

June 26, 2003

PROCUREMENT MEMORANDUM 2003-02

INFORMATION

MEMORANDUM FOR HEADS OF CONTRACTING OFFICES

FROM: Michael S. Sade, Director Acquisition Management
and Procurement Executive

SUBJECT: Emergency Procurement Flexibilities

Many of us have wondered about the impact of contemporary world events and recent legislative changes on the rules governing federal acquisition.

The Office of Federal Procurement Policy (OFPP) has recently issued [authoritative guidance](#) on the subject. OFPP's guidance document entitled "[Emergency Procurement Flexibilities: A Framework for Responsive Contracting & Guidelines for Using Simplified Acquisition Procedures](#)" (attached), provides a clear and concise explanation of the various authorities available to federal agencies.

The document is divided into two parts. The first part, *A Framework for Responsive Contracting*, provides the general framework for "agile" contracting – also referred to as "responsive" or "emergency" contracting. It describes both the current flexibilities and the new ones authorized by the Homeland Security Act of 2002 (HSA), P.L. 107-296, to meet the demands associated with protecting our homeland. The second part, *Use of Simplified Acquisition Procedures*, focuses on the use of simplified acquisition procedures. HSA significantly expands application of simplified acquisition procedures and requires OFPP to issue guidance on their application to purchases over \$5 million.

The first part of the guidance makes clear that existing statutory authorities already provide executive agencies with a myriad of tools to gain efficient and effective access to the marketplace. Examples of such tools include:

- Simplified open market competitions for commercial items;
- Competition among pre-qualified sources (e.g., COMMITS);
- HUBZone small business contracts;
- Oral solicitations
- Letter contracts
- Limited source selections

- Innovative contracting

The HSA provides a temporary set of emergency procurement authorities to help agencies address the challenges related to the ongoing war against terrorism (as set forth in Title VIII, Subtitle F, of the HSA). Section 852 provides that they may be used for “the procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.” HSA authorities, which largely augment existing flexibilities, permit agencies to:

- Make expansive use of simplified acquisition procedures (see Section 855(b) of HSA);
- Waive certain accounting, compliance and other statutory requirements when purchasing non-commercial items;
- With appropriate management action, apply micro-purchase flexibilities to actions up to \$7,500;
- Apply flexibilities generally available only the \$100,000 simplified acquisition threshold, while simultaneously expanding application of the small business reservation, to contracts in support of a humanitarian, peacekeeping, or contingency operations in values up to \$200,000 if awarded and performed in the United States and \$300,000 if awarded and performed outside the U.S.
- Make awards to 8(a) and HUBZone small businesses on a sole-source basis in any amount when an agency elects to use the following exceptions to full and open competition: (i) only one responsible source, (ii) unusual and compelling urgency, (iii) ensuring national security is not compromised, or (iv) full and open competition not in the public interest.

HSA’s authorities apply to procurements where solicitations have been issued on or after January 24, 2003, but not later than November 24, 2003.

The document contains a Table (on page 7) with a summary of procurement flexibilities with augmented application to emergency procurements.

The second part provides guidance on use of these procedures, including acquisitions over \$5 million, as required by 855(b)(2) of the HSA. Guidance includes:

- Anticipating need for emergency situations whenever possible;
- Considering the abilities of small businesses and new entrants;
- Mitigating risk when circumstances limit or preclude planning and market research;
- Being sure the market can respond to the agency’s requirements.
- Giving a reasonable indication of what evaluation factors matter to the agency;

- Thinking about how best to ensure fair and reasonable pricing when competition cannot be used;
- Using firm fixed price contracts and fixed price contracts with economic price adjustment to the maximum extent practicable;
- Synopsizing actions and providing ready access to solicitations through FedbizOpps, unless an exception applies;
- Justifying and obtaining necessary management approvals for sole source procurements;
- Being concise, but clear, in documenting actions taken;
- Making sure documentation captures any unusual difficulties experienced with sole source acquisitions; and
- Recognizing the benefits – and challenges, of buying non-commercial items within a commercial items framework.

Please review OFPP's guidance carefully. Keeping the guidance available for ready reference will help us be better prepared in the case of an emergency.

Please refer any questions about this memorandum to Nancy Barrere at Nbarrere@doc.gov.

Attachment

cc: T. Pyke, DOC CIO
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