



The Time Is Now: Contracting in Emergencies Contract Services Association (January 2007)

ISSUE

From recent events we know that we must find new ways for the Government to perform certain functions in times of emergencies (whether it is a natural disaster, domestic terrorist attack or an overseas contingency operation). The aftermath of Hurricane Katrina showed that the Government may not be as flexible as it needs to be to respond to such situations with the extreme speed and efficiency required. Bringing the private sector into the relief and reconstruction efforts (e.g., rescuing people and rebuilding towns and cities) is essential to ensure quicker, high-quality responses in these emergencies. The primary purpose of such efforts is to help make it easier for the Government to perform its mission.¹

PROBLEMS ENCOUNTERED

Numerous reports have cited the ongoing problems and challenges of working in emergency/contingency environments. These include:

- Lack of qualified personnel;
- Turnover in personnel;
- Open-ended or ill-defined requirements;
- Failure of local governments to understand and play a proper role;
- Unnecessary delays, which increase costs;
- Poor communications; and
- Blurred (or non-existent) lines of responsibility.

SEEKING AN ANSWER

The primary way of incorporating the business world into humanitarian efforts, in a timely manner, is to have a fully functional set of contracting guidelines for events of extreme emergencies.

In the aftermath of the devastating 2005 hurricane season, the key agencies involved already have taken a step back and are looking at the lessons learned. In domestic disasters (natural or terrorist), the Federal Emergency Management Agency (FEMA) is the lead Federal entity. For FEMA, they are looking at developing a robust logistics department, establishing better long-term planning, pre-positioning contracts (putting in place contracts that are “ready to go”), and improving communications. Since Hurricane Katrina, FEMA has renegotiated and recompeted several of its original contracts. It also has competitively awarded several regional multiple award contracts for a five-year period.

¹ [The definitions and the appropriateness of the response varies depending on the circumstances – whether it’s a hurricane/other domestic disaster or terrorism-related incident versus an overseas operations. For the purposes of this review, we are focused on domestic disasters or domestic terrorist-related incidents.](#)

The U.S. Army Corps of Engineers is looking at options that include employing a more comprehensive approach to projects, establishing better risk assessments, improving the review process, and enhancing technical expertise.

A number of challenges facing all levels of Government (Federal, state and local), and issues related to their respective roles and responsibilities, have been discussed in great length in other papers – and, therefore, are not addressed in this paper. Rather, the intent of this paper is to contribute to the discussion from the vantage point of the contractors who participated in the trenches and are performing contracts in a post-Katrina era.

ISSUES TO CONSIDER

The following issues are addressed in this White Paper.²

- Contracting regulations;
- Contracting types;
- Competition requirements;
- Payment;
- Risks – lawsuits and insurance liabilities;
- Small Business;
- Local Economy;
- Database on qualified contractors; and
- Contingency Corps.

² [Several reports and legislative proposals already have touched on many of these issues – this paper supplements the work already done.](#)

ISSUES TO CONSIDER: CONTRACTING REGULATIONS and AUTHORITIES

The Federal Acquisition Regulations, as well as individual agency guidance and certain statutes, provide a certain amount of latitude for getting the immediate job done quickly. However the streamlined acquisition policies, technology, GWACS, GSA Schedules and other procurement vehicles of recent years, have not necessarily improved the Government's understanding of its own rules during emergencies/disasters. Thus, the Government often operates inefficiently, or in the worse case, ineffectively.

Areas that should be considered in shaping effective emergency contracting regulations:

- Understand the order of precedence (of statutes and regulations) between contracting authorities, and identify any inconsistencies.
 - ✓ What trumps what?
 - ✓ How do they all work together?
 - ✓ What is the context – in other words, what is the wrong way to do something vs. what is expeditious but possible (and the correct way to proceed)?
 - ✓ What are the legal and regulatory bottlenecks?
 - ✓ Need to recognize that some rules are not appropriate for the circumstances.
- Understand the relevance of applicable labor laws (e.g., Service Contract Act and Davis Bacon Act).
 - ✓ Should a waiver be exercised in extreme circumstances?
 - ✓ What is the impact on the local community if the laws are waived? For example, the impact of hiring out-of-state workers (at lower wages), or the potential for contracting with less qualified companies and/or with companies with limited and/or no experience in Government contracting.
- Understand the relation with emergency regulations.
 - ✓ Improve transparency in implementing the FAR.
 - ✓ Implement FAR Part 18 (Emergency Contracting).
 - Explore revisions to FAR Part 18 to make it more responsive to extreme disasters, by providing a single reference point to contracting personnel.
 - Ensure that any FAR guidance on emergency contracting includes broader small business involvement (e.g., not limited to those areas where sole source authority is provided).
- Develop Best Practices Guidance (by the Office of Management and Budget). The guidance would outline how agencies should proceed in case of extreme emergencies, to include how outside contractors would be used in the initial relief efforts (e.g., this is how initial relief will be provided through these particular types of contract awards).
 - ✓ Distribute information to media and local communities to improve understanding of contracting procedures and actions taken.
 - ✓ When special emergency contracting procedures are used, reinstitute “normal” contracting procedures and preferences for local companies as soon as possible after the initial response. This might counter the negative press that occurred following Hurricane Katrina.

ISSUES TO CONSIDER: CONTRACTING TYPES

The private sector plays a critical role in helping the Government respond quickly. The Federal Acquisition Regulations are clear on the types of emergency contracts available – and what steps the Government can, and should, take to protect itself. A better understanding of the contract types and more appropriate use of such contracts should curb potential abuses. In the initial days after a disaster, the Government's first priority should be an immediate response to the urgent needs of the community, irrespective of certain competition requirements or socio-economic procurement goals. Emergency rules should apply for a short period (60-90 or 120 days), and after that initial period all regular contracting rules and socio-economic preferences should kick back in. In order to fully protect the Government and contractor, detailed information should be provided to avoid unnecessary risks and miscommunications. This would include such information as name and contract data, contracting officer, type of contract used, quality, description and delivery dates, applicable certifications and representations, expected contract terms and conditions, special instructions, evaluation criteria and proposal due date/time).

Contracting types that should be considered in shaping effective emergency contracts include:

- Full and open, and set-aside contracts.
- Pre-positioned contracts.
 - ✓ Competitively awarded.
 - ✓ Multiple Award (3-5), multi-year (five-year) contracts.
 - ✓ Pre-awarded indefinite delivery/indefinite quantity contracts in times of emergencies. (this presents challenges because how does industry price a “maybe” contract?).
 - ✓ Example, FEMA already has awarded several five-year multiple award pre-positioned contracts.
 - ✓ Example, LOGCAP.
- FAR Part 12 and the Test Program for Certain Commercial Items under FAR Part 13.5.
- Sole source contracts – with written justification as required by the FAR.
- Regional contracts – though these might not be effective in cases where a region is “wiped out.”
- Contingency contractor registration / First Responder database.
 - ✓ Basic IDIQ contracts with task orders for initial response.
 - ✓ Negotiate contingency rates.
- Contracts awarded that provide a preference for local businesses (Stafford Act).
- Schedule contracts.
 - ✓ Used extensively after 9/11.
 - ✓ GSA has grouped available “disaster relief services and products” on its website.
 - ✓ FY2007 Defense Authorization Act.
- Oral requests for proposals (RFPs) – when processing a written solicitation would delay the acquisition of supplies to the detriment of the Government/affected population.
 - ✓ This worked particularly well for TACOM during the first Gulf war.
 - ✓ Oral agreements should be put in writing and letter contracts should be definitized as soon as possible.

- Letter RFPs and contracts.
 - ✓ Still must be competed.
 - ✓ Should be as complete and definite as feasible.
 - ✓ Allow a “time later” for the contractor to submit proper price proposal.
- Economy Act contracts (allow interagency acquisitions and placement of orders between units of same agency).

Recent legislation addresses some of the concerns resulting from Hurricane Katrina:

- FY2007 Department of Homeland Security Appropriations Act (P.L. 109-295)
 - ✓ Requires contracting strategy that maximizes the use of advance contracts to the extent practical and cost-effective.
 - ✓ Minimize the excessive use by contractors of subcontractors or tiers of subcontractors to perform the principal work of the contract. Excessive use has been defined as being 65%. While this requirement is included in the statute, a more appropriate view would be to simply require contracting officials, in appropriate circumstances, to minimize the use of multiple tiers of subcontractors to perform the principal work of the contract. CSA members also stress that implementation of this provision should not inadvertently discourage the use of small businesses.

ISSUES TO CONSIDER: COMPETITION REQUIREMENTS

A “threshold” should be established that sets a balance between the need to comply with the statutory requirements for competition versus the urgent need to get help to the community. Another “threshold” should be established whereby second guessing (weeks or months after the response) cannot be allowed – accountability could be ensured by having appropriate senior level officials sign off on sole source or limited competitions. Such “thresholds” also could be tied to the threat of imminent loss of life or property.

Factors that should be considered in developing policies addressing competition requirements include:

- Unusual and compelling urgency circumstances under the Competition in Contracting Act.
- Detailed written justification and higher approval level for procurements exceeding \$500,000.
 - ✓ J&A may be made after contract award if deemed it would unreasonably delay acquisition (See FAR 6.304 - \$550,000 can be approved by CO).
- Limited authority for sole-source contracts.
 - ✓ Addressed in FAR Part 6.3.
 - ✓ Request offers from as many sources as practicable under the circumstances.
 - ✓ Sole source is often a negotiated transaction that permits the Government to achieve a fair price.
- Limited competition.
 - ✓ Exigencies of time (e.g., how long would it take using current process, including protests).
 - ✓ Reasonable circumstances where other alternatives do not exist.
 - ✓ Explain why needed and put protections in place for Government.
 - ✓ Limit to three sources (e.g., in the manner used by Federal Supply Schedules).
 - ✓ Informal price competition.
- Audits rights – certain audit rights already granted under the FAR.
 - ✓ May depend on type of contract.
 - ✓ Should not be aimed at criminalizing the process or the company.
 - ✓ Should be focused on overseeing and making it right (e.g., tying up loose ends).
 - ✓ Should not be focused on 20-20 hindsight – standards might be different in times of crisis.

Recently enacted and proposed legislation addresses these issues:

- FY2007 National Defense Authorization Act (P.L. 109-364).
 - ✓ Conferees directed Secretary of Defense to issue guidance on the appropriate use of “unusual and compelling” circumstance under the Competition in Contracting Act.
- H. R. 3766 (sponsored by Reps. Kenny Marchant and Tom Davis in 109th Congress, not adopted).
 - ✓ Agency head would be allowed to use procedures other than competitive procedures pursuant to the provisions in the Competition in Contracting Act without having to provide written notification to Congress.
 - ✓ Authority can only be used if the head of the agency determines that use of such authority is necessary to facilitate the response to, or recovery from, the national emergency or major disaster.

ISSUES TO CONSIDER: PAYMENT

Timely contract payments that improve cash flow are critical to the financial health of Government contractors, regardless of size. The expectation that payments will be timely frequently affects a contractor's willingness to do business with the Government. The contracting community promptly responded to the events of 9/11 and Hurricane Katrina – but receiving payment for their efforts was often problematic.

Areas that should be considered to ensure timely payment of contractors during emergency operations:

- How is the money going to be made available to make emergency purchases?
 - ✓ Need to identify causes for the problems of slow payment – and develop procedures for resolving them.
 - ✓ Who has the “cash register” and how do contractors access it to ensure payment for goods and services provided?
 - ✓ Congress could make the money available through a special appropriation, and assign it to an agency such as FEMA.
 - ✓ The procurement official would have a limit on what could be spent initially, and charged with keeping an administrative commitment document and reporting to FEMA so that the Government, and contractors, would not be in danger of over-expending.
- Recognize that advance payments are permissible and should be considered for small businesses as a form of financial assistance.
- Allow direct payments for food and lodging.
- Develop a contingency contracting payment process.
 - ✓ During Hurricane Katrina, all procedures were in place – but the current payment system could not handle the emergency.
 - ✓ Government personnel handled the payment process routinely rather than using expedited procedures.
 - ✓ Where did invoices go and who had them? Need ability to track them down.
 - ✓ How does the contracting officer and accounting/payment officials handle a flood of invoices?
 - ✓ Establish a payment contingency taskforce in each agency.
- Enforce existing guidance to ensure timely contract payment in emergency situations. Contracting officers should be aware of the payment terms that already are available and that can be used in emergency situations.
 - ✓ Letter contracts – Federal Acquisition Regulation (FAR) Part 16.603-2(c) addresses definitization of contracts.
 - ✓ FAR Part 52.216-26 does allow for payment before contract definitization (not to exceed 85% of the allowable cost). Consideration should be given to definitizing undefinitized contracts within 30 days.
- Develop new policy guidance where needed, or reinforce existing policies, to allow partial payments in the face of a dispute.
 - ✓ Following Hurricane Katrina, FEMA would withhold payment on an entire invoice even though only a fraction of the invoice was in dispute.
 - ✓ FAR Part 52.232-1 allows partial payments and provides protection for the Government for any repayment of overcharges; directions should be given to the contracting officials to follow these requirements.
 - ✓ FAR Part 52.232.1-6 addresses the use of progress payments.

ISSUES TO CONSIDER: RISKS (LAWSUITS AND INSURANCE LIABILITY)

Unlike many public officials and their agencies, private contractors enjoy no sovereign immunity. To get the job done, such contractors have to put their assets on the line. No contractor carries the insurance necessary to cover all of the many risks involved in responding to a disaster. The unknowns are too many, and the cost of the insurance coverage is prohibitive.

Areas that should be considered in understanding and addressing the risks involved in emergency contracts include:

- Anti-Deficiency Act has been a barrier to indemnification of contractors. An amendment to the Act should be made to allow such indemnification in limited extreme situations.
- Rapid response by contractors is necessary immediately following a disaster or terrorist attack, and in the following months when such contractors work hand-in-hand with Federal, state and local officials.
- Risk is great of litigation and even liability for performing essentially public functions.
 - ✓ For example, class actions, alleging mass torts, have been filed against all four of the contractors that supervised the clean-up from the terrorist attacks on September 11th.
- Equitable adjustments and reimbursements.
 - ✓ Allow to cover increased costs due to insurance premium increases and increases in workmen's compensation insurance (following a presidentially declared disaster).
 - ✓ Make change to cost principle to allow for recovery of amounts for self-insuring against catastrophic losses.

Proposed legislation intended to address the issues of risk:

- The Government Contractor Protection Act (sponsored by Senator Thune in 109th Congress), not adopted.
 - ✓ Would ensure that the Army, the Environmental Protection Agency and the Department of Transportation have and retain the authority to administer effectively the Federal laws within their purview.
 - ✓ Would give contractors a limited measure of protection (comparable to but less than the protection that Federal officials enjoy when exercising their discretion).
 - ✓ Would limit the legal expenses that inflate the cost of the recovery.
 - ✓ Would block court actions that could stall the recovery from the disaster.
 - ✓ Would follow Safety Act requirements by creating a Federal cause of action for any claims arising out of, relating to, or resulting from certain activities.
 - ✓ Would give the Federal courts exclusive jurisdiction over any such cause of action, and set reasonable limits on any resulting liability.
 - ✓ Would preclude any recovery of punitive damages, or prejudgment interest.
 - ✓ Would limit any recovery of non-economic damages and requires the Government contractor to be given credit for any collections from any collateral sources (e.g., insurance).
 - ✓ Would entitle the contractor, as an extension of the Government agency for which it is working to assert the Government contractor defense, if the COE certifies that the work is necessary for the recovery from Katrina.

ISSUES TO CONSIDER: SMALL BUSINESS

Small business, whether local or from “unaffected” regions, are essential to any solution. Small businesses often are more nimble than many of their large business counterparts that have multiple approval layers and compartmentalized capabilities. And many small Government contractors certainly can perform as well as any large business. The key to success is proper due diligence.

Areas that should be considered in developing policies shaping the appropriate role of small businesses in emergency contracts include:

- A somewhat controversial suggestion has been made to temporarily suspend specific socio-economic prime contracting goals.
 - ✓ In the short term, this may be necessary to ensure that the immediate needs of the local community are addressed since it may be difficult to find enough small disadvantaged companies to meet the specific statutory socio-economic goal, especially within the local community.
 - ✓ However, general small business goals could remain in place to ensure that ALL small businesses still have an opportunity to be considered.
- When a prime contract goes to a large prime contractor, strong small business subcontracting plans should be in place.
 - ✓ Prime contractors should be encouraged to have pre-positioned subcontracts that can be called upon to meet the specific circumstances of an emergency.
- Contracting officers should assess a small business’ capability based on the following:
 - ✓ Bonding strength.
 - ✓ Past performance history (including work in the commercial market or for state and local governments).
 - ✓ Financial capacity and working capital.
 - ✓ Ability to perform on larger contracts.
- Opportunities must be provided for all qualified small businesses.
 - ✓ Ensure use of the Rule of Two (i.e., reasonable expectation of obtaining offers from two or more small business concerns).
 - ✓ Review implementing regulations for Stafford Act changes – although the interim regulation (FAR § 26.202) comports with the statute, in practice it may have the practical effect of encouraging geographically restricted awards to large businesses and relegating small businesses to “second class” status. Interim FAR § 26.202(a)(3) reads:
The contracting officer shall also consider whether a local area set-aside should be further restricted to small business concerns in the designated area.
 - ✓ Consider whether interim procedures implementing the local area preference should be revised to provide that – prior to conducting such a procurement on a geographic basis only – the contracting officer should justify reasons for not utilizing a small business set-aside for the requirement.
 - ✓ Ensure inclusion of all qualified small businesses. FAR Part 18 (Emergency Contracting), should allow use of other small businesses. In other words, allow any small business set-aside under this section to be conducted without regard to the advantaged or disadvantaged status of eligible small businesses.
- Establish pre-positioned contracts with qualified small businesses in various regions. This would allow an agency to have a stable of capable small businesses available, whether it is those in the immediate vicinity or from other regions – especially when the local area is devastated.

- Size Standards
 - ✓ \$3-5million threshold standard (or higher) could be applied to all small businesses for emergency contracts for sole source awards – and not just 8(a), HUBZone, and tribally owned.

- Thousands of small businesses are capable Government contractors and are knowledgeable about the statutes and regulations governing Government contracting. However, in the wake of Hurricane Katrina, contracting with non-traditional Government contractors was a challenge at both the prime and subcontract level (particularly in subcontracts). Due diligence is needed when contracting with businesses that do not normally do Federal business. The following need to be considered:
 - ✓ Ability to provide competitive pricing.
 - ✓ Need for training/education.
 - ✓ Ability to comply with certification or licensing requirements.
 - ✓ Ability to track contract costs and document performance – inability causes problems when auditing and reimbursing on contracts.
 - ✓ Use technical capability analysis (followed by establishment of a fixed hourly labor rates to be used by all contractors and subcontractors for similar work).
 - ✓ Improve understanding of Federal contracting requirements and documentation.
 - ✓ Understand flow-downs to subcontractors and vendors.

ISSUES TO CONSIDER: LOCAL ECONOMY

Defining a “local business” is a politically charged issue. The current standards are confusing, leaving many companies wondering if they qualify or not. The Stafford Act provides certain flexibilities to take into account what is needed to respond to the disaster and to help the local community. In addition, waiving certain laws, while necessary in the short term, may have long term unintended consequences on local economies. Furthermore, local businesses should not necessarily have a lock on contracts since they may be reeling from the disaster and would not make an initial good choice to perform the work. To regain normalcy, bringing in outside contractors in the initial stages may be required.

Areas that should be considered in working within the local economy:

- Stafford Act – 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.
- Issues related to definition of a local business.
 - ✓ Inclusion of price preference for local companies.
 - ✓ Overnight start-up companies formed to take advantage of opportunities.
 - ✓ Solicitation should expressly define local business for the purposes of the contract.
- Challenges in identifying local businesses immediately following a disaster.
 - ✓ While companies exist – there may be difficulty in finding qualified businesses capable of performing.
 - ✓ Local company employees may have been evacuated, making it difficult for local firms to perform the necessary work in the immediate aftermath.
 - ✓ Housing employees can increase costs and decrease productivity.
 - ✓ Food and lodging may be scarce.
- Impact of waiving labor laws.
 - ✓ Brings potential for hiring out-of-state workers at lower wages than usually paid for similar work during non-emergency scenarios.
 - ✓ Brings potential for contracting with less qualified companies.

Recently enacted legislation addresses issues related to the local economy:

- FY2007 Department of Homeland Security Appropriations Act (P.L. 109-295).
 - ✓ Requires written justification for not awarding contracts to an organization, firm, or individual residing or doing business primarily in the area affected by such major disaster.
 - ✓ Requires transitioning of work performed under contracts in effect on the date on which the President declares the emergency or major disaster to organizations, firms, and individuals residing or doing business primarily in any area affected by the major disaster or emergency, unless the head of such agency determines that it is not feasible or practicable to do so.

ISSUES TO CONSIDER: DATABASE ON QUALIFIED CONTRACTORS

When responding to a disaster, agencies have little time to use the normal solicitation process. Contacting companies that can perform the mission and knowing who are viable, qualified companies is essential if the Government wants the best value for the community and quickest response. However, many qualified local businesses that normally do not do business with the Government would not be in any existing Government databases or on any agency schedules. Developing a special database of such contractors would be a valuable tool in emergency response situations.

Areas that should be considered in shaping an appropriate database include:

- The Government should maintain an interactive database that provides instant information to contracting officers. This tracks with a GAO recommendation that agencies develop a central information source for contracting and officials to contact about contracts. This would provide knowledge of contractor capabilities and prices by identifying commodities and services and establishing vendor relationships before they are needed, to include:
 - ✓ Types of product/services required.
 - ✓ Preferred GWAC/Other vehicle(s) for that product/service or GSA Schedule by vendor for less common products/services.
 - ✓ 'Expedited buying guide' link to that vehicle.
 - ✓ Summary of appropriate actions to take in sole source, unusual and compelling circumstances when other alternatives are unavailable.
 - ✓ FEMA and Army Corps had established "hot lines" on contracts during Hurricane Katrina, but was it too little too late. Companies had difficulties in getting through on the "hot lines"
 - ✓ Hurricane Contracting Information Center established after Hurricane Katrina, and operated through participating agencies: Department of Commerce, Department of Interior, General Services Administration GSA, SBA, National Emergency Resource Registry)
- GSA e-library identifies FSS Contractors by locations and socioeconomic status.
- GSA is establishing an Office of Emergency Recovery and an Office of Historic Preservation.
 - ✓ Private sector companies can help in standing up office in this office (e.g., providing volunteers to work in the office) in a time of emergency.

Recent legislation addresses the issue of databases of qualified contractors:

- FY2007 Department of Homeland Security Appropriations Act (P.L. 109-295).
 - ✓ Requires the establishment and maintenance of a registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities.
- H.R. 4427 (sponsored by Rep. Bennie Thompson in 109th Congress), not adopted.
 - ✓ Requires Secretary of Homeland Security to establish and maintain a database of small businesses for purposes of consultation by Federal agencies prior to awarding contracts related to declared emergencies.

ISSUES TO CONSIDER: CONTINGENCY CORPS and CONTINGENCY PLANS

With Hurricane Katrina, there were few contracting officers in place and fewer still that were knowledgeable of the statutory and regulatory tools available. Developing a specially trained cadre of contracting officials within various agencies who could be called upon in times of emergencies is a necessary step to ensure that proper contracting procedures are in place and to manage oversight and accountability. Several recommendations already have been identified.

Areas that have been raised in several reports to address contingency corps and plans include:

- Mobilize contracting personnel from various locations.
 - ✓ Sufficient qualified contracting personnel that can stay longer than 30 days.
- Recommendations of Government Accountability Office.
 - ✓ Ensure sufficient numbers of trained staff who have clear responsibilities and guidance for overseeing contractor performance.
 - ✓ Provide sufficient numbers of field level contracting staff with the authority needed to meet mission requirements.
 - ✓ Formalize assigning and communicating disaster related responsibilities, with joint training for government and contractor personnel.
 - ✓ Develop knowledge of contractor capabilities and prices by identifying available commodities and services and establishing vendor relationships before they are needed.
 - ✓ Establish a scalable operations plan to adjust the level of capacity required to effectively respond to the need.
 - ✓ Formally assigning and communicating disaster-related responsibilities with joint training for government and contractor personnel.
- Recommendations of Department of Homeland Security.
 - ✓ Establish an acquisition system under which each requirement has a well-defined mission and a team that includes a program manager, a contracting officer, a financial manager, and other professionals necessary to achieve mission results.
 - ✓ Buildup the department's acquisition workforce to ensure it has a "qualified cadre of professionals" now and in the future.
- Recommendations from Chief Acquisition Council.
 - ✓ Develop procedures and guidance on best practices.
 - ✓ Establish directories of individuals with expertise in emergency procurement.
 - ✓ Establish directory of existing contracts that could be relevant to future emergencies.
 - ✓ Ensure knowledge of existing rules that are sufficient to meet agencies' contingency needs.
- Develop an Emergency Plan.
 - ✓ During Procurement Systems Review, need to develop an emergency contracting plan.
 - ✓ On military bases, contracting offices have plans in place for emergencies that may happen on the base. This includes a list of contractors who agree to support the base in an emergency. Agreements are entered into with these contractors with telephone numbers, including home phone numbers for after hours, and a list for different types of disciplines that would be needed. The bases also often have procurement personnel on call, and have their emergency telephone numbers for after work hours and weekends. And, telephone numbers for base contracting offices (outside the area), if needed for additional support.
 - ✓ Consider whether this type of planning for a local community could work as efficiently as it would in the military environment in a disaster of the type of Hurricane Katrina.
 - ✓ Identify different organizations across the country that could supplement logistics and the purchasing and contracting effort for the agencies affected by a disaster.
- Initial Responder Guidance.

- ✓ Plan for complete self sustainment – initial seven days of food, water, housing, fuel, ice, manpower and material, medical and safety support.
- ✓ Set up communications – this is vital, though difficult.
- ✓ Prepare in advance for meeting cost standards for record keeping and competition of purchases in very short period of time.
- ✓ Prepare to invoice for work from hour one.
- ✓ Consider ability to support initial cash outflow.
- ✓ Develop a supply and support plan.

Recently enacted legislation attempts to tackle many of these issues:

- FY2007 Department of Homeland Security Appropriations Act (P.L. 109-295).
 - ✓ Requires DHS Secretary to establish a National Advisory Council to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters.
 - ✓ Requires strategic human capital plans.
 - ✓ Requires FEMA Administrator to develop plans to establish and implement a Surge Capacity Force.