in accordance with FAR 5.201, and was a J&A for the effort approved?	
Preparing Option Package		
32	Was a D&F prepared that addresses cited areas in the rest of this section?	
33	Funds are available.	
34	The requirement fulfills an existing government need.	
35	The most advantageous method of fulfilling the government need, the price, and other factors were considered.	
36	The option was synopsisized at the time of award unless exempted.	
37	A new solicitation fails to produce a better price or more advantageous offer.	
38	An informal analysis of prices or an examination of the market indicated that the option price is better than the prices available in the market or that the option is a more advantageous offer.	
39	The option price was part of the initial award.	
40	The relationship of the option price to the price for the initial contract period is analyzed.	

41	The adequacy of the competition at the time of the initial award is compared to the competition at the time of the option period.	
42	Changes in the general economy that could affect cost of performance are analyzed.	
43	Market research of other contracting activities or industries is analyzed for substantive changes in bid prices for similar services at their activities.	
44	A memorandum for record is in the contract file and reflects the market research performed.	
45	Potential savings in administrative costs from exercising the option are compared to the administrative costs of awarding a new contract.	
46	The time between contract award and exercise of option is so short that it indicates the option price is the lowest price obtainable or the more advantageous price.	
47	The requirements of FAR Subpart 17.2 and Part 6 are exercised in accordance with the terms of the option.	
48	A determination of contractor responsibility is included in the file.	
49	The CCR was checked to verify the status of the contractor, and a copy is in the contract file.	
50	The excluded parties list was checked, and a copy is in the contract file.	
51	A unilateral modification was issued.	
52	The appropriate wage determination was incorporated into the modification (if applicable).	

53	If funds are not available, the availability of funds clause was 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	After completion of award, a DD Form 350 was completed, signed, and filed in the contract. A copy was provided to the Plans and Programs office.	
55	The amount of the modification, when funded at the same time exercised, is the same as Line B8 of DD Form 350.	
56	When the modification is mailed, a copy of the return receipt card is maintained after it is returned.	
57	An inventory is conducted if government-furnished property is included on, and required by, the contract.	

Ratification Checklist

Item Number	Note: Procedures may differ based on the area of responsibility (AOR). Contact the responsible component's office of primary responsibility (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. Do not do it. Let the contracting officer help you. The contracting office is responsible for contracts with all firms that want to sell goods and services to the installation. To protect the interests of the government and prevent unauthorized contracting, adhere to the following:</p> <p>(1) If you are not a contracting officer, make sure the vendor or business representative knows that you cannot make the purchase.</p> <p>(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.</p> <p>(3) Personnel without contractual authority will not make statements regarding contractual matters because such statements may be construed as a commitment by the government.</p>	
1	Does the file include a statement from the officer or employee describing the circumstances?	
2	Did the CCO include all orders, invoices, and other evidence of the transaction?	

3	Does the file contain the endorsement of the commanding officer (of the person who made the unauthorized commitment), concurring that the commitment should be ratified and that measures should be taken to prevent recurrence of the unauthorized commitment?	
4	Did the CCO complete a determination and finding (D&F) (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 that the price is 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 currently available (FAR 1.602-3(c)(6))?	
11	Is the ratification in accordance with any other limitations specified under agency procedures (FAR 1.602-3(c)(7))?	
12	Was the ratification reviewed and approved in accordance with the head of the contracting activity delegations, but in no cases lower than the chief of the contracting office (FAR 1.602-3(b)(2) and 1.602-3(b)(3))?	

13	If authority was above the CCO, did the ratifying official with the proper authority perform an analysis of whether the price is fair and reasonable and produce an unauthorized commitment D&F (FAR 1.602-3(c))?	
14	Was a legal review obtained and included in the file?	
15	Did the ratifying official execute a contractual document?	
16	A sample ratification file index is included below.	
	<p>Sample Ratification File Index</p> <ol style="list-style-type: none"> 1. Purchase request/funding documents 2. Memorandum for record (MFR) from customer with commander's endorsement, including disciplinary actions and actions taken to prevent recurrence of future unauthorized actions. 3. MFR from resource manager 4. Receiving reports as required 5. Invoices 6. Price fair and reasonable and unauthorized commitment D&F from contracting officer, with legal review 7. Findings of ratifying official 8. Contractual documents (executed document from ratifying official), including purchase description, statement of work, or specification 9. Documentation diary 10. Ratification checklist 	

Requiring Activity Checklist

Item Number	Note: Procedures may differ based on the area of responsibility (AOR). Contact the responsible component's office of primary responsibility (OPR) for command-specific procedures.	Applicable or 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 the requiring activity a routine practice when preparing contract packages and program strategies?	
3	Did the contracting office provide training materials, including a customer guide to the requiring activities?	
4	Did the CCO provide the requiring activity with customer education and training that explain contracting procedures such as purchase requests, contracting officer's representative (COR) training and duties, lease-purchase options, Military Interdepartmental Purchase Requests (MIPRs), blanket purchase agreements (BPAs), government purchase card (GPC), and ratification; provide help in developing requisitions for requirements; develop and maintain open lines of communication; and stress the importance of meaningful partnerships with customers and contractors to ensure that the goals and objectives of the mission are met to the maximum extent practicable.	

5	<p>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 doubt about whether a need can be satisfied through contracting channels, the CCO should assist in determining the appropriate course of action because dollar thresholds dictate distinct lead times for different requirements.</p>	
6	<p>Is the requiring activity aware of the importance of ethics? DoDD 5500-7, "Joint Ethics Regulation," and FAR Part 3 provide detailed guidance and explain expectations for all personnel. Acceptance of gifts or favors can result in administrative action or criminal prosecution. Although a small minority, some contractors and potential contractors are willing to attempt to put a favor in the right hands to gain an advantage in receiving contract awards. Whenever a gratuity is presented to you, if you can do so without offending the individual or contractor, do not accept it, and state that if you accept the offer or gift, you can no longer do business with the contractor. 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 to be validated before it can be submitted to contracting personnel 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 the Program and Budget Advisory Committee (PBAC), which validates funding.</p>	

8	Is the requiring activity aware of the cited steps in the contracting office procurement process?	
8a	<ul style="list-style-type: none"> • Contracting personnel receive an approved purchase request. • The purchase request is assigned to a CCO, based on the service, construction, or commodity. • Contract processing lead times are based on the dollar threshold, and the CCO ensures the appropriate funding type (color of money) is used (e.g., US Code Title 10 and 22). • The CCO reviews the kind of item or service that is needed and how well the item is described, such as statement of work (SOW), performance work statement (PWS), and salient characteristics. • The market research is reviewed to assess the quality of the vendor base and the 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 email to the customer, finance office, and vendor if possible). 	
9	Have personnel from a requiring activity become directly or indirectly involved in an unauthorized purchase action? If so, they should immediately contact the contracting office to begin appropriate contract ratification actions.	

10	<p>Is the requiring activity aware of the four basic methods of contracting? These methods are micropurchases (i.e., supplies or services that do not exceed the micropurchase threshold of up to \$30,000 OCONUS); simplified acquisitions, as specified in FAR Part 13, for purchases of supplies or services; formal contracts, typically for contracts exceeding the simplified acquisition threshold (SAT); and orders under existing contracts, such as BPAs, indefinite-delivery contracts (e.g., IDIQ contracts), or General Services Administration (GSA) Federal Supply Schedule contracts.</p>	
11	<p>Is the requiring activity aware of the conditions that permit other than full and open competition (FAR 6.302)? These conditions include (1) only one responsible source, with no other supplies or services that will satisfy agency requirements, and (2) unusual and compelling urgency that precludes full and open competition when a delay in contract award would result in serious financial or other injury to the government. Note: It is important to remember that classifying a product or service as critical, failing to perform timely logistics planning, or identifying a short-notice requirement does not justify the award of a sole-source contract.</p>	
12	<p>Is the requiring activity aware of the documents that typically compose a complete requirements package? A requirements package is a general statement that refers to all of the documents required by the CCO before a contracting action is initiated. A requirements package consists of the following documents:</p>	

12a

- Purchase request and funding documentation. This information includes the complete physical and mailing address, delivery or need date (note that ASAP is not a date and that delivery time per estimate is usually equal to period of performance), complete point of contact information (email address, office telephone number, and cell number), detailed item description, and shipping (plus or minus approximately 20–30%).
- Statement of work. A SOW is required for contracts for services (including construction) that do not require significant technical requirements or ongoing advice and surveillance from technical and requirements personnel.
- Performance work statement. A PWS is a SOW for performance-based acquisitions that describes the required results in clear, specific, and objective terms with measurable outcomes.

12b	<ul style="list-style-type: none">• Quality assurance surveillance plans to accompany SOW or PWS. These plans should specify all work requiring surveillance and the method of surveillance.• Specifications. Specifications are primarily required for commodity purchases (e.g., supplies, equipment) and drawings (for construction projects). A specification is a description of the technical requirements of the service or supply (e.g., by size, color, weight, and material) and should include the intended use. Specifications shall state only the government's minimum needs and shall be designed to promote full and open competition.• Generic purchase descriptions. This type of description is a less involved explanation, written in simple language, with one exception: brand names are prohibited without a separate written justification. The following factors should be considered: 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), and intended use.	
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12c	<ul style="list-style-type: none"> • Brand name (or equal) descriptions. These descriptions must include, in addition to the brand name and part number, a general description of those salient physical, functional, and 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 are the only acceptable product, the purchase request must be accompanied by a justification stating the reason that no substitutes are acceptable. Bear in mind that the time needed to find a vendor that meets your specification and to deliver the items is longer (because specialized items usually are manufactured and distributed from Europe or the United States) than the time required to purchase a substitute item that might not be exactly the same item, but can be purchased in the local economy. • Independent government cost estimate. An independent government estimate (IGE) is required for all requirements with an anticipated total value greater than the simplified acquisition threshold. The end user in the functional area responsible for the requirement develops the estimate, which must accompany the purchase request package. 	
12d	<p>The government estimate should never be prepared using a vendor price quote, but rather should be based on previous purchases, similar purchases, Internet research, and the like. Estimates should include a complete breakout of each element, including labor costs, material costs, and all shipping costs.</p>	
13	<p>Is the requiring activity aware of procedures for the receipt of items and accountability?</p>	

<p>13a</p>	<ul style="list-style-type: none"> • Contractor invoices. These invoices should flow to the contracting office to review and certify as correct for payment (thus ensuring accuracy and completeness). The contracting office will return inaccurate or incomplete invoices to the vendor with an explanation and instructions to resubmit the document. After CCO certification, the assigned CCO will forward the invoice to the applicable requiring activity with instructions to complete the receiving report (DD 250). 	
<p>13b</p>	<ul style="list-style-type: none"> • Receiving reports. These reports (DD 250) address the requiring activity role. Organizations receiving deliveries must document the items that were received. Documentation can be accomplished by completing a receiving report, DD Form 250. Proper documentation ensures that the contractor is paid correctly and efficiently. This approach is especially important in a deployed environment, where there is constant turnover. After receipt of a request to complete a receiving report, the end user shall review the invoice received from the CCO; if no discrepancies are found, shall complete DD 250 in a timely manner (e.g., within 72 hours); and if discrepancies are found, shall coordinate with the CCO to make corrections. 	
<p>13c</p>	<ul style="list-style-type: none"> • Finance personnel role. Finance personnel will review and inspect the invoice, DD 250, and any other supporting documents and will reject any invoices with discrepancies. A properly completed invoice and receiving report are required before a contractor is scheduled for payment and the payment for the vendor can be arranged according to finance procedures. 	
<p>14</p>	<p>Is the requiring activity aware of the definition and function of a contract modification?</p>	

14a	<p>The contracting office should be notified immediately after personnel discover that a change might be required in a contract. In general, contract changes require the same supporting documentation as the original contract (e.g., funding document, SOW or PWS 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 affect the work originally specified in the contract. The contracting officer is empowered to make such changes after receipt of proper documentation. The contracting officer must give consideration to the type of work in the original contract and the increase in dollar value compared to the change being considered. Changes outside the scope of the contract are only authorized based on special 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 by using a supplemental agreement.</p>	
15	<p>Is the requiring activity aware of COR duties and responsibilities?</p>	

15a	<p>The CCO appoints the CORs, who are qualified individuals who assist in the technical monitoring or administration of a contract. CORs must be appointed for any contract with significant technical requirements that require ongoing advice and surveillance from technical and requirements personnel. CORs are not generally appointed for simplified acquisitions unless the requirement is sufficiently complex to warrant such an action (e.g., requirements that necessitate a PWS). The requiring activity's nomination must include candidate qualifications, including training and contract administration experience. The contracting officer will ensure that the COR understands how to properly execute COR responsibilities. Key COR responsibilities include verifying contractor performance in accordance with the terms and conditions of the contract, performing inspections, verifying corrected deficiencies, performing government acceptance, serving as liaison with the CCO and the contractor, monitoring contractor performance and notifying the CCO about deficiencies, submitting performance reports, and performing property surveillance.</p>	
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SF 44 Checklist

Item Number	Reference: FAR 13.306 and DFARS 213.306, "SF 44, Purchase Order-Invoice-Voucher"	Applicable and Present
1	Are all of the following satisfied:	
2	The amount of the purchase is at or below the micropurchase 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	Use of SF 44 is determined to be more economical and efficient than other simplified acquisition procedures.	
6	SF 44s are controlled and safeguarded.	
7	Training on the use and control of SF 44s has been provided.	
8	If any prompt payment discounts were offered, they are on the order.	
9	The accounting line is on the order and is properly certified.	
10	All signatures are obtained from the purchaser, seller (order and invoice), and accounting.	
11	Copies were distributed correctly.	
12	If cash is paid upon delivery, four copies are distributed: one to the government; one to the vendor; one to the finance office; and one for the CCO (this copy remains in the continuity book).	
13	If no cash is paid upon the delivery, four copies are distributed: one to the seller (invoice copy), one to the seller (for seller records), one to the accounting office, and one to the CCO (this copy remains in the continuity book).	

Simplified Acquisition Checklist

Item Number	Note: Procedures may differ based on the area of responsibility (AOR). Contact the responsible component's office of primary responsibility (OPR) for command-specific procedures.	Applicable and Present
1	<p>Purchase Request (FAR 32.702)</p> <p>a. Is the electronic or original funding documentation in the file?</p> <p>b. Is the funds increase letter in the file (if applicable)?</p> <p>c. Does the fund cite match the award, and are sufficient funds available?</p>	
2	<p>Performance of Market Research/Competition</p> <p>a. Are the required sources of supply reviewed (FAR 8.002)?</p> <p>b. If less than the simplified acquisition threshold (SAT), did the CCO consider solicitation of at least three sources to promote competition to the maximum extent practicable (FAR 13.104(b))?</p>	
3	<p>Were acquisitions less than the micropurchase threshold publicized in accordance with agency regulations (FAR 5.101, FAR 5.202(a) (12), and FAR 5.303 exceptions)?</p>	
4	<p>Did the appropriate authority approve the acquisition plan, and does the plan meet the content requirements of FAR 7.105 and DFARS 207.105?</p>	
5	<p>Did the CCO forward actions as required to the appropriate board or council (e.g., Joint Contracting Support Board, Acquisition Strategy Council) for review and approval as required?</p>	

6	<p>Were determinations and findings (D&Fs) (FAR 1.704) included as required (e.g., commercial contract, fair and reasonable price, time and materials contract, extension of period of performance, exercise of options)? The handbook DVD includes a summary list of D&Fs.</p>	
Solicitation		
7	<p>Is the appropriate documentation included?</p> <p>a. Is a copy of the solicitation in the file? If a synopsis/solicitation is used, is it in the file?</p> <p>b. If a service was more than \$2,500 and SCA was applicable, was SF 98 used, including the applicable wage determination? If SCA exempt, was FAR Clause 52.222-48 included in the solicitation, which must be completed and returned with the proposal? An SCA nonapplicability memorandum signed by the CCO must also be in the file.</p>	

8

Were the following solicitation clauses included?

- a. FAR Clause 52.212-1, "Instructions to Offerors-Commercial Items," by reference
- b. FAR Clause 52.212-2, "Evaluation-Commercial Items," full text (only used if specific technical evaluation criteria are used)
- c. FAR Clause 52.212-3, "Offeror Representation and Certifications-Commercial Items," full text
- d. FAR Clause 52.212-4, "Contract Terms and Conditions-Commercial Items," by reference
- e. FAR Clause 52.212-5, "Contract Terms and Conditions to Implement Statutes," full text (applicable clauses must be checked)
- f. FAR Clause 252.204-7004, "Required Central Contractor Registration," by reference
- g. FAR Clause 252.212-7000, "Offeror Representations and Certifications-Commercial Items," for all solicitations exceeding \$100,000, full text
- h. FAR Clause 252.212-7001, "Contract Terms and Conditions to Implement Statutes," full text

<p>9</p>	<p>Were the following solicitation evaluation issues addressed:</p> <ul style="list-style-type: none"> a. Did the CCO notify the potential quoters or offerors about the basis for making the award (FAR 13.106-1(a)(2))? b. If evaluation factors were used, were the proposals evaluated solely on the factors contained in the solicitation (FAR 12.602(a))? 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; was the general approach for evaluating past performance information described; and did the CCO insert one of the FAR 15.304(e) phrases (FAR 13.106, 15.304(d) and (e), 15.204-5(c), 15.204-5(d), and 52.212-4)? d. Was past performance an evaluation factor for contract award? If not, was the contracting officer's rationale documented in the contract file? e. If only one offer was received and the price was deemed reasonable based on adequate price competition, was a determination approved one level above the contracting officer (FAR 15.305)? f. Was the source selection decision documented (FAR 15.308)? 	
<p>10</p>	<p>Did an appropriate review authority review the solicitation and contract?</p>	
<p>11</p>	<p>Were well-supported pricing objectives developed before entry into negotiations?</p>	
<p>12</p>	<p>If only one offer was received and the price was deemed reasonable based on adequate price competition, was a determination approved one level above the CCO?</p>	

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	Were procedures established for vetting of non-US vendors (e.g., FRAGO, acquisition instruction)?	
15	<p>If a CCO determines that a compelling reason exists to conduct business with a contractor that is debarred or suspended from procurement programs, the CCO must provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are as follows:</p> <ul style="list-style-type: none">a. Only a debarred or suspended contractor can provide the supplies or services.b. Urgency requires contracting with a debarred or suspended contractor.c. 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.d. The national defense requires continued business dealings with the debarred or suspended contractor (DFARS 209.4).	
16	Was the local vendor database updated to determine contractor responsibility?	

17

Award Documentation

- a. Did the CCO accomplish a price reasonableness determination (FAR 13.106-3(a), 14.408-2, or Subpart 15.4, as applicable)?
- b. Did the CCO include the signed abstract or offer evaluation form (PD2) and offers?
- c. Was the CCR information included for the prospective awardee for awards to US firms (<http://www.ccr.gov/index.cfm>) (Print Screen for Verification)?
- d. Did the CCO accomplish the debar check for US firms (<http://epls.arnet.gov/>) (Print Screen for Verification)?
- e. Does the contract file documentation include quotes or proposals; brief written description of the procedures used in awarding the contract, including the use of test procedures in FAR Subpart 13.5; number of offers received; explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and any justification approved (FAR 13.106-3(b)(2) and FAR 13.501(b))?
- f. Was FAR Clause 52.212-3, "Representation and Certifications—Commercial Items," completed for awards greater than \$2,500?
- g. Was the Online Representations and Certifications Application (ORCA) completed for US firms (<http://orca.bpn.gov>) (Print Screen for Information)?
- h. Was FAR Clause 252.212-7000, "Representations and Certifications—Commercial Items," completed for awards exceeding \$100,000?
- i. Did the CCO verify that all applicable clauses are in the document (FAR Clause 52.212-1 and Subpart 52.212-3, solicitation only)?

18	<p>Purchase Order/Contract in File</p> <p>a. Is the SF 1449/DD 1155 completed (all required blocks)?</p> <p>b. Are FOB terms specified (Block 11), and is shipping address shown (Block 15)?</p> <p>c. Are payment and discount terms specified (Block 12), and is correct payment office address (Block 18a) included?</p> <p>d. Is the delivery or performance period clearly stated?</p> <p>e. Did the CCO distribute a copy of the purchase order to the customer, contractor, and finance office?</p>	
15	Were the contract modification request, reason for modification, and documentation included in the file (FAR 43.205)?	
16	For service contracts, did the CCO ensure that solicitations and contracts included the inspection and quality assurance surveillance plans that are necessary to protect the government's interests (FAR 37.604)?	
17	For service contracts, did the contracting officer determine whether 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) and FAR 37.103(b))?	

18	Justifications and Approvals a. Have justifications and approvals (J&As) for other than full and open competition been completed and placed in the contract file when required? b. For sole-source procurements not exceeding the SAT, did the CCO document the file as to the circumstances of soliciting only one source? c. Were proper approvals obtained in accordance with acquisition instructions?	
19	Options: Did the contracting officer justify in writing the quantities or the term under the option, notification period for exercising the option, and any limitation on option price under FAR 17.203(g)? Did the contracting officer include the justification document in the contract file? FAR 17.202(d) generally covers most of the rationale needed.	
20	Was 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 area of responsibility (AOR). Contact the responsible component's office of primary responsibility (OPR) for command-specific procedures.	Applicable and Present
1	Learn the organizational structure at the deployment location.	
2	Brief the site commander at the deployed location, using sample deployed commander in-briefs on attached DVD (Contingency Contracting: A Joint Handbook DVD) and performing the following:	

2a

- Explain current contracting status and organization structure.
- Note that the office should be colocated with finance personnel and in a site providing access for contractors and that an assigned finance paying agent needs to accompany you for on-the-spot or over-the-counter SF 44 transactions.
- Explain your needs for a vehicle, office space, communications, interpreter, and security.
- Reference your head of the contracting activity (HCA), and mention how contracting authority flows down from the HCA, separate from command authority.
- Discuss the role of contracting and local purchase support for procuring the supplies, services, and construction necessary to support mission execution, life support, and morale, welfare, and recreation (MWR) requirements. Address examples such as 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, and MWR supplies, services, and activities.
- Cite requested approvals, permissions, and policies, including requirements validation and prioritization; unauthorized commitments and ratification process (per HCA guidance); undue influence whereby contracting officers will not make illegal purchases and must follow the FAR; additional duties exemption, as the situation permits; permission to leave the base, camp, or station and wear civilian clothes; and contract status updates during staff meetings.

2b

- Describe in-place purchase request and funding controls, and identify who can approve purchase requests.
- Note that only CCOs can obligate the US government, although (with HCA authorization) CCOs can train and appoint decentralized ordering officers to use SF 44s and blanket purchase agreements (BPAs).
- Explain that CCOs will achieve mission success by using expedited acquisition procedures while ensuring adherence to laws and regulations.
- Discuss whether there is an on-scene veterinarian or public health official for inspection of food and water.
- Discuss whether there is a base supply (LGS) function that can centralize the receipt of goods and accomplish quality assurance.
- Describe your preferences for delivery procedures (e.g., centralized receipt, delivery to on-base and off-base customers, pickup downtown).
- Determine whether escorts are available for tasks such as on-base deliveries, trash pickup, and construction. If escorts are not available, suggest making the requesting organization responsible for providing escorts.
- Provide customer training (weekly, monthly), and furnish a contracting customer handbook (a sample contracting customer handbook is included in the attached handbook DVD).

3	<p>Use HCA inputs to help answer the following: Is this a declared contingency operation? What is the simplified acquisition threshold (SAT)? What is the micropurchase amount? Is a host nation support agreement in place? What are the nonappropriated funds contracting procedures? What are the contract reporting procedures? What is the onsite CCO/contracting office chief ratification authority? What ratification format and form will be used? Who assigns procurement instrument identification numbers (PIINs)? 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 use SF 44? When is the government purchase card (GPC) approved for use?</p>	
4	<p>Team with finance personnel to establish local funding and payment procedure and set up obligation authority for GPC purchases as appropriate.</p>	
5	<p>Team with supply representative, if available, to establish local purchase procedures.</p>	
6	<p>Team with transportation representative, if available, to coordinate rules for vehicle hires, shipping instructions, and contracting vehicle.</p>	
7	<p>Team with communication representative, if available, to coordinate procedures for communication requirements and obtain communications support (e.g., telephone and fax access).</p>	
8	<p>Team with civil engineer representatives on construction and material support.</p>	
9	<p>Team with services representatives, if available, on billeting requirements, food service, and morale issues.</p>	

10	Hire interpreter and guide if needed.	
11	Set up office space, if available, and identify (signpost) the office location.	
12	Survey the local market, availability of local sources, and associated capabilities; obtain maps and telephone books; and check with the Embassy to obtain recommendations on local vendors.	
13	Establish a customer education guide (using samples in the attached handbook DVD) and rules of engagement with main customers, discuss possible requirements, and develop strategies.	

Terminations Checklist

Item Number	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 CCO have the authority to terminate the contract (FAR 49.101)?	
2	Which type of termination is being considered, partial or full termination (FAR 49.115)?	
3	Was termination coordinated through the legal office (FAR 49.105-2, "Local Policy")?	
4	Was a notice of termination made specifying the extent and the effective date (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) or stop-work order (communications or services) issued?	
8	Was a notice of termination issued to the contractor (FAR 49.102)?	
9	Did the contractor terminate all subcontracts (FAR 49.104(b))?	
10	Did you obtain government-furnished property from the contractor, if applicable (FAR 49.108-3(b)(1))?	
11	Did the government receive the materials that it paid for, 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 a final invoice from contractor?	
15	Was a price negotiation memorandum completed to show the proposed, objective, and negotiated prices?	
16	Was a modification made to terminate the contract (bilateral preferred)?	