



## **Federal Procurement Law:**

### **Emergency/Disaster Acquisitions and the Covid-19 Pandemic**

#### **Legal Framework: The Stafford Act**

The [Stafford Act](#) is the statutory authority that describes the processes and programs by which the Federal Government provides assistance to states, local governments, eligible private non-profits and individuals in response to an emergency or a disaster. An emergency or disaster declaration made by the President is required to prompt this assistance, which in turn is coordinated and provided through FEMA under the National Response Framework.

On March 13, 2020, President Trump declared the Covid-19 pandemic as a [national emergency](#) under the Stafford Act. Since then, disaster declarations have been issued for all 50 states, the District of Columbia and the territories.

#### **Local Preference Provision**

The Stafford Act contains a few provisions governing contracts between Federal agencies and private entities for emergency or disaster assistance. In particular, [it provides](#) that, to the extent feasible and practical, Federal agencies shall give preference to firms in the affected area when awarding contracts for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities. Regulations implementing this mandate can be found in the Federal Acquisition Regulation (FAR) Part 26.

[OMB's Memorandum M-20-18](#) advised that, because the emergency declaration was nationwide, no action was required from agencies to create preferences for local firms. It is still unclear whether this guidance will change now that disaster declarations have been issued for all states and territories and, presumably, the response efforts become more targeted.

#### **Contracting Flexibilities: What Seasoned Federal Contractors Must Know**

The federal procurement framework generally requires full and open competition. However, FAR 18 sets forth multiple acquisition flexibilities that are available for emergency acquisitions. Among the many flexibilities granted, FAR 18.2 allows the increase of certain procurement thresholds when an emergency or disaster declaration has been issued, thereby expediting the acquisition process.

Thus, for purposes of federal acquisitions related to the COVID-19 response:

- The micro-purchase threshold is raised to \$20,000 for domestic purchases and to \$30,000 for purchases outside the U.S.;
- The simplified acquisition threshold is raised from \$250,000 to \$750,000 for domestic purchases and \$1.5 million for purchases outside the U.S.; and
- The threshold for simplified procedures for certain commercial items is increased to \$13 million.

The existence of these flexibilities does not mean agencies must use them. Nevertheless, it is important for contractors to be aware of these thresholds and the streamlined acquisition procedures they entail. Moreover, contractors should familiarize themselves with FAR 6.3 and the exceptions established therein which allow for “other than full and open competition.” While these exceptions are not frequently used, nothing precludes agencies from using them if needed.

### **Where to Start: Considerations for Potential Federal Contractors**

Businesses interested in becoming federal contractors to assist in the relief efforts must register in the System for Award Management ([SAM](#)) and within it, in the Disaster Response Registry. The Registry is the primary place agencies, such as FEMA and the U.S. Army Corp of Engineers, use to search for contractors that want to assist through federal contracting opportunities. Moreover, businesses should:

- Submit an inquiry to the Department of Homeland Security (DHS) Procurement Action Innovative Response Team (PAIR) team at [DHSIndustryLiaison@hq.dhs.gov](mailto:DHSIndustryLiaison@hq.dhs.gov) if interested in doing business with FEMA/DHS and supporting the response to COVID-19 with your company’s non-medical goods and/or services.
- To sell medical supplies or equipment to the federal government, submit a price quote under the [COVID-19 PPE and Medical Supplies Request for Quotation](#). Full details can be found in the solicitation ([Notice ID 70FA2020R00000011](#)). Please know that this solicitation requires registration in (SAM) in order to be considered for award.
- Register in the [Dynamic Small Business Search \(DSBS\)](#) if your business is a small business concern. DSBS is another tool contracting officers generally use to identify potential small business contractors for upcoming contracting opportunities.

In order to locate contracting opportunities related to response efforts, businesses should monitor:

- [Beta.Sam.Gov](#)-(formerly known as Federal Business Opportunities, and commonly known as FedBizOps or FBO). Beta is a free and publicly accessible government website where contract opportunities exceeding \$25,000 are posted.

### **A Word to the Wise**

A significant portion of the aid provided under the Stafford Act comes in the form of grants to states and local governments, which will then procure goods and services. Thus, many contracting opportunities will be directly with these entities and therefore not subject to federal procurement law. Businesses interested in contracting with states and local governments should get acquainted with the statutes and regulations applicable to those acquisitions.