

May 5, 2010

## ACQUISITION ALERT 10-02

This Alert is issued to provide updated guidance to all NOAA Acquisition personnel, including those with delegated procurement authority and users of the Government-wide purchase card, on processing acquisitions in support of incidents requiring quick acquisition turnarounds (e.g., Deep Water Horizon).

- I. General - Federal Acquisition Regulation (FAR) Part 18 provides for expanded authorities for acquisition personnel, including purchase cardholders, when there is the need for acquisition flexibilities. In addition, Department of Commerce, Procurement Memorandum 2006-07 ([http://oam.ocs.doc.gov/docs/PM\\_2006-07-Emergency-Acquisition-Flexibilities.pdf](http://oam.ocs.doc.gov/docs/PM_2006-07-Emergency-Acquisition-Flexibilities.pdf)) outlines emergency acquisition flexibilities.
- II. Unusual and Compelling Urgency –
  - (a) Definition: When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for (FAR 6.302-2(a) (2)). This authority applies in those situations where:
    - (1) Full and open competition procedures would delay the need; and
    - (2) Delay in award of the contract would result in serious injury, financial or other, to the Government.
  - (b) The contracting officer shall document the contract files with the written justifications and approvals described in FAR 6.303 and 6.304.
  - (c) The following is required when using the unusual and compelling urgency authority:
    - (1) The contracting officer shall request offers from as many potential sources as is practicable under the circumstances;
    - (2) The total period of performance shall not exceed the time necessary to meet the unusual and compelling requirements of the work to be performed under the contract or the time necessary to put a competitive acquisition in place. Under no circumstance shall the period of performance exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply.
    - (3) A justification for other than full and open competition in accordance with FAR 6.303 is required.
    - (4) A determination of exceptional circumstances in accordance with FAR 6.302-2(d)(3) is required. This may be incorporated into the justification in paragraph c. above and should be clearly identified as a determination of exceptional circumstances.
    - (5) The justification and determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

III. Available Acquisition Flexibilities – Acquisition flexibilities available to the contracting officer include the following:

- (a) Synopses of proposed contract actions – If the requirement is being made utilizing the unusual and compelling urgency authority, contracting officers need not submit a synopsis notice if the Government would be seriously injured if the agency complied with the notice time periods;
- (b) Streamlined procedures and a broad range of goods and services may be available under Federal Supply Schedule contracts, NOAA BPAs, multi-agency BPAs, or multi-agency, indefinite-delivery contracts.
- (c) Purchase from Federal Prison Industries is not mandatory and a waiver is not required if public exigency requires immediate delivery or performance.
- (d) Contracting Officers are not held to the notification required when changes in AbilityOne specifications or descriptions are required to meet emergency needs.
- (e) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available and quotations may be solicited orally in accordance with FAR Subpart 13.106-1.

IV. Emergency Authorities –The DOC Assistant Secretary for Administration/Chief Financial Officer shall, upon: (a) the occurrence of certain qualifying events; (b) appropriate declarations from the White House; (c) specific request from the Bureau Procurement Official; and (d) determining that circumstances warrant the utilization of expanded authorities, specifically authorize utilization of expanded authorities, where appropriate, to specifically identified individuals. No other individuals will have authority to utilize the expanded authorities. See FAR Part 18 for emergency authorities.

V. Acquisition of Food –

- (a) It is well established that, absent specific statutory authority, appropriated funds may not be used for subsistence expenses or for food for civilian employees at their duty station, even though they may be working under unusual conditions. As an exception to the general rule, the Comptroller General has authorized government purchase of meals for employees at their duty station if the meals are necessary in an extreme emergency defined as danger to human life or the destruction of federal property. In order for subsistence or food purchases for civilian employees to be allowable, the following determinations must be made at the appropriate organizational level:
  - (1) In order to carry out critical responsibilities of the agency, it is necessary to staff an office throughout an emergency;
  - (2) The emergency involves danger to human life or the possibility of destruction of Federal property; and
  - (3) To staff an office, it is necessary to provide meals and lodging to employees who must work during the emergency.
- (b) Absent specific policy for NOAA Line and Staff Offices, the determination to make the above determinations shall be made at no lower than the Deputy Assistant Administrator

level. Line and Staff Offices shall provide a copy of such delegation of authority and policy to the Director, Acquisition and Grants Office (AGO), to be maintained for purposes of management oversight and control.

- (c) Where a specific determination that a qualifying situation exists, the following purchases are allowable using appropriated funds (whether purchased through an acquisition office, by an individual holding delegated procurement authority, or using the Government-wide purchase card):
  - (1) Lodging, or where lodging is not available and employees must be housed on-site at the Government facility, the basic amenities that would be available if off-site lodging was available (e.g., beds, mattresses, pillows, linens, washcloths, towels).
  - (2) Food and beverages (not including alcoholic beverages) for employees.
  - (3) Where employees in remote locations must remain on-site and food is purchased which must be prepared (e.g., food purchased at grocery or convenience stores), kitchen supplies such as paper and plastic ware, cooking utensils, dish detergent and paper towels if the employees do not have access to commercial dining or snack facilities.
  - (4) Office supplies such as chairs, cell phone protective cases, etc.
  - (5) Cleaning products such as antibacterial wipes, hand soap, and bleach needed to clean the office and maintain sanitary working conditions.
- (d) All items acquired that are not consumed through their use (e.g., linens, kitchen utensils, etc.) remain the property of the Government and are to be retained at the facility for future events of a similar nature.
- (e) The following acquisitions are not allowable, even in the event of a qualifying emergency:
  - (1) Food and beverages for non-employees (e.g., dependents of employees).
  - (2) Personal care items such as laundry detergent, shampoo, soap, deodorant, shaving crème, feminine hygiene products, infant care items (diapers, food, formula, wipes, etc.) for employees or non-employees.
  - (3) Personal entertainment products (e.g., magazines, alcoholic beverages, etc.).

Employees acquiring such prohibited items can be subject to both administrative action (revocation of acquisition authority) and disciplinary action and are personally liable for reimbursing the Government for the unallowable purchases.

- VI. Procedures – For actions not being purchased on purchase cards, the Line Offices shall prepare the Procurement Request in the C.Request system and contact the Head of the Contracting Office (HCO) to provide notification of the urgent need and the specifics regarding the Procurement Request in the system.

- VII. Purchase Card –

- (a) A cardholder's monthly billing cycle limit of \$10,000.00 may be temporarily increased. In order to obtain an increase, an approving official must submit a written justification to the agency program coordinator for an increase in the monthly billing cycle limit. The cardholder and the Approving Official must contact the NOAA Agency Program Coordinator. Contact information is provided below.
- (b) Single purchase limits cannot be increased unless the cardholder holds a FAC-C certification. If the cardholder is FAC-C certified, they should contact the NOAA Agency Program Coordinator for assistance in requesting an increase to the single purchase limit. Contact information is provided below.

#### VIII. Convenience Checks –

- (a) Convenience checks are intended only for use with merchants that do not accept purchase cards, for emergency incident response, and for other Agency approved purposes that comply with Public Law 104-134, the Debt Collection Improvement Act of 1996. Convenience checks should be used as a payment method of last resort, only when no reasonable alternative merchant is available who accepts the purchase card. Convenience checks shall not be used by individuals to write checks to themselves, or to any other individual for any of the following:
  - (1) Vendors who accept the purchase card;
  - (2) Cash advance or reimbursement purposes;
  - (3) Salary payment or cash awards;
  - (4) Employee reimbursements;
  - (5) Travel-related tickets or expenditures, including meals, lodging and rental of vehicles;
  - (6) Advance payment to vendors;
  - (7) Hazardous materials;
  - (8) Honorarium fee to a non-U.S. citizen or permanent resident alien not authorized to receive this payment in accordance with their visa;
  - (9) On-the-Spot awards; or
  - (10) Incentive awards to contractor or contract employees.
- (b) The convenience check policy is set forth in Commerce Acquisition Manual (CAM) 1313.301, Section 4, page 21, at [http://oam.ocs.doc.gov/docs/CAM%201313.301\\_Revised\\_January\\_2010%20-%20Final.pdf](http://oam.ocs.doc.gov/docs/CAM%201313.301_Revised_January_2010%20-%20Final.pdf)
- (c) The cardholders and Approving Official need to attempt to contact their NOAA Agency Program Coordinator initially. If they are unable to reach the NOAA Agency Program Coordinator, the Commerce Bankcard Center can be reached 24/7 to provide assistance. Contract information is as follows:

NOAA APC: Shannon McIlroy  
Phone Number: 206-526-6027  
Email: Shannon.C.Mcilroy@noaa.gov

NOAA APC: Carolyn Hedgpeth  
Phone Number: 303-497-6155

Email: Carolyn.Hedgpeth@noaa.gov

NOAA APC: Tracey Cureaux

Phone Number: 301-713-0833 x196

Email: Tracey.M.Cureaux@noaa.gov

CBC Toll Free: (800) 782-2233

The CBC can be contacted 24/7

IX. FPDS-NG Coding –

- (a) For acquisitions related to the Deepwater Horizon oil spill response, the actions should be reported in FPDS-NG by selecting the value “Gulf Oil Spill 0410” in the National Interest Action drop-down box.
- (b) The National Interest Action code is valid from April 25, 2010 to August 25, 2010.

Please note: This NIA Code should be used only to facilitate cost collection and reporting. Use of this NIA Code does not authorize or justify use of any Emergency Acquisition Flexibilities in FAR 18.2. However, the acquisition flexibilities described in FAR 18.1 may be available, as well as others in agency acquisition supplements, to support the Deepwater Horizon Oil Spill Response at this time.

In the event of an emergency, the Acquisition and Grants Office will inform the Incident Command Center of the appropriate acquisition contact to whom any questions can be referred. At all other times, guidance can be obtained through the Acquisition and Grants Office Policy Lead (Linda Shariati, 301-713-0833 x-145).