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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

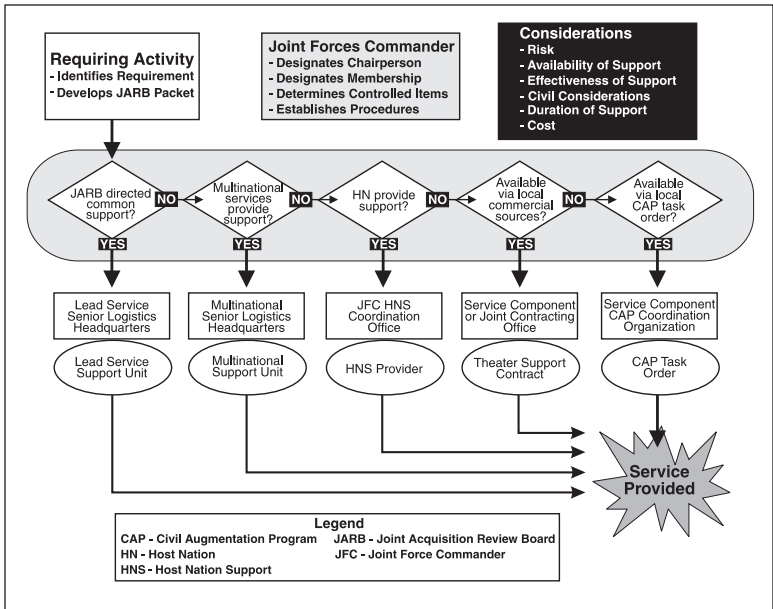


Figure 3. Joint Acquisition Review Board Process

- 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 or 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](#)