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Description of document: Federal Emergency Management Agency (FEMA)  
Acquisition Manual 2021

Requested date: 22-December-2021

Release date: 20-September-2022

Posted date: 05-December-2022

Source of document: FOIA Request  
Federal Emergency Management Agency  
FOIA Officer  
Disclosure Branch  
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**FEMA**

September 20, 2022

**SENT VIA E-MAIL TO**

**Re: FEMA FOIA Case Number 2022-FEFO-00211**

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), dated and received on December 22, 2022. You are seeking an electronic/digital copy of the FEMA Acquisition Manual. This was produced in June 2021, probably by the Office of the Chief Component Procurement Officer. Not asking for a copy of the DHS Manual.

A search was conducted of FEMA's Office of the Chief Procurement Officer (OCPO) for documents responsive to your request. The search produced a total of 121 pages, which are enclosed in full. The cut-off date for the search is December 22, 2021.

As part of the 2007 amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies.

You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road- OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770/Toll-free: 1-877-684-6448  
Facsimile: 202-741-5769

You have the right to appeal if you disagree with FEMA's response. The procedure for administrative appeals is outlined in the DHS regulations at 6 C.F.R. §5.8. In the event you wish to submit an appeal, we encourage you to both state the reason(s) you believe FEMA's initial determination on your FOIA request was erroneous in your correspondence, and include a copy of this letter with your appeal. Should you wish to do so, you must send your appeal within 90

2022-FEFO-00211

working days from the date of this letter to [fema-foia@fema.dhs.gov](mailto:fema-foia@fema.dhs.gov), or alternatively, via mail at the following address:

FEMA  
Office of the Chief Administrative Officer  
Information Management Division (FOIA Appeals)  
500 C Street, SW, Seventh Floor, Mail Stop 3172  
Washington, D.C. 20472-3172

There is no charge for this FOIA request. As this concludes the processing of your request, it will be closed.

If you need any further assistance or would like to discuss any aspect of your request, please contact the assigned FOIA Specialist at [juan.vegasandoval@fema.dhs.gov](mailto:juan.vegasandoval@fema.dhs.gov) and refer to FOIA case number 2022-FEFO-00211. You may also contact someone at [fema-foia@fema.dhs.gov](mailto:fema-foia@fema.dhs.gov), or (202) 646-3323, and you may contact our FOIA Public Liaison in the same manner. For a faster response please email the assigned FOIA specialist directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Bridges".

Greg Bridges  
Disclosure Branch Chief  
Information Management Division  
Office of the Chief Administrative Officer  
Federal Emergency Management Agency  
U.S. Department of Homeland Security

Enclosures: Responsive Records (121 Pages)

# Federal Emergency Management Agency Acquisition Manual (FAM)



Version 1.0  
June 2021

**FEMA Acquisition Manual (FAM)**

**RECORD OF CHANGES**

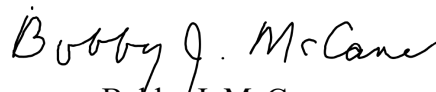
<b>FAM Notice Number, Version</b>	<b>DATE OF CHANGE</b>	<b>SUBCHAPTERS/PAGES AFFECTED BY CHANGE</b>

## FOREWORD

“Deliver Exceptional Results”

(excerpt taken from the memo “Deliver Exceptional Results” dated March 28, 2016)

*As you know, I am committed to quality contracting business practices that deliver exceptional results. The Department of Homeland Security (DHS), Office of the Chief Procurement Officer (OCPO) auditors, our FEMA financial auditors, as well as the Government Accountability Office (GAO) auditors have reviewed our contracting practices and found deficiencies in several areas, the specifics of which are detailed below. Your colleagues in the quality assurance section of our Office make every effort to ensure that we continue to follow Federal, Departmental, and internal regulations and guidance. The responsibilities and expectations outlined in the “Deliver Exceptional Results” memorandum should serve as a reminder to each of you; the requirements set forth in the Federal Acquisitions Regulations (FAR) and Homeland Security Acquisition Manual (HSAM). I would like to thank each of you for all that you do in support of the FEMA mission. Together we can deliver exceptional results.*

  
Bobby J. McCane

The Head of Contracting Activity, Chief Component Procurement Officer

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#### **Subpart 3X01.1 Purpose, Authority, Issuance**

#### **3X01.101 Purpose**

The Federal Emergency Management Agency Acquisition Manual (FAM) is issued by the Head of Contracting Activity (HCA). It establishes the FEMA component-wide acquisition procedures, which implement or supplement the Federal Acquisition Regulation (FAR), the Homeland Security Acquisition Regulation (HSAR), the Homeland Security Acquisition Manual (HSAM), and other DHS regulations and statutory requirements or policies. It is non-regulatory in nature and provides uniform procedures for the internal operation of acquiring supplies and services within the FEMA Office of the Chief Procurement Officer (OCPO). The FAM is not a stand-alone document and must be read in conjunction with the FAR, HSAR, and HSAM.

### **3X01.102 Statement of Guiding principles for the Federal Acquisition System**

FEMA Office of the Chief Procurement Officer (OCPO) must use sound judgement and be informed of all statutes, laws, regulations, Executive Orders, policies in the FAR, HSAR, HSAM, DHS Directives, and the FAM in order to create a world class acquisition system that delivers best value products or services to the customer.

### **3X01.104 Applicability**

(a) Pursuant to HSAR 3001.104, the following order of precedence applies:

- (1) Statute
- (2) FAR or other applicable Executive Order
- (3) HSAR
- (4) DHS Directives
- (5) HSAM
- (6) DHS Acquisition Alerts, and
- (7) FAM

If there are any inconsistencies between any of these documents, the contracting officer shall resolve the inconsistencies using this order of precedence.

### **3X01.105 Issuance**

#### **3X01.105.190 Publication of FAM**

(a) This manual is issued electronically and may be found on the Policy and Quality Control Branch (PQCB); Policies and Procedures web page. The FAM implements FEMA OCPO internal operating processes, policies, and procedures; and is not published as regulation. It replaces all previously issued Standard Operating Procedures (SOPs) and FEMA Acquisition Alerts.

#### **3X01.105.290 Arrangement of FAM**

(b) Numbering.

- (1) This manual conforms to the arrangement and numbering system prescribed by HSAM 3001.105-270. FAM addresses the specific paragraphs for which supplementation or implementation applies. For

example, this paragraph supplements HSAM 3001.105-270 (b) (1); therefore, the only paragraphs cited in the FAM are paragraphs (b) and (1).

(2) FAM coverage is identified by the prefix “3X” and followed by the complete FAM cite which may be down to the subparagraph level (e.g., FAM 3X01.105-3). (3) Coverage in the FAM that supplements the HSAM will use parts, subparts, section and subsection numbers ending in "90" through "99" (e.g., FAM 3X01.202-90).

(4) Coverage in the FAM, other than that identified with a "90" or higher number, that implements the HSAM or HSAR will use the identical number sequence and caption of the HSAM or HSAR segment being implemented which may be down to the subparagraph level (e.g., FAM 3X01.105-3(a)).

(c) References and citations. This manual may be referred to as the Federal Emergency Management Agency Acquisition Manual or the FAM. Cross references to the HSAR or HSAM in this manual will be cited by "HSAR", or "HSAM" followed by its numbered cite. As an electronic document, the FAM contains many links (identified in blueprint) to the word or term referenced in the text.

### **3X01.105-3 Copies**

(a) The FAM is issued electronically, and a loose-leaf version may be downloaded at OCPO Policies and Directives. No hardcopy distribution will be made.

### **Subpart 3X01.2 Administration**

#### **3X01.202-90 Component Compliance with the FAM**

Questions pertaining to the FAM shall be directed to the Policy and Quality Control Branch (PQCB) where the appropriate Policy personnel will be identified to field and respond to matters concerning the FAM.

### **Subpart 3X01.3 FEMA Acquisition Manual**

#### **3X01.301 Policy**

- (a) The FAM is a supplement to the HSAR, HSAM, and other DHS and FEMA Directives that may further implement those policies, procedures, and tools in support of FEMA's contracting processes. The FEMA Office of the Chief Component Procurement Officer (FEMA OCPO), as the Head of the Contracting Activity (HCA) shall provide for these activities.
- (b) HSAM 3001.301(a) (ii) states that the HCA retains authorities for delegations to the Chief of the Contracting Office (COCO). Unless otherwise directed by the HCA, duties necessary to support the COCO authorities enumerated within this FAM that are not limited by the FAR, HSAR, HSAM, are identified in [FAM Appendix A: Chief of the Contracting Office \(COCO\) Delegated Responsibilities](#).

#### **3X01.301-90 Amendment of FAM**

(a) Suggestions from DHS and/or FEMA personnel may result in FAM changes.

(b) FEMA's OCPO Acquisition Programs and Policy Division (APPD), and Policy and Quality Control Branch (PQCB) are responsible for coordinating and publishing changes to the FAM. Changes to the FAM will be made by issuance of a FAM Change Notice (FCN) or by Administrative changes summarized in period updates as approved by the OCPO.

### **3X01.301-91 Effective Date of FAM**

(a) Published changes to the FAM by issuance of FCNs apply to solicitations issued on or after the effective date of this manual. After the issuance of the FAM, any new or revised procedures or forms shall be used when issuing solicitations, contracts, or modifications thereafter;

(b) Contracting officers may, at their discretion, amend solicitations issued before the effective date of the FAM to include FCNs provided that award of the resulting contract(s) will occur on or after the effective date; and

(c) Contracting officers shall modify existing contracts, orders, Blanket Purchase Agreements (BPAs), and Basic Ordering Agreements (BOAs) to comply with changes required by statute, law, or regulation; including those changes outlined in the HSAR, within the timeframe identified by the change. If no timeframe is addressed in the statute, law, or regulation, the timeframe should be within 60 days of notification.

### **3X01.303 Publication**

To the maximum extent possible, all text in the FAM is numbered to align with the FAR or HSAR numbering convention. The convention uses the same numbers as the FAR or HSAM counterpart preceded by the prefix "3X." Subsection numbering of -90 or S-90 and greater is reserved for information pertaining to specific FEMA guidance.

### **3X01.304 Agency control and compliance procedures**

(a) FEMA PQCB maintains the approved plan for the FAM. In case of conflict or inconsistency, the following takes precedence:

- (1) Federal Acquisition Regulation (FAR);
- (2) Homeland Security Acquisition Regulation (HSAR);
- (3) Homeland Security Acquisition Manual (HSAM).

(b) Review and Approval of Local clauses. Clauses developed as a result of negotiations, or that fulfill a specific and unique requirement that do not constitute a Deviation from the FAR, HSAR, HSAM nor require approval from DHS CPO, are to be submitted before incorporation into contract(s) to: PQCB Quality Review section at: [fema-ocpo-qualityreview@fema.dhs.gov](mailto:fema-ocpo-qualityreview@fema.dhs.gov) for review by OCC and recommendation for approval by the HCA. Local Clauses must be approved by DHS if a Component decides to establish one.

(c) Proposed new repetitive use or "substantially the same as" local clauses shall be reviewed by the PQCB prior to use. Review will determine essentiality and ensure that the new circumstances for use of the clauses are

appropriate. These are clauses which are not deviations and do not require HCA approval. PQCB will seek advice from OCC on the proposed clause, and final approval by the HCA.

(d) Clause Numbering.

- (1) All clauses included in agency supplements must adhere to the numbering and identification requirements of FAR Subpart 52.1, as supplemented by HSAR 3052.1.
- (2) One-time clauses do not have to be numbered but must be identified in accordance with FAR 52.103 by title, date, and name of the office that developed them.
- (3) All clauses included in solicitations, whether included in a supplement or not, must be identified as required by FAR 52.103.

**Subpart 3X01.4 Deviations**

**3X01.403-90 Individual deviations from the FAR, HSAR, HSAM, and FAM**

(a) Pursuant to FAR 1.403, HSAR 3001.403 and HSAM 3001.403(a), Individual Deviations from the FAR, HSAR, and HSAM, the HCA is authorized to grant individual deviations unless an exception applies. Contracting officers shall follow the individual deviation policies and procedures in the HSAR and HSAM and provide evidence of legal coordination prior to submission to the HCA for approval. Deviation requests must be routed through the PQCB Branch before submission to the HCA for endorsement.

(b) Individual deviations from the FAM shall:

- (1) Cite the specific part of the FAM;
- (2) State the nature of the deviation;
- (3) State the impact of the deviation; and
- (4) Explain the reason(s) why one is needed.

Individual deviations from the FAM do not require legal review and must be routed to the PQCB Branch prior to requesting approval from the HCA.

**3X01.404-90 Class Deviations**

(a) Pursuant to HSAR 3001.404(a) and HSAM 3001.404(a), Class Deviations, the FAR, HSAR, and HSAM require the endorsement by the HCA before submitting the request through the DHS OCPO, Director, Policy and Acquisition Workforce for approval by the CPO/DCPO. Contracting officers shall follow the policies and procedures for class deviations in HSAM 3001.404 and use the format described at HSAM 3001.403. Evidence of coordination with legal shall be submitted with the Class Deviation request must be routed through the PQCB Branch before submission to the HCA for endorsement.

(b) Class Deviations from the FAM shall:

- (1) Cite the specific part of the FAM;
- (2) State the nature of the deviation;
- (3) State the impact of the deviation; and
- (4) Explain the reason(s) why one is needed.

Class deviations from the FAM do not require legal review and must be routed to the PQCB Branch prior to requesting approval by the HCA.

## **Subpart 3X01.6 Career Development, Contracting Authority, and Responsibilities**

### **3X01.601 General**

(a) Contract Specialists and Contracting Officers shall follow the Federal Acquisition Certification in Contracting (FAC-C) Program policy procedures, which can be found by following the link below:

[http://dhsconnect.dhs.gov/org/comp/mgmt/ocpo/TrainingCareerDev/CertificationPrograms/FAC-C/PolicyDocs/DHS%20FAC-C%20Policy%20064-04-002%20Rev.%2001-%20FINAL%20Signed%20\(01-30-15\)KM.pdf](http://dhsconnect.dhs.gov/org/comp/mgmt/ocpo/TrainingCareerDev/CertificationPrograms/FAC-C/PolicyDocs/DHS%20FAC-C%20Policy%20064-04-002%20Rev.%2001-%20FINAL%20Signed%20(01-30-15)KM.pdf)

(b) FEMA acquisition personnel shall address all questions regarding the Federal Acquisition Certification in Contracting to the FEMA Acquisition Career Manager at [ocpo-trainingofficer@fema.dhs.gov](mailto:ocpo-trainingofficer@fema.dhs.gov).

### **3X01.602-3 Ratification of unauthorized commitments**

(b)(2) The Chief of the Contracting Office (COCO), or designee, is the OCPO ratifying official for unauthorized commitments (UAC) above the micro-purchase threshold (MPT).

#### **3X01.602-3-90 OCPO Procedures for ratification of unauthorized commitments**

(a) Definitions.

- (1) "Ratifying official" means the individual having the authority to authorize the issuance of a contract award, purchase order, or other procurement instrument providing for the ratification of an unauthorized commitment.
- (2) "Unauthorized commitment", as defined in FAR 1.602-3, includes, but is not limited to, any action by a person other than the contracting officer that results in: (i) continued performance by a contractor beyond the expiration date or the price established by the procurement instrument; or (ii) the commencement of performance of work in advance of issuance of a formal procurement instrument properly executed by a duly authorized contracting officer.

(b) The OCPO Branch Chiefs may ratify actions for unauthorized commitments up to the micro-purchase threshold.

(c) The guidance for requesting, submitting, and approving the ratification of unauthorized commitments is outlined in FEMA Directive No. 093-2 Ratifying Unauthorized Commitment and is as follows:

- (1) The individual responsible for the unauthorized commitment (or an individual in the same Branch) prepares a statement of all pertinent facts of the transaction, attaching all relevant documents. The statement indicates if the goods or services have been accepted or explain how the Government derived benefit from the unauthorized commitment outlined in FEMA Directive No. 093-2, Ratifying Unauthorized Commitment.
- (2) The contracting officer shall review the statement for accuracy and completeness and to ensure compliance with the FAR, HSAR, and HSAM.
- (3) Contracting officers shall complete the Request for Ratification of Unauthorized Commitment and the Memorandum of Facts and Circumstances templates outlined in FEMA Directive No. 093-2 Ratifying Unauthorized Commitment and submit all ratification actions for review in accordance with this Directive No. 093.
- (4) The contracting officer shall ensure that the contract file contains the appropriate documentation in accordance with HSAM 3001.602-3.

**[RESERVED]**



**[RESERVED]**

<b>CHAPTER</b>	<b>3X04</b>	<b>ADMINISTRATIVE MATTERS</b>
<b>Subpart</b>	<b>3X04.1</b>	<b>Contract Execution</b>
	3X04.101	Contracting Officer's signature
	3X04.101-70	Reserved.
<b>Subpart</b>	<b>3X04.2</b>	<b>Contract Distribution</b>
	3X04.202	Agency distribution requirements
<b>Subpart</b>	<b>3X04.4</b>	<b>Safeguarding Classified Information Within Industry</b>
	3X04.403	Responsibilities of contracting officers
	3X04.470	Security requirements for contractor access to unclassified facilities, IT resources, and sensitive information
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<b>Subpart</b>	<b>3X04.5</b>	<b>Electronic Commerce in Contracting</b>
	3X05.502	Policy
	3X05.502-70	Acquisition -related Systems
	3X05.502-91	Measuring and Reporting Cost Savings in PRISM
<b>Subpart</b>	<b>3X04.6</b>	<b>Contract Reporting</b>
	3X04.603	Policy
	3X04.604	Responsibilities
	3X04.605	Procedures
	3X04.606	Reporting data
	3X04.670	Acquisition related reporting requirement
<b>Subpart</b>	<b>3X04.8</b>	<b>Government Contract Files</b>
	3X04.801	General
	3X04.803-70	Contents of contract files
	3X04.804	Closeout of Contract files
	3X04.804-1	Closeout by the office administering the contract
	3X04.804-5	Procedures for closing out contract files
<b>Subpart</b>	<b>3X04.10</b>	<b>Contract Line Number (CLIN)</b>
	3X04.1001-90	Policy
<b>Subpart</b>	<b>3X04.13</b>	<b>Personal Identity Verification</b>
	3X03.1301	Policy
<b>Subpart</b>	<b>3X04.70</b>	<b>Review and Approval of Proposed Contract Actions</b>
	3X04.7000-90	Scope
	3X04.7002-90	Component internal review and approval procedures
	3X04.7003-90	Legal reviews

	3X04.7004-90	Office of the Chief Procurement Officer (OCPO) review and approval
	3X04.7005	Periodic Compliance Reviews
<b>Subpart</b>	<b>3X04.71</b>	<b>Contents of Procurement request Package</b>
	3X04.7101-90	Documentation Requirements

## **Subpart 3X04.1 Contract Execution**

### **3X04.101 Contracting Officer's signature**

#### **3X04.101-70 Contract execution in contract writing systems.**

## **Subpart 3X04.2 Contract Distribution**

### **3X04.202 Agency Distribution**

Award documents shall be distributed by all parties. Timely distribution enhances the delivery, receipt, and acceptance of supplies and services, and facilitates the processing of accurate and timely payments.

## **Subpart 3X04.4 Safeguarding Classified Information Within Industry**

### **3X04.403 Responsibilities of contracting officer**

(a) Contracting Officers shall engage with the FEMA Chief Information Officer (CIO), FEMA Chief Security Officer (CSO) and the FEMA Privacy Officer during the acquisition planning phase in accordance with FAR Part 7: Acquisition Planning.

HSAM 3004.4 provides guidance, procedures and responsibilities for safeguarding sensitive information during contract performance by a contractor or any of its employees. The [FAM Safeguarding of Sensitive Information Procedures Guide](#) provides FEMA guidance on Privacy and Information Security in Contracting.

### **3X04.470 Security requirements for contractor access to unclassified facilities, IT resources, and sensitive information**

(b) HSAM 3004.470, Security requirements for contractor access to unclassified facilities, IT resources, and sensitive information, requires completion of the **HSAM Appendix G - Checklist for Sensitive Information** for **all** acquisitions, including assisted acquisitions, regardless of dollar value. The Appendix G checklist is typically submitted electronically and concurrently for review. Because review time frames may vary, multiple signature pages of the Appendix G checklist from each reviewing office is acceptable. The reviewing offices for review are:

- (1) FEMA Chief Information Officer (CIO) and Chief Information Security Officer (CISO): [FEMA-ActionOffice-MS-OCIO@fema.dhs.gov](mailto:FEMA-ActionOffice-MS-OCIO@fema.dhs.gov)
- (2) FEMA Chief Security Officer (CSO): [FEMA-ActionOffice-MS-OCSO@fema.dhs.gov](mailto:FEMA-ActionOffice-MS-OCSO@fema.dhs.gov)
- (3) FEMA Privacy Officer: [FEMA-Privacy@fema.dhs.gov](mailto:FEMA-Privacy@fema.dhs.gov)

(4) **(When applicable)** TSA Sensitive Security Information (SSI) Program Office when contractor employees will have to access SSI. As the Department-wide SSI Program Office, TSA must review all SSI requirements. The TSA SSI Program Office can be contacted at [SSI@HQ.DHS.gov](mailto:SSI@HQ.DHS.gov) ; and

(5) **(When applicable)** Cybersecurity and Infrastructure Security Agency (CISA) Chemical-terrorism Vulnerability Information (CVI) Program Office when contractor employees will have access to CVI. As the Department-wide CVI Program Office, CISA must review all CVI requirements. The CISA CVI Program Office can be contacted at [ISCDExcSec@cisa.dhs.gov](mailto:ISCDExcSec@cisa.dhs.gov) ;

(a) If it is not clear to the requiring official if the contractor will have access to sensitive information and/or if contractor information systems will be used to input, store, process, output, and/or transmit sensitive information, the requiring official shall at a minimum consult with the FEMA CIO, CSO, and Privacy Officer.

(b) In order to effectively and efficiently review and approve the Appendix G, the FEMA Head of Contracting Activity (HCA) has delegated authority for Appendix G signature to the Contracting Officer with the limitation that the answers to Section A, Sensitive Information and Access Requirements, subsections 1, 2 , and 3 are all considered “No”. If any answer is “Yes”, the Appendix G must be sent to the Chief of the Contracting Office (COCO) for signature.

### **3X04.470-1 Responsibilities**

(d) If any incorporated language or clause requires training, documentation, or certification from the contractor; the Contracting Officer is responsible for ensuring that these requirements are listed as deliverables in the contract and that the Contracting Officer Representative (COR) monitoring the contract:

- (1) is aware of the contract requirement and understands their responsibility in submitting the required documentation in order to ensure contract compliance;
- (2) submits each deliverable in accordance with the incorporated clause in the contract;
- (3) adheres to the contract compliance and contract monitoring requirements outlined in the provisions and clauses incorporated in the contract

All required documentation shall be certified as compliant by the Contracting Officer.

## **Subpart 3X04.5 Electronic Commerce in Contracting**

### **Subpart 3X04.502 Policy**

The FEMA OCPO **Records and Information Management Branch (RIMD)** is delegated responsibility for providing policy, guidance, and training for the PRISM Contract Management System. Branch Chiefs are responsible for ensuring that contracting personnel obtain the appropriate training.

### **Subpart 3X04.502-90 Acquisition Related Systems – PRISM Contract Management System**

(a) All procurement actions shall be entered into the PRISM contract management system. These actions include PRs, purchase card orders over the micro-purchase threshold for customers outside of OCPO, purchase orders, contracts, task/delivery orders against DHS contracts, Multi-agency Contracts (MACs), Government-

wide Acquisition Contracts (GWACs), Federal Supply Schedules (FSS), call orders against BPAs, interagency agreements, and all modifications, including administrative modifications. Exceptions to this policy:

- (1) OCPO purchase card orders, not exceeding the micro-purchase threshold;
- (2) Use of the advance procurement planning module in PRISM;
- (3) Use of the invoice module in PRISM;
- (4) Use of the receiving and acceptance module in PRISM;
- (5) Use of the past performance module in PRISM; and
- (6) The final DD254 form.

(b) Roles and Responsibilities:

- (1) *Program Offices shall:* Program offices budget personnel enter in their requirements and commitments into ECAPS. All acquisition package documentation is uploaded in ECAPS and through the route and approval process within the system, the funds are automatically transferred into the financial system where they are committed, an export file is then created and sent to PRISM in the form of a PR. All acquisition package documentation must be manually extracted by the CS/CO from ECAPS.
- (2) *Designated Payment Offices shall:* Use PRISM to determine the current contracting officer and COR for contracts and orders to facilitate the timely processing of invoices.
- (3) *OCPO contracting officers shall:*
  - (i) Accept PRs submitted and approved in PRISM. Paper PRs will not be accepted from offices that are not established as requisitioners in PRISM;
  - (ii) Execute all contracts and contract modifications in PRISM;
  - (iii) Report the award of the aforementioned actions by completing the Federal Procurement Data System (FPDS-NG) data requirements when applicable and release the document (and upload all signed awards); and
  - (iv) Release all contract documents in PRISM, in accordance with HSAM3004.101-70.

(c) System Documentation Requirements

- (1) Contract related documentation generated from PRISM should be filed in accordance with FAR 4.8, Government Contract Files, and include the latest electronic contract file checklists version (also see the **FAM Review and Approval of Procurement Actions Procedures Guide**).
- (2) All personnel utilizing PRISM will be trained prior to obtaining a user account. When assistance is needed by the user, the FEMA PRISM Help Desk may be contacted via email at [fema-prism-helpdesk@fema.dhs.gov](mailto:fema-prism-helpdesk@fema.dhs.gov).

## **3X04.502-91 Measuring and Reporting Cost Savings in PRISM**

(a) The Office of Management and Budget (OMB) Memorandum M-09-25, Improving Government Acquisition established a policy requiring agencies to develop an acquisition savings plan as one means of improving Government acquisitions.

(b) Contracting officers are required to record cost savings in PRISM (with the Hard Cost Savings Field), and the Price Negotiation Memorandum (PNM), as applicable. The recording of cost savings in PRISM is mandatory. Option period savings are to be reported *only* when the options are exercised. Reporting applies to all contract awards, BPAs, task/delivery orders, purchase orders, BPA call awards, and modifications, but does not apply to interagency agreements.

The RIMB Reports Team can develop a report with the [**Hard Cost Savings Field**] being confirmed to be in PRISM. This would require Contracting Officers to populate the field, then a report can be generated to extract the data to provide a cost savings report. (c)The OCPO RIMD shall run a quarterly Cost Saving PRISM Report and post it to the Electronic Procurement Information Center (EPIC).

## **Subpart 3X04.6 Contract Reporting**

### **3X04.603 Policy**

Contracting officers and contract specialists shall report all unclassified contract actions using appropriated funds as specified in FAR Subpart 4.6. Contracting officers and contract specialists shall access FPDS-NG through PRISM.

### **3X04.604 Responsibilities**

In accordance with FAR 4.604 Responsibilities:

(1) The Senior Procurement Executive in coordination with the Head of the Contracting Activity is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS. (b)(1) The responsibility for the completion and accuracy of the individual contract action report (CAR) resides with the contracting officer who awarded the contract action. CARs in a draft or error status in FPDS are not considered complete.

(2) The CAR must be confirmed for accuracy by the contracting officer prior to release of the contract award. The CAR must then be completed in FPDS within three business days after contract award.

### **3X04.605 Procedures**

### **3X04.670 Acquisition related reporting requirements**

The Chief of Contracting Office (COCO) is responsible for ensuring that each report found in **HSAM Appendix B** is submitted to the required location by the date. Additionally, Contracting Officers are responsible for adhering to 1102 reporting requirements found in **FAM Appendix E: 1102 Reporting Requirements**.

## **Subpart 3X04.8 Government Contract Files**

### **3X04.801 General**

The HCA retains responsibility as the head of each office performing contracting and contract administration functions.

### **3X04.803-90 Contents of Contract Files**

As part of the Paperwork Reduction Act, DHS established Electronic Contract Filing System (ECFS) to reduce the paperwork burden and improve the procurement efficiency through the use of virtual contract filing system to store and manage the contract file documents. The Contract File Room is the primary location to maintain hard copy files prior to the launch of the ECFS and until those files have reached the end of their POP, closed out, and proper disposition of the files has been completed. The FEMA OCPO **Records and Information Management Branch (RIMD)** is responsible for establishing the policies and procedures as it relates to the daily operations for the ECFS and the File Room Records Management and Responsibilities.

The [ECFS and File Room Records Management and Responsibilities](#) can be found in the Guide section of this manual. The ECFS POC is: FEMA-OCPO-ECFS-HELPDESK, [fema-ocpo-ecfs-helpdesk@fema.dhs.gov](mailto:fema-ocpo-ecfs-helpdesk@fema.dhs.gov)

Contracting officers shall document each contract, task or delivery order, and interagency agreements file using the appropriate following contract file checklists.

[ECFS Basic Ordering Agreement \(BOA\) Checklist](#)  
[ECFS Blanket Purchase Agreement \(BPA\) Checklist](#)  
[ECFS Contract Checklist](#)  
[ECFS Delivery/Task Order Checklist](#)  
[ECFS Grants Checklist](#)  
[ECFS IGSA Checklist](#)  
[ECFS IGSA Checklist included Modifications](#)  
[ECFS Inter/Intra Agency Agreement \(IAA\) Checklist](#)  
[ECFS Simplified Acquisition Procedures \(SAP\) Checklist](#)

For Disaster acquisitions, the Contracting Officer shall ensure the Disaster Contract File Verification Toolkit checklist is also included in the file.

[Disaster Contract File Verification Toolkit Checklist](#)

The checklists are also located in the checklist tab for this manual.

(a) In addition to the examples listed at FAR 4.803, the contract file shall also include:

- (1) Individual source selection evaluators' rating sheets if they meet the following two-part test: pursuant to 36 C.F.R.122.12(c), Creation and Maintenance of Federal Records, Section 1222.12, "What types of documentary materials are Federal records?"
  - (i) They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and
  - (ii) They contain unique information, such as substantive annotations or comments that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions,

actions, or responsibilities.

(2) Individual notes and drafts may be excluded from the administrative record as long as they are not formal, concrete steps in the evaluation process, and were not circulated for official purposes such as approval, comment, and/or action by any member of the source selection team.

### **3X04.804-90 Closeout of contract files.**

#### **3X04.804-170-90 Closeout by the office administering the contract**

The Acquisition Operations Division, Expeditionary Branch, Community and Survivor Assistance and Contract Closeout Unit is responsible for managing and providing guidance and procedures related to closing out contract files.

#### **Subpart 3X04.804-5-90 Procedures for closing out contract files**

FEMA acquisition personnel shall follow the closeout procedures contained in FAR 4.8, HSAM 3004.8, and the Contract Closeout Guide located at Acquisition Operations Division, Disaster and Field Operations, Expeditionary Branch, Closeout Sections collaboration page located at:

<https://intranet.fema.net/org/ms/ocpo/collab/Operations/DFO/Exp/Closeout> (USER MUST REQUEST ACCESS)

#### **Subpart 3X04.10 Contract Line Item Number**

##### **3X04.1001-90 Policy**

(a) Pursuant to FAR 4.1001, the proper structuring of Contract Line Item Numbers (CLINs) and Subline Item Numbers (SLINs) enables Government and contractor personnel to track the various deliverables and tasks throughout the acquisition process with greater accuracy and visibility and makes contract administration more efficient and effective.

(b) Contracting officers and contract specialists shall use CLINs as an administrative technique, to identify within a single contractual document or solicitation, multiple items/supplies and/or services that have discrete characteristics, such as different prices, descriptions, delivery schedules or performance periods, funding, contract types, and to identify accounting classification citations. Contracting officers and contract specialists are encouraged to follow the examples in the [FAM Contract Line Item Number \(CLIN\) Structure Guide](#) to create CLINs and SLINs.

#### **Subchapter 3X04.13 Personal Identity Verification**

##### **Subchapter 3X04.1301-90 Policy**

In accordance with HSAM 3004.13 Contracting officers and Program Offices shall collaborate with the FEMA Office of the Chief Security Officer (OCSO), Personnel Security Division (PSD) to determine if contractors require access to unclassified information, materials, and/or sensitive information; Federal information technology systems; and/or require recurring or routine physical access to Federally-controlled facilities.

##### **3X04.7003 Legal Review**

#### **Subpart 3X04.70 Review and Approval of Proposed Contract Actions**



### **3X04.7000-90 Scope**

(a) This subparagraph establishes the FEMA OCPO review and approval requirements pursuant to HSAM 3004.7002 for the following contract actions when the value of the acquisition (inclusive of options) exceeds the simplified acquisition threshold as follows (below the SAT, streamlined processes for contract actions are required):

- (1) Acquisition Plans;
- (2) Proposed solicitations, contracts, out of scope contract modifications, BPAs, and BOAs issued and awarded pursuant to Federal Acquisition Regulation (FAR) Parts 8.4, 12, 13.5, 14, 15 or 16;
- (3) Letter contracts in accordance with HSAM Subchapter 3016.603;
- (4) Proposed Intra-/Inter-agency agreements;
- (5) Pre-negotiation objectives and the documentation of negotiation for actions using FAR Part 15;
- (6) Justifications; and
- (7) Determinations.

### **3X04.7002-90 Component internal review and approval procedures**

(a) FEMA OCPO shall comply with HSAM 3004.70 Review and Approval of Proposed Contract Actions to ensure that the contracting officer has complied with applicable acquisition statutes, regulations, policies, and procedures, the CO has followed sound business practices; and that the contents of the contract file comply with FAR 4.803. The PQCB is responsible for developing and maintaining policies and procedures on review and approval requirements, oversight policies and processes, and contract review processes. Review and approval procedures for procurement actions are located in the [FAM Review and Approval of Procurement Actions Procedures Guide](#).

(1) *Compliance review procedures.* The Contracting officer is responsible for submission of procurement actions for compliance reviews. *Submission of Documents.* All contract files for internal review shall be routed through the Electronic Contract Filing System (ECFS) using the applicable electronic file checklist outlined in subpart **3X04.803-90 Contents of Contract Files** and the **FAM Review and Approval of Procurement Actions Procedures Guide**

(2) *Procurement Strategy Roadmap (PSR) procedures.* See HSAM 3007.102-7001 and the FEMA specific guidance in the **FAM Review and Approval of Procurement Actions Procedures Guide Part II**.

(b) Review and approval requirements are contained in the **FAM Review and Approval of Procurement Actions Procedures Guide** and the **Guide's Review and Approval Matrix, Part I Attachment 1**. Actions identified in this list must be submitted to PQCB, Quality Review Section for review and provided in electronic copy to [fema-ocpo-qualityreview@fema.dhs.gov](mailto:fema-ocpo-qualityreview@fema.dhs.gov).

(1) Reviews, comments, approvals, and resolution of comments shall be documented in writing and maintained in the contract file pursuant to HSAM 3004.7002.

### **3X04.7003-90 Legal Reviews**

Legal review requirements are contained in the FAM Review and Approval of Procurement Actions Procedures Guide and the Guide's Review and Approval Matrix, Attachment 1 (for exceptions, see HSAM 3004.7003(b)).

### **3X04.7004-90 Office of the Chief Procurement Officer (OCPO) review and approval**

As required by HSAM Subchapters 3004.7002 and 3004.7003, FEMA OCPO Branch Chiefs shall obtain all necessary reviews and approvals of acquisition documents prior to transmittal to DHS OCPO, including documentation of review and resolution of comments.

### **3X04.7005-90 Periodic compliance reviews**

The FEMA OCPO Policy & Control Branch, Quality Review Section will conduct quarterly post award Quality Assurance Reviews (QARs) of files regardless of dollar value in accordance with Business Operating Procedure (BOP) No. 116 and in support of OMB Circular A-123 Management's Responsibility for Internal Control, Guidelines for Accessing the Acquisition Function.

### **Subpart 3X04.71 Contents of a Procurement Request Package**

#### **3X04.7101-90 Documentation requirements.**

The Acquisition Program and Policy Branch, Acquisition Management Branch, Portfolio Management Section (PfMS) assists in preparing acquisition package documents. The Acquisition Portfolio Manager (PfM) should be contacted early in the procurement development process. Additional information can be found on the [Portfolio Management Section](https://intranet.fema.net/org/ms/ocpo/appd/CS/amb/pfm/Pages/default.aspx) home page on the Acquisition Program and Policy Division intranet site: <https://intranet.fema.net/org/ms/ocpo/appd/CS/amb/pfm/Pages/default.aspx>

(9) In accordance with DHS Management Directive (MD) 0007.1, Information Technology Integration and Management, FEMA CIO is responsible for reviewing and approving IT purchases under \$2.5 million. IT purchases of \$2.5 million or over must be approved by the FEMA OCIO and DHS OCIO. CO's should not process an IT acquisition action that have not been approved by the FEMA OCIO and return the acquisition package to the program office to obtain the required approvals.

<b>CHAPTER</b>	<b>3X05</b>	<b>PUBLICIZING CONTRACT ACTIONS</b>
<b>Subpart</b>	<b>3X05.3</b> 3X05.303-790	<b>Synopsis of Contract Awards</b> Congressional Notification and contract actions
<b>Subpart</b>	<b>3X05.4</b> 3X05.403 3X05.404 3X05.404-90 3X05.470-90	<b>Release of Information</b> Requests from Members of Congress Release of long-range acquisition estimates Release Procedures Freedom of Information Act (FOIA) and Press Releases
<b>Subpart</b>	<b>3X05</b> 3X05.303.790	<b>Synopsis of Contract Awards</b> Congressional Notification and contract actions

#### **Subpart 3X05.3 Synopsis of Contract Awards**

(a) Contracting officers or other officials designated by the FEMA OCPO (OCPO) shall prepare and electronically submit the Congressional notification via the Enterprise Reporting Application (ERA) at: <http://ocpo-sp.dhs.gov/sites/era/Pages/Congressional-Notifications.aspx> at least five (5) full business days prior to the anticipated award or notice of award in accordance with HASM 3005.303-70.

(b) Contracting officers are reminded that the \$1 million threshold is calculated based on the total value of the contract inclusive of all options even if the options will be funded at a later date.

(1) The form must be routed to the Policy & Quality Control Branch (PQCB) at [fema-ocpo-congressionalnotification@fema.dhs.gov](mailto:fema-ocpo-congressionalnotification@fema.dhs.gov); through the assigned FEMA OCPO Section and Branch Chief identified by the Contracting officer for review and approval prior to submission to the DHS CPO.

(2) When all approvers identified by the contracting officer have approved the form, the tool will automatically transfer the notification to the DHS, Chief Procurement Office (CPO) for review and approval.

(3) The form shall be submitted to the DHS CPO at least five business days (after FEMA OCPO internal coordination as required) in advance of award. The DHS CPO will designate an award date in the tool which will be transmitted by email and viewable in the tool after they have transmitted the notification to Congress. The contracting officer shall not proceed with award until after he/she receives confirmation from DHS, CPO.

(c) All congressional notification and deferrals shall be coordinated with the PQCB Quality Review Section for approval from the DHS Chief Procurement Officer (CPO) or Deputy Chief Procurement Officer (DCPO).

(1) The **DHS Congressional Notification Deferral Job Aid** as well as the **Congressional Notification Summaries Job Aid** is available under ‘Reference Documents’ at this [link](#).

(2) The electronic Congressional notification (CN) form for deferrals must be completed within ERA, concurrent with contract award, and will require the contracting officer to upload the approved

DCPO/CPO deferral document. Additionally, for Class CN, the electronic CN form must include a list of contracts awarded under a Class CN deferral by noon Friday.

## **Subpart 3X05.4 Release of Information**

### **3X05.470-90 Press Releases**

OCPO's Freedom of Information Act (FOIA) POC is the Acquisition Program and Policy Division (APPD), Business Relations Branch, Industry Liaison Section.

(a) COs shall insert the following language in all new solicitations and awards:

#### ***Advertisements, Publicizing Awards, and News Releases***

*All press releases or announcements about agency programs, projects, and contract awards need to be cleared by the FEMA CO. Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity news release or commercial advertising without first obtaining explicit written consent to do so from the CO. The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or considered to be superior to other products or services.*

(b) All Contractor press releases submitted for approval must first be submitted to the CO consistent with the HSAR 3005.470-1(b), regardless of how or where the request is received within FEMA. If the request is sent to anyone other than the CO, the contractor should be instructed to submit the request to the CO. After the contractor request is received by the CO:

- (1) CO acknowledges receipt of the press release request to the contractor, advising the contractor that there is an approval process in place.
- (2) CO advises the contractor that if the press release is approved, the CO reserves the right to make edits.
- (3) CO emails the request for press release form (3X04 Attachment 1 at the end of this chapter also located in the FORMS section) through their respective leadership chain directly to the FEMA HCA and Deputy HCA for approval. Either the Deputy or HCA will review and/or provide comments and/or approval for the CO prior to initiating step 4.
- (4) CO routes the request for press release to [FEMA-ActionOffice-MS-OCPO@fema.dhs.gov](mailto:FEMA-ActionOffice-MS-OCPO@fema.dhs.gov) for approval.
- (5) [FEMA-ActionOffice-MS-OCPO@fema.dhs.gov](mailto:FEMA-ActionOffice-MS-OCPO@fema.dhs.gov) routes to FEMA Office of External Affairs's Strategic Communications POC for approval.
- (6) FEMA Office of External Affairs's Strategic Communications POC notifies [FEMA-ActionOffice-MS-OCPO@fema.dhs.gov](mailto:FEMA-ActionOffice-MS-OCPO@fema.dhs.gov) of their approval or request edits, if needed.
- (7) Once approved by the FEMA Office of External Affairs's Strategic Communications POC, [FEMA-ActionOffice-MS-OCPO@fema.dhs.gov](mailto:FEMA-ActionOffice-MS-OCPO@fema.dhs.gov) sends an email to the following individuals with

an approved copy of the press release advising that the CO should notify the contractor of the approval: HCA/DHCA, OCC, External Affairs, and CO.

(8) The CO will incorporate any applicable edits in the press release and notify the contractor of approval. The CO should advise the contractor that edits have been made and that the release must comply with the FEMA revisions.

#### **Subpart 3X05.404 Release of long-range acquisition estimates**

##### **3X05.404-90 Release Procedures.**

(c) [The Acquisition Planning Forecast System \(APFS\)](#) provides the annual FEMA procurement forecast (See FAM 3X07.172)

<b>CHAPTER</b>	<b>3X06</b>	<b>COMPETITION REQUIREMENTS</b>
<b>Subpart</b>	<b>3X06.3</b>	<b>Other than Full and Open Competition</b>
	<b>3X06.303-2</b>	Content
	<b>3X06.304</b>	Approval of the Justification
	<b>3X06.304-90</b>	FEMA Justification for an Exception to Fair Opportunity (JEFO) Control Number
<b>Subpart</b>	<b>3X06.5</b>	<b>Advocates for Competition</b>
	<b>3X06.570</b>	Advocates for competition for the procuring activity

## **Subpart 3X06.3 Other than Full and Open Competition**

### **3X06.303-2 Content**

All justifications requiring review and approval shall follow the procedures located in the DHS Justification and Approval for Other than Full and Open Competition Guide and sample format provided in Appendix B of this manual.

#### **(d) J&A Format**

- (1) For acquisitions above the micro-purchase threshold and below the simplified acquisition threshold, no particular format is required. However, the decision to acquire the goods or services on other than a full and open competitive basis will be documented. The Contract Specialist (CS) or Contracting officer (CO) will place this documentation, along with any additional supporting information, in the contract file.

### **3X06.304 Approval of the Justification**

#### **(a) Responsibilities**

- (1) In accordance with FAR 6.303-1 Requirements, the submitter is responsible for ensuring the requirement meets the Government's minimum needs and the supporting data, which forms a basis for this justification, is complete and accurate. The applicable PO will prepare the J&A and route it to the Contracting officer for review and concurrence.
- (2) The Contracting officer (CO) will ensure all applicable approvals are obtained and that the original J&A (to include all supporting documentation) with all required signatures is placed in the contract file.
  - (i) All J&As requiring approval by the HCA or the DHS CPO must be routed through and reviewed, in advance, by the Director or Deputy Director of the Acquisition Operations Branch. The J&As are then forwarded to the HCA or the DHS CPO.
  - (ii) All justifications submitted for approval shall be accompanied by the approved acquisition plan. Any previous justification shall also be submitted.
- (3) Assignment of a justification tracking number. Tracking numbers are required on all pages of the

justification. A Justification Tracking No. Log and instructions for its use are maintained at Policy and Quality Control Branch ishare page. For assignment of a J&A Tracking Number contact [FEMA-OCPO-Policy@fema.dhs.gov](mailto:FEMA-OCPO-Policy@fema.dhs.gov).

(4) The Office of Chief Counsel (OCC) is responsible for providing legal advice on the interpretation, administration, and enforcement of all J&As over \$100,000.

(5) The Competition Advocate (CA) is responsible for promoting the acquisition of commercial items and challenging barriers thereto, promoting full and open competition, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics.

(6) Approval Levels (J&A). The CO approves each J&A up to \$700,000 and recommends approval for J&As over \$700,000. The CA approves J&As exceeding \$700,000 but not over \$13.5M. The HCA approves J&As \$13.5M but not exceeding \$68M. The DHS Chief Procurement Officer (CPO) approves J&As greater than \$68M. All approvals under the exception for Public Interest at 41 U.S.C. 253(c)(7) must be signed by the Secretary of DHS.

**(b) Class J&A**

(1) Class justifications shall be approved by the same approval authority as for individual justifications (See FAR 48 CFR 6.304(a)). Class determinations and findings and J&As under the authority at FAR 6.302-7, Public Interest, are prohibited. When awarding a contract based on a class justification, a copy of the approved J&A must be included in the contract file.

(c) Justifications and approvals that result in the invocation of the exception to the Buy American statute at FAR 25.103(b)(2) or 25.202(a)(2) shall be reviewed and approved in accordance with HSAM 3025.103(b)(2)(i) or 3025.202(a)(2), as applicable. The justification and approval shall follow the format in the DHS Justification and Approval for Other than Full and Open Competition Guide and template and be submitted to the CPO for review and approval using the DHS Buy American Reporting Tool (See HSAM 3025.001(c)(74)).

(d) Revisions to justifications may be made with change pages or by a complete revision of the J&A. The revisions must be either highlighted or identified by the use of change bars alongside the revised text to facilitate identification of the changes.

(1) When a revision is made to a justification that impacts the description of the supplies or services being purchased and there is no impact to the dollar value of the action, the contracting officer must ensure that the revised J&A is reviewed and approved by the original approving official.

(2) When a revision is made to a justification that impacts the dollar value of the J&A, the contracting officer must ensure that the revised J&A is reviewed and approved by the original approving official and any other approving official necessitated by the change in the dollar value.

(e) If an exception applies, such as unusual and compelling urgency, see FAR Part 6.302-2(c) and FAR Part 5.202, this exception will be documented in the file.

**3X06.304-90 FEMA Justification for an Exception to Fair Opportunity (JEFO) Control Number**

The Federal Emergency Management Agency's (FEMA) Policy and Internal Control (PIC) Section, maintains a log to assign control numbers for Agency justifications for an exception to fair opportunity (JEFO), while also

keeping a record of those justifications. A FEMA Contracting Officer (CO) or Contract Specialist (CS) shall submit a request for the review of all JEFOs with an estimated value over the current simplified acquisition threshold (SAT) of \$250,000.00 to the FEMA Policy inbox at [fema-ocpo-policy@fema.dhs.gov](mailto:fema-ocpo-policy@fema.dhs.gov). The submission of the request shall also include a request to be assigned a JEFO control number upon the completion of the review.

## **Subpart 3X06.5 Advocates for Competition**

### **3X06.570 Advocates for competition for the procuring activity**

A listing with point of contact information for the Department Advocate for Competition and each PAAC/APAAC(s) is maintained by the CPO on the Doing Business with DHS page, and is accessible at <https://www.dhs.gov/competition-advocates-and-task-order-and-delivery-order-ombudsman>.



<b>CHAPTER</b>	<b>3X07</b>	<b>ACQUISITION PLANNING</b>
	<b>3X07.001</b>	<b>Definitions</b>
<b>Subpart</b>	<b>3X07.1</b>	<b>Acquisition Plans</b>
	3X07.102	Policy
	3X07.102-70	Procurement Strategy Roadmap
	3X07.105	Contents of a written acquisition plan
	3X07.105-90	Acquisition Plan (AP) Tracking Log
	3X07.172	Acquisition Planning Forecast System (APFS)
<b>Subpart</b>	<b>3X07.2</b>	<b>Planning for the Purchase of Supplies in Economic Quantities</b>
	3X07.2-90	Timely Submission of Acquisition Packages and Budget Execution for Fiscal Year
<b>Subpart</b>	<b>3X07.5</b>	<b>Inherently Governmental Functions</b>
	3X07.503	Policy
	3X07.001	Definitions

**Acquisition Plan** means a written document used to fulfill the acquisition planning requirements of FAR Parts 7 and 34. This includes all acquisitions, including contracts, task orders or delivery orders under Indefinite Delivery Vehicles (IDVs), Federal Supply Schedules (FSS), Government-wide Agency Contracts (GWACs), Blanket Purchase Agreements (BPAs), and inter- and intra-agency acquisitions (IAAs).

**Acquisition Planning Forecast System (APFS)** means a system of records for requirement offices to enter for all planned acquisitions over the simplified acquisition threshold (SAT), except as identified in HSAM 3007.172.

**Contracting officer (CO)** means a Federal employee with written appointment authority to enter into, administer, or terminate contracts and make related determinations and findings. This individual is also authorized, by virtue of position or appointment, to perform the functions defined by the Federal Acquisition Regulation and the Homeland Security Acquisition Regulation.

**Chief Procurement Officer (CPO)** means a Senior Procurement Executive (SPE) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

**Head of the Contracting Activity (HCA)** means a senior official who has specific authority delegated by DHS SPE for all contracting activity within the agency.

**Procurement Administrative Lead Time (PALT):** The number of calendar days between receipt of a complete and final PR package by AOD and the award of the contract, the execution of the interagency agreements, the placement of the order, or the modification of one of these documents.

Subpart 3X07.1 Acquisition Plans

### **3X07.102 Policy**

(a) Acquisitions shall be planned such that the appropriate contract types are selected and such that all technical, business, management, and other significant considerations are addressed as prescribed by FAR Part 7 and as supplemented in HSAM Chapter 3007.

#### **3X07.102-70 Procurement Strategy Roadmap**

Contracting officers are required to prepare a procurement strategy roadmap (PSR) review for all acquisitions exceeding \$25 million as outlined in HSAM 3007.102-70 and the procedures outlined in the FAM Review and Approval of Procurement Actions Procedures Guide. The contracting officer shall coordinate any completed or planned market research efforts with the Small Business Specialists (SBS) prior to scheduling the HCA Strategy Briefing.

#### **3X07.105 Content of Written Acquisition Plans and Strategies**

FAR 7.103 (e) specifies the written acquisition plan requirements for cost reimbursement and other high- risk contracts (e.g., other than firm fixed priced contracts (OTFFP) and FAR 7.105 details the contents of written acquisition plans. The DHS AP template which can be found at HSAM Appendix Z. In accordance with FAR Class Deviation 20-02, written Acquisition Planning Requirements:

- (a) A written AP is required for Firm Fixed Price (FFP) actions \$50M and more; and
- (b) A written AP is not required for OTFFP actions below the SAT; however, written APs shall be prepared for OTFFP actions above the simplified acquisition threshold (SAT).

#### **3X07.105-90 Acquisition Plan (AP) Tracking Log**

Acquisition Plans are required to be numbered. Each AP shall have a unique number starting with the FEMA identifier, followed by the Fiscal Year (FY), and ending with three numbers (e.g., HSFE-FY-XXX). The Acquisition Plan number shall be obtained from the Acquisition Program and Policy Branch, Acquisition Management Branch, Portfolio Management Section (PfMS): [Portfolio Management Section \(fema.net\)](#) .

#### **3X07.172 Acquisition Planning Forecast System**

- (a) All potential procurements over the SAT, except as identified in HSAM Appendix H, shall be entered in the APFS database in accordance with HSAM 3019.202-270 and 3007.172.
- (b) All potential procurements outlined above shall be entered in the APFS database on or before August 31st of each year. All unplanned procurements shall be entered as soon as the requirement is known.
- (c) If the acquisition strategy and SB program is known at the time the APFS record is created; the Contracting officer shall include this in the APFS record comment section before routing to the APFS coordinator for publishing.

(d) Contracting officers shall include a copy of the published record to document the official file.

## **Subpart 3X07.2 Planning for the Purchase of Supplies in Economic Quantities**

### **3X07.204-90 Timely Submission of Acquisition Packages and Budget Execution for Fiscal Year**

The annual memorandum, Timely Submission of Acquisition Packages and Budget Execution for Fiscal Year (FY) serves as a reminder for timely planning and execution of funding actions consistent with fiscal year spend plans and acquisition processing requirements. Each FEMA Component and Office, working collaboratively with the Office of the Chief Procurement Officer (OCPO), shall prepare and submit a detailed Planned Acquisition Schedule for that respective fiscal year for new acquisitions requiring a requisition and commitment for Services and Supplies. All fiscal year acquisition schedules must follow the deadlines outlined in the Timetable for Submission of Acquisition Packages. Additional resources provided in this annual memorandum include:

- (a) The FY Acquisition Deadlines for Receipt of Complete Acquisition Package
- (b) Justification guidance for untimely packages
- (c) OCPO FY Procurement Administrative Lead-Time (PALT)
- (d) Guidelines for Information Technology Purchases (Including Telecommunications)
- (e) Additional Acquisition Planning Reminders: Includes guidance for the Balanced Workforce Strategy and 5-year Master Acquisition Planning Schedule (MAPS)
- (f) OCFO FY Schedule of Critical Dates for Budget Execution

The procurement process is a combined effort between the Acquisition Operations Division and Program Offices and the annual Timely Submission of Acquisition Packages and Budget Execution for Fiscal Year memorandum shall serve as a tool for Program Offices representatives to use when initiating an acquisition through the AOD. The guide contains an acquisition package checklist, samples, and templates that can provide guidance when preparing the acquisition package.

## **Subpart 3X07.5 Inherently Governmental Functions**

### **3X07.503 Policy**

(g) IAW HSAM 3007.5; The Inherently Governmental and Critical Functions Analysis is mandatory and shall be completed by the program official using the Job Aid-Inherently Governmental and Critical Functions Analysis and the Inherently Governmental and Critical Functions Product Service Code (PSC) Exemption Memo also located on DHS Connect under “Job Aids” at:

<http://dhsconnect.dhs.gov/org/comp/mgmt/ocpo/APL/Pages/Guides%26Tools.aspx>

<b>CHAPTER</b>	<b>3X08</b>	<b>REQUIRED SOURCES OF SUPPLIES AND SERVICES</b>
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<b>Subpart</b>	<b>3X08.4</b> 3X08.405-6	<b>Ordering Procedures for Federal Supply Schedules</b> Limited sources justification and approval
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**Subpart 3X08.4 Ordering Procedures for Federal Supply Schedules**

**3X08.405-6 Limited sources justification and approval**

(a) OCPO must comply with the requirements pursuant to FAR Part 8.405-6 and HSAM 3008.405-6. The Contracting Officer and Branch Chief must ensure that the justification is reviewed and approved at the appropriate levels as outlined in FAM Subpart **3X06.304 Approval of the Justification**, public posting requirements are followed, and the contract file documented.

## CHAPTER 3X09 CONTRACTOR QUALIFICATIONS

Subpart	3X09.1	Responsible Prospective Contractors
	3X09.104-90	Standards
	3X09.105-90	Responsibility Determination during Disasters

### 3X09.1 Responsible Prospective Contractors

#### 3X09.104-90 Standards

(a) FAR 9.104-3 requires the Contracting Officer (CO) to obtain “acceptable” evidence of the prospective contractor’s ability to obtain required resources. The FAR prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible, and the responsibility must reflect the requirements of the proposal. While an offer may prompt questions about the offeror's responsibility, the properties of the bid or proposal itself are not matters of responsibility. Whether an offer is responsive or acceptable or not, how good it is compared to others, whether the price is fair and reasonable, and whether the price is below cost, are not matters of responsibility. Rather, to be determined responsible, a prospective contractor must satisfy the following requirements:

- (1) adequate financial resources;
- (2) ability to comply with schedule;
- (3) satisfactory performance record; and
- (4) satisfactory integrity and ethics.

No award can be made by a government agency unless the CO makes an affirmative determination of responsibility.

(b) In order to ensure bids and proposals allow the CO to provide a comprehensive, affirmative responsibility determination, the CO shall insert the “*Financial Responsibility/ Technical Ability Language*” located at [FAM Appendix D](#) in all solicitations and resulting contracts.

#### 3X09.105-90 Responsibility Determination during Disasters

(a) *Determinations.* (1) Before awarding a contract during a disaster in excess of the simplified acquisition threshold (SAT), the contracting officer (CO) shall review the performance and integrity information available in the Federal Awardee Performance and Integrity Information System (FAPIS), (available at <https://www.cpars.gov/>), including FAPIS information from the System for Award Management (SAM) Exclusions and the Contractor Performance Assessment Reporting System (CPARS) and other source of information for pre-qualification of contractors for disaster response to commodities and services.

(2) When making a responsibility determination during a disaster, the CO shall consider all the information available through FAPIIS with regard to the offeror and any immediate owner, predecessor, or subsidiary identified for that offeror in FAPIIS, as well as other past performance information on the offeror.

(3) In making the determination of responsibility, the contracting officer shall consider information available through FAPIIS regard to the offeror and any immediate owner, predecessor, or subsidiary identified for that offeror in FAPIIS, including information that is linked to FAPIIS such as from SAM, and CPARS, as well as any other relevant past performance information on the offeror. In addition, to the maximum extent possible and depending on the sources readily available, the contracting officer should use the following sources of information to support such determinations:

- (i) Records and disaster experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.
- (ii) The prospective contractor-including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.
- (iii) Disaster response source of supplier information of a type offered to buyers in the private sector.
- (iv) Pre-award survey reports.
- (v) Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

(4) The CO's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the contracting officer shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination.

<b>CHAPTER</b>	<b>3X10</b>	<b>MARKET RESEARCH</b>
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<b>Subpart</b>	<b>3X10.000</b>	<b>Scope of part</b>
	<b>3X10.001</b>	<b>Policy</b>
	<b>3X10.001-90</b>	<b>Responsibilities</b>

**Subpart 3X10.000 Scope of part**

**3X10.001 Policy**

- (a) The DHS Market Research Guide provides DHS guidance and a sample market research report template that can be tailored to specific market research needs.
- (b) The Acquisition Program and Policy Branch, Acquisition Management Branch, Industry Liaison Section establishes strategic relationships with suppliers and stakeholders and serves as an information provider for suppliers seeking to do business with FEMA. The Industry Liaison Program (ILP):
- Assist contracting officers and program offices with secondary market research;
  - Facilitates meetings between suppliers and FEMA program offices;
  - Local Business Transition Team (LBTT); and
  - Provides full coordination and collaboration of program Industry Days

The FEMA ILP Resources can be found at:

<https://intranet.fema.net/org/ms/ocpo/appd/CS/BRB/ILS/Pages/default.aspx> .

**3X10.001-90 Responsibilities**

- (a) The Acquisition Program and Policy Branch, Acquisition Management Branch, Portfolio Management Section (PfMS) serves as the customer service liaison to FEMA's program offices and supports the market research effort in support of acquisitions. Useful links, Resources and Tools Library can be accessed at: <https://intranet.fema.net/org/ms/ocpo/appd/CS/amb/pfm/Pages/default.aspx> .
- (b) Contracting officers shall follow the process and procedures in accordance with HSAM 3010 and ensure that appropriate market research documentation is included in the contract file.
- (c) The small business specialist shall participate in the acquisition planning process to help identify requirements for small businesses and identifying alternative strategies that would reduce or minimize acquisition strategies involving substantial bundling.
- A complete market research document is required for all small business review packages and shall be accompanied by the DHS 700-22; Small Business Review Form.

The Acquisition Program and Policy Branch, Acquisition Management Branch, Strategic Planning Section manages FEMA's strategic sourcing activities and serves as the focal point for enhancing FEMA's acquisition performance through strategic planning support. The Guide to Utilizing Department of Homeland Security Strategically Sourced Contracts and information regarding the FEMA Strategic Sourcing can be found at [https://portalapps.fema.net/apps/employee\\_tools/ocpo\\_tools/fssp/Pages/default.aspx](https://portalapps.fema.net/apps/employee_tools/ocpo_tools/fssp/Pages/default.aspx)

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<b>CHAPTER</b>	<b>3X15</b>	<b>CONTRACTING BY NEGOTIATION</b>
<b>Subpart</b>	<b>3X15.6</b> 3X15.606-90	<b>Unsolicited Proposals</b> Agency Procedures

### **Subpart 3X15.6 Unsolicited Proposals**

#### **3X15.606-90 Agency Procedures**

The FEMA OCPO point of contact for Unsolicited Proposals is [fema-ocpo-unsolicited-proposal@fema.dhs.gov](mailto:fema-ocpo-unsolicited-proposal@fema.dhs.gov). HSAM Appendix K, Unsolicited Proposal Procedures should be used in conjunction with FAR Subpart 15.6 and HSAR Subchapter 3015.6. Additional information on unsolicited proposals is accessible at <http://www.dhs.gov/unsolicited-proposals>.

CHAPTER	3X16	TYPES OF CONTRACTS
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Subpart	3X16.4 3X16.40-90	Incentive Contracts General
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Subpart	3X16.5 3X16.504-90	Indefinite-Delivery Contracts Indefinite-quantity Contracts
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### Subpart 3X16.4 Incentive Contracts

#### 3X16.401-90 General

(f)(1)&(2) The Contracting officer shall report all award fee and incentive fee contracting actions using the Enterprise Reporting Application (ERA); under the Award Fee / Performance Incentive Reporting System (AFPIRS) tab. The information captured AFPIRS is required by FAR 16.401(f) and HSAM Section 3016.401(f). The information is analyzed to determine the effectiveness of award fee and performance incentives awarded by DHS and to facilitate collection of best practices. The following is required:

(i) *Award Fee Contracts* – The evaluation must be completed within 30 days of the contract’s ultimate completion date and the interim award fee evaluation(s) must be completed within 30 days of the schedule evaluation date.

(ii) *Incentive Fee Contracts* – The evaluation must be completed within 30 days of the contract’s ultimate completion date.

(iii) All Cost-Plus Award Fee, Cost Plus Incentive, Fixed Price Award Fee, or Fixed Price Incentive awards must be validated within 30 days of award.

(3) The Policy & Quality Control Branch receives notification of all overdue AFPIRS actions for the FEMA OCPO and will notify the Section Chief on a bi-monthly basis on the overdue action.

(4) To report these actions, the Contracting officer shall access the ERA at <http://ocpo-sp.dhs.gov/sites/era/Pages/Default.aspx>. AFPIRS is located third on the list on the ERA Homepage.

### Subpart 3X16.5 Indefinite - Delivery Contracts

#### 3X16.504-90 Indefinite - quantity contracts

(c) FAR 16.504 –Indefinite-Quantity Contracts requires the Government to order, and the contractor to furnish, at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. Contracting officers 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. Maximum quantity limits may be stated as number of units or as dollar values.

(1) FEMA Prepositioned Indefinite-Delivery/Indefinite-Quantity (IDIQ) contracts are established to provide an orderly and continuing means of assistance to alleviate the suffering and damage which result

from such disasters. FEMA relies heavily on IDIQ contracts to procure the goods and services it requires following major disasters and emergencies. Consequently, the magnitude of these disasters has amplified the need for greater ceiling amounts when responding to declared disasters and emergencies. In order to allow FEMA, the greatest flexibility when responding to disasters, the Contracting officer shall insert, when appropriate, the following language in the solicitation and contract when issuing new IDIQ contracts in support of disasters:

*With respect to the maximum quantity of supplies, services or supplies and services (this should be specified for each contract), the total amount of supplies or services ordered under this shall not exceed the total productive capacity of all vendors under this contract.*

- (2) The aforementioned language will provide the Contracting officer with greater flexibility to issue orders up to the productive capacity of all vendors under the prepositioned IDIQ contract without having to issue a Justification and Approval (J&A) or competing new actions.
- (3) When using this language, Congressional Notifications shall be issued for each order exceeding \$1M. Additionally, any solicitation using this language should be treated as an action valued at greater than or equal to \$300M for internal routing procedures.
- (4) The Contracting officer is required to provide a justification in the acquisition plan for inclusion of this language in the solicitation.
  - (i) The justification shall detail the purpose and need for the specific ceiling requirement and should be tailored to the specific requirement.
  - (ii) For planning purposes, contracting officers shall determine the capacity of all vendors before awarding the contract with this language

<b>CHAPTER</b>	<b>3X17</b>	<b>SPECIAL CONTRACTING METHODS</b>
<b>Subpart</b>	<b>3X17.5</b> 3X17.501-72-90	<b>Interagency Acquisitions</b> Policies Applicable to Direct and Assisted Interagency Acquisitions
<b>Subpart</b>	<b>3X17.71</b> 3X17.7102.90	<b>Requirements for Acquisitions Involving Strategically Sourced Commodities</b> Using department-wide contract vehicles

### **Subpart 3X17.5 Interagency Acquisitions**

#### **3X17.501-72-90 Policies Applicable to Direct and Assisted Interagency Acquisitions**

(b) Inter-Agency reimbursable work agreements (IRWAs). Interagency Acquisitions (IAAs) are administered and executed through the Office of the Chief Procurement Officer (OCPO); however, IRWAs are financial transactions between FEMA/DHS and other federal agencies or between DHS Components and are to be administered and executed through the Office of the Chief Financial Officer (OCFO). FEMA Manual 112-5-1 Interagency and Intergovernmental Agreement (Revision: 01) provides a standardized Federal Emergency Management Agency (FEMA) policy and procedures relating to the preparation, processing, coordination, execution, and administration of Inter/Intra –Agency Reimbursable Work Agreements (IRWAs).

#### **Subpart 3X17.71 Requirements for Acquisitions Involving Strategically Sourced Commodities**

##### **3X17.7102-90 Using department-wide contract vehicles**

(a) DHS policy is to use Department-wide contracts unless one of the exceptions apply and or waivers described in HSAM 3017.7102 is obtained. However, if none of the exceptions is applicable, and the contracting officer still does not intend to use a DHS-wide contract vehicle, it is FEMA OCPO policy that the contracting officer obtain approval for a waiver from the DHS CPO.

(1) The Contracting officer is responsible for obtaining all the necessary approvals and signatures for the waiver and exception packages by routing using their Branch’s internal routing procedures; to include the Small Business Specialist.

(2) The Policy & Quality Control Branch will submit the waiver and exception package received by the Contracting officer to Strategic Sourcing Program Office (SSPO); [SSPO@dhs.gov](mailto:SSPO@dhs.gov).

(3) The Acquisition Program and Policy Branch, Acquisition Management Branch, Strategic Planning Section manages FEMA’s strategic sourcing activities and serves as the focal point for enhancing FEMA’s acquisition performance through strategic planning support. Information regarding the FEMA Strategic Sourcing can be found at [https://portalapps.fema.net/apps/employee\\_tools/ocpo\\_tools/fssp/Pages/default.aspx](https://portalapps.fema.net/apps/employee_tools/ocpo_tools/fssp/Pages/default.aspx)

<b>CHAPTER</b>	<b>3X18</b>	<b>EMERGENCY ACQUISITIONS</b>
<b>Subpart</b>	<b>3X18.2</b>	<b>Emergency Acquisition Flexibilities</b>
	3X18.201-90	Contingency operations
	3X18.203-90	Emergency Declaration Major Disaster Declaration
	3X18.203-90	Pre-solicitation Memorandum Sample

## Subpart 3X18.2 Emergency Acquisition Flexibilities

### 3X18.201-90 Contingency operations

(a) Guidance related to administering contracts during an emergency such as nuclear, biological, chemical, or radiological attack, natural disaster, or a health emergency, such as a pandemic is provided at HSAM 3018. In addition, the following guides are available as a tool and reference:

- (1) [\*DHS Contractor Performance During an Emergency Event \(such as Anthrax Attack\) A Guide for Program Managers and Contracting Officers.\*](#) This guide provides information to Contracting officers and Program Managers on planning for contractor support during an emergency. It provides background information and sample language that can be used in solicitations and contracts to maximize the availability of contractor support during an emergency event.
- (2) [\*Job Aid: Local Buy Quick Reference Guide.\*](#) Contains local buy guidance for Acquisition Professionals and Purchase Cardholders based off information contained within the Robert T. Stafford Act section 307.
- (3) [\*Disaster Contracting Desk Guide V4.0 2020.\*](#) This Emergency and Contingency Contracting Desk Guide provides in-depth information in support of the “*Joint Field Office Standard Operating Procedure for Emergency Acquisitions and Support Staff (July 2013)*” regarding the acquisition of supplies, services, and equipment in support of emergency and contingency operations. It is geared towards contracting positions that manage, supervise, and perform professional work involving the procurement of supplies, services and construction.

### 3X18.203-90 Emergency declaration major disaster declaration

FEMA OCPO must comply with statutory requirements and guidance regarding preferences given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief Act. (See HSAM 3026 and FAM 3X26).

- (a) See HSAM 3005.303-70 regarding Congressional notifications of covered contract actions.
- (b) See HSAM 3005.303-70 and FAM 3X05.3 regarding Congressional notifications of covered contract actions
- (c) See HSAR 3006.303 and HSAM 3006.303 for competition authorities.
- (d) See HSAM Chapters 3026.202 and 3026.203; FAM Chapters 3X26.202 and 3X26.203 for guidance



regarding local area set-aside preference and transition of work approval requirements.

### **3X18.203.91      Pre-solicitation Memorandum Sample**

Contracting Officers may use the pre-solicitation memorandum sample below for disaster acquisitions.

[Pre-solicitation Memorandum Sample](#)

<b>CHAPTER</b>	<b>3X19</b>	<b>SMALL BUSINESS PROGRAMS</b>
	<b>3X19.001</b>	<b>Definitions</b>
<b>Subpart</b>	<b>3X19.2</b>	<b>Policies</b>
	3X19.201	General policy
	3X19.202-270	Procurement forecast
	3X19.202-271	DHS Small Business Review Form
<b>Subpart</b>	<b>3X19.5</b>	<b>Set-aside for Small Business</b>
	3X19.501	General
	3X19.502	Setting aside acquisitions
<b>Subpart</b>	<b>3X19.7</b>	<b>The Small Business Subcontracting Program</b>
	3X19.704	Subcontracting plan requirements
	3X19.704-90	Reporting requirements
	3X19.705-470	Reviewing the subcontracting plan
<b>Subpart</b>	<b>3X19.8</b>	<b>Contracting with the Small Business Administration (The 8(a) Program)</b>
<b>Subpart</b>	<b>3X19.9</b>	<b>Small Business Awards Program</b>

### **3X19.001 Definitions**

**Office of Small and Disadvantaged Business Utilization (OSDBU):** The office within DHS designed to assist, counsel and advise small businesses on how to do business with DHS.

**Small Business Administration Procurement Center Representative (SBA/PCR):** An SBA liaison employee assigned to DHS to carry out SBA policies and programs. The SBA PCR is a reviewing official for the DHS Form 700-22, Small Business Review Form (**DHS 700-22**) and DHS Form 700-23, DHS Subcontracting Plan Review Checklist (**DHS 700-23**) when requirements exceed the thresholds provided in this manual.

**Small Business Specialist (SBS):** The individual appointed within FEMA OCPO to make recommendations, in accordance with agency procedures, as to whether a particular acquisition should be awarded as a set-aside under Part 19 of the FAR. The SBS is responsible for monitoring small business goals within FEMA OCPO, reviewing and approving DHS Form 700-22 and Form 700-23 documentation, coordinating with the SBA PCR and ensuring that FEMA OCPO personnel are aware of small business initiatives.

### **Subpart 3X19.2 Policies**

#### **3X19.201 General Policy**

The FEMA OCPO Small Business Program falls under the Acquisition Program and Policy Division, **Business**

## **Relations Branch, Industry Liaison Section.**

Each fiscal year, the Small Business Specialist (SBS) in consultation with the HCA, negotiates with the DHS OSDBU the overall small business and small business socio-economic goals to be achieved.

### **3X19.202-270 Procurement forecast**

(a) *Purpose.* The DHS Acquisition Planning Forecast System (APFS) is a portal for small business vendors to view anticipated contract actions. To request an APFS account:

- (1) Visit the DHS APFS at: <https://apfs.dhs.gov/>;
- (2) Select “Government Users”;
- (3) Select “Request Account” under the sign in section;
- (4) Complete all sections completely; and
- (5) Once complete, the APFS System Administrator will follow up with APFS account information and additional guidance.

(b) *Responsibility.* The SBS is the APFS Coordinator and is responsible for publishing all acquisitions over the simplified acquisition threshold, in accordance with HSAM 3007.172.

(c) *Reporting.* The Acquisition Programs and Policy Division, Business Relations Branch, **Strategic Planning Section**, may send out monthly reports to each AOD Branch Chief; with the status of APFS records in the Contracting Office queue waiting for processing in order to meet the APFS reporting requirements outline in HSAM 3019.202-270 (b) and required by Public Law 100-656

### **Subpart 3X19.202-271 Small Business Review Form**

(a) *Purpose.* Contracting officers shall involve the Small Business Specialist (SBS) as soon as the agency need is identified. This should occur prior to preparation of the Acquisition Plan (AP) and the DHS 700-22 . Early determination whether the requirement will be set-aside for small businesses expedites the approval of the AP and the small business review form. The SBS can assist the Program Office and contracting officer/contract specialist in locating small businesses to participate in DHS acquisitions; writing justifications that document detailed reasons a requirement is best suited to be solicited as restricted; and suggesting acquisition strategies to maximize small business involvement at either the prime or subcontract level.

(b) *Requirement.* DHS 700-22 requirements are provided in **HSAM Appendix H**, Acquisition Planning Forecast System and Small Business Review Form Requirements matrix. The most current DHS 700-22 can be found at the DHS Online Forms: <http://dhsconnect.dhs.gov/Resources/forms> and in the forms section of this manual. The DHS Form 700-22 small business review package must be obtained prior to preparing a synopsis or releasing the solicitation and must include the following:

- (1) Completed DHS 700-22 signed by the Contracting officer.
- (2) Market Research Report. All documentation and historical data that supports a set-aside or an unrestricted (full and open competition) procurement strategy must be included in the market research

report. (See **HSAM Appendix I, Attachment C for the market research template.**)

- (3) For requirements greater than the simplified acquisition threshold, include Acquisition Planning Forecast System” (APFS) published number on the DHS 700-22.
- (4) A copy of the Statement of Work, Statement of Objectives, or a description of the required supplies.
- (5) Independent Government Cost Estimate (IGCE), including a breakdown of supplies or services for each contract year or option period.
- (6) For supplies, include any findings regarding the ability of prospective small businesses to either manufacture the item(s) or receive the product from another small business manufacturer. (See FAR 19.102(f) and 19.502-2(c).)
- (7) For sole source 8(a) awards, include the SBA Offering Letter, when applicable (see FAR 19.804-2). If the sole source 8(a) award is expected to exceed \$20 million, include the Justification and Approval (J&A) required by FAR 19.808-1(a).
- (8) For other sole source/limited source acquisitions, include the signed J&A for other than full and open competition;
- (9) Signed Strategic sourcing waivers and exemptions.

*(c) Preparation and Approval.*

(1) Contracting officers shall involve the Small Business Specialist (SBS) as soon as the agency need is identified. This should occur prior to preparation of the Acquisition Plan (AP) and the DHS 700-22 Small Business Review Form. Early determination whether the requirement will be set-aside for small businesses expedites the approval of the AP and the review form;

(i) The contracting officer shall coordinate any completed or planned market research efforts with the Small Business Specialists (SBS) prior to scheduling the Procurement Strategy Roadmap (PSR) briefing with the HCA.

(ii) After approval of the DHS 700-22 by the SBS, file the signed form in the official solicitation file.

## **Subpart 3X19.5 Set- Asides for Small Business**

### **3X19.501 General**

Progress in meeting DHS’ various procurement preference goals should be considered when making a decision which preference program to use for a specific acquisition. Additionally, the results of market research, the program’s needs, the expected value of the procurement, and the procurement history of a specific requirement will also help determine which preference program should be recommended.

### **3X19.502 Setting aside acquisitions**

The contracting officer shall encourage small business participation in acquisitions to the maximum extent practicable and prepare supporting documentation that describes the market research conducted and justifies why a requirement cannot be set aside for small businesses.

(a) The contracting officer shall also:

(1) Consider the following small business preference programs (no order of precedence amongst these programs) first for open market requirements exceeding the micro-purchase threshold and not expected to exceed the simplified acquisition threshold:

(i) Section 8(a) Program Set-Aside under FAR Subpart 19.8;

(ii) Historically Underutilized Business Zone (HUBZone) Program under FAR Subpart 19.13;

(iii) Service-Disabled Veteran-Owned Small Business (SDVOSB) Program under FAR Subpart 19.14;

(iv) Women-Owned Small Business/Economically Disadvantaged Women-Owned Small Business under FAR Subpart 19.15; or

(v) Total small business set-aside under FAR Subpart 19.5.

(2) For requirements over the simplified acquisition threshold, first consider businesses in categories (1)(i) through (1)(iv) above (there is no order of precedence among these programs). Second, consider other small businesses (category (1)(v) above).

(3) If it is determined, after conducting market research, that none of the above small business programs are appropriate for the acquisition, proceed with full and open (unrestricted) competition procedures. However, market research documents must show how items (1) and (2) listed above were considered.

(b) The SBS shall:

(1) Review for substantial bundling for all procurements over \$2.5 million planned for open market procurement and pre-existing contract vehicles such as Multiple Award Schedules (MAS), GSA FSS delivery and task orders, MACs, GWACs, DHS-wide contracts, DHS multiple award contracts, and BPAs.

(2) Ensure that the SBA PCR reviews all proposed contract actions of \$2.5 million or more when use of a pre-existing contract vehicle (for example, a GSA FSS contract, MAC, GWAC, DHS-wide contract, or BPA) is planned. Acquisitions over \$2.5 million shall receive a review for bundling considerations.

(3) Review the package and either concur or non-concur and date the DHS 700-22. When a set-aside is recommended and the SBS marks "Concur," approval has been granted and no further coordination is required.

(4) In the event of a nonconcurrence DHS 700-22 provides for the contracting officer's counter-response in Block 22. If the contracting officer does not agree with the SBS's determination, the nonconcurrence shall include a justification. The resolution of differences is accomplished by the HCA.

(5) Complete the review within two (2) business days, provided that the package is complete. Incomplete submissions or inadequate documentation of market research may result in review timeframes exceeding two business days.

(6) Coordinate the review with the SBA PCR.

(7) Notify the contract specialist when all reviews are complete.

(c) The SBA PCR shall:

(1) Review all open market procurements over \$2.5 million when an Unrestricted procurement is contemplated (including sole source procurements).

(2) Review all actions of \$2.5 million or more planned under a pre-existing contract vehicle for bundling.

(3) Sign and date DHS Form 700-22 indicating concurrence or non-concurrence and return the Form to the SBS.

The contracting officer shall first consider an acquisition for the 8(a), HUBZone, SDVOSB, or WOSB programs before using a total small business set-aside (See 19.502-2(b)). However, if the requirement has been accepted by the SBA under the 8(a) Program, it must remain in the 8(a) Program unless the SBA agrees to its release. Small business set-asides have priority over acquisitions using full and open competition and pre-existing contract vehicles. See requirements for establishing a small business set-aside under FAR Subpart 19.5.

The progress in meeting the DHS small business goals, as well as other factors such as the results of market research; programmatic needs specific to the agency; anticipated award price; and the acquisition history; should be considered when making a decision as to which program to use for the acquisition. The HCA shall, when required, and in coordination with the OSDDBU, resolve disagreements between the contracting officer and the SBS.

## **Subpart 3X19.7 The Small Business Subcontracting Program**

### **3X19.704 Subcontracting Plan requirements**

(a) The DHS Form 700-23, Subcontracting Plan Review Checklist is mandatory for all DHS Subcontracting Plan reviews. All items on the Subcontracting Plan Review Checklist shall be completed by the Contracting Officer (CO) with information from the proposed prime contract and the subcontracting plan. If the plan is missing any item listed in Section II, "Required Elements of the Subcontracting Plan", it is incomplete and shall not be accepted by the CO. After the checklist is completed by the CO, the checklist shall be submitted to the component Small Business Specialist for review, then submitted to the SBA PCR for review, within the time frame established in HSAM 3019.7-5- 470(b), and finally, submitted back to the CO. An acceptable plan must be approved by the CO prior to award.

(b) The Contracting officer, Small Business Specialist and the SBA Procurement Center Representative (PCR) are responsible for the subcontracting plan review process; and the approving authority for the subcontracting plan is the Contracting officer

(c) Prime contractors that meets the statutory requirements at FAR 19.702 shall submit subcontracting accomplishments on the Individual Subcontract Report (ISR) and the Summary Subcontract Report (SSR) by using the web-based Electronic Subcontracting Reporting System (eSRS). Contracting officers should refer to **the DHS eSRS Business Rules and Processes Guide** for information on the eSRS, the basics of subcontracting and how to prepare and review subcontracting reports.

#### **Subpart 3X19.800-90 SBA 8(a) Business Development Program**

(a) The **8(a) Partnership Agreement (PA)** sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements. The PA provides for the award of contracts, modifications, options and purchase orders, under the provisions of Section 8(a) of the Small Business Act and the SBA's 8(a) Business Development Program regulations, without the SBA signature on the contract action. The PA encompasses all competitive and non-competitive 8(a) acquisitions. (See the **DHS Acquisition Alert 13-07 for the current PA between DHS and the SBA; and HSAM, Appendix X**).

(b) All 8(a) offer letters for the Washington Metropolitan Area District Office (WMADO) should be forwarded to the following email address: [DCOfferletters@sba.gov](mailto:DCOfferletters@sba.gov)

(c) [Sample 8\(a\) offering letter](#)

(d) If you need to locate the SBA District Office outside the WMADO, please use the link below. Click on the office Directory for the Director of Business Development or any Team Lead Business Opportunity Specialist for additional information on where to forward the 8(a) offering letters at: <http://www.sba.gov/districtoffices>.

#### **Subpart 3019.804-490 Repetitive acquisitions**

(a) Release for Non-8(a) Competition

(1) Once a requirement has been accepted by the SBA into the 8(a) Program, any follow-on requirements shall remain in the 8(a) program, unless SBA agrees to release the requirement from the 8(a) program in accordance with 13 CFR 124.504(d).

(2) The Contracting officer shall consult with the SBS prior to notifying the SBA in writing of their request to release a requirement from the 8(a) Program. If it is determined that continuation of the requirement in the 8(a) Program is not in the best interest of the Government. The written request must provide the rationale as to why the program offices wants to release the requirement from the 8(a) Program.

(b) Request to Release Written Notification

(1) A written request should be sent to the SBA district office serving the geographical area in which the buying activity is located. The Contracting officer shall obtain approval to release the requirement from the 8(a) Program from the SBA's Associate Administrator/Business Development (AA/BD) prior to any public notice or solicitation of the requirement.

(2) The Contracting officer shall include the following in the request notification:

(i) Reason(s) for the request;

(ii) Procurement history of the requirement;

- (iii) Incumbent name;
- (iv) Assigned NAICS Code; and
- (v) Statement of Work.

(3) The Contracting officer is encouraged to use sample letter [“Request for SBA Release from 8\(a\) Program”](#) to prepare a release request.

#### **Subpart 3X19.9 Small Business Awards Program**

(a) The DHS Office of Small and Disadvantaged Business Utilization sponsors the annual DHS Small Business Awards Ceremony to recognize small businesses that have provided DHS with outstanding service during the fiscal year; and DHS employees who have demonstrated advocacy and a personal commitment to the DHS Small Business Program its small business goals. The award categories are:

- (1) Small Business Achievement Award
- (2) Small Business Advocate of the Year Award

(b) OCPO staff shall follow the nomination procedures and instructions. Using the Guidelines for DHS Small Business Awards, each OCPO Branch shall submit at least one nomination for the Small Business Achievement Award and at least one nomination for the Small Business Advocate of the Year. Nomination packages shall be forwarded to the OCPO SBS by the specified due date and format that is provided by the OCPO SBS.







CHAPTER	3X21	APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
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Subpart	3X22.104-90	Basic Labor Policies
	3X22.104-91	Section 504 Program for Contracting

**Subpart 3X22.104-90 Section 504 Program for Contracting**

**3X22.104-91 Section 504 Program for Contracting**

To prevent disability-based discrimination, FEMA must ensure its public-facing programs, services, and activities carried out by FEMA contractors are accessible to, and usable by, individuals with disabilities.

(a) The Contracting officer shall ensure the following special contract language is inserted into all new contractual requirements (PWS, SOW) for interacting with the public:

*“Section 504 COMPLIANCE: The Contractor/Provider shall comply fully with Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities. No otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity for which the Contractor/Provider is awarded a contract and/or receives federal financial assistance from the Federal Emergency Management Agency. This includes, but is not limited to, providing reasonable accommodations and modifications to ensure effective communication access, physical access, and program access to all participants, including persons with disabilities. The Contractor/Provider shall incorporate this language in any subcontracts related to the provision of the FEMA public-facing program or activity.”*

(b) Access to Public Events. The cognizant Contracting officer with primary responsibility for orchestrating a public event sponsored by FEMA OCPO, such as small business fair, or an “industry day” or pre-solicitation or pre-proposal conference, shall ensure that accommodations per Section 504 are provided when such are requested, in sufficient advance notice, as needed. Accordingly, contracting officers shall include this statement (tailored for specifics) in each announcement for any public event sponsored by FEMA OCPO:

*“FEMA OCPO plans to conduct a (specify type of event: industry day, small business fair, or pre-solicitation/proposal conference) at the following facilities (identify address and location) on (identify time and date) for the purpose of (state the purpose of the planned activity). The planned format for the presentation of information will be the visual display of information via projected charts presenting written and graphic information, with spoken discussion accompanying such material. On or before (example February 4, 20xx), please send an email to [FEMA-CivilRightsOffice@fema.dhs.gov](mailto:FEMA-CivilRightsOffice@fema.dhs.gov) to request auxiliary aids and services.”*

Regardless of whether a program or activity is conducted by FEMA directly or through a contractor, it must be administered in compliance with Section 504 which means that persons with disabilities must have access to, and an opportunity to participate in, the program or activity without delay or segregation.

**CHAPTER**

**3X23**

**ENVIRONMENT, ENERGY AND WATER EFFICIENCY,  
RENEWABLE ENERGY TECHNOLOGIES,  
OCCUPATIONAL SAFETY, AND DRUG-FREE  
WORKPLACE**

**[RESERVED]**

<b>CHAPTER</b>	<b>3X24</b>	<b>PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION</b>
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<b>Subpart</b>	<b>3X24.2-90</b>	<b>Freedom of Information Act (FOIA)</b>
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**Subpart 3X24.2-90 Freedom of Information Act (FOIA)**

OCPO's Freedom of Information Act (FOIA) POC is the Acquisition Program and Policy Division (APPD), **Business Relations Branch, Industry Liaison Section.**

<https://intranet.fema.net/org/ms/ocpo/appd/CS/BRB/ILS/Pages/default.aspx>

**[RESERVED]**

<b>CHAPTER</b>	<b>3X26</b>	<b>OTHER SOCIOECONOMIC PROGRAMS</b>
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<b>Subpart</b>	<b>3X26.2</b>	<b>Disaster or Emergency Assistance Activities</b>
	3X26.200-90	Scope of Subpart
	3X26.202.2-90	Local Area Preference
	3X26.202.2-91	Evaluation Preference

**Subpart 3X26.2 Disaster or Emergency Assistance Activities**

**3X26.200-90 Scope of Subpart**

(a) Section 307 of the Robert T. Stafford Disaster Relief & Emergency Assistance Act, requires, where feasible and practicable, responding Federal agencies to procure services and commodities from businesses residing in or primarily doing business within communities declared a Major Disaster by the President, thereby helping strengthen the economies of affected communities who are rebuilding from the effects of the disaster. To ensure future disaster acquisition decisions actively promote the use of local vendors:

- (1) All such decisions will be coordinated closely with the Office of the Chief Procurement Officer (OCPO);
- (2) The goal for transitioning from national stand-by response contracts (e.g. Individual Assistance - Technical Assistance Contracts (IA-TAC) and Public Assistance - Technical Assistance Contracts (PA-TAC)) to local vendors will be *within six months of the disaster event*; sooner if practicable;
- (3) Disaster-specific contracts will be set aside for local vendors wherever feasible and practicable; and
- (4) Where setting aside contracts is deemed infeasible or impracticable, preference will be given to local vendors in the source selection process.

(b) The final decision as to whether a contract will be set aside for local vendors rests solely with the Contracting officer, who will closely coordinate such a decision with the requiring program office.

(c) The **Industry Liaison Program (ILP)**, including a Local Business Transition Team (LBTT) is available to assist in effectively meeting the requirements of Section 307, as well as provide a single point of entry for vendors seeking to do business with FEMA. To support the use of local vendors and the transition of national prepositioned contracts in disasters, the following criteria will apply:

- (1) All inquiries for vendors seeking to do business with FEMA will be directed to the ILP. The ILP will request pertinent information from each vendor to determine if products/services meet FEMA's mission. For products/services that meet FEMA's mission, the ILP will provide vendor information to the appropriate HQ or Regional program office and/or disaster Contracting officer to assist with locating local businesses;
- (2) The ILP can assist program offices in the preparation of acquisition packages for submission to

Contracting officer; and

(3) Where appropriate, the ILP will conduct seminars for local vendors to educate them on FEMA's acquisition process, to better enable them to respond to potential solicitations. Regional Administrators and/or Federal Coordinating Officers should coordinate with their OPCO representative within seven days of the presidential major disaster declaration to evaluate the situation and determine in which cases a significant amount of goods and services will be acquired. Where significant purchasing is anticipated, the OCPO representative will coordinate with the ILP to determine how best to conduct local vendor outreach and outreach efforts will be initiated as soon as local conditions make such outreach viable.

(d) The Acquisition Program and Policy Branch, Acquisition Management Branch, **Industry Liaison Section**, manages the ILP and ensures that FEMA responds timely to vendor inquiries and that the process by which we engage is ethical, transparent, and complies with the Federal Acquisition Regulations and DHS/FEMA policies. All inquiries from vendors seeking to do business with FEMA to the ILP in both disaster and non-disaster situations shall be forwarded to the ILP. The FEMA ILP Resources can be found at: <https://intranet.fema.net/org/ms/ocpo/appd/CS/BRB/ILS/Pages/default.aspx>.

(e) When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.), preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through a local area set-aside or an evaluation preference.

### **3X26.2-90 Local Area Preference Local Area Set-Aside**

- (a) To fulfill the statutory requirements relating to 42 U.S.C. 5150, contracting officers may set aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete. No separate justification or determination and findings is required for set-asides to Local Firms During a Major Disaster or Emergency. *See FAR 6.208.*
- (b) The set-aside area specified by the contracting officer shall be a geographic area within the area identified in a Presidential declaration(s) of major disaster or emergency and any additional geographic areas identified by the Department of Homeland Security.
- (c) A major disaster or emergency area may span counties in several contiguous States. The set-aside area need not include all the counties in the declared disaster/emergency area(s) but cannot go outside it.
- (d) The contracting officer, in consultation with the requirements office, shall define the specific geographic area for the local set-aside.
- (e) The contracting officer shall also determine whether a local area set-aside should be further restricted to small business concerns in the set-aside area IAW with FAR Part 19.

### **3X26-202.2-91 Local Area Evaluation Preference**

- (a) The contracting officer shall insert the Local Area Evaluation Preference provision in solicitations for goods and services in response to a declared disaster when:
  - (1) A local area set-aside is not feasible or practicable because market research demonstrates there is not a reasonable expectation of receiving offers from qualified local area vendors, and
  - (2) The solicitation does not contain FAR 52.226-4, Notice of Disaster or Emergency Area Set-Aside.



(b) The price preference in the Local Area Evaluation Preference provision is set at 10 percent however, the price preference can be increased in the provision, when market research indicates the cost of doing business in the declared disaster or emergency area is higher than normal.

(1) If the 10 percent price preference is increased in the provision for any solicitation, the rationale supporting the increased percentage used shall be documented in the contract file by the contracting officer.

(2) Local Area Evaluation Preference provision and guidance is provided in the **FAM Appendix B: Local Area Evaluation Preference**.

(3) In addition to certification and submission of FAR provision 52.226-3, contracting officers shall require additional local area documentation requirements in all solicitations for local area set asides or local area evaluation preferences.

(c) The minimum additional local area documentation requirement is provided at the **FAM Appendix B: Local Area Evaluation Preference**.

(1) Documentation requirements can be tailored depending on the size, scope, and complexity of the requirement.

(2) The contracting officer, in consultation with legal counsel, shall determine whether the offeror is local to the disaster or emergency area.

(d) Subsequent to any Presidential declaration of a major disaster or emergency, any expenditure of Federal funds, under an emergency response contract not awarded to a local firm, must be justified in writing in the contract file.

(1) The justification should include consideration for the scope of the major disaster or emergency and the immediate requirements or needs of supplies and services to ensure life is protected, victims are cared for, and property is protected.

(2) The contracting officer shall include this justification in the contract file if the use of a local area evaluation preference does not result in award to a local area business concern.

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<b>CHAPTER</b>	<b>3X32</b>	<b>CONTRACT FINANCING</b>
<b>Subpart</b>	<b>3X32.7</b> 3X32.702-90	<b>Contract Funding</b> Conference guidance
<b>Subpart</b>	<b>3X32.90</b> 3X32.9000	<b>Contract Payments</b> Invoice and voucher review and approval

### **Subpart 3X32.7 Contract Funding**

#### **3X32.702-90 Conference Guidance**

All DHS conference planning activities (approval and process) must be conducted in accordance with OCFO's Financial Management Policy Manual (FMPM) Section 7.10.1, Conference Controls. FEMA OCPO supplemental guidance reinforces important distinctions between permissible and impermissible methods of conducting conferences.

### **Subpart 3X32.90 Contract Payments**

#### **3X32.9000 Invoice and voucher review and approval**

[The Federal Emergency Management Agency \(FEMA\) SharePoint Invoice Processing Desk Guide for Contracting Officer's Representatives \(CORs\) and Invoice Approving Officials \(AOs\)](https://portalapps.fema.net/apps/employee_tools/ocpo_tools/cor_community/Pages/CORToolkit.aspx) provides practical guidance for CORs and AOs as they perform their daily duties in post-award contract administration. This guide, issued jointly by FEMA's Office of the Chief Financial Officer (OCFO) and Office of the Chief Procurement Officer (OCPO), establishes standards, describes responsibilities, and execution of invoice processing activities within the Agency. This guide is located at: [https://portalapps.fema.net/apps/employee\\_tools/ocpo\\_tools/cor\\_community/Pages/CORToolkit.aspx](https://portalapps.fema.net/apps/employee_tools/ocpo_tools/cor_community/Pages/CORToolkit.aspx).

The Contracting Officer Representative (COR)/Approving Official (AO), and the contracting officer (CO) are all responsible for ensuring that the contractor's invoice or voucher is proper, accurate and timely. If the contractor's invoice is not proper, the COR/AO or contracting officer, as appropriate, must notify the contractor and request a proper invoice/voucher.

CHAPTER	3X33	PROTESTS, DISPUTES, AND APPEALS
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	3X33.001	Definitions
Subpart	3X33.1	Protests
	3X33.102-90	General
	3X33.103-90	Protests to the agency

### 3X33.001 Definitions

**Agency Protest** means a protest that may be filed with either the contracting officer or the officer responsible for the resolution of all agency protests filed at the level above the contracting officer. A protester's pursuit of any agency protest does not extend the protester's time for obtaining a stay at the Government Accountability Office (GAO).

**Ombudsman** means the agency official above the level of the contracting officer designated by the Director of Acquisition Operations Division (AOD) to handle and issue the formal agency decision resolving the protest.

**Day** means a calendar day. In computing a period of time for the purpose of these procedures, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or a Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or a Federal holiday. Similarly, when the Washington, D.C. offices of the Federal Emergency Management Agency (FEMA) are closed for all or part of the last day, the period extends to the next day on which the Agency is open.

### Subpart 3X33.1 Protests

#### 3X33.102-90 General

FEMA's designated Agency Protest Ombudsman is identified at [FEMA Protest Ombudsman](#).

#### 3X33.103-90 Protests to FEMA

(d)(4) Prior to submission of an agency protest, all parties must use their best efforts to resolve concerns raised by an interested party. FEMA offers, as an option for dispute resolution, Alternative Dispute Resolution (ADR). ADR is an informal, expeditious and inexpensive way to resolve contract issues and is designed to promote satisfying solutions and fair procedures. For more information on FEMA's ADR services, please contact FEMA's ADR office at the following address:

Federal Emergency Management Agency  
Alternative Dispute Resolution Division  
FEMA Office of Chief Counsel  
400 Virginia Avenue, SW  
Washington, DC 20472-3400

Agency Protest Procedures to be included in Unsuccessful Offeror Letters and Agency Protest Written Ruling Template can be found in the [FAM Appendix C: Agency Protest](#).

Protests filed through the contracting officer:



- (1) Within 10 days after the protest is filed through the contracting officer, the contracting officer shall:
  - (i) Prepare an administrative report that responds to the issues raised by the protester; and
  - (ii) Forward this administrative report to FEMA, Office of Chief Council, Associate Chief Counsel for General Law (OCC), for review and approval.
- (2) Within 20 days after the protest is filed through the contracting officer, the contracting officer shall:
  - (i) Send a written ruling and a summary of the reasons supporting the ruling to the protesters by “Certified Mail (Return Receipt Requested)”; and
  - (ii) Forward copies to the OCC, the Ombudsman, and the Director of AOD.
- (3) The protester who filed protests through the contracting officer may, within five days of receipt of the contracting officer’s written ruling, appeal to the ombudsman.
- (4) The contracting officer shall provide the ombudsman with all required documents and information within a timely manner when requested by the ombudsman.
- (5) The ombudsman shall:
  - (i) Send a written ruling and a summary of the reasons supporting the ruling to the protester by “Certified Mail (Return Receipt Requested)” within 10 days of receipt of the request for appellate review of the contracting officer’s decision; and
  - (ii) Forward copies of the decision to the applicable contracting office, the Director of AOD, and OCC.

Protests filed through the ombudsman:

- (1) Contracting officers will provide the ombudsman with all required documents and information within a timely manner when requested by the ombudsman.
- (2) Within 20 days after the protest is filed through the ombudsman, the ombudsman shall:
  - (i) Prepare an administrative report that responds to the issues raised by the protester or may have been identified by agency officials as being relevant to the fairness of the procurement process; and
  - (ii) Forward this administrative report to the OCC for review and approval.
- (3) Within 35 days after the protest is filed through the ombudsman, the ombudsman shall send a written ruling and a summary of the reasons supporting the ruling to the protester by “Certified Mail (Return Receipt Requested)” and shall forward copies to the applicable contracting office, the OCC, and the Director of AOD.

Protests and any subsequent appeals submissions:

(1) Protests and any subsequent appeals must be received by 4:30 p.m., current-local time in order to be considered filed on that day.

(2) In accordance with FAR 33.103, protest submissions will not be considered filed until all of the following information is provided:

- (i) The protester's name, address, telephone number, and facsimile number;
- (ii) The solicitation or contract number;
- (iii) A detailed statement of all factual and legal grounds for protests, to include an explanation of how the protester was prejudiced;
- (iv) Copies of relevant documents;
- (v) A request for ruling by the agency;
- (vi) A statement detailing the form of relief requested;
- (vii) All information establishing that the protester is an interested party for the purposes of filing a protest; and
- (viii) All information establishing the timeliness of the protest.

(3) All protests must be signed by an authorized representative of the protester and must be addressed to the contracting officer or the ombudsman.

Effect of protest on award and performance:

(1) When a protest is filed prior to award, a contract may not be awarded unless authorized by the Director of AOD based on a written finding that:

- (i) Contract performance would be in the best interest of the Government; or
- (ii) Urgent and compelling circumstances that significantly affect the interests of the Federal government will not permit waiting for a decision.

(2) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with FAR Subpart 15.505 or FAR Subpart 15.506, whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified. The Director of AOD may authorize continued contract performance, notwithstanding the protest, based on a written finding that:

- (i) Contract performance would be in the best interest of the Federal government; or
- (ii) Urgent and compelling circumstances that significantly affect the interests of the Federal government will not permit waiting for a decision.

(3) The contracting officer or the ombudsman may grant one or more of the following remedies,

depending on the basis of protest:

- (i) Terminate the contract;
- (ii) Re-compete the requirement;
- (iii) Issue a new solicitation;
- (iv) Refrain from exercising options under the contract;
- (v) Award a contract consistent with statutes and regulations;
- (vi) Amend the solicitation provisions which gave rise to the protest and continue with the procurement, and/or
- (vii) Such other remedies as the decision-maker may determine are necessary to correct a defect.

Dismissal of protests:

- (1) The agency may dismiss protest when protesters file protests through the GAO or United States Courts of Federal Claims while their protests are pending at the agency level and for failure to comply with any of the requirements of these agency protest procedures. For example, the agency may dismiss protests that are procedurally or substantively defective (e.g., the protest is untimely, or the protest fails to clearly state legally sufficient grounds of protests).
- (2) Contracting officers shall ensure that clause 52.233-2, “Service of Protest” and clauses 52.233-3, “Protest After Award” and, “Solicitation/Terms and Conditions Language” are incorporated into all solicitations and contracts/orders regardless of value, under sections covering contract clauses or instructions.
- (3) Contracting officers shall ensure that the language in the **FAM Appendix C: Agency Protest**, entitled “Agency Protest Procedures to be included in Unsuccessful Offeror Letters” in all “Unsuccessful Offeror” letters.
- (4) Contracting officers shall ensure that the language in the **FAM Appendix C: Agency Protest**, entitled “Agency Protest Written Ruling Template” shall be used to issue protest rulings.

Copies of protests:

All copies of protests along with the decision rendered to the OCPO shall be forwarded to the Policy and Quality Control Branch Chief.

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<b>CHAPTER</b>	<b>3X39</b>	<b>ACQUISITION OF INFORMATION TECHNOLOGY</b>
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<b>Subpart</b>	<b>3X39.1</b>	<b>General</b>
	3X39.170	Information Technology Review
<b>Subpart</b>	<b>3X39.2</b>	<b>Electronic Information Technology</b>
	3X39.201	Scope of Subpart
	3X39.203	Applicability

### **Subpart 3X39.1 General**

#### **3X39.170 Information Technology Review**

Directive 142-02, Information Technology Integration and Management and HSAM 3039 establishes the authorities, responsibilities, and policies of the DHS Chief Information Officer (CIO) with respect to the management of IT and directs the DHS CIO and Component CIOs to establish the IT Acquisition Review (ITAR) process for acquisitions that include IT.

Contracts for IT acquisitions where the base and all options (or option years) total estimated value is equal or greater than \$500,000 are required to submit a FEMA ITAR package for an IT Acquisition Review (ITAR). All acquisitions that meet the criteria must be reviewed and approved by the FEMA CIO prior to submission for a DHS ITAR review. This is coordinated through FEMA's OCIO, IT Core Service, Contracting department/IT Acquisition Review (ITAR) Coordinators. For information on the FEMA ITAR process and ITAR Submission forms visit: [FEMA OCIO ITAR SharePoint Site](#)

### **Subpart 3X39.2 Electronic Information Technology**

#### **3X39.201 Scope of subpart**

(c) When acquiring Electronic Information Technology (EIT), contracting officers must ensure that Federal employees and members of the public with disabilities have access to and use information and data comparable to the access needed by individuals without disabilities. Program Offices and contracting officers are encouraged to collaborate with the DHS Office of Accessible Systems and Technology (OAST) and must use the DHS Accessibility Requirements Tool (DART) at <http://dhsconnect.dhs.gov/org/comp/mgmt/ocio/oast/Pages/DART.aspx> to ascertain the appropriate Section 508 Compliance language for incorporation into EIT solicitations resulting in contracts, BPAs, BOAs, purchase orders, and/or orders.

#### **3X39.203 Applicability**

(a)(1) Contracting officers must ensure compliance with FAR 3039.203 and HSAM 3039.203 and also ensure that exception determinations have been coordinated with OAST.



**[RESERVED]**

<b>CHAPTER</b>	<b>3X42</b>	<b>CONTRACT ADMINISTRATION AND AUDIT SERVICES</b>
<b>Subpart</b>	<b>3X42.270</b> 3X42.270-90	<b>Contracting Officer Representative (COR), Alternate Contracting Officer Representative (ACOR), Technical Monitor (TM) Policy</b>
<b>Subpart</b>	<b>3X42.15</b> 3X42.1502 3X42.1503	<b>Contractor Performance Information Policy Procedures</b>
<b>Subpart</b>	<b>3X42.270</b>	<b>Contracting Officer Representative (COR), Alternate Contracting Officer Representative (ACOR), Technical Monitor (TM)</b>

### **3X42.270-90 Policy**

- (a) Contracting Offices shall follow the policy and procedures concerning the selection and training, experience, certification, appointment, and termination of a COR as outlined in the DHS Acquisition Workforce Policy, number 064-04-003, Federal Acquisition Certification for Contracting Officer's Representatives and Appointment and Revocation as well as any HSAM acquisition workforce policies.
- (b) The FEMA Contracting Officer Representative (COR) Program provides guidance and direction on elements of certification, nomination, and appointment process, as well as functions, roles, and responsibilities; background information on acquisition functions; DHS-specific, duty-driven processes and procedures; best practices; important reference documents; and other important information and templates to help CORs initiate and administer contracts as well as ACORs and TM's support the contract.
- (c) To appoint a COR, ACOR, or TM to a contract the CO must use the Primary COR Appointment Letter to appoint the COR and an Alternate COR Appointment Letter to appointment the ACOR. The CO must modify the Alternate COR Appointment Letter to appoint a Technical Monitor.
- (d) A copy of all appointment letters must be provided to the COR, ACOR or TM and must be added to the contract file. Contracts that utilize a COR, ACOR or TM and do not include an Appointment Letter in the contract file for each position utilized will be considered a deficiency and will require immediate correction.
- (e) Guidance regarding the FEMA COR Program shall be sent to: FEMA-COR-Certification@fema.dhs.gov and by visiting the FEMA COR site at:  
[https://portalapps.fema.net/apps/employee\\_tools/ocpo\\_tools/cor\\_community/Pages/Home.aspx](https://portalapps.fema.net/apps/employee_tools/ocpo_tools/cor_community/Pages/Home.aspx)
- (f) All CORs, ACORs and TMs shall be certified before nomination or appointment. The Contracting Officer shall verify the status for all FEMA COR's at:  
[https://portalapps.fema.net/apps/employee\\_tools/ocpo\\_tools/cor\\_community/Pages/DHS%20COR%20Certification%20Status.aspx](https://portalapps.fema.net/apps/employee_tools/ocpo_tools/cor_community/Pages/DHS%20COR%20Certification%20Status.aspx) .
- (g) All ACORs and TMs must hold FAC-COR certification at the same level of certification the COR is required to hold.

(h) A quick reference to the COR appointment requirements and templates are provided at the top of the FEMA COR Certification Requirements page on the COR Community Site. The full direction is found in the 2012 COR Policy DHS COR 064-04-003 (page 7). What is considered high risk is detailed in the 2011 OMB memorandum titled “Revisions to the FAC-COR”. The 2012 COR Policy aligns the DHS COR certification levels to the risk determinations in the 2011 OMB memorandum.”

## **Subpart 3X42.15 Contractor Performance Information**

### **3X42.1502 Policy**

Contractor performance assessments are completed in accordance with the requirements at FAR Subpart 42.1502(a), Contractor Performance Information and at HSAM 3042.1502 (see DHS FAR Class Deviation 11-03 for applicable threshold changes).

### **3X42.1503 Procedures**

For all indefinite delivery indefinite quantity (IDIQ) contracts with a period of performance exceeding one year, the relevant Contracting Officer/Contract Specialist (CO/CS) will require interim contractor performance evaluations on the performance under each task order 30 days prior to the end of the period of performance for the period being evaluated. The CO/CS is not to issue any new task orders under the contract until an interim evaluation of the contractor’s performance has been entered into the Contractor Performance Assessment Reporting System (CPARS) and the contractor has had an opportunity to review the evaluation and comment upon it.

(a) For all contracts and task orders issued under indefinite delivery indefinite quantity (IDIQ) contracts with a period of performance exceeding one year, the contracting officer/contract specialist (CO/CS) will require interim contractor performance evaluations for each 12 months of performance and a final evaluation for the last 12 months or less of performance. These evaluations must be drafted 30 days prior to the end of the period of performance being evaluated. The CO/CS will not issue any new task orders under an IDIQ contract until all required evaluations for all task orders have been completed in CPARS.

(b) The CO/CS will not exercise an option to extend the period of performance of a contract/order until all required evaluations have been completed and a draft evaluation of the current evaluation period has been entered in CPARS.

(c) The CO/CS will not modify a contract/order to add new work until all required evaluations have been completed.

(d) The CO/CS will not approve the justification for a sole source follow-on contract/order with a particular company until a final evaluation of the contractor’s performance under the previous contract has been drafted in CPARS.

The CO/CS must communicate the following to the appointed contracting officer’s representative (COR) for each contract/order:

(a) the need to have the above referenced evaluations drafted within 30 days prior to the end of the period of performance being evaluated, and

(b) the CO/CS's inability to perform the actions identified above if the evaluations are not completed as required

Exceptions to this guidance will be reviewed on a case by case basis. In this regard, the Director, Acquisition Operations Division, or his/her designee, is delegated the authority to approve such exceptions and to record the justifications explaining why the performance evaluation cannot be prepared before taking an action. However, within 30 days after the action is taken, a performance evaluation for the contractor will be completed and entered into CPARS. The contractor will then have seven days in which to rebut any negative evaluation before the final evaluation is posted.

**CHAPTER**

**3X43**

**CONTRACT MODIFICATIONS**

**[RESERVED]**

**[RESERVED]**



**[RESERVED]**

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CHAPTER	3X49	TERMINATION OF CONTRACTS
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	3X49.001	Definitions
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Subpart	3X49.1	General Principles
	3X49.101-90	Authorities and responsibilities

### 3X49.001 Definitions

**Contracting Officer (CO)** means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

"Administrative contracting officer (ACO)" refers to a contracting officer who is administering contracts.

"Termination contracting officer (TCO)" refers to a contracting officer who is settling terminated contracts.

**Termination for Convenience (T4C)** means the exercise of the Government's right to completely or partially terminate performance of work under a contract when it is in the Government's interest.

**Termination for Default (T4D)** means the exercise of the Government's right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

### Subpart 3X49.1 General Principles

#### 3X49.101-90 Authorities and responsibilities

(a) Contracting Officer shall provide all notices of termination for default to FEMA's Office of Chief Counsel (OCC), with relevant supporting documentation, for legal sufficiency. The contracting officer shall provide a copy of all termination notices, to include legal sufficiency, for anticipated terminations of contracts or orders with a total value exceeding \$1 million to the OCPO Policy & Quality Control Branch at least five (5) business days *prior* to issuing the notice to the DHS OCPO.

(b) *Suspension and Debarment for Terminations for Default or Cause.* When default termination is being considered, Contracting Officers shall seek guidance from FEMA's Office of Chief Counsel (OCC). The CO shall decide which type of termination action to take and submit to OCC for review of all notices of termination.

(1) When default termination is being considered, FEMA Contracting Officers (COs) shall seek guidance from FEMA's Office of Chief Counsel (OCC). The OCC shall review all notices of termination for default or convenience. The OCC shall review all relevant, supporting termination documentation for legal sufficiency. Contracting Officers shall also review whether the reason for any termination of contract is cause for suspension or debarment. Any such reason shall be reported to the Federal Awardee Performance & Integrity Information System (FAPIIS). Reporting terminations is also required at the Contractor Performance Assessment Reporting System (CPARS) past performance reporting system.

(2) Responsibilities

- (i) Policy & Quality Control Branch will develop and update policy that addresses termination of contracts.
- (ii) Head of the Contracting Activity (HCA) shall coordinate the routing of any Cure Notice, Show Cause Notice, or Letter of Concern prior to any FEMA CO issuing such a notice or letter.
- (iii) The Contracting Officer (CO), should under no circumstance terminate a contract, either for convenience of the government or for default, without consulting FEMA legal counselors or legal sufficiency of all contract file documentation.
- (iv) Office of Chief Council (OCC) will review all aspects of terminations of contracts for legal sufficiency.

### (3) Procedures

- (i) When Contracting Officers are contemplating terminating a contract, they are to consult with the entire acquisition team, including legal counsel, for the project. The team can serve as a valuable resource for input in managing any contract termination, whether for convenience of the government, or, for contract default.
- (ii) Contracting Officers shall review whether any specific reason for any contract termination constitutes cause for recommending that a contractor be either suspended or debarred.
- (iii) Contracting Officers shall report terminations to the FAPIIS and must also address termination for default or cause in the Contractor Performance Assessment Reporting System (CPARS) past performance reporting system.
- (iv) The FEMA OCC shall review all notices of termination for default, with relevant supporting documentation, for legal sufficiency.
- (v) General requests to use special purpose clauses shall contain the following information: a copy of the clause, justification for the necessity of its use, and the concurrence of legal counsel regarding the legality of the proposed clauses and the inappropriateness of any standard, FAR clauses.

The CO shall review whether the reason for termination of contract is cause for suspension or debarment. The CO shall follow HSAM 3049.101 (b) concerning procedures, documentation, and process for each potential suspension and debarment.

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<b>CHAPTER</b>	<b>3X53</b>	<b>FORMS</b>
<b>Subpart</b>	<b>3X53.1</b>	<b>General</b>
	3X53.101	Requirements for use of forms
	3X53.103	Exceptions
	3X53.105	Computer generation

### **Subpart 3X53.1 General**

#### **3X53.101 Requirements for use of forms.**

The forms prescribed in HSAM Chapter 3053 are required for use by FEMA OCPO. The Chief Procurement Officer (CPO) may grant an exception or the FEMA OCPO may substitute a form via internal procedures according to HSAM 3053.103(b).

#### **3X53.103 Exceptions.**

(a) Requests for exceptions to forms contained in HSAM Chapter 3053 shall be submitted to the CPO through the PQCB. Each request shall: (1) include the substitute format that will be used in place of the HSAM form; (2) include the Component rationale for the exception; and (3) be submitted by the Head of the Contracting Activity (HCA).

FEMA OCPO shall follow internal routing procedures to obtain this approval.

#### **3X53.105 Computer generation**

The DHS forms are available electronically on DHS Connect at <http://dhsconnect.dhs.gov/Resources/forms>



**FAM APPENDIX A: CHIEF OF THE CONTRACTING OFFICE**  
**DELEGATED RESPONSIBILITIES**

<b>DELEGATED RESPONSIBILITIES</b>		
<b><u>Reference</u></b>	<b><u>Area of Responsibility</u></b>	<b><u>Duties</u></b>
HSAM 3001.301-71 (b)	<p>Effective Date of HSAM Notice</p> <p><b>HSAM Authority Delegated no lower than COCO</b></p> <p><i>Authority Not Re-delegable</i></p>	If solicitations are already in process or negotiations complete when the HSAM Notice is received, the new procedures or forms need not be used if it is determined by the Chief of the Contracting Office (COCO) that it would not be in the best interest of the Government. In no case shall the authority be delegated below the level of COCO.
HSAM 3001.601-70 (b)	<p>Deviations from Federal Acquisition Regulation (FAR), Homeland Security Acquisition Regulation (HSAR), and Homeland Security Acquisition Manual (HSAM) - Designation of the Head of Contracting Activities and Chiefs of Contracting Offices</p> <p><b>HSAM Delegation to HCA*</b></p> <p><i>Authority Not Re-delegable</i></p>	<p>HCA's, without re-delegation, shall designate individuals as COCO's and shall submit a copy of the signed designation to the CPO within 5 days of issuance</p> <p>.</p>
HSAM 3001.671-2	<p>Selection of Non-Warranted Ordering Officials</p> <p><i>Authority Not Re-delegable</i></p>	HCA (or written designee) must ensure that nominated ordering officials possess the necessary skills and abilities to successfully perform the assigned duties. DHS MD Number 0783, Ordering Official Certification, details the requirements for the DHS ordering officials.
HSAM 3001.671-3 (a), (b), and (c)	<p>Authority of Ordering Officials</p> <p><i>Authority Not Re-delegable</i></p>	<p>Determine the appointment of ordering officials is essential for the operation of the contracting mission.</p> <p>Shall maintain a file of appointments, including waivers for temporary appointment and terminations, for all ordering officials.</p> <p>Issued a unique appointment letter that delegates authority to the ordering official and that delineates his or her duties, responsibilities, and limitations of authority. The delegated authority shall not be redelegated by the ordering official.</p>
HSAM 3001.671-4	<p>Specialized Training for Ordering Officials</p> <p><i>Authority Not Re-delegable</i></p>	Require an eligible ordering official to complete additional specialized training, which is considered relevant to a particular contract for assignment. This specialized training is in addition to the certification requirements and may be required for the ordering official to meet the needs of the appointment.
FAR 1.602-3 (b)(3) HSAM 3001.602-3 (b)(2)	<p>Ratification of Unauthorized Commitments</p> <p><b>HSAM Delegation to HCA*</b></p> <p><i>Authority Not Re-delegable</i></p>	<p>Per FAR subsection 1.602-3(b), the HCA is normally the agency official authorized to ratify unauthorized commitments.</p> <p>Homeland Security Acquisition Manual (HSAM ) Subchapter 3001.602-3(b)(2) authorizes the HCA to delegate this authority to the COCO.</p>

DELEGATED RESPONSIBILITIES		
<u>Reference</u>	<u>Area of Responsibility</u>	<u>Duties</u>
HSAR 3002.101	Definition: individual responsible for managing contracting office(s) within a component.	
FAR 3.103-2 (b)(2)	Independent Pricing - Evaluating the Certification	If the offeror deleted or modified subparagraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting competition
FAR 3.103-2 (b)(2)	FAR 52.203-2, Certificate of Independent Price Determination- Certificate Evaluation-Rejection of Offers Suspected of Being Collusive  <b>FAR Requirement--"chief of the contracting office"</b>	<ul style="list-style-type: none"> <li>Review of altered certificates and statements.</li> <li>Written determination whether disclosure of prices contained in a bid or proposal has the effect of restricting competition.</li> <li>Rejection/consideration for award based on above determination.</li> </ul>
HSAM 3003.104-5 (c)(2)	Procurement Integrity-Disqualification  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	<p>Authorization for resumption of participation in procurement by previously disqualified official.</p> <p>COCO is delegated authority for actions with a total contract value of \$25 million or less.</p>
HSAR 3003.203	Gratuities Clause (FAR 52.203-3)-Reporting Suspected Violations  <b>HSAR Designation of COCO</b>	<p>The contracting officer shall submit the report to the COCO (unless the alleged violation was directly reported to the COCO) and the Head of the Contracting Activity (HCA) for further action. The COCO and HCA will determine, with the advice of Component legal counsel, whether the case warrants submission to the OIG, or other investigatory organization.</p> <p>COCO is responsible if the contracting officer is suspected of the violation.</p>
HSAR 3003.204	Gratuities Clause (FAR 52.203-3) Violations-Treatment of Violations  <b>HSAR Delegation from Agency Head or Designee to COCO</b>	<ul style="list-style-type: none"> <li>Ensure hearing procedures required by FAR 3.204(b) afforded the contractor.</li> <li>Consult with Government legal counsel regarding appropriate action.</li> </ul>
FAR 3.405	Misrepresentations or Violations of Covenant Against Contingent Fees  <b>FAR Requirement - "Chief of the Contracting Office"</b>	<ul style="list-style-type: none"> <li>Review of facts concerning a violation of Covenant against contingent fees.</li> <li>COCO shall prepare a written finding of the facts of the case and submit the file to HCA for review. The file shall contain the written opinion of the legal counsel for the contracting office, if any. Refer to FAR 3.405(b)(1) through (4).</li> </ul>
HSAM 3004.470 (d)	Security requirements for contractor access to unclassified facilities, IT resources, and sensitive information  Appendix G	The COCO is designated as the approving official for Appendix G – Checklist for Sensitive Information for requirements that have any access to sensitive information, information systems, and/or Government facilities.

DELEGATED RESPONSIBILITIES		
<u>Reference</u>	<u>Area of Responsibility</u>	<u>Duties</u>
		<p>Contracting Officer is designated as the approving official for requirements that do not have any access to sensitive information, information systems, and Government facilities.</p> <p>Checklist for Sensitive Information for all acquisitions, including assisted acquisitions, is required regardless of dollar value.</p> <p>The checklist shall be coordinated with and signed by the offices listed in subparagraph (b), as applicable, of this section.</p>
HSAM 3004.670	<p>Acquisition related reporting requirements</p> <p><b>HSAM Delegation of COCO</b></p>	COCO shall ensure that each report found in HSAM appendix B is submitted to the required location. HSAM - Appendix B "reporting requirements"
HSAM 3004.801	Contract Administration Functions	The COCO is designated as the head of each office performing contracting and contract administration functions.
HSAM 3004.804-170 (c) and (d)	<p>Monitoring contract closeouts</p> <p><b>HSAM Delegation of COCO</b></p>	<p>(c) <i>Tracking system.</i> The COCO must utilize an automated or manual contract closeout tracking information system to identify those contracts which are physically completed and ready for closeout, but have not been administratively closed out and disposed of in accordance with FAR 4.8, HSAR 3004 .8, and this subchapter .</p> <p>(d) <i>Monitoring of tracking system.</i> The COCO is responsible for reviewing quarterly or as often as practical, the latest status of the contract closeouts and disposal to ensure that contracting officers are closing contracts in a timely manner.</p>
HSAM 3004.7003 (f)	<p>Legal Review Documentation</p> <p><b>HSAM Delegation of COCO</b></p>	The contracting officer is responsible for assuring that all legal comments are responded to and documented in the contract file. Any disagreements between the contracting officer and the reviewing attorney shall be forwarded to the COCO for resolution. The COCO may delegate this function.
HSAM 3007.103 (j)(2)(ii)	All Acquisition Plans (APs) not requiring CPO approval shall be approved/signed by the HCA or designee.	<p>The COCO is designated to approve/sign APs for:</p> <p>FFP Actions: APs greater than or equal to \$50M but not exceeding \$100M;</p> <p>OTFFP Actions: greater than or equal to Simplified Acquisition Threshold (SAT) but not exceeding \$100M.</p> <p>The HCA/DHCA may require additional reviews.</p> <p>All APs that require CPO approval, regardless of dollar value, will require HCA approval.</p>

DELEGATED RESPONSIBILITIES		
<u>Reference</u>	<u>Area of Responsibility</u>	<u>Duties</u>
HSAM 3007.503 (c)	<p>The HCA or designee shall make the determination with advice from legal counsel if the PM/requirements official and the contracting officer disagree as to whether a function is inherently governmental.</p> <p><b>HSAM Delegation to COCO</b>  <i>Authority Not Re-delegable</i></p>	The COCO, without re-delegation, is designated to make the determination as to whether a function is inherently governmental.
HSAM 3009.171	<p>Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.</p>	<p>The contracting officer's determination that a contractor is not eligible for award under HSAR 3009.171, shall be documented in a determination of non-responsibility.</p> <p>If the subject business concern is a small business, the determination of non-responsibility must be approved by the Chief of the Contracting Office (COCO).</p>
FAR 9.506 (b)	<p>Organizational Conflict of Interest  <b>FAR requirement--"chief of the contracting office" Unless Higher Level Designated by Agency</b>  <b>It has not been re-designated</b></p>	Pre-solicitation approval of Contracting Officer's written analysis and recommended course of action for avoiding, neutralizing, or mitigating conflict per FAR 9.505 rules.
HSAM 3012.302 (c)	<p>Tailoring of provisions and clauses for the acquisition of commercial items</p> <p><b>HSAM Delegation of individual waiver to at a level no lower than the COCO</b></p>	An individual waiver shall be approved by the Chief of the Contracting Office (COCO) and a class waiver by the HCA. The waiver shall be reviewed by legal counsel.
HSAM 3014.201-7	<p>Sealed Bidding - Contract Clauses</p> <p><b>HSAM Delegation to COCO</b>  <i>Authority Not Re-delegable</i></p>	COCOs are authorized to waive, in writing, inclusion of FAR 52.214-27 and 52.214-28 in solicitation of bids
HSAM 3014.404-1	<p>Cancellation of IFBs After Bid Opening</p> <p><b>HSAM Delegation to COCO</b>  <i>Authority Not Re-delegable</i></p>	Written determinations at FAR 14.404-1(c), (e), and (f).
HSAM 3014.407-3	<p>Sealed Bidding-Other Mistakes Disclosed Before Award</p> <p><b>HSAM Delegation to COCO</b>  <i>Authority Not Re-delegable</i></p>	Written determinations at FAR 14.407-3(a), (b), (c) and (d).
FAR 15.303(a)	Source Selection Authority Designation	In addition to the Contracting Officer, COCO is designated as the source selection authority unless the agency head appoints another individual for a particular acquisition or group of acquisitions.
HSAM 3015.406-170 (a) and (b)	Pre-negotiation Objectives	Review and approval levels for Pre-negotiation Memoranda (Greater than \$10M)
HSAM 3016 .603-3-2 (c)	<p>Letter Contracts-Application</p> <p><b>HSAM Delegation to COCO</b>  <i>Authority Not Re-delegable</i></p>	COCOs are authorized to approve a contracting officer's determination of a reasonable price or fee for a letter contract. Extensions to the definitization of a letter contract must be approved by the COCO

DELEGATED RESPONSIBILITIES		
<u>Reference</u>	<u>Area of Responsibility</u>	<u>Duties</u>
FAR 16.207-3 (d)	Firm-Fixed-Price, Level of Effort Term Contracts - Limitations	A firm-fixed-price, level-of-effort term contract is suitable for investigation or study in a specific research and development area. Contract may only be used when (a) - (d) are met. ((d) The contract price is \$150,000 or less, unless approved by the chief of the contracting office.
HSAM 3017.204	Options  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	COCOs may approve total contract periods exceeding five years. Documentation shall include rationale describing circumstances that warrant a period longer than five years, the results of market research, benefits to the Government and how price risks normally associated with a long performance period are being mitigated.
HSAM 3017.502-171 (g)	Interagency Agreements  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	Unless otherwise approved by the COCO, the agreement period shall not exceed five years. If the agreement period is approved to exceed five years during the effective period of the IA, the contracting officer must amend the agreement to reflect this change and the COCO's approval must be documented in the file.
FAR 18.121	Emergency Acquisitions - Bid Guarantees	The chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions when a performance bond or a performance bond and payment bond is required. See FAR 28.101-1 c.
FAR 19.402 (c)(4)	Small Business Administration Procurement Center Representatives	Receipt of appeal by the SBA Procurement Center Rep. of Contracting Officer determination not to solicit a concern recommended by SBA for a particular acquisition, when not doing so results in no small business being solicited.
HSAM 3019.501 (c)	Set-Asides for Small Business  <b>HSAM Authority Delegated no lower than COCO</b> <i>Authority Not Re-delegable</i>	Resolve any disagreement between Small business specialist and contracting officer. COCO must furnish a copy of determination to the OSDBU
HSAM 3019. 502-3 (a)(5)	Partial Set-asides  <b>HSAM Delegation to the COCO</b> <i>Authority Not Re-delegable</i>	COCO authorized to make the determination
HSAM 3019. 506 (b)	Withdrawing or modifying small business set-asides  <b>HSAM Authority Delegated no lower than COCO</b> <i>Authority Not Re-delegable</i>	The COCO is responsible for resolving disagreements between the contracting officer and the Component small business specialist. In no case shall the authority be delegated below the level of COCO. The HCA shall coordinate this action with the OSDBU.
FAR 19.602-1 (a)(2)(i)	Certificates of Competency and Determinations of Responsibility - Procedures	Approval of Contracting Officer determination that apparent successful small business offeror lacks certain elements of responsibility, the CO does not need to refer the matter to the cognizant SBA Government Contracting Area Office if the small business is determined to be unqualified and ineligible because it does not meet the standard in 9.104-1(g), provided that the determination is approved by the COCO



DELEGATED RESPONSIBILITIES		
Reference	Area of Responsibility	Duties
HSAM 3019.602-3 (b)	Small Business Certificates of Competency and Determinations of Responsibility-Resolution of Differences between DHS and SBA.  <b>HSAM Authority Delegated no lower than COCO</b> <i>Authority Not Re-delegable</i>	<ul style="list-style-type: none"> <li>DHS designated official under FAR 19.602-3 for resolution of differences. COCO shall provide copies of all SBA correspondence to the OSDDBU.</li> <li>A formal appeal requesting reconsideration of a Certificate of Competency shall be submitted to APPD Director for review prior to its submission by the COCO to the Small Business Administration</li> </ul>
HSAM 3019.812 (d)	SBA 8(a) Program - Contract Administration  <b>HSAM Delegation to the COCO</b> <i>Authority Not Re-delegable</i>	The COCO is delegated this authority.
HSAM 3022.101-4	Basic Labor Policies - Removal of items from contractors ' facilities affected by work stoppages	Advise Contracting Officer if negative response received from contractor, subcontractor, or union representative and items are still critical.
HSAM 3022.406-8 (d)	Labor Standards for Contracts involving Construction- Investigations  <b>HSAM Delegation to the COCO</b> <i>Authority Not Re-delegable</i>	Receipt and processing of Contracting Officer's report
HSAM 3027.201-2 (e)	Patents, Data, and Copyrights - Contract Clauses  <b>HSAM Delegation to the COCO</b> <i>Authority Not Re-delegable</i>	The authority to approve the use of the Waiver of Indemnity clause in DHS is delegated to the Chief of the Contracting Office (COCO) upon coordination of the Assistant General Counsel of Intellectual Property
HSAR 3027.205 (a)	Patents, Data, and Copyrights - General  3027.205 - Adjustment of Royalties	<ul style="list-style-type: none"> <li>The Chief of the Contracting Office (COCO) is delegated the authority for administrative reviews under FAR 27.304-1(b)(2) after coordination with legal counsel.</li> <li>Reports shall be made to Component legal counsel. Contracting Officers shall coordinate actions with the COCO and HCA – (HSAR 3027.205)</li> </ul>
HSAM 3027.304-1 (a), (b)(1), (c)(1)-(4) and (g)	Patent Rights under Government Contracts  <b>HSAM Delegation to the COCO</b> <i>Authority Not Re-delegable</i>	After coordination with legal counsel. (c)(1)-(4). The contracting officer shall coordinate determinations to grant requests for greater rights with legal counsel.
FAR 28.101-1 (c)	Bonds and Insurance - Policy on use	COCOs are delegated authority for waivers of bid guarantee requirements for construction contracts to be performed overseas
HSAM 3031.205-32 (b)	Precontract costs not to exceed \$25 million  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	When the contracting officer determines in writing that it is necessary to incur precontract costs to meet the proposed cost- reimbursable contract's delivery schedule, the determination shall be approved by the Chief of the Contracting Office (COCO). Determination will be made by the HCA for precontract costs greater than \$25 million.
HSAR 3032.003  HSAM 3032.003	Contract Financing-Simplified Acquisition Procedures (SAP) Financing  <b>HSAM Authority Delegated to COCO</b> <i>Authority Not Re-delegable</i>	Where appropriate, COCO may determine that contract financing for commercial items may be provided for purchases made under FAR Part 13. A written determination must be prepared detailing the rationale supporting the decision.

DELEGATED RESPONSIBILITIES		
<u>Reference</u>	<u>Area of Responsibility</u>	<u>Duties</u>
HSAM 3032.501-2 (a)(3)	Unusual progress payments  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	COCO is delegated authority to approve the contractor's request for unusual progress payments
HSAM 3032.703-3 (b)	Contracts crossing fiscal years	COCO is authorized to approve the award of contracts, options, or orders under contracts for severable services for a period beginning in one fiscal year and ending in the next, provided it does not exceed one year. Redelegate to no lower than one level above the CO
HSAM 3033.104 (a)	Protests to the Government Accountability Office (GAO)  <b>HSAM Authority Delegated to COCO</b> <i>Authority Not Re-delegable</i>	<ul style="list-style-type: none"> <li>COCO shall prepare and provide to the GAO the required agency report.</li> <li>COCO shall notify the HCA whenever a protest to the GAO is filed.</li> </ul>
HSAM 3036.209	Construction contracts with architect-engineer firms -HSAM  The Head of the Contracting Activity (HCA) or designee no lower than a Senior Executive Service (SES) or flag officer level may approve the award of a contract for the construction of a project to the firm that designed the project or its subsidiaries or affiliates.	COCOs must submit requests to the HCA to include: (1) the reason(s) why award to the design firm is required; (2) an analysis of the facts involving potential or actual organizational conflicts of interest, including benefits and detriments to the Government and prospective contractor; and (3) measures to be taken to avoid, neutralize, or mitigate conflicts of interest
HSAM 3036.213-2 (a)	Procedures for sealed bidding in construction contracting - Presolicitation notices  <b>HSAM Authority Delegated no lower than COCO</b> <i>Authority Not Re-delegable</i>	COCO may waive the requirement to send presolicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed the simplified acquisition threshold
HSAM 3036.602-1 (b)	Selection Criteria - Firms of architect-engineer contracts  <b>HSAM Authority Delegated no lower than COCO</b> <i>Authority Not Re-delegable</i>	COCO is authorized to approve the use of design competition. Approval must be obtained prior to soliciting proposals
HSAM 3036.602-4 (a) and (b)	Architecture and Engineering (A&E) Services – Selection Authority  <b>HSAM Authority Delegated no lower than COCO</b> <i>Authority Not Re-delegable</i>	COCO is delegated the authority to approve the use of design competition and make final selection for A&E Services.
HSAM 3036.602-5 (b)	A&E contracts - Short selection process for contracts not to exceed the simplified acquisition threshold.  <b>HSAM Authority Delegated no lower than COCO</b> <i>Authority Not Re-delegable</i>	Review and approve the selection report IAW FAR 36.602-5.
HSAM 3037.104-70 (b)(5)	Personal Services Contracts - Experts and Consultants	The COCO, without redelegation, shall approve the required D&F unless the personal services

DELEGATED RESPONSIBILITIES		
<u>Reference</u>	<u>Area of Responsibility</u>	<u>Duties</u>
	<b>HSAM Authority Delegated to COCO</b> <i>Authority Not Re-delegable</i>	contract for experts and consultant services are acquired without regard to the pay limitation of 5 U.S.C. 3109 in which case, the Head of the Contracting Activity (HCA) shall approve.
HSAM 3037.106 (b)	Funding and Term of Service Contracts	The Chief of the Contracting Office (COCO) is delegated this authority. COCO shall not re-delegate this authority no lower than one level above the CO.
HSAM 3037.203-70 (a)	Services of individual experts and consultants  <b>HSAM Delegation under 5 U.S.C. 3109 to COCO</b> <i>Authority Not Re-delegable</i>	COCO is delegated authority under 5 U.S.C. 3109 (to procure by contract the temporary or intermittent services of experts or consultants or an organization thereof, if such an acquisition is authorized by an appropriation or other statute.)
HSAM 3037.204 (a), (b), and (d)	Guidelines for determining availability of personnel  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	COCO is delegated the authorities at FAR 37.204
HSAM 3042.705-3 (b)	Educational institutions  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	If DHS is the Cognizant Federal Agency for an educational institution for the purpose of negotiating indirect cost rates, the use of predetermined final indirect cost rates must be approved by the COCO.
HSAM 3043.7002- 1 (a)(2)	Undefinitized Contract Actions (UCA's) Limitations – Authorizations  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	Contracting officer shall obtain prior written approval for use of a UCA from COCO if not expected to exceed \$1 Million (HCA if over \$1 Million)
HSAM 3043.7004	UCA Monitoring system and report	The COCO shall (a) ensure that all UCAs, except for UCAs on classified contracts, are entered into the ERA under the UCA tab, (b) regularly monitor the ERA reports, and (c) ensure that progress is made to definitize the UCAs within the six-month period (except see FAR 16.603-2 for additional requirements for letter contracts.) Also, see HSAM 3016.603-2(c) for COCO approval to extend the definitization schedule under letter contracts.
HSAM 3044.302	Subcontracting Policies and Procedures - Contractor's Purchasing Systems Reviews  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	COCO is delegated this authority when the contract administration is retained.
HSAM 3048 .104-3	Value Engineering - Sharing collateral savings  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	COCO is authorized to make the cost determination at FAR 48 .104-2(a).
HSAM 3048.201 (e)	Value Engineering - Clauses for supply or service contracts  <b>HSAM Delegation to COCO</b> <i>Authority Not Re-delegable</i>	The COCO is authorized to make the cost determination for an individual contract only at FAR 48.201(e).
HSAM 3048.202	Value Engineering - Clause for Construction contracts  <b>HSAM Delegation to COCO</b>	The COCO is authorized to make the cost determination for an individual contract only at FAR 48.202.

<b>DELEGATED RESPONSIBILITIES</b>		
<b><u>Reference</u></b>	<b><u>Area of Responsibility</u></b>	<b><u>Duties</u></b>
	<i>Authority Not Re-delegable</i>	
FAR 48.201 (a)	VECPs- Contract Clauses for Supply and Service Contracts -Individual Contracts.  <b>FAR Requirement - COCO</b>	Authorization for inclusion of value engineering clauses in solicitations and contracts for the kinds of requirements described in FAR 48.201(a)(1) - (6).
FAR 49.101 (e)	Termination of Contracts - Authorities and Responsibilities	If the same item is under contract with both large and small business concerns and it is necessary to terminate for convenience part of the units still to be delivered, preference shall be given to the continuing performance of small business contracts over large business contracts unless the chief of the contracting office determines that this is not in the Government's interest.
FAR 50.205-4 (a)(2)	Support of Anti-terrorism by Fostering Effective Technologies (SAFETY) Act of 2002 - Authorization of awards made presuming SAFETY Act designation or certification after contract award  <b>FAR Requirement - COCO</b>	When necessary to award a contract prior to DHS issuing SAFETY Act protections, contracting officers may award contracts presuming that DHS will issue a SAFETY Act designation/certification to the contractor after contract award only if- (1) The criteria of 50.205-3(a) are met; (2) The chief of the contracting office (or other official designated in agency procedures) approves the action; and (3) The contracting officer advises DHS of the timelines for potential award and consults DHS as to when DHS could reasonably complete evaluations of offerors' applications for SAFETY Act designations or certifications.
FAR 52.216-2	Economic Price Adjustment - Standard Supplies	As prescribed in 16.203-4(a), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.
FAR 52.2163-3	Economic Price Adjustment - Semi Standard Supplies	As prescribed in 16.203-4(a), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.
FAR 52.216-4	Economic Price Adjustment - Labor and Material	As prescribed in 16.203-4(c), when contracting by negotiation, insert a clause that is substantially the same as the following clause in solicitations and contracts when the conditions specified in 16.203-4(c)(1)(i) through (iv) apply (but see 16.203- 4(c)(2)). The clause may be modified by increasing the 10- percent limit on aggregate increases specified in subparagraph (c)(4), upon approval by the chief of the contracting office.

## FAM APPENDIX B: Local Area Evaluation Preference

This Appendix provides local area price evaluation preference guidance, provisions and additional local area documentation

### **Section I: Local Area Price Evaluation Preference Guidance**

The Contracting Officer shall deem the price offered by a local area business concern to be lower than the price offered by another non-local business concern if the price offered by the local area business concern is not more than 10 percent higher than the price offered by the other lowest, responsive and responsible offeror.

(1) Eliminate all offers or offerors that are unacceptable for reasons other than price; *e.g.*, nonresponsive, debarred or suspended, or a prohibited source

(2) Rank the remaining offers by price.

**For LPTA:**

**Example #1: If the lowest, responsive, responsible offeror is a Local Area Business, award on that offer**

Offeror	Locality	Price
Contractor A	Local Area Business	\$90
Contractor B	Non-Local Business	\$100

**No price preference** needs to be added because the lowest, responsive, responsible offeror is the Local Area Business, Contractor A

**Example #2: If the lowest responsive, responsible offeror is Non-Local, apply price evaluation preference. If Local Offeror is less than the evaluated price of the Non-Local offeror, award to Local Offeror.**

Offeror	Locality	Price	Evaluated Price After Preference
Contractor A	Local Area Business	\$105	\$105
Contractor B	Non-Local Business	\$100	\$110

**Outcome:** The contract would be awarded to the Local Area Business, Contractor A, because its price is less than 10 percent added to the price of the Non-Local Business, Contractor B - **(\$100 + 10 percent = \$110)**

## FAM APPENDIX B: Local Area Evaluation Preference (cont.)

Therefore, the Local Area Offeror displaces the Non-Local Offeror as the lowest, responsive and responsible offeror.

**Example #3: If the lowest responsive, responsible offeror is Non-Local, apply price preference. If evaluated price of the Non-Local offer remains less than the lowest Local Offeror, award to the Non-Local Offeror.**

Offeror	Locality	Price	Evaluated Price After Preference
Contractor A	Local Area Business	\$120	\$120
Contractor B	Non-Local Business	\$100	\$110

**Outcome:** The contract would be awarded to Non-Local Business, Contractor B because the Local Area Business, Contractor A's price (**\$120**) is **higher** than 10 percent added to the price of Non-Local Business, Contractor B - (\$100

+ 10 percent = **\$110**). Therefore, the Local Area Offeror **does not displace** the Non-Local Business as the lowest, responsive, and responsible offeror.

**Example #4 - Tie** - If application of a price preference results in a tie between a local offer and a non-local offer, award on the local offer.

Offeror	Locality	Price	Evaluated Price After Preference
Contractor A	Local Area Business	\$110	\$110
Contractor B	Non-Local Business	\$100	\$110

### For Best Value –

**Example #1:** The Contracting Officer must apply the 10 percent preference to all non-local business offerors and then determine which offeror represents the best value to the government.

Offeror	Locality	Price	Evaluated Price After Preference
Contractor A	Local Area Business	\$105	\$105
Contractor B	Non-Local Business	\$100	\$110

## **Section II: Local Area Evaluation Preference Provision**

IAW FAM 3X26.202 Evaluation Preference; The contracting officer shall insert the Local Area Evaluation Preference provision in solicitations for goods and services in response to a declared disaster:

- (a) Evaluation Preference: Offers will be evaluated by adding a factor of **10 percent** to the price of all offers, except for offers who reside or primarily do business in the disaster or emergency area

## **FAM APPENDIX B: Local Area Evaluation Preference (cont.)**

- (1) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.
- (2) When the two highest rated offerors are a local business concern and a non-local business concern, and the evaluated offer of the local business concern is equal to the evaluated offer of the non-local business concern after considering the price evaluation preference, award will be made to the local business concern.
- (b) Local Area Offerors: All offerors that reside or primarily do business in the disaster or emergency area shall submit certification in accordance with FAR provision 52.226-3 along with any additional supporting documentation as required in the solicitation.
- (c) If an offeror fails to comply with section (b) of this provision or the contracting officer determines the offeror does not meet the criteria that it resides or primarily does business in the disaster or emergency area, then its offer will be evaluated by adding a factor of 10 percent to its price.

### **Section III: Additional Local Area Documentation Requirement**

Pursuant to FAR 52.226-3(e), in addition to certification of FAR Provision 52.226-3(b), Offerors shall submit the following to support its representation that it resides or primarily does business in the disaster or emergency area:

- (c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—
  - (1) The offeror had its main operating office in the area (*offeror shall present a copy of a current main operating office building ownership/lease documentation as supporting evidence and evidence of domestic registration with the office of the [INSERT STATE] Secretary of State*); and
  - (2) That office generated at least half of the offeror's gross revenues and employed at least half of the offeror's permanent employees (*offeror shall present supporting documents showing the offeror's gross revenues during the past 12 months, including previous IRS tax year records, as supporting evidence and supporting documents demonstrating that its main operating office in the set-aside area employed at least half of the offeror's permanent employees*).

**If the offeror does not meet the criteria in paragraph (c) of this provision, in accordance with FAR 52.226-3(d), offerors shall provide at least:**

1. Physical location(s) of the offeror's permanent office(s) and date any office in the set-aside area(s) was established

\*Offeror shall present a copy of a current operating office building ownership/lease documentation as supporting evidence of any permanent office(s) and any office(s) in the set-aside area)

1. Current state licenses;
2. Other evidence that establishes the offeror resides or primarily does business in the set-aside area.



## FAM APPENDIX C: AGENCY PROTEST

### Solicitations/Terms and Conditions Language

**The following shall be inserted into all solicitations and contracts/orders, regardless of value, under sections covering contract clauses or instructions:**

-----  
*(insert paragraph number)* NOTICE OF FILING REQUIREMENTS FOR AGENCY PROTESTS

Prior to submission of an agency protest, all parties must use their best efforts to resolve concerns raised by an interested party. FEMA offers, as an option for disputes resolution, Alternative Dispute Resolution (ADR). ADR is an informal, expeditious and inexpensive way to resolve contract issues and is designed to promote satisfying solutions and fair procedures. For more information on FEMA's ADR services, please contact FEMA's ADR office at the following address:

Federal Emergency Management Agency

Alternative Dispute Resolution Division

FEMA Office of Chief Counsel

400 Virginia Avenue, SW

Washington, DC 20472-3400

If concerns cannot be resolved, protesters may use these procedures when a resolution is requested from the agency. These procedures have been designed to create an avenue for resolving third-party grievances in connection with the acquisition process outside of formal processes through the Government Accountability Office (GAO) and the United States Court of Federal Claims (CFC). Filing an agency protest is not a prerequisite to filing at the GAO or CFC. If the protester files a protest through the GAO or CFC while their protest is pending at the agency level, FEMA may dismiss the agency protest.

Pursuing an agency protest does not extend the time for obtaining a stay at GAO. These procedures are in addition to the existing protest procedures contained in FAR Subpart 33.103.

#### A. Definitions.

1. "Agency protest" is one that may be filed with either the contracting officer or the officer responsible for the resolution of all agency protests filed at the level above the contracting officer.
2. "Ombudsman" is the agency official above the level of the contacting officer designated by the Director of Acquisitions Operations to handle and issue the formal agency decision resolving the protest. Protesters using these procedures may protest directly to the ombudsman.
3. "Day" is a calendar day. In computing a period of time for the purpose of these procedures, the day from which the period begins to run is not counted. When the last day of the period is Saturday, Sunday, or a Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or a Federal holiday. Similarly, when the Washington, DC offices of FEMA are closed for all or part of the last day, the period extends to the next day on which the Agency is open.

B. Submission Guidelines.

1. Agency protests may be filed through the contracting officer or, at a level above the contracting officer, through the ombudsman either by facsimile transmission or by "Certified Mail" (Return Receipt Requested) as follows:

FEMA	or	FEMA
<<contracting officer name, title>>		<<ombudsman name, title>>
<<address 2>>		<<address 2>>
<<address 3>>		<<address 3>>
<<telephone>>		<<telephone>>
<<fax>>		<<fax>>

2. The outside of the envelop or beginning of the FAX transmission must be marked "Agency Protest". If the protester submits the protest directly through the ombudsman, the protester must also, within one (1) day of submitting the protest to the ombudsman, submit a copy of the protest to the responsible contracting officer either by FAX transmission or by "Certified Mail" (Return Receipt Requested).
3. To be filed on a given day, protests and any subsequent appeals must be received by 4:30 p.m., current-local time. Any protests received after that time will be considered to be filed on the next day.
4. Protest submission will not be considered filed until all of the following information is provided:
  - a. The protester's name, address, telephone number and fax number;
  - b. The solicitation or contract number;
  - c. A detailed statement of all factual and legal grounds for protests, to include an explanation of how the protester was prejudiced;
  - d. Copies of relevant documents;
  - e. A request for ruling by the agency;
  - f. A statement detailing the form of relief requested;
  - g. All information establishing that the protester is an interested party for the purposes of filings a protest; and
  - h. All information establishing the timeliness of the protest.
5. All protests must be signed by an authorized representative of the protester; and must be addressed to the contracting officer or the ombudsman.

C. Timeliness/Resolution of Protests.

1. Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.
2. Protests other than those covered by paragraph (1) of this section shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier), with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to

the protester but shall be filed not later than 10 days after the date on which the debriefing is held.

3. Protests filed through the contracting officer within 20 days after the protest is filed through the contracting officer, the contracting officer will send a written ruling and a summary of the reasons supporting the ruling to the protester by “Certified Mail (Return Receipt Requested)”.

D. Appeals.

1. Protesters who filed protests through the contracting officer may, within five days of receipt of the contracting officer’s written ruling, appeal to the ombudsman.
2. Requests for appellate review must be submitted to the ombudsman by facsimile transmission or by “Certified Mail” (Return Receipt Requested).
3. The ombudsman will send a written ruling and a summary of the reasons supporting the ruling to the protester by “Certified Mail (Return Receipt Requested)” within 10 days of receipt of the request for appellate review of the contracting officer’s decision.
4. In accordance with FAR 33.103(d)(4) and 4 C.F.R. 21.2(a)(3), if there is an agency appellate review of the contracting officer’s decision on the protest, it will not extend GAO’s timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action.

E. Protests filed through the ombudsman:

1. If the protester protests directly through the ombudsman, the ombudsman will send a written ruling and a summary of the reasons supporting the ruling to the protester by “Certified Mail (Return Receipt Requested)” within 35 days after the protest was filed.
2. Protests filed directly through the ombudsman cannot be appealed within the agency.

- F. Dismissal of Protests. The agency may dismiss protests when protesters file protests through the GAO or CFC while their protests are pending at the agency level; and for failure to comply with any of the requirements of these agency protest procedures. For example, the agency may dismiss protests that are procedurally or substantively defective (e.g., the protest is untimely, or the protest fails to clearly state legally sufficient grounds of protests).

**The following shall be inserted into all Unsuccessful Offeror Letters:**

*(insert paragraph number)* AGENCY PROTEST PROCEDURES

Prior to submission of an agency protest, all parties must use their best efforts to resolve concerns raised by an interested party. FEMA offers, as an option for dispute resolution, Alternative Dispute Resolution (ADR). ADR is an informal, expeditious and inexpensive way to resolve contract issues and is designed to promote satisfying solutions and fair procedures. For more information on FEMA’s ADR services, please contact FEMA’s ADR office at the following address:

Federal Emergency Management Agency  
Alternative Dispute Resolution Division  
FEMA Office of Chief Counsel  
400 Virginia Avenue, SW  
Washington, DC 20472-3400

If concerns cannot be resolved through ADR, protesters may use the Agency Protest Procedures outlined in paragraph \_\_\_\_\_ of solicitation \_\_\_\_\_, when a resolution is requested from the agency. Agency protests may be filed with either the contracting officer or, at a level above the contracting officer, through the ombudsman. Pursuing an agency protest does not extend the time for obtaining a stay at Government Accountability Office (GAO). Filing an agency protest is not a prerequisite to filing at the GAO or the United States Court of Federal Claims (CFC).

Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.

Protests, other than those covered by above paragraph, shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier), with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester but shall be filed not later than 10 days after the date on which the debriefing is held.

To be filed on a given day, protests and any subsequent appeals must be received by 4:30 p.m., current-local time. Any protests received after that time will be considered to be filed on the next day.

Protests filed through the contracting officer:

1. Within 20 days after the protest is filed through the contracting officer, the contracting officer will issue a decision to the protester
2. Protesters who filed protests through the contracting officer may, within five days of receipt of the contracting officer's written ruling, appeal to the ombudsman.
3. The ombudsman will issue a final decision for the agency within 10 days of receipt of the request for appellate review of the contracting officer's decision. In accordance with FAR 33.103(d)(4) and 4 CFR 21.2(a)(3), if there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action.

Protests filed through the ombudsman:

1. If the protester protests directly through the ombudsman, the ombudsman will issue a decision to the protester within 35 days after the protest was filed.
2. Protests filed directly through the ombudsman cannot be appealed within the agency.

Protesters using these procedures may protest to the contracting officer or the ombudsman either by facsimile transmission or by "Certified Mail (Return Receipt Requested)" as follows:

FEMA	or	FEMA
<<contracting officer name, title>>		<<ombudsman name, title>>
<<address 2>>		<<address 2>>
<<address 3>>		<<address 3>>
<<telephone>>		<<telephone>>
<<fax>>		<<fax>>

The agency may dismiss protests when protesters file protests through the GAO or CFC while their protests are pending at the agency level and for failure to comply with any of the requirements of the Agency Protest Procedures outlined in paragraph \_\_\_\_\_ of solicitation \_\_\_\_\_.

See paragraph \_\_\_\_\_ of solicitation \_\_\_\_\_, for additional details and instructions.

**Agency Protest Written Ruling Template: The following template shall be used to issue protest rulings:**

**AGENCY PROTEST RULING**

Matter of: (Insert name of Protester/Firm/Address)

Protest Identification Number:

Decision Date:

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**Basis of Protest**

Date Protest Received:

Summary of Grounds of Protest:

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**Ruling**

Decision: (Brief summary of ruling)

Background: (Brief summary of events leading up to protest including when Requests for Proposals issued, description of requirement, and when protest received)

Discussion: (Discuss the facts of the case and explain why the protest is or is not valid. Include ruling.)

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**Appeals**

Protesters who filed protests through the contracting officer may, within five days of receipt of the contracting officer's written ruling, appeal to the ombudsman either by facsimile transmission or by "Certified Mail (Return Receipt Requested)" as follows:

FEMA

<<ombudsman name, title>>

<<address >>

<<telephone>>

<<fax>>

Within 10 days of receipt of the request for appellate review of the contracting officer's decision, the ombudsman will issue a final decision for the agency:

Signed

*Signature*

---

Contracting officer name

Address

Phone number

## **FAM APPENDIX D: FINANCIAL RESPONSIBILITY/TECHNICAL ABILITY LANGUAGE**

*In order to ensure bids and proposals allow the CO to provide a comprehensive, affirmative responsibility determination, the CO shall insert the following language in all solicitations and resulting contracts:*

### **Non-Disaster Procurements**

#### ***Statement of Contractor Assurance***

By submitting this offer, the offeror certifies that, at the time of submission, they have adequate financial resources to perform the contract; they have the capability to comply with the required or proposed delivery or performance schedule; and otherwise meet or exceed the general standards required by FAR 9.104-1.

The offeror shall disclose any filings for bankruptcy, fines levied by governmental agencies, or legal proceeding against any participating organization, employees, corporate officer, or entity that might have a material effect on the proposer's ability to implement the proposed project, as required by FAR [52.209-5 or 52.212-3(h)\*], Certification Regarding Responsibility Matters.

### **Disaster Procurements**

#### ***Statement of Contractor Assurance***

By submitting this offer, the offeror certifies that, at the time of submission, they have adequate financial resources to perform the contract; they have the capability to comply with the required or proposed delivery or performance schedule; and otherwise meet or exceed the general standards required by FAR 9.104-1. Furthermore, by submitting this offer, the offeror also certifies that any partners or subcontractors meet or exceed the general standards required by FAR 9.104-1, and the offeror has commitments from their partners and subcontractors to deliver all commodities/services proposed.

The offeror shall disclose any filings for bankruptcy, fines levied by governmental agencies, or legal proceeding against any participating organization, employees, corporate officer, or entity that might have a material effect on the proposer's ability to implement the proposed project, as required by FAR [52.209-5 or 52.212-3(h)\*], Certification Regarding Responsibility Matters.

**FAM APPENDIX D: FINANCIAL RESPONSIBILITY/TECHNICAL ABILITY LANGUAGE**  
**(cont.)**

***Instructions for Submitting Contractor Assurance Information\*\****

The offeror shall submit information supporting this certification to the CO at the time proposals are due. This submission will only be reviewed by the CO in making a determination of responsibility. This information will not be reviewed as part of a technical evaluation and will not count against page limits for technical proposals.

At a minimum, offerors shall include: 1) the offeror's delivery plans, including, but not limited to, any agreements and/or arrangements with suppliers, providing as much detail necessary to explain how the statement of work will be accomplished within this working relationship; 2) a description of the offeror's ability to adequately meet the financial demands of the requirement, including current relationships with lending and/or financial institutions or equity sources which have demonstrated interest in providing financing for the proposed project; and

3) at the offerors discretion, any additional information the offeror believes supports the above certification and will assist the CO in making the determination of responsibility for the offeror and its subcontractors.

\*52.212-3(h) applies to acquisitions over the Simplified Acquisition Threshold (\$250,000)

\*\* This request for information is only included for disaster solicitations because FAR 9.105-1 Obtaining Information, states that information should generally be obtained after receipt of offers and "shall ordinarily be limited to information concerning – (i) the low bidder; or (ii) those offerors in range for award."



## FAM APPENDIX E: 1102 REPORTING REQUIREMENTS

Below are reporting requirements for Contracting Officers.

CPARS -- <a href="#">CPARS</a>	Contractor performance evaluations are completed on an annual basis to meet the requirements of FAR Subpart 42.15.
FPDS-NG	FPDS-NG reporting is done through PRISM. FPDS-NG reports are to be completed and finalized at time of award.
ERA -- <a href="#">AFPIRS</a>	Information regarding all Award Fee and Incentive Fee contracts and approved award fee or incentive payments must be reported in ERA Award Fee/Performance Incentive Reporting System.
ERA -- <a href="#">BART</a>	All approved waivers to the Buy American Act need to be reported in the Buy American Reporting Tool.
ERA – <a href="#">Congressional Notification</a>	All actions requiring CNs including those for which there is a deferral.
ERA – <a href="#">Interim (Bridge) Contract Reporting Tool</a>	All interim contract must be reported until a new competitive contract or order is operational.
ERA – One Bid Analysis	Report when only one responsible offer is received in response to a solicitation using competitive procedure, CS will receive request to complete questionnaire.
ERA – <a href="#">Procurements of Interest Tool (POINT)</a>	Report new and existing contracts, orders, Blanket Purchase Agreements, and Interagency Agreements (IAA) that: <ul style="list-style-type: none"> <li>• Meet the Procurement Strategy Roadmap (PSR) threshold for the component</li> <li>• Are below the PSR thresholds with congressional, media, or other significant interest to the CPO.</li> </ul>
ERA – <a href="#">Safeguarding Sensitive Information (Cyber Hygiene)</a>	All solicitations and contracts that include the cyber hygiene special clauses and determined to be high risk must be reported.
Internal Reporting – Termination	All contract actions that are terminated under Cause or Default regardless of dollar value How and to where?
Internal Reporting – Un-Definitized Contract Action	Any contract actions not established before performance is begun to include but not limited to: <ul style="list-style-type: none"> <li>• Change Orders (original copy and supplemental agreement)</li> <li>• Letter Contracts (original copy and definitized contract)</li> </ul> Must provide copy of order/letter to PQCB upon execution for records.
Internal Reporting – Unauthorized Commitment	Provide final ratified documents for unauthorized commitment to PQCB for records.
Internal Reporting – JOFOC/J&A	Must receive control number from PQCB for all J&As and provide final J&A signed by HCA/DHS CPO to PQCB for records.
Internal Reporting – PSR	Provide final approved PSR and PSR Waiver to PQCB for records.
Internal Reporting – Protest	Provide detailed information to PQCB for records, when any protests are filed against the solicitation or award. The information includes:

	<ul style="list-style-type: none"> <li>• Branch</li> <li>• Branch Chief</li> <li>• CO</li> <li>• OCC POC</li> <li>• Customer Name</li> <li>• Project Name</li> <li>• Sol/Contract Number</li> <li>• Protest Type (Agency, GAO, COFC)</li> <li>• Date Protest Received</li> <li>• Protest Number</li> <li>• Company</li> <li>• Status</li> <li>• Ruling</li> </ul>
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The following Guides, Forms, and checklists will be incorporated as TABS next to the

FAM on the POCB share page for easy access:

**Congressional Notification Deferral Job Aid** and the **Congressional Notification Summaries Job Aid** is available under ‘Reference Documents’ at this [link](#).

[Disaster Contracting Desk Guide V4.0 2020](#)

[ECFS and File Room Records Management and Responsibilities](#)

[FAM Contract Line Item Number \(CLIN\) Structure Guide](#)

[FAM Review and Approval of Procurement Actions Procedures Guide](#)

[FAM Safeguarding of Sensitive Information Procedures Guide](#)

[Federal Emergency Management Agency \(FEMA\) SharePoint Invoice Processing Desk Guide for Contracting Officer’s Representatives \(CORs\) and Invoice Approving Officials \(AOs\)](#)

[Job Aid: Local Buy Quick Reference Guide](#)

### **Checklists:**

[Contract Security Compliance Checklist](#)

[ECFS Basic Ordering Agreement \(BOA\) Checklist](#)

[ECFS Blanket Purchase Agreement \(BPA\) Checklist](#)

[ECFS Contract Checklist](#)

[ECFS Delivery/Task Order Checklist](#)

[ECFS Grants Checklist](#)

[ECFS IGSA Checklist](#)

[ECFS IGSA Checklist included Modifications](#)

[ECFS Inter/Intra Agency Agreement \(IAA\) Checklist](#)

[ECFS Simplified Acquisition Procedures \(SAP\) Checklist](#)

[Disaster Contract File Verification Toolkit Checklist](#)

[Senior Management Level Pre-Award Review \(Requirements exceeding \\$5 MIL\)](#)

### **Templates:**

Template related to the Directive : [FEMA Directive No. 093-2 Ratifying Unauthorized Commitment](#)

[HSAM Appendix G - Checklist for Sensitive Information](#)

[Pre-solicitation Memorandum Sample](#)

[Procurement Strategy Roadmap \(PSR\) Review Template](#)

[Procurement Strategy Roadmap \(PSR\) Waiver Template](#)

[Quality Review Comment Form](#)

[Quality Review Routing Sheet](#)

[Sample Request for SBA Release from 8\(a\) Program](#)

[Sample 8\(a\) offering letter](#)