

October 21, 2005

# AGAR ADVISORY

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT  
AGAR ADVISORY NO. 79A

**Hurricane Katrina Contingency Contracting Authorities, Proclamation of the President Suspending the Davis Bacon Act and Waivers for Use of Convenience Checks for Disaster Recovery and Emergency Blanket Waiver Approval for Hurricane Related Information Technology Acquisitions**

**INTRODUCTION:** This Agriculture Acquisition Regulation (AGAR) Advisory is a revision of, and supersedes, AGAR Advisory 79, dated September 9, 2005. The purpose of this AGAR Advisory is to establish contingency contracting authorities, disseminate information concerning the suspension of the Davis Bacon Act in specific parishes and counties, and disseminate waivers related to disaster recovery in the aftermath of Hurricane Katrina.

**SUMMARY:** (1) The Department of Agriculture (USDA) Senior Procurement Executive by AGAR Advisory 79 and this superseding AGAR Advisory 79A has raised the contingency contracting authorities pursuant to the authorities granted under Section 1443 of Public Law 108-136 codified at 41 U.S.C. 428a and as promulgated by the Civilian Agency Acquisition Council Letter 2005-04 dated September 7, 2005, and based on Proclamation 7924 of September 8, 2005 by the President suspending the Davis Bacon Act for jurisdictions devastated by Hurricane Katrina. (2) By memorandum dated September 9, 2005, the USDA Senior Procurement Executive has granted a waiver from AGAR Advisory 52, Prohibition on Using Convenience Checks for Purchases or Payments, and a waiver from the maximum single purchase limit in Departmental Regulation (DR) 5013-6, for purchases in direct support of Hurricane Katrina disaster recovery efforts. (3) The USDA Office of the Chief Information Officer (OCIO) has established an emergency blanket waiver for purchases of information technology made to respond to the Hurricane Katrina emergency. (4) The President has suspended the Davis Bacon Act for jurisdictions devastated by Hurricane Katrina.

**SPECIFIC ISSUES:**

1. Applicability.

The authorities in this advisory are applicable to acquisitions that have a clear and direct relationship to Hurricane Katrina rescue and relief efforts. An acquisition is considered to have a clear and direct relationship to Hurricane Katrina rescue and relief efforts if the commodities will be delivered to, or the services performed in the jurisdictions named in Proclamation 7924, or in areas immediately adjacent to those jurisdictions for supplies,

services, or construction that otherwise would not have been needed except for Hurricane Katrina.

Acquisitions of supplies, services, or construction for delivery to or performance at a location outside and not immediately adjacent to a named county have a clear and direct relationship to Hurricane Katrina rescue and relief efforts if the requisitioner demonstrates that the acquisition in fact (1) is in support of rescue and relief, and (2) is for supplies, services, or construction that otherwise would not have been needed except for Hurricane Katrina.

## 2. Contingency Contracting Authorities

Pursuant to Civilian Agency Acquisition Council Letter 2005-04 dated September 7, 2005 and Proclamation 7924 (copies attached), the following contracting thresholds are raised effective September 9, 2005:

a. The micro-purchase threshold as defined in Federal Acquisition Regulation (FAR) 2.101 is raised from \$2,500 to \$15,000 for acquisitions of supplies or services used to support the contingency operation for Hurricane Katrina disaster recovery.

For construction in jurisdictions in which the Davis Bacon Act has been suspended by Proclamation 7924, the micro-purchase threshold is raised from \$2,000 to \$15,000. The jurisdictions in which the Davis Bacon Act has been suspended are listed in the attached copy of the Proclamation.

The micro-purchase threshold for construction in jurisdictions not listed in the proclamation remains at \$2,000, regardless of whether the construction, repair, or alteration activity is in support of disaster recovery efforts.

For an additional increase to the micropurchase threshold, see section 4, Micropurchase authority over \$15,000, below.

b. The FAR 19.502-1 requirements for setting aside acquisitions do not apply to purchases of \$15,000 or less for acquisitions used to support the contingency operation for Hurricane Katrina disaster recovery. Nevertheless, contracting officers and purchase cardholders shall ensure that small business concerns are provided maximum practicable opportunity under the circumstances to participate in Federal acquisitions, and shall equitably distribute purchases among qualified suppliers.

c. The threshold for application of the clauses FAR 52.225-1, Buy American Act—Supplies and FAR 52.225-13, Restrictions on Certain Foreign Purchases is \$15,000 for acquisitions used to support the contingency operation for Hurricane Katrina disaster recovery (See FAR 25.1101 and 1103.).

d. The simplified acquisition threshold as defined in FAR 2.101 is raised to \$250,000 for supplies or services that are used to support the contingency operation for Hurricane

Katrina disaster recovery. Contracting officers should remember that the small business reserve is also raised to \$250,000 (see FAR 19.502-2).

3. Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5206) (Stafford Act).

The Stafford Act provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities, such as debris clearance, distribution of supplies, or reconstruction. A major disaster has been declared for the states of Louisiana, Mississippi, Alabama, and Florida. See FAR subpart 26.2.

4. Micro purchase authority over \$15,000.

In accordance with section 101(2) of Public Law 109-62, the micro-purchase threshold for actions in support of Hurricane Katrina rescue and relief efforts is \$250,000. However, OMB has restricted agency authority to use the \$250,000 micro-purchase threshold to cases where exceptional circumstances justify its use. Agencies that require micro-purchase authority over \$15,000 to support Hurricane Katrina relief and recovery shall submit a request for increased authority through their Heads of Contracting Activity Designees (HCADs) to the Senior Procurement Executive (SPE). The request shall describe the exceptional circumstances that require an increase to the micro-purchase threshold, and justify why use of other acquisition techniques would not adequately enable the agency to support recovery and relief efforts under the circumstances described. The request shall propose a maximum micro-purchase threshold not to exceed \$250,000. The request shall state the number of contracting officers proposed to exercise the increased authority, the geographical areas in which the authority will be exercised, the estimated time during which the authority will be needed, and the types of supplies and services to be acquired with the increased authority. If the SPE approves the request, the SPE will require additional information as the approval to grant an increased delegation of authority will be on an individual-by-individual basis, and will require controls over the authority granted.

5. Purchase Cards.

a. Except as specifically provided below, DR 5013-6, Use of the Purchase Card and Convenience Check, applies to all card or check transactions made in support of Hurricane Katrina disaster recovery.

b. Because of the need to ensure that cardholders have appropriate knowledge and expertise in making purchases over \$2,500, agencies shall follow the delegation procedure in Section 14, paragraph c of DR 5013-6 in authorizing cardholders to make micro-purchases between \$2,500 and \$15,000.

c. AGAR Advisory 52, Prohibition on Using Convenience Checks for Purchases or Payments, and DR 5013-6, Use of the Purchase Card and Convenience Check-

The USDA Senior Procurement Executive has authorized, for a period of 180 calendar days from September 9, 2005 (the date of the attached memorandum):

i. The use of convenience checks in direct support of Hurricane Katrina disaster recovery efforts. Convenience checks used for such purpose will not count against annual waiver limits (caps); and

ii. The use of convenience checks over \$2,500 by warranted contracting officers up to the limits of their warrants, for payment of new emergency contracts in direct support of hurricane disaster recovery efforts.

See the attached memorandum for specific details concerning application of the authority summarized in subparagraphs 2.c.i and 2.c.ii above.

d. Purchase cards and convenience checks may be used to acquire telecommunications equipment and services in support of Hurricane Katrina disaster recovery efforts. Hurricane Katrina disaster recovery is an emergency within the meaning of AGAR Advisory 58A, and the waiver for emergency acquisitions is applicable. Acquisitions must be reported to the Associate Chief Information Officer for Telecommunications in accordance with AGAR Advisory 58A, Emergencies (p. 4). Reports should be filed within 15 days, or as soon as possible if conditions related to disaster response make it impracticable to report within this timeframe.

6. USDA Information Technology (IT) Acquisition Approval Process (Reference AGAR Advisory No. 53) - Emergency Blanket Waiver Approval for Hurricane Related Information Technology Acquisitions

The USDA OCIO has established an emergency blanket waiver to the USDA OCIO IT acquisition approval process for procurement of IT hardware, software and IT contractor support services in the wake of the recent hurricane. Refer to the attached copy of the USDA OCIO memorandum dated September 7, 2005 (waiver number 1323) for specific details concerning this waiver.

7. Labor issues.

a. Suspension of the Davis Bacon Act. By Proclamation 7924, the President has suspended the Davis Bacon Act for jurisdictions devastated by Hurricane Katrina. A copy of the Proclamation, which lists the jurisdictions in which the Davis Bacon Act has been suspended, is attached. For construction in jurisdictions in which the Davis Bacon Act has been suspended, the micro-purchase threshold is \$15,000. The micro-purchase threshold for jurisdictions not listed in the Proclamation remains at \$2,000, regardless of whether the construction, repair, or alteration activity is in support of disaster recovery efforts.

A copy of a class deviation implementing the suspension of the Davis Bacon Act is attached. The deviation identifies the FAR sections affected by the suspension. While

clauses related to wage determinations do not apply during the suspension, other construction related clauses prescribed in FAR subpart 22.4 are still applicable. These clauses are:

- 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation
- 52.222-8 Payrolls and Basic Records
- 52.222-9 Apprentices and Trainees
- 52.222-10 Compliance with Copeland Act Requirements
- 52.222-12 Contract Termination –Debarment (DEVIATION)
- 52.222-14 Disputes Concerning Labor Standards
- 52.222-15 Certification of Eligibility
- 52.222-17 Labor Standards for Construction Work – Facilities Contracts (DEVIATION)

52.222-12 CONTRACT TERMINATION—DEBARMENT (FEB 1988) (DEVIATION)  
A breach of the contract clauses entitled Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

52.222-17 LABOR STANDARDS FOR CONSTRUCTION WORK—  
FACILITIES CONTRACTS (FEB 1988) (DEVIATION)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:

- (1) Contract Work Hours and Safety Standards Act—Overtime Compensation at 52.222-4.
- (2) Payrolls and Basic Records at 52.222-8.
- (3) Apprentices and Trainees at 52.222-9.
- (4) Compliance with Copeland Act Requirements at 52.222-10.
- (5) Contract Termination—Debarment at 52.222-12 (Deviation).
- (6) Disputes Concerning Labor Standards at 52.222-14.
- (7) Certification of Eligibility at 52.222-15.

(Strike out references to CWHSSA in contracts under the simplified acquisition threshold)

For construction contracts for single projects started during the suspension, contracting officers shall not include Davis Bacon clauses, but shall include applicable labor clauses identified in the deviation. For construction contracts that include tasks or severable performance that may be started after the suspension has been lifted, contracting officers shall include Davis Bacon provisions and clauses in solicitations and contracts without regard to the suspension, but also shall include the clause provided in the deviation.

b. Applicability of the Service Contract Act. The Service Contract Act still applies to acquisitions of services over \$2,500, including micro-purchases between

\$2,500 and \$15,000.

c. Minimum wage and overtime. Applicable minimum wage and overtime provisions of the Contract Work Hours and Safety Standards Act, the Walsh-Healy Act, and/or state law are still in effect for disaster recovery efforts.

d. OFCCP Waiver. The Office of Federal Contract Compliance Programs, Department of Labor (OFCCP) has waived certain affirmative action program requirements included in equal employment opportunity clauses at FAR 52.2226-26, FAR 52.222-35, and FAR 52.222-36. OFCCP has waived the requirement for contractors to develop affirmative action programs, to provide notices required by OFCCP, and to report to OFCCP (e.g., Standard Form 100 (EEO-1 reports)). This waiver does not relax or exempt contractors from nondiscrimination requirements. Contractors must still post “Equal Opportunity is the Law” notices; keep pertinent employment records; and list employment opportunities with the appropriate local employment service office. A copy of the waiver is attached. Contracting officers shall add the applicable language from the waiver memorandum to FAR clauses 52.222-26, 52.222-35, and 52.222-36, in the manner prescribed by FAR 22.810(e), FAR 22.1310(a)(2), and 22.1408(b), respectively.

#### 8. Reporting.

AGAR Advisory 72 governs reporting of transactions between \$2,500 and \$25,000. All transactions above \$2,500, including purchase card transactions, shall be reported in FPDS NG, regardless of whether such transactions are made using micropurchase procedures. Include “Katrina” in the Description of Requirement field when reporting actions in FPDS NG. The General Services Administration is updating FPDS NG to include a data element on the screen called National Interest Action. When this element becomes available, report Katrina related actions by completing this data element, instead of entering “Katrina” in the Description of Requirement field.

Cardholders reconciling Katrina related transactions in PCMS shall enter “Katrina” in the Comment block.

#### 9. Stewardship Action Plan.

A copy of USDA’s Stewardship Action Plan is attached. Agencies shall take action required by section V, Oversight, of the Stewardship Action Plan.

Questions regarding this advisory may be directed to Joe Daragan at 202-720-5729 or by email to [joe.daragan@usda.gov](mailto:joe.daragan@usda.gov) - contingency contracting authorities and Proclamation by the President; Joe Taylor at 202-401-0787 or by email to [joe.taylor@usda.gov](mailto:joe.taylor@usda.gov) - convenience checks; and Alesia Webster at 202-720-6898 or by email to [alesia.webster@usda.gov](mailto:alesia.webster@usda.gov) - USDA OCIO IT acquisition approval waiver.

This advisory is available on the USDA Procurement Home Page at

<http://www.usda.gov/procurement/policy/advisories.html>.

**EXPIRATION DATE:** Effective until cancelled or in accordance with expiration dates established in the individual attachments to this Advisory.

**ATTACHMENTS:**

CAAC Letter 2005-04 dated September 7, 2005, subject: Hurricane Katrina Contingency Contracting Authorities

USDA SPE Memorandum dated September 9, 2005, subject: Waiver for Use of Convenience Checks for Disaster Recovery

USDA CIO Memorandum dated September 7, 2005, subject: Emergency Blanket Waiver Approval for Hurricane Related Information Technology Acquisitions (#1323)

Proclamation 7924 of September 8, 2005, To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina

Class Deviation from Federal Acquisition Regulation (FAR) Subpart 22.4, October 20, 2005

Department of Labor, Office of Federal Contract Compliance Programs, Memorandum to All Contracting Agencies of the Federal Government, Contracts for Hurricane Katrina Relief Efforts, September 9, 2005

Stewardship Action Plan for Significant Acquisitions Related to Hurricane Katrina, September 30, 2005

**[END]**



CIVILIAN AGENCY ACQUISITION COUNCIL LETTER 2005-04

SEP 7 2005

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM:

*Julia Wise*  
JULIA WISE  
CHAIR  
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Hurricane Katrina Contingency Contracting Authorities

In the aftermath of Hurricane Katrina, the Secretary of Defense and the Secretary of Homeland Security determined that existing circumstances warrant the exercise of authority in accordance with 41 USC 428a. As a result of this declaration, the emergency procurement authorities authorized by section 1443 of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. Law 108-136) are available. Therefore, pursuant to the authorities granted under Title XIV, Sec. 1443 of Pub. L. 108-136 codified at 41 U.S.C. 428a, and as implemented in the Federal Acquisition Regulations, the following authorities apply:

- The Micro-purchase threshold as defined in FAR 2.101 is \$15,000 for acquisitions of supplies or services that, as determined by the head of your agency, are to be used to support the contingency operation. (\$2,000 for construction subject to the Davis-Bacon Act).
- The Simplified Acquisition Threshold as defined in FAR 2.101 is \$250,000 for acquisitions of supplies or services that, as determined by the head of your agency, are to be used to support the contingency operation.
- The FAR 19.502-1 requirements for setting aside acquisitions do not apply to purchases of \$15,000 or less for acquisitions used to support the contingency operation.
- The threshold for application of the clauses FAR 52.225-1, Buy American Act--Supplies and FAR 52.225-13, Restrictions on Certain Foreign Purchases is \$15,000 for acquisitions that, as determined by the head of your agency, are to be used to support the contingency operation (see FAR 25.1101 and 1103).



**United States  
Department of  
Agriculture**

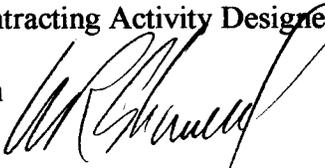
Office of the  
Assistant Secretary  
for Administration

Office of  
Procurement and  
Property  
Management

300 7<sup>th</sup> Street  
Southwest  
Room 302  
Reporters Building

Washington, DC  
20024-9300

**TO:** Head of the Contracting Activity Designees

**FROM:** W. R. Ashworth  
Director  SEP 9 2005

**SUBJECT:** Waiver for Use of Convenience Checks for Disaster Recovery

The purpose of this memorandum is to grant a waiver from AGAR Advisory 52, Prohibition on Using Convenience Checks, and a waiver from the maximum single purchase limit in Departmental Directive 5013-6, Use of the Purchase Card and Convenience Check, in direct support of Hurricane Katrina disaster recovery efforts.

AGAR Advisory 52 states, "Agencies and cardholders may not use convenience checks unless an applicable waiver allows such use." Each agency's annual waiver authority (cap) covers normal declining needs based on projected convenience check use where payments cannot be made by other means. The advisory states, "In the event of an unforeseen emergency, agencies may request authority to use convenience checks for transactions to cope with the emergency." Department Regulation 5013-6, paragraph 14 d, states, "The single purchase limit established for a warranted individual may not exceed the lesser amount of the individual's delegated authority or \$1 million, unless a waiver is authorized by the APC." Agencies have requested authority to use convenience checks to expedite recovery efforts from the effects of Hurricane Katrina and facilitate payments for disaster recovery contracts up to the warrant levels of contracting officers where there are no other practical methods under the circumstances.

Therefore, I hereby authorize, for a period of 180 calendar days from the date of this memorandum, the following:

1. Use of convenience checks in direct support of Hurricane Katrina disaster recovery efforts. Convenience checks used for such purpose will not count against annual waiver limits (caps); and,
2. Use of convenience checks over \$2,500 by warranted contracting officers up to the limits of their warrants for payment of new emergency contracts in direct support of hurricane disaster recovery efforts. Contracting officers are responsible to track payments made under such contracts.

Convenience checks are not authorized to pay invoices under existing non-disaster recovery contracts. Payment for these transactions will be made via the IAS to FFIS

**Head of the Contracting Activity Designees**  
**Page 2**

interface or directly in FFIS as applicable when agency access to FFIS production is restored.

To aid the National Finance Center in issuing correct Internal Revenue Service Miscellaneous Income Form 1099s to vendors, cardholders shall require vendors to fill out and sign a Form W-9, Request for Tax Payer Identification Number and Certification, before issuing convenience checks. The W-9 should be retained by the cardholder for transaction reconciliation in PCMS.

For questions, contact Joe Taylor, OPPM, Procurement Policy Division, 202-401-0787.

cc: Agency Purchase Card Coordinators



**United States  
Department of  
Agriculture**

SEP - 7 2005

**Office of the Chief  
Information Officer**

1400 Independence  
Avenue SW

Washington, DC  
20250

TO: Agency Heads

FROM: David M. Combs  
Acting Chief Information Officer

A handwritten signature in black ink that reads "David M. Combs".

SUBJECT: Emergency Blanket Waiver Approval for Hurricane Related Information  
Technology Acquisitions (#1323)

The Office of the Chief Information Officer is establishing a blanket waiver to procure Information Technology (IT) hardware, software and IT contractor support services in the wake of the recent hurricane. The blanket waiver approval applies to all affected USDA agencies. Acquisitions covered under this waiver include those IT purchases that are made to respond to the emergency. The emergency waiver will have an overall cap of \$25,000,000 for FY 2005 and FY 2006.

- Provide this office a copy of the contract within thirty days of execution along with the contract related data as shown in the attachment.
- Consistent with Executive Order 13360-Providing Opportunities for Service-Disabled Veteran Businesses (SDVB) To Increase Their Federal Contracting and Subcontracting, the agency should consult the Office of Small and Disadvantaged Business Utilization to identify opportunities to direct this acquisition towards a SDVB. The point of contact is Janet Baylor at 202-720-7117.

An electronic version of the attachment can be obtained by request. If you have any questions, please call me at (202) 720-8833 or have a member of your staff call Alesia Webster at (202) 720-6898.

Attachment



# Presidential Documents

## Title 3—

## The President

### Proclamation 7924 of September 8, 2005

## To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina

By the President of the United States of America

### A Proclamation

1. Section 3142(a) of title 40, United States Code, provides that “every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes or laborers and mechanics.”

2. Section 3142(b) of title 40, United States Code, provides that such “minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed . . .”

3. Under various other related acts, the payment of wages is made dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code.

4. Section 3147 of title 40, United States Code, provides that “[t]he President may suspend the provisions of this subchapter during a national emergency.”

5. Several areas of the Nation have been recently devastated by Hurricane Katrina. The devastation from the hurricane has resulted in the largest amount of property damage from a natural disaster in the history of the Nation. An enormous but undetermined number of lives have been lost, and hundreds of thousands of homes and business establishments either destroyed or severely damaged. Hundreds of thousands of individuals have lost their jobs and their livelihood. An unprecedented amount of Federal assistance will be needed to restore the communities that have been ravaged by the hurricane. Accordingly, I find that the conditions caused by Hurricane Katrina constitute a “national emergency” within the meaning of section 3147 of title 40, United States Code.

- (a) Hurricane Katrina has resulted in unprecedented property damage.
- (b) The wage rates imposed by section 3142 of title 40, United States Code, increase the cost to the Federal Government of providing Federal assistance to these areas.
- (c) Suspension of the subchapter IV of chapter 31 of title 40, United States Code, 40 U.S.C. 3141–3148, and the operation of related acts to the extent they depend upon the Secretary of Labor’s determinations under section 3142 of title 40, United States Code, will result in greater assistance to these devastated communities and will permit the employment of thousands of additional individuals.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do by this proclamation suspend, as to all contracts entered into on or after the date of this proclamation and until otherwise provided,

the provisions of subchapter IV of chapter 31 of title 40, United States Code, 40 U.S.C. 3141–3148, and the provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code, as they apply to contracts to be performed in the following jurisdictions: the counties of Baldwin, Choctaw, Clarke, Mobile, Sumter, and Washington in the State of Alabama; the counties of Broward, Miami-Dade, and Monroe in the State of Florida; the parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, La Salle, Lafayette, Lafourche, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn in the State of Louisiana; and the counties of Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, DeSoto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo in the State of Mississippi.

And, as to such contracts to be performed in such jurisdictions, I do hereby suspend, until otherwise provided, the provisions of any Executive Order, proclamation, rule, regulation, or other directive providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code;

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.





United States  
Department of  
Agriculture

Office of the  
Assistant Secretary  
for Administration

Office of  
Procurement and  
Property  
Management

300 7<sup>th</sup> Street  
Southwest  
Room 302  
Reporters Building

Washington, DC  
20024-9300

TO: W.R. Ashworth  
Senior Procurement Executive

FROM: Todd Repass   
Acting Chief  
Procurement Policy Division

OCT 20 2005

SUBJECT: Request for Class Deviation from Federal Acquisition Regulation  
(FAR) Subpart 22.4

In accordance with FAR 1.404 and Agriculture Acquisition Regulation (AGAR) 401.404, your approval is requested to deviate from FAR subpart 22.4 and FAR provisions and clauses prescribed by FAR subpart 22.4.

FAR subpart 22.4 implements statutes that prescribe labor standards for contracts in excess of \$2,000 for construction, alteration and repair of public buildings and public works. Among these statutes is the Davis Bacon Act. By Proclamation 7924 of September 8, 2005, the President suspended the applicability of the Davis Bacon Act to contracts in counties devastated by Hurricane Katrina. A list of the affected counties is attached.

The Department of Agriculture (USDA) has numerous offices in affected counties, including the National Finance Center and various agency area, regional, state, and county offices. USDA controls other real property in affected counties that may have been damaged by Hurricane Katrina. USDA anticipates that it will require construction services to repair damage from Hurricane Katrina and to restore USDA offices in order to provide assistance to citizens in areas served by these offices.

A class deviation from FAR subpart 22.4, and from clauses prescribed by subpart 22.4, is needed to implement the suspension of the Davis Bacon Act in USDA contracts for construction in affected counties. Accordingly, FAR 22.403 through 22.406 do not apply to new contracts (or orders) for construction in affected counties with the following exceptions:

FAR section	Applicability (over \$2,000)
22.403-2 Copeland Act	Anti-Kickback provisions of Copeland Anti-Kickback Act (18 U.S.C. 874) applies to all construction. Weekly statement of wage compliance and clause requirement do not apply (40 U.S.C. 3145 (recodified from 40 U.S.C. 276c)).
22.403-3 Contract Work Hours and Safety Standards Act (CWHSSA)	Still applies to construction over the \$250,000 simplified acquisition threshold in affected counties.
22.403-4 Department of Labor regulations	Applicable to enforcement of CWHSSA and Copeland Anti-Kickback Act (18 U.S.C. 874); rules of practice applicable; Administrator, Wage and Hour Division still contact point for interpretation of Department of Labor regulations
22.405 Labor standards for construction work performed under facilities contracts	Applicable to facilities contracts in affected counties, as modified (see attached clause)
22.406-1 Administration and enforcement; Policy	Applicable to enforcement of CWHSSA and Copeland Anti-Kickback Act (18 U.S.C. 874)
22.406-7 Compliance checking, par. (a)	Applicable to enforcement of CWHSSA and Copeland Anti-Kickback Act (18 U.S.C. 874)
22.406-8 Investigations	Applicable to enforcement of CWHSSA and Copeland Anti-Kickback Act (18 U.S.C. 874)
22.406-9 Withholding from or suspension of contract payments	Applicable to enforcement of CWHSSA
22.406-10 Disposition of disputes concerning construction contract labor standards enforcement, through 22.406-13 Semiannual enforcement reports	Applicable to construction generally

A class deviation from clause prescriptions in FAR Subpart 22.4, and specifically from the prescriptions in FAR 22.407, Contract Clauses, is needed as follows:

A. Solicitations and contracts for single projects to be performed in a single phase:

The following clauses still shall be inserted in solicitations and contracts for construction in affected counties:

- 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation
- 52.222-8 Payrolls and Basic Records
- 52.222-9 Apprentices and Trainees
- 52.222-10 Compliance with Copeland Act Requirements
- 52.222-12 Contract Termination –Debarment (DEVIATION)
- 52.222-14 Disputes Concerning Labor Standards
- 52.222-15 Certification of Eligibility
- 52.222-17 Labor Standards for Construction Work – Facilities Contracts (DEVIATION)

52.222-12 CONTRACT TERMINATION—DEBARMENT (FEB 1988)  
(DEVIATION)

A breach of the contract clauses entitled Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

52.222-17 LABOR STANDARDS FOR CONSTRUCTION WORK—  
FACILITIES CONTRACTS (FEB 1988) (DEVIATION)

- (a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:
- (1) Contract Work Hours and Safety Standards Act—Overtime Compensation at 52.222-4.
  - (2) Payrolls and Basic Records at 52.222-8.
  - (3) Apprentices and Trainees at 52.222-9.
  - (4) Compliance with Copeland Act Requirements at 52.222-10.
  - (5) Contract Termination—Debarment at 52.222-12 (Deviation).
  - (6) Disputes Concerning Labor Standards at 52.222-14.
  - (7) Certification of Eligibility at 52.222-15.

(Strike out references to CWHSSA in contracts under the simplified acquisition threshold)

B. Multiphase construction contracts, construction contracts with options, Requirements or IDIQ contracts for construction

For construction contracts that include tasks or severable performance that may occur after the suspension of the Davis Bacon Act is lifted, include all applicable Davis Bacon clauses without regard to the suspension. Include clause 452.222-70, Suspension of Davis Bacon Act (OCT 2005) (below), in accordance with the following AGAR prescription:

**422.470 Suspension of Davis Bacon Act.** The contracting officer shall insert the following clause in solicitations and contracts for construction, alteration, or repair of public buildings or works located in counties identified in Proclamation 7924 of September 8, 2005 if the estimated value of the contract exceeds \$15,000, or the micro-purchase threshold, whichever is less. The clause shall be included in section I of the solicitation and contract, and may also be inserted behind SF 1442, AD 838, or OF 347 in the contract package.

**452.222-70 Suspension of Davis Bacon Act (OCT 2005)** Pursuant to Proclamation 7924 of September 8, 2005, the President has suspended the Davis-Bacon Act in counties devastated by Hurricane Katrina. Accordingly, until written notice is provided to the contractor, the provisions of FAR subpart 22.4 related to the Davis-Bacon Act that are dependent on wage determinations made by the Secretary of Labor shall not apply to work performed in the following jurisdictions:

Alabama:

The counties of Baldwin, Choctaw, Clarke, Mobile, Sumter, and Washington

Florida:

The counties of Broward, Miami-Dade, and Monroe

Louisiana:

The parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, La Salle, Lafayette, Lafourche, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn

Mississippi:

The counties of Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, DeSoto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah,

W.R. Ashworth

5

Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo.

Upon receipt of notice of termination of the suspension, the contractor may request an equitable price adjustment to compensate for any increase in wage rates directly related to reinstatement of the provisions of the Davis Bacon Act.

(End of Clause)

In accordance with FAR 1.404, USDA has received notice from the chairperson of the Civilian Agency Acquisition Council (CAAC) that consultation has occurred. A copy of CAAC Letter 2005-05 is attached to this deviation request as evidence of consultation.

APPROVAL:

In accordance with FAR 1.404 and AGAR 401.404, I authorize this deviation from FAR subpart 22.4.

  
\_\_\_\_\_  
W.R. Ashworth, Senior Procurement Executive

10-21-05  
\_\_\_\_\_  
Date

Attachment

U.S. Department of Labor

Employment Standards Administration  
Office of Federal Contract  
Compliance Programs  
Washington, D.C. 20210



SEP 9 2005

MEMORANDUM TO ALL CONTRACTING AGENCIES OF THE FEDERAL  
GOVERNMENT

FROM:

*Charles E. James, Sr.*  
CHARLES E. JAMES, SR.  
Deputy Assistant Secretary

SUBJECT:

Contracts for Hurricane Katrina Relief Efforts

In view of the special circumstances in the national interest presented by the destruction caused by Hurricane Katrina, I have decided to grant a limited exemption and waiver from some of the requirements of the laws administered by the Office of Federal Contract Compliance Programs (OFCCP). OFCCP enforces Executive Order 11246, as amended, Section 503 of the Rehabilitation Act, as amended, and Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act, as amended, which require that Federal contracting agencies include in all covered contracts an equal employment opportunity clause. OFCCP regulations authorize me to exempt or waive a Federal contracting agency from requiring the inclusion of any part of the equal opportunity clause in any specific contract when I deem that special circumstances in the national interest so require. 41 CFR 60-1.5(b)(1), 60-250.4(b)(1), and 60-741.4(b)(1).

The exemption and waivers granted herein relate to the requirement to develop written affirmative action programs under OFCCP regulations implementing the three laws enforced by OFCCP. Federal contracting agencies may utilize the following equal opportunity clauses in covered contracts entered into to provide Hurricane Katrina relief. However, Federal contractors will continue to be subject to the nondiscrimination requirements under those laws. Accordingly, the EEO clauses in FAR sections may be modified as follows:

*At the end of 52.222-26:*

Notwithstanding the provisions of this section, the contractor will not be obligated to develop the affirmative action program, prepare the reports, or provide the notices usually required under the regulations implementing Executive Order 11246, as amended.

*At the end of 52.222.35:*

Notwithstanding the provisions of this section, the contractor will not be obligated to develop the affirmative action program, prepare the reports, provide the notices, or list the job openings usually required under the regulations implementing Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act, as amended.

*At the end of 52.222-36:*

Notwithstanding the provisions of this section, the contractor will not be obligated to develop the affirmative action program, prepare the reports, or provide the notices usually required under the regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended.

Notwithstanding the foregoing, the following FAR requirements will continue:

- Posting of the "Equal Opportunity is the Law" notice;
- Record keeping and record retention; and
- Employment listings with appropriate local employment service office.

I am granting this exemption and waiver for a period of three months, subject to an extension should special interests in the national interest so require. This exemption and waiver pertain only to the three programs administered by OFCCP and should not be interpreted as applicable to any other programs or statutes administered by the Department of Labor.

If you have any questions or seek additional clarification on a specific contract please contact my office.

**US DEPARTMENT OF AGRICULTURE'S**  
**STEWARDSHIP ACTION PLAN FOR SIGNIFICANT**  
**ACQUISITIONS RELATED TO HURRICANE KATRINA**

**I. Purpose.** To ensure prudent stewardship of taxpayer funds for current and future acquisitions supporting Hurricane Katrina rescue, recovery, and reconstruction operations.

**II. Applicability.** The plan applies to all USDA agency offices, including acquisition, finance, and program offices, involved in the acquisition function for acquisitions that have a clear and direct relationship to the support of Hurricane Katrina.

**III. Definition.** The following transaction types with a clear and direct relationship to Hurricane Katrina may be considered “significant acquisitions” for the purposes of this stewardship plan:

- Any service or construction purchase over \$2,500 made by a non-warranted employee;
- Any purchase including an item of equipment over \$5,000 made by a non-warranted employee;
- Micro-purchases over \$15,000;
- Any sole source acquisition over \$50,000;
- Simplified Acquisitions between \$100,000 and \$250,000;
- Any acquisition over \$500,000.

**IV. Emergency Procurement Authorities.** Agriculture Acquisition Regulation (AGAR) Advisories Number 78 and 79 provided the following contingency contracting authorities and guidance in support of recovery efforts associated with Hurricane Katrina:

- Class Justification and Approval for Other Than Full and Open Competition in support of Hurricane Katrina disaster declarations;
- Increase of the Micro-purchase threshold to \$15,000 for non-warranted, named individuals;
- Increase of the Simplified Acquisition threshold to \$250,000;
- Waiver of the prohibition on using convenience checks for purchases and payments;
- Emergency blanket waiver to the USDA information technology acquisition approval process; and
- Suspension of the Davis Bacon Act for specific counties devastated by Hurricane Katrina.

**V. Oversight.** Spending on contingency operations, such as Katrina, requires additional internal controls for each action defined as a significant acquisition (see III above). Oversight activities shall apply to contractual actions executed immediately following Hurricane Katrina and all significant acquisitions executed thereafter.

**A. Actions Immediately Following Hurricane Katrina.** Each Head of Contracting Activity Designee (HCAD) will immediately establish a working group to identify and review acquisitions (significant or otherwise at the agency's discretion) awarded immediately following Hurricane Katrina and prior to the effective date of this policy. The working group will review these actions to determine if modifications, terminations, or follow-on transactions are in the best interest of the government. The working group shall consist of the HCAD and additional designated agency experts. The agency is strongly encouraged to involve Procurement Policy Division, Office of the General Counsel, and Office of the Inspector General. The agency shall establish deadlines (not to exceed October 31, 2005) for reviewing these transactions.

**B. Future Actions.** HCAD's shall establish a process and plan for mitigating acquisition risk for Katrina-related activities undertaken after the effective date of this guidance. HCAD's shall implement a review structure for their agency that reflects an increased level of oversight and attention for "significant acquisitions," as defined above. Mitigation efforts shall include, at a minimum, the following outcomes:

- Minimization of variances in cost, schedule, or performance for significant acquisition;
- Increased program management approvals based on the risk and value for each significant acquisition;
- Additional program management responsibilities upon contract completion; and
- Additional financial management controls.

**C. Reporting.** USDA agencies shall use Attachment A to document Katrina-related activities, with emphasis on "significant acquisitions." Agencies should ensure that purchases are authorized and valid, proper procedures are followed, and that the service or supply is fully accepted and received.

Agency HCAD's shall submit this report to [todd.repass@usda.gov](mailto:todd.repass@usda.gov), Procurement Policy Division, five calendar days after the end of each month. If no Katrina related procurements have been awarded, a negative response is required.

The first Agency submission is due no later than November 7, 2005, and the HCAD shall attach a copy of the Agency plan to the first submission of this report. A transmittal letter shall accompany the report that provides a HCAD certification that the Stewardship plan has been followed in reviewing the acquisition process for the actions listed within the report.

**VI. Managing Interagency Contracting.** When conducting acquisitions for other federal agencies, the cognizant contracting officer and funds certifying official shall apply oversight to ensure the buying agency has sufficient funds, has approved the statement of work, and otherwise concurs with the acquisition and program management plan established for the acquisition.

**VII. Responsibilities.** USDA acquisition officials in Katrina-related activities are listed below:

- Chief Acquisition Officer – Assistant Secretary for Administration, the Agency officer approved pursuant to 41 U.S.C. 414;
- Senior Procurement Executive (SPE) – The Agency official appointed pursuant to Executive Order No. 12931 and the OFPP Act, 41 U.S.C. 414. Through a delegation to the Assistant Secretary for Administration, the Secretary has designated the Director, Office of Procurement and Property Management to the serve as the SPE.
- Head of Contracting Activity (HCA) identifies the official who has overall responsibility for managing the contracting activity in a specific Agency (i.e., Chief, Forest Service; Administrator, Agricultural Research Service; etc.);
- Head of the Contracting Activity Designee (HCAD) - The named individual designated by the Agency to exercise all authorities delegated to the HCA. HCAD is responsible for implementing all oversight actions identified in Section V above; and
- Procurement Policy Division – Organization within Office of Procurement and Property Management that serves as the collection and review point for all Agency certified plans on a monthly basis.

**VIII. Additional Guidance.** As additional guidance is provided by organizations that affect the acquisition process, advisories will be distributed to all applicable personnel through web site updates and email distribution.

**IX. Contingency Contracting Personnel.** USDA has mobilized contracting personnel to fulfill urgent mission requirements related to disaster relief, specifically the Hurricane Katrina effort and is balancing this effort with existing procurement workload constraints. Specific buying teams have been deployed on site to support procurement of hurricane recovery products and services. This has reduced the number of contracting personnel available to complete fiscal year end activities. Calls have been forwarded to the Agencies requesting the identification of potential detailees to supplement the buying team personnel.

**VII. Effective Date.** This contingency contracting action plan is effective September 30, 2005.

REPORT OF “SIGNIFICANT ACQUISITION” ACTIONS FOR THE PERIOD OF \_\_\_\_\_ TO \_\_\_\_\_ FOR THE KATRINA EFFORT

Agency	Dollar Amt of Action	Source of Funding	Contract vehicle no. (e.g., contract, purchase order, delivery order, task order no.)	Requirement Description	Period of Performance/ Has contract been fully performed?	Significant Acquisition Authority*	Approving Official (e.g., CO, HCAD)

\*What type of “Significant Acquisition” was awarded. See definition in Paragraph III of Plan.