



OCT 18 2005

CIVILIAN AGENCY ACQUISITION COUNCIL LETTER 2005-05

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM:

GERALD ZAFFOS
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT:

Laws and other requirements applicable to micro-purchases
conducted under section 101 of Public Law 109-62

Section 101(1) of Public Law 109-62 authorized the use of the emergency procurement authorities in 41 U.S.C. 428a(c). Section 101(2), raised the dollar amount of the micro-purchase threshold at 41 U.S.C. 428 to \$250,000. Although section 101(2) raised the micro-purchase threshold for actions in support of Hurricane Katrina rescue and relief efforts to \$250,000, the need for the increased threshold has diminished. Therefore, the threshold for contingency operations for micro-purchases remains at \$15,000, except for exceptional circumstances. If an agency believes that an exceptional circumstance exists, they must contact the Deputy Director for Management at the Office of Management and Budget (OMB). See OMB Memorandum dated October 3, 2005, attachment 1.

The following significant guidance was also issued for Hurricane Katrina rescue and relief efforts:

1. In addition to signing Public Law 109-62, on September 8, 2005, President Bush signed a proclamation that suspends the application of the Davis-Bacon Act to contracts for construction contracts that are entered into on or after September 8, 2005 and are performed in the counties listed in the proclamation. The suspension will stay in effect until the President rescinds the proclamation.
2. On September 9, 2005, the Deputy Assistant Secretary of Labor exercised his authority to grant a limited exception and waiver from some of the requirements of the laws administered by the Office of Federal Contract Compliance Programs (OFCCP). These exceptions apply only to contracts entered into to provide Hurricane Katrina relief and expire three months from the date of the Department of Labor (DOL) memorandum, unless extended as prescribed in the DOL memorandum. The authority to modify the EEO clauses expires December 6, 2005 unless further extended by the Secretary of Labor.

GSA provides the following additional guidance:

1. 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 will be performed, either within or immediately adjacent to the counties named in the President's proclamation on Davis-Bacon Act; or the acquisition is being made from a source within a named county for delivery or performance within a named county.
2. Prior to placing an order from a source outside a named county for delivery to or performance at a location that is not within or immediately adjacent to a named county, you must verify from the requiring office that the acquisition is, in fact, in support of Hurricane Katrina rescue and relief efforts. Be sure to document the verification, including the name and title of the person you contacted.
3. As provided for in the DOL letter dated September 9, 2005 (see attachment 2), agencies are authorized to modify the clauses at FAR 52.222-26, Equal Opportunity; 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans; and 52.222-36, Affirmative Action for Workers with Disabilities.
4. As stated in the DOL letter dated September 22, 2005, see attachment 3, agencies are authorized to award contracts for construction in the named counties in excess of \$2,000 without regard to wage determinations issued by the Secretary of Labor under the Davis-Bacon Act. However, other construction related clauses still apply because they are not dependent upon the Secretary of Labor's wage determinations. Clauses that are still applicable are:
 - (a) 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation.
 - (b) 52.222-8, Payrolls and Basic Records.
 - (c) 52.222-9, Apprentices and Trainees.
 - (d) 52.222-10, Compliance with Copeland Act Requirements.
 - (e) 52.222-12, Contract Termination-Debarment.
5. In accordance with section 101(1) of Pub. L. 109-62, the \$10 million threshold in FAR 13.500, Test Program for Certain Commercial Items, paragraph (e) is applicable to procurements in support of Hurricane Katrina rescue and relief efforts.

6. As a result of the increase in the micro-purchase threshold to \$15,000, authorized agency personnel acting in support of Hurricane Katrina rescue and relief efforts may place orders up to \$15,000 without:

(a) Obtaining competition if the price is determined to be fair and reasonable.

(b) Regard to the Buy American Act.

(c) Setting aside purchases below the threshold exclusively for small business concerns.

7. Notwithstanding paragraph 6(c), OMB policy is to ensure that small business concerns are provided maximum practicable opportunity under the circumstances to participate in Federal acquisitions as prime contractors and subcontractors. Also, agency personnel are still required to equitably distribute purchases among qualified suppliers.

8. Although registration in CCR can be waived when utilizing urgent and compelling justifications or when responding to natural disasters (see FAR 4.1102(a) (3)), agencies should strive to have vendors register in CCR as part of receiving an award in excess of the micro-purchase threshold. Further, vendors seeking to do business with the Federal Government should be referred to CCR (www.ccr.gov) for registration.

9. Agencies are authorized to use Part 12 for micro-purchases directly related to Hurricane Katrina rescue and relief efforts. SF 1449, Solicitation/Contract/Order for Commercial Items, may be used to place open market purchases. This form already incorporates by reference the clause at 52.212-4 and indicates that clause 52.212-5 is attached.

10. Under FAR 26.201, which implements the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.), agencies must give preference to organizations, firms and individuals residing in or doing business primarily in the areas affected by Hurricane Katrina.

This CAAC Letter serves as evidence of your consultation with the Chair of the Civilian Agency Acquisition Council as required by FAR 1.404 for class deviations. The class deviations must be within the scope of this memorandum and must be directly related to Hurricane Katrina rescue and relief efforts.

If you require additional information, please contact Mr. Gerald Zaffos, at 202-208-6091, email jerry.zaffos@gsa.gov.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 3, 2005

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Clay Johnson III
Deputy Director for Management

SUBJECT: Limitation on Use of Special Micro-purchase Threshold Authority for Hurricane Katrina Rescue and Relief Operations

Section 101(2) of the Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising from the Consequences of Hurricane Katrina (Public Law 109-62) raised the micro-purchase threshold to \$250,000 for procurements of property or services to support Hurricane Katrina rescue and relief operations. On September 13, 2005, the Office of Management and Budget provided your Chief Acquisition Officers and Chief Financial Officers with detailed guidance to ensure responsible and effective use of this authority.

After consultation with officials from many of the departments and agencies, we have concluded that the need for the increased micro-purchase threshold authorized by section 101(2) has diminished. We therefore request that agencies not utilize this increased authority unless there are exceptional circumstances. If an agency believes that such exceptional circumstances exist, please contact me directly at 202-456-7070.

This memorandum should be distributed broadly to all individuals (i.e., program, contracting, finance, legal, and other officials) who may have responsibilities associated with micro-purchase authority. Thank you for your prompt attention to this matter.

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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.

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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.



SEP 22 2005

MEMORANDUM NO. 199

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL
GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: ALFRED B. ROBINSON, Jr. 
Deputy Administrator

SUBJECT: Suspension of the Davis-Bacon Act and the Related Acts in Louisiana,
Mississippi, Alabama, and Florida

On September 8, 2005, President Bush signed a proclamation suspending the Davis-Bacon Act in the areas seriously affected by the devastation resulting from Hurricane Katrina. The suspension proclamation, which can be accessed through the White House Web site at <http://www.whitehouse.gov/news/releases/2005/09/20050908-5.html>, was issued pursuant to section 6 of the Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*, and also applies to various related acts as well as any executive order, proclamation, rule, regulation, or other directive requiring Davis-Bacon wage determinations.

This suspension covers all parishes in the State of Louisiana, all counties in the State of Mississippi, the counties of Baldwin, Choctaw, Clarke, Mobile, Sumter and Washington in the State of Alabama, and the counties of Broward, Miami-Dade, and Monroe in the State of Florida. In the event that a single contract/project requires construction work in areas covered by the suspension as well as other areas not covered by the suspension, the Davis-Bacon provisions must be applied to the work performed outside of the suspended area(s).

The suspension applies to all contracts entered into on or after September 8, 2005, and will remain in force until otherwise provided. Therefore, as of September 8, 2005, agencies should not request wage determinations or obtain Davis-Bacon wage determinations from www.wdol.gov for contracts to be performed exclusively in the suspended areas.

In the case of projects assisted under the National Housing Act, the applicable date is the beginning of construction or the initial endorsement of the mortgage, whichever occurs first. Thus, if either construction began or the initial endorsement occurred before September 8, 2005, the Davis-Bacon labor standards provisions would be applicable to the project. In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, the applicable date is the beginning of construction or the execution of the

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agreement to enter into a housing assistance payments contract. Thus, if either of these two events occurred before September 8, 2005, the Davis-Bacon provisions would apply to the project. With respect to projects undertaken pursuant to the U.S. Housing Act of 1937 and the Native American Housing Assistance and Self Determination Act of 1996, where there is no contract award, the applicable date is the start of construction.

Contracts awarded before September 8, 2005, are not impacted by this suspension, and the determined rates apply to all covered work performed on such contracts. Thus, subcontractors to such prime contracts are subject to Davis-Bacon provisions irrespective of the date of the subcontract. The provisions of the Davis-Bacon and related Acts and the regulations for enforcement of the contract requirements, including the conformance provisions for adding additional classifications and wage rates, continue to apply to such contracts.

Pursuant to the Department of Labor Regulations, 29 C.F.R. Part 3, and the delegations of authority, Secretary's Order 4-2001 and Employment Standards Order No. 2001-01, contractors on contracts for which the President's proclamation suspended the Davis-Bacon and related Acts provisions are exempt from the regulatory requirement in section 3.3(b) to submit a weekly statement with respect to the payment of the wages (i.e., the Copeland Act certified payroll reporting requirements in 40 U.S.C. 3145). The Anti-Kickback provisions of the Copeland Act contained in 18 U.S.C. 874 and the regulations governing payroll deductions in 29 C.F.R. Part 3 will continue to apply.

Agencies should remind their contractors that the recordkeeping requirements of the Fair Labor Standards Act (FLSA) will apply to any employer covered by that Act. The FLSA requires that the records include certain identifying information about the employee and data about the hours worked and the wages earned.

The Contract Work Hours and Safety Standards Act (CWHSSA) overtime provisions apply to contracts in excess of \$100,000 that may require or involve the employment of laborers and mechanics, including guards and watchmen (1) upon a public work of the United States, or any territory, or of the District of Columbia; (2) to other such contracts to which the United States or any agency or instrumentality thereof, any territory or the District of Columbia is a party; or (3) to contracts for work financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof, under statutes of the United States providing wage standards for such work. The application of CWHSSA does not depend on the application of the Davis-Bacon Act. Therefore, the Department has determined that CWHSSA continues to apply to contracts in excess of \$100,000 in the same manner as before the suspension of the Davis-Bacon and related Act provisions. The overtime requirements of the FLSA also continue to apply. Similar to CWHSSA, the FLSA requires the payment of no less than time and one-half a non-exempt employee's regular rate of pay for hours worked over 40 in a workweek.

Pursuant to Department of Labor Regulations, 29 C.F.R. Part 5, section 5.5 (a), the contracting officer is required to insert in full in any covered solicitation or contract for

construction the clauses listed in section 5.5. See also Federal Acquisition Regulations at 48 C.F.R. 22.407. Section 5.5(a) of 29 C.F.R. Part 5 permits modification of the contract clauses to meet the particular needs of an agency, provided that such modifications are first approved by the Department of Labor. Therefore, with respect to those contracts affected by the Presidential suspension of the Davis-Bacon and related Acts, the Department hereby allows the omission of the labor standards clauses from the affected contracts with the exception of certain clauses listed below that are necessary to enforce the provisions of the Copeland Act and CWHSSA.

29 C.F.R. Part 5, section 5.5(a)(2) *Withholding*.

29 C.F.R. Part 5, section 5.5(a)(5) *Compliance with Copeland Act requirements*.
modified as follows:

(5) *Compliance with Copeland Act requirements*. The contractor shall comply with the requirements of 29 C.F.R. Part 3 which, **with the exception of 29 C.F.R. Part 3, section 3.3**, are incorporated by reference in this contract.

29 C.F.R. Part 5, section 5.5(a)(6) *Subcontracts*. modified as follows:

(6) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. Part 5.5(a) **as applied herein** and such other clauses as the (write in the name of the Federal agency) may by appropriate instruction require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all **applicable** contract clauses in 29 C.F.R. 5.5.

29 C.F.R. Part 5, section 5.5(a)(7) *Contract termination: debarment*.

29 C.F.R. Part 5, section 5.5(a)(8) *Compliance with Davis-Bacon and Related Act requirements*.

29 C.F.R. Part 5, section 5.5(a)(9) *Disputes concerning labor standards*.

29 C.F.R. Part 5, section 5.5(a)(10) *Certification of eligibility*.

29 C.F.R. Part 5, sections 5.5(b) *Contract Work Hours and Safety Standards Act* and 5.5(c) in their entirety.

We recommend that the corresponding clauses of the Federal Acquisition Regulations be omitted or incorporated accordingly.

Questions regarding the implementation of the suspension proclamation should be directed to William Gross at (202) 693-0569.