

CHAPTER 12:

FEMA Disaster Leasing

1. Overview – Disaster Leasing	12-3
Chapter Outline	12-3
Background	12-3
Key Definitions and Concepts.....	12-3
Part 1 - Acquisition Planning/Pre-Solicitation Requirements	12-5
1. Trigger Event and Activation	12-5
2. Lease Acquisition Models – FEMA Disaster Lease	12-8
3. REXUS Lease Number Generation and G-REX Tracking	12-11
4. Acquisition Planning	12-11
Part 2 - Market Survey Process	12-14
1. Prepare for the Market Survey/Market Research.....	12-14
2. Traveling to Assist FEMA - Deployment.....	12-15
3. Conducting the Market Survey	12-16
Part 3 – Solicitation Process	12-17
Prepare the Solicitation Package.....	12-17
Part 4 – Pre-Negotiation/Negotiation Process	12-19
1. Overview.....	12-19
2. Preparing Negotiation Objectives	12-19
3. Negotiating the Disaster Lease	12-20
Part 5 – Award Determination	12-21
1. Overview.....	12-21
2. Basis for Award	12-21
3. Funding.....	12-22



4. Environmental and Historic Preservation Compliance 12-22

5. Completing the FEMA Lease Package 12-23

Part 6 – Design, TI and BSAC Negotiations, and Notice to Proceed..... 12-23

Part 7 – Construction Phase..... 12-24

Part 8 – Lease Commencement and Closeout 12-24

1. Overview..... 12-24

3. Extensions and Renewals 12-24

4. Long Term Disaster Leases 12-25

5. Lease Administration Management..... 12-25

6. Close-Out..... 12-25

Attachment 1: Class Justification for Other Than Full and Open Competition 12-26

Attachment 2: Disaster Lease File Checklist..... 12-29

Attachment 3: Time and Attendance Template 12-32

Attachment 4: Memorandum of Agreement..... 12-33

Attachment 5: Determination of Exceptional Circumstances..... 12-44

Attachment 6: Acquisition Order MV-2011-07 12-46

1. Overview – Disaster Leasing

Chapter Outline

This chapter provides guidance relating to leases executed in support of disaster relief efforts on behalf of the Federal Emergency Management Agency (FEMA). These acquisitions are performed using the authority under 41 U.S.C. 3304(a)(2) as implemented by FAR 6.302-2, and commonly known as Unusual and Compelling Urgency. These types of lease acquisitions occur in an accelerated timeframe necessary to respond to the critical lifesaving and life sustaining activities following a Presidential declaration of disaster under the Robert T. Stafford Act (Stafford Act). This chapter provides supplemental guidance to Leasing Desk Guide Chapter 2 and follows the basic outline of that chapter while highlighting important areas of difference or specialization that are applicable to these types of acquisitions. Due to the number of significant differences in this specialized type of lease acquisition, it is recommended that users become familiar with this chapter before attempting to conduct disaster lease acquisitions. It should also be noted that these procedures apply specifically to actions conducted for FEMA.

Background

The Robert T Stafford Act authorizes FEMA to manage the Federal Government's response to disasters. Following a disaster, the President has the authority to issue a disaster declaration that initiates FEMA's response and assistance activities following the protocols contained in the National Response Framework (NRF). To accomplish the variety of actions that are required to respond to disasters, FEMA employs a wide range of subject matter experts in addition to relying on agency partners, such as GSA, to provide necessary services and expertise which FEMA may not have in-house. GSA partners with FEMA under the NRF pursuant to a Memorandum of Agreement to provide acquisition support, including leasing. FEMA issues a Mission Assignment (MA) to initiate GSA's support and then issues one or more Resource Request Forms (RRFs) to request specific services. The first RRF generally received is for a facility to house FEMA's Joint Field Office (JFO) which serves as FEMA's field based HQ for disaster relief efforts, and must be operational within 72 hours of a disaster declaration. In order to find and lease space for FEMA within this timeframe, GSA utilizes the flexibility available through the emergency acquisition regulations in the FAR and special exemptions under the Stafford Act. These emergency acquisition authorities are authorized for all FEMA disaster relief acquisitions through a class action Justification for Other Than Full and Open Competition. Leases for FEMA disaster relief are significantly different from those acquired through our regular leasing program. These leases are very short in duration, typically lasting from 2-6 months and must be acquired immediately in support of life saving and life sustaining activities. To facilitate this type of highly specific transaction, the leasing program has established special documents and procedures that are designed for this use. This chapter provides comprehensive guidance on how to acquire leases for FEMA disaster relief properly in accordance with applicable rules and regulations while meeting the urgency required by the circumstances following a disaster.

Key Definitions and Concepts

This chapter will discuss the policies and procedures regarding the procurement of space for FEMA disaster relief offices under unusual and compelling justifications. It is important for the reader to differentiate these policies and procedures from other types of emergency lease actions involving unusual and compelling circumstances, and to understand the key terms and concepts associated with FEMA disaster leasing.

What is Emergency Leasing?

Emergency Leasing refers to leases entered into for agencies other than FEMA following an event which may be a natural disaster, or may be more localized, such as a fire at a particular building which requires the agency to relocate, temporarily or permanently. Emergency leasing may utilize the broad flexibility granted under the FAR for emergency acquisitions, such as providing exemptions for advertising and competition requirements. Emergency leasing follows the normal leasing process with special noted exemptions and changes. Emergency Leasing will be covered in detail in a future chapter of this guide. Disaster leasing, covered in this chapter, follows a unique process that varies significantly from regular or even emergency leasing. For this reason, the two types of acquisitions are handled separately in this guide in order to prevent confusion.

What is Disaster Leasing?

Disaster Leasing is defined as a specific type of emergency lease acquisition performed for the FEMA in support of disaster relief efforts under the Stafford Act and ordered by a Presidential disaster declaration. Disaster leasing relies on 3 key components to expedite the acquisition process to meet the operational timeframes required for disaster relief. The first key component is the acquisition flexibility available to all emergency acquisitions set forth in the Federal Acquisition Regulation (FAR). These flexibilities include key items such as advertising exemptions which allow LCOs to immediately approach the market and begin the solicitation process even for larger leases. The second are the statutory exemptions available through the Robert T. Stafford Act. These include the ability to waive the floodplain compliance process when it is necessary to lease space in a floodplain for disaster relief activities. The third key component is the unique operational relationship between GSA and FEMA under the National Response Framework which allows the LCO to partner with various FEMA Subject Matter Experts (SMEs) who are also deployed and assist the LCO in reviewing and approving buildings in the field without the need to involve PBS office based personnel for items such as safety and accessibility reviews.

What is Unusual and Compelling Urgency?

Unusual and compelling urgency is the term used to represent a situation where the Federal Government has a bona fide need for goods or services which cannot be acquired within the timeframe needed under traditional full and open procedures. The authority to conduct acquisitions using this process comes from 41 USC 3304(a)(2) and is further described in FAR 6.302-2. Unusual and Compelling Urgency is a form of “other than full and open competition,” similar to sole source acquisitions commonly used to procure succeeding leases in the leasing program which is described under FAR 6.302-1. In a sole source acquisition, the LCO negotiates with only one Offeror (typically an incumbent Lessor). LCOs who perform acquisitions using Unusual and Compelling Urgency procedures are still required to promote competition to the maximum extent practical under the circumstances. As circumstances surrounding disasters vary greatly, the ability to promote competition will also vary to a greater or lesser extent. LCOs should consider the urgency with which the agency plans to occupy the space and, where feasible, permit a reasonable negotiation period based on the situation. However, when a reasonably diligent search of the market only reveals few, or possibly a single location, LCOs do not have an obligation to expand the delineated area or perform multiple iterations of market surveys when the urgency of the situation does not permit such activities. Acquisitions using Unusual and Compelling Urgency procedures may not exceed one year, including all options, unless the Head of Contracting Activity (HCA) determines that exceptional circumstances apply. The determination must be documented in the file.

Part 1 - Acquisition Planning/Pre-Solicitation Requirements

1. Trigger Event and Activation

The trigger event for disaster leasing actions will be an issued or reasonably expected presidential disaster declaration made under the Stafford Act. Coordination between FEMA and GSA will begin as early as an event is identified and will be coordinated by GSA's Office of Mission Assurance (OMA). OMA will participate in advance planning meetings on events which are identified beforehand, such as hurricanes, in order to better assist FEMA with their response planning and execution. When the nature of the event allows for advance notice, it is important to take advantage of this additional time by conducting preliminary market research based on information received through OMA from FEMA regarding potential delineated areas. However, until a Lease Contracting Officer (LCO) is deployed, the regional leasing program should coordinate any discussions with FEMA through OMA. While some disasters occur without notice, many severe disasters such as hurricanes, super-storm cells, and flooding can be forecasted to some extent in advance of the actual event. Regional leasing divisions should establish communication protocols with the regional Office of Mission Assurance and begin regular discussions as soon as a natural disaster occurs or is expected. Coordination with OMA is critical to ensure that the leasing division's efforts are properly aligned with other disaster relief efforts.

Mission Assignment and Resource Requests

GSA's relationship with FEMA for disaster relief differs significantly from the standard procedures used to provide space for most Federal agencies. When a Federal agency requires space, they submit a request to GSA using the SF-81 or another method such as an email. This request is then evaluated by the Public Buildings Service (PBS) and, when owned space is not available, the leasing program acquires space for the agency in a privately owned building. The agency compensates PBS for the cost of leasing services through the PBS fee. When FEMA requires space in support of disaster relief efforts, the process occurs within the National Response Framework (NRF) pursuant to a Memorandum of Agreement dated June 18, 2007 entered into between GSA and FEMA. GSA is one of many agencies that FEMA partners with to assist with disaster relief efforts. FEMA transmits a MA to GSA's Office of Mission Assurance formally requesting support.

Following receipt of the MA, FEMA will transmit one or more RRFs. The RRF will request that PBS provide certain resources to FEMA, such as office space. RRFs for office space will be routed through OMA to the regional leasing program for fulfillment. This resource request will be fulfilled by assigning one or more LCOs to FEMA as determined by regional leasing management based on the type and amount of RRFs received and expected. Once PBS assigns an LCO(s) to a request, that LCO is considered to be assigned to FEMA full-time until the requested action is completed or they are relieved by another LCO. This action is referred to as a deployment and is covered in more detail later in this chapter. Once an RRF is received by OMA and transmitted to the regional leasing program, the LCO may begin formal procurement activities. Procurements conducted in support of a presidential major disaster declaration are supported by a Class Justification for Other Than Full and Open Competition, meaning that the LCO does not need to draft and submit a new one for each individual action. The LCO should review the class justification, contained in Attachment 1 to the chapter, and prepare the required memo to the file stating that the procurement to be conducted falls within the parameters of the class justification. No further justification is required on the part of the LCO. It is not uncommon for FEMA's advance teams to begin scouting for JFO locations and the RRF may identify a potential site. The LCO should take note of any locations identified by FEMA but must conduct their own market

research to determine if there are other potential locations as discussed in more detail later in this chapter.

Assigning LCOs to FEMA Disaster Leasing Requests

Assigning LCOs to leasing requests should involve consideration of the knowledge, skills, and experience required for successful completion of the project, as well as the availability of that person to remain deployed until the end of the anticipated need unless regional management will provide a replacement. FEMA disaster leasing requests occur in a fast-paced environment using a procurement method that varies significantly from those used for full and open competition or routine sole source acquisitions. LCOs should be properly trained on disaster leasing procedures before they are asked to deploy for the first time to respond to a FEMA request.

Regional leasing management should ensure that a sufficient number of LCOs are properly trained to respond to FEMA disaster leasing requests based on the expected level of need in that region, with the understanding that disasters can occur at any time and in any part of the country. Regions with more frequent FEMA disaster leasing needs should consider establishing a more formal program of pre-selecting LCOs so that time is not lost locating a suitable LCO once a request has been received. Two successful methods of pre-selecting LCOs include establishing a group of trained LCOs to respond to disaster leasing requests and maintaining a rotating list of trained LCOs who will then be expected to deploy if a request is received during their rotation. Assigning LCOs to disaster leases based purely on pre-existing territorial assignments may result in a skill gap between the assigned employee and the assignment.

Resourcing large events

Small events may only require that PBS assign a single LCO who deploys to acquire 1 or 2 leases and then will return to their regular duties. However, larger events, such as major hurricanes, will generally require that PBS deploy LCOs for an extended period of time to handle current and future requests as they come in. Large events will involve a number of lease requests which will be submitted over a period of weeks or even months. It is not practical to attempt to locate and deploy LCOs for each individual request for large events. Regional management should be prepared for requests to come in an episodic pattern with brief periods between receipt of individual requests. Having deployed resources will eliminate unnecessary delays in fulfilling lease requests as LCOs can begin working them immediately upon submission. PBS will need to continue to provide the services of an LCO or LCOs until all FEMA requests have been fulfilled. Depending on the scale of the event and number of leases required, this may require multiple LCOs deployed on a rotating basis. Regional leasing programs should coordinate with assigned individuals to ensure that they are available for the duration of the expected assignment or that substitutes are identified ahead of time. Based on several factors, such as the location of the event, the location of the LCO workforce, and the level of need, it may be necessary to have LCOs stationed with FEMA or it may be possible to deploy resources from the regional office. Whatever the decision that is made by the regional program management, PBS has a responsibility to fulfill FEMA lease requests promptly.

In recognition of the resource requirements for handling large disaster responses, the Senior Procurement Executive (SPE), through Acquisition Order MV-2011-07, has authorized warrants to be used outside of their usual regional boundaries for disaster leasing requests. When the resource needs of an event are expected to exceed the ability of the home region to manage, the region's leasing management should contact the Office of Leasing and arrange for a call for volunteers to be issued nationwide. Through this coordination, regions can tap into the national LCO workforce to assist in resourcing the largest disasters, such as major hurricanes. Regions are encouraged to utilize this ability before the need overwhelms the region's ability to prevent a back log of disaster lease requests from forming.

Utilizing Broker Resources

The leasing program regularly utilizes the services of contracted brokers to accomplish leasing actions. The current contract, the GSA Leasing Support Services (GLS) contract, allows regions to issue emergency task orders to brokers which can be used to task FEMA disaster lease actions. Using the broker can provide access to supplemental leasing assistance during critical periods in the disaster relief process. The broker contract can be especially useful for mitigating the impact of large disaster responses on the resources of the regional leasing division. When PBS chooses to use broker resources, the tasking region should ensure that the responding broker is familiar with disaster leasing procedures and that the broker will be able to respond to the need with the urgency required. When PBS chooses to utilize the broker for disaster leasing requests, the expectations regarding urgency remain the same. It is beyond the scope of this chapter to provide detailed instructions on the tasking process used in the broker contract. For detailed information on emergency tasking procedures, please consult the latest edition of the administration guide for the broker contract.

Brokers are reimbursed through their usual commission received from the Lessor. Therefore, the following section on timecards and reimbursement does not apply to broker personnel. When utilizing the broker, the current version of the commission language should be added to the disaster leasing templates by the broker as an attachment.

Timecards and Reimbursement for FEMA Leasing Actions

PBS is typically reimbursed for the cost of providing leasing services through the PBS fee. FEMA disaster leases are not subject to the PBS fee. In many cases, due to the short term nature of these leases, PBS would not be able to recoup the costs of providing lease acquisition services through the standard PBS fee structure. In lieu of this fee, FEMA reimburses PBS directly for the cost of the support provided using RWA funds provided to OMA with the MA. Generally, this cost includes the salary and travel expenses for the personnel assigned to assist FEMA in the relief effort. It is important that LCOs track all time that is spent in support of FEMA disaster relief efforts after receipt of the RRF from the time they begin their deployment until they return home. Additional time supporting FEMA before or after the actual deployment should also be tracked and submitted for reimbursement, such as the time required to perform market research, and execute renewal options, extensions, or termination actions. Once the assigned LCO begins travel to deploy for FEMA, his or her entire time should be dedicated to the FEMA relief effort and therefore 100% of their time should be logged on their timesheet. Prior to deployment, the LCO should only log actual time worked. For example, if an LCO spends several hours setting up a market survey and then deploys the following morning, the LCO should log the actual hours for the market research and then begin logging all hours beginning when they leave their residence to travel to the airport for deployment and continue until they return to their residence. Other PBS personnel tasked with support of the leasing action, such as appraisers, should also log their hours and submit timecards for reimbursement.

Timecards

At the beginning of the deployment, and for each new pay period that begins while an LCO is deployed, OMA will provide that employee with a timecard. The timecard should be filled out completely, including the FEMA RWA number which will be provided by OMA. This timecard will be approved by the FEMA Logistics Chief (Log Chief) or regional OMA designee and then submitted to the regional OMA office for processing against the RWA. The LCO is responsible for submitting a request for irregular overtime through GSA's leave and overtime request system (currently HR Links), and obtaining approval by his or her supervisor. The HR Links request for overtime must match the approved timecard. Please see Attachment 3 for a copy of the timecard.

Overtime and Night Pay Differential

Overtime pay and night pay differential pay guidelines are established by OPM and are applicable to employees under the General Schedule. It is common for FEMA deployments to require work outside of the LCO's normal duty hours. This may include extended hours during normal workdays as well as work on weekends and even holidays. The LCO is entitled to overtime pay and to the night time differential when applicable.

For additional information regarding overtime and night pay, please consult OPM pay and leave guidelines.

2. Lease Acquisition Models – FEMA Disaster Lease

The act of acquiring space for FEMA disaster relief differs significantly from the leases typically acquired for other Federal agencies. Generally, disaster relief leases are short term (3-6 months) and must be acquired in an expedited timeframe in order to support FEMA's mission. For the initial lease request for the JFO, FEMA's operational benchmark is to have a functional office within 72 hours of a presidential disaster declaration. Depending on the available inventory of properties available, FEMA may need to be placed in a non-traditional office space environment when office space cannot be found in the desired area within the timeframe required. Notable examples include vacant big box stores, shopping malls, and convention centers. In response to these issues, the Office of Leasing has developed specialized document templates for disaster relief leases that are very flexible and intended to be completed in the field. Those templates are available in the National Office of Leasing forms library located [here](#).

The FEMA disaster lease documents may be used for leases in support of Stafford Act operations with initial terms of 18 months or less for office space. Improved land may be leased for longer terms pursuant to GSA's normal leasing authority. Unimproved land may only be leased up to 1 year due to GSA's statutory limitations. Leases with longer initial terms may be acquired using the abbreviated leasing process detailed in this chapter but should utilize one of the other leasing documents, such as the global lease. The shortened document templates allow for a faster leasing process but also represent more risk which is not appropriate for long term occupancies where GSA should obtain a more complete and detailed agreement with the Lessor. Office leases with initial terms of more than 18 months should utilize one of the other sets of leasing documents (e.g., Small, Simplified, Global Lease templates). Longer term leases for disaster relief are discussed later in this Chapter.

Components of the FEMA Disaster Lease Package

The FEMA Disaster Lease templates are a variation of the Small Lease templates. LCOs are encouraged to become familiar with this model and its documents before attempting to use them for a FEMA disaster lease. LCOs should always consult the Office of Leasing Google site for the current version of these forms prior to beginning a FEMA lease acquisition.

Oral RLP Guide – The FEMA Disaster Lease does not use a written RLP that is completed with the details of an individual acquisition and distributed to the market. FAR 15.203(f) authorizes the use of oral solicitations for emergency acquisitions. The Oral RLP guide assists LCOs in conducting oral solicitations and negotiations without a project specific RLP. The intention is to foster the ability for LCOs to move quickly and to complete acquisitions in the field where they may not have access to office resources required to complete and distribute RLPs. The RLP guide functions as a reminder to LCOs to ensure that appropriate topics are covered through their verbal negotiations with Offerors, which are often conducted and concluded over the course of a few days or potentially even a single face-to-face meeting that ends with a signed lease contract. This guide is distributed to the Offerors as part of the solicitation package.

GSA Form 3626 – This form is used in the Small Lease model and functions as the first pages of the lease as well as the offer document in lieu of a 1364. The Offeror will complete part 1 of the form which contains information on the property, the Offeror, and the proposed rent. It should be noted that FEMA leases do not generally use amortized tenant improvements or BSAC rental components due to their short terms. The LCO must note the actual lease term commencement (effective) date of the lease on this form unless a separate lease amendment will be used. LCOs may not rely on the date of signature or other implied dates to establish the effective date of disaster leases as the effective date of the lease must be specifically set forth in writing.

FEMA Office Lease Supplemental Requirements – This document consists of a selection of paragraphs from the Small Lease Supplemental Requirements as well as paragraphs written for unique FEMA considerations, primarily contained in section 6. These paragraphs focus on the essential services and contract provisions that FEMA will require and are tailored towards a short term occupancy. LCOs may use this document whenever the initial term is 18 months or less, which covers most disaster leases.

FEMA Land Lease Supplemental Requirements – This document represents an even more limited selection of paragraphs from the Small Lease combined with special paragraphs tailored towards the lease of land for FEMA. FEMA leases land for multiple purposes, including as a ware yard to store storm debris for disposal, parking for large vehicles, and for the placement of mobile homes to provide housing of displaced individuals. GSA's statutory leasing authority limits leases of unimproved land to 1 year. Any improvement upon the land, such as a road, fence, or paving, whether that improvement is existing or to be installed by the Lessor pursuant to the lease, is to be considered improved land and may be leased for any term required by FEMA up to GSA's normal statutory leasing limits.

GSA Form 3517A or B – Disaster leases use the same General Clauses document as other leases. The 3517A may be used for leases at or below SLAT. The 3517B must be used whenever the lease exceeds SLAT. It should be noted that the FEMA Supplemental Lease and Land Lease documents contain two important substitutions to the standard general clauses to a) allow for Lessors to receive an award without an active SAM registration and b) allow for payment using FEMA's invoice payment procedures in lieu of GSA's payment process. LCOs should check for special increased SLAT thresholds and general clause exemptions that may have been authorized by the SPE for contracting associated with the relief actions of certain disasters.

GSA Form 3518 – GSA's Representations and Certifications. This form must be used to manually collect an Offeror's representations and certifications when the Offeror is not registered in SAM at the time of award.

SF3881 ACH Form – This form collects the appropriate banking information that FEMA will need to submit payment to Lessors following receipt of lease invoices. This form must be used to manually collect the Offeror's banking information when the Offeror is not registered in SAM at the time of award. Please note that this form does **not** become a part of the lease but must be collected by the LCO and turned over to FEMA as part of the lease documentation. This form is not required when the Offeror is registered in SAM at the time of award, in which case the LCO will provide FEMA with a copy of the Lessor's active SAM registration.

Common Types of FEMA Leases

Joint Field Office (JFO)

The primary lease procured for FEMA is for a central office location from which FEMA coordinates with state and local officials to manage the disaster relief effort. JFOs are typically located near the area impacted by the event, but in areas that can provide suitable space and infrastructure. The size of JFOs are scaled to correspond to the magnitude of the disaster relief effort but can be very large facilities. The size of the JFO requirement can sometimes be an impediment to finding suitable space. Disaster leases require that the space is available for immediate occupancy. This means that LCOs should search for large amounts of contiguous vacant space. These spaces may be difficult to locate in some markets. As discussed in more detail in the market survey section of this chapter, LCOs should consider alternative sources of space in addition to traditional office space. JFOs should be placed in regular office buildings where available, but can also be housed in vacant “big box” retail stores or even malls.

Disaster Recovery Center (DRC)

DRCs are smaller offices that are used to provide satellite office space to complement JFOs. These offices are smaller than JFOs but will often be located in more remote areas. This means that LCOs should continue to examine office and alternative sources of space, including retail, strip centers, or other small parcels of space.

Mobile Disaster Recovery Centers (MDRCs)

MDRCs are mobile units that operate out of large vehicles equipped to function as temporary office space. MDRCs will typically be used to locate in an area for a period of time to assist with a particular area and then move to another area. Generally, these locations do not require a lease for office space, but will utilize space in a parking lot. LCOs should use the land lease documents when payment is required. When the space is available at no cost the LCO should refer these situations to FEMA to enter into a License Use Agreement or other form of agreement.

Warehouse/Storage Centers

FEMA uses warehouses to store various goods used in the relief effort. Warehouses should have a loading dock with one or more roll up doors for loading/unloading of trucks. Turning radius should be considered when leasing space for storage that requires tight turns to access. It is also very important to consider ceiling height when leasing storage space. FEMA may request a certain amount of square footage, but warehouse space is often calculated using cubic feet. The LCO should engage FEMA in discussions to see what options exist for leasing smaller footprints if the vertical height can be utilized as this will open up more and potentially less costly options.

Warehouses may be leased using the office space templates but it is important to discuss with FEMA what type and level of services they will need at the warehouse. For example, they may need some level of janitorial service but may not require daily cleaning. It is also common for FEMA to request some combination of office and warehouse space in which case the lease should define the level of service to be provided for each type of space to avoid paying for office level operating costs for the warehouse areas receiving less service.

Mobile Housing Unit (MHU)

MHUs are land sites converted by FEMA into temporary housing using mobile homes to house displaced victims. These sites can vary significantly in size and may need to be maintained

longer than traditional short term FEMA leases. The LCO should discuss the length of the anticipated need with the FEMA logistics contact. LCOs may need to contact their regional appraiser for assistance in determining appropriate rates for the lease of raw land.

MHUs are placed on open land and improved by FEMA to function as temporary mobile home parks. While all efforts should be made to avoid agreeing to restoration rights, in some situations, it may be necessary for the Government to agree to restore MHU sites back to their original condition so that they can be used for their prior purpose, such as pasture land. LCOs may agree to restoration provisions in land leases provided that FEMA develops an estimate to restore the space to its original condition and commits funding, through a signed funding form 146-0-2, in the entire amount of the restoration estimate.

License Use Agreement (LUA)

LUAs are agreements entered into between FEMA and another party, typically another governmental entity. These are used when the space will be provided at no cost. GSA is not a party to these agreements. FEMA may request that GSA obtain leases for facilities that are occupied under a LUA when FEMA needs to continue to use a facility for longer than the LUA provides and the Lessor requires payment for the additional occupancy duration. When this occurs, the LCO must begin any lease after the expiration date of the LUA. LUAs are not PBS lease contracts. Any issues or concerns related to them should be referred to FEMA. The GSA lease should utilize the appropriate GSA lease documents and the LCO should ensure that the proper facility review and approval forms have been received and placed in the official file.

3. REXUS Lease Number Generation and G-REX Tracking

FEMA disaster leases are contracts acquired using GSA's leasing authority and must be monitored and tracked as part of the lease inventory. Prior to awarding the lease, the LCO will acquire a contract number through the REXUS project module using the special Agency Bureau (AB) code 7060, which is specific to FEMA disaster leases. However, the LCO must then **de-activate** the lease project once the project is completed according to the procedures for cancelling projects found in the REXUS user guides. The lease should not be made active in REXUS, as this may inadvertently cause PBS to issue a payment to the Lessor.

Once the project is complete, the LCO should upload all file documents into the G-REX disaster lease module. This special module was designed to maintain the disaster lease inventory data in a manner similar to how lease data is maintained in REXUS. It is important that the information in G-REX is updated so that it remains accurate and current. This includes updating the square footage whenever there are expansions or reductions and updating the expiration date when extended, renewed, or terminated early. Disaster leases, while unique in many aspects, remain a part of GSA's lease inventory and GSA must be able to properly account for this part of our lease inventory to internal and external stakeholders.

For some large events, the SPE may grant special exemptions or higher thresholds, such as increasing the SLAT threshold. When this occurs, a special **National Interest Action** code will be assigned. There is a special field in the G-REX disaster lease module for this code. When applicable, LCOs should enter this code along with the other lease data. This allows PBS to track lease actions performed for these special events.

4. Acquisition Planning

Acquisition planning for FEMA disaster relief leases follows an abbreviated process and the urgency of the requirement limits the methodology that is available to the LCO. Traditional planning for lease acquisitions begins approximately 36 months prior to the expiration of an

existing lease and includes a methodical process of engaging the agency in conversations to examine their space requirements and then the LCO develops an appropriate strategy to acquire that space. This process is not possible for disaster leases. However, open and early communications with FEMA are essential to provide space that meets their needs within their required timeframe.

Acquisition Plans – All leases, regardless of dollar value, require acquisition planning. FAR 7.103(m) allows for agencies to waive the “detail and formality” of the acquisition planning process when there is an urgency of need. In many instances, it is not practical to follow the standard acquisition planning process during a disaster and to hold issuing RLPs while routing acquisition plans for approval. Regions are encouraged to determine appropriate forms of acquisition planning to ensure that regional leasing management is appropriately aware of lease acquisitions that are occurring in the field. Regions should maintain robust lines of communication with deployed LCOs and to engage in, at a minimum, a verbal form of acquisition planning to ensure that procurements are conducted properly. LCOs should document the file with the acquisition planning that has occurred using, at a minimum, a memo to file or the appropriate acquisition plan template as determined by regional management.

Acquisition Strategy – Leases procured for FEMA in support of disaster relief follow Unusual and Compelling Urgency procedures. It should be noted that while Unusual and Compelling Urgency is a form of Other Than Full and Open Competition, it is **not** a sole source acquisition. When conducting an acquisition using Unusual and Compelling Urgency, the LCO has a responsibility to promote competition to the maximum extent practical under the circumstances. This is generally done through the market research and market survey process where the LCO canvasses the market in the intended area to identify potential sources, similar to how that process works for routine acquisitions. It is not uncommon for FEMA to conduct market research and identify one or more buildings in advance of the LCO’s research. While this information should be added to the LCO’s own research, FEMA may not unilaterally select a single building upon which to focus the search effort. The LCO must canvass the market and identify all potential buildings within the identified search parameters. Identifying multiple options is also practically beneficial as it is not uncommon for building owners to decline to lease space to FEMA due to the short term nature of the lease or other reasons. For this reason, the LCO should begin the search process with as many identified options as practical to consider.

Leases for FEMA disaster relief activities are covered under a Class Justification for Other Than Full and Open Competition. **In order to utilize the procurement flexibilities available through this authorization, all lease files for disaster leases must include the required certification, located below.** The full Class Justification for Other Than Full and Open Competition is located in Attachment 1 to this chapter.

Required Certification:

“I certify that, to the best of my knowledge and belief, the requirement for space falls within the scope and applicability of the class justification for other than full and open competition for the acquisition of work space and related supporting services in response to emergencies or major disaster situations specified in the first paragraph of the class justification for other than full and open competition, entitled Identification and Description of Action Being Approved. The Contracting Officer anticipates being able to negotiate a fair and reasonable price consistent with market conditions and the Government’s requirements.”

Lease Term Strategy – FEMA disaster lease terms are generally short term, to coincide with how long FEMA anticipates requiring the space to complete their mission. The space request from FEMA should outline the length of the expected need. In almost all instances, this need will be less than one year. Leases over the Simplified Lease Acquisition Threshold (SLAT) acquired

under the unusual and compelling urgency justification are limited to an initial term of 1 year, including renewal options, unless the HCA has determined that exceptional circumstances apply. LCOs may include renewal options in JFO disaster leases to provide FEMA with the right to continue occupying the space for a period of time beyond the initial term without the need to renegotiate terms; however inclusion of options to extend occupancy for more than 1 year requires an HCA determination that exceptional circumstances apply. If an exceptional circumstances justification is prepared to allow for options over the 1 year term, no further exceptional circumstances is need before exercise of the option. If FEMA requests a term that is difficult to acquire in the market, such as 1 month firm with numerous renewal options, the LCO should communicate with their FEMA logistics contact to discuss terms which will not unduly compromise the LCO's ability to locate suitable space. The LCO should use their judgment, knowledge of the market, and market research data to determine if a proposed term will have an impact on the properties that are available. Many FEMA leases for larger events will be one year with a limited firm term.

Exceptional Circumstances Determination – As noted above, leases over the SLAT, acquired using unusual and compelling urgency procedures are limited to one year unless the HCA determines that exceptional circumstances exist. Accordingly, the HCA can sign a determination of exceptional circumstances for leases more than 1 year, including options, without requiring a separate justification for other than full and open competition. The exceptional circumstances determination may be signed after the lease acquisition in situations where making the determination prior to award would unreasonably delay the acquisition..

When FEMA requests space with an initial term of more than 1 year, the D&F template located in Attachment 5 should be completed and signed by the LCO prior to forwarding to the HCA for approval. This determination must be signed by the HCA and placed in the file. Leases over the SLAT with initial terms of 1 year which are later extended require the determination of exceptional circumstances and also require a new LCO certification that the facts and circumstances of the scope of the Class OTFO are met.

Funding Considerations – Disaster relief leases are paid using funds appropriated to FEMA under the Stafford Act in support of disaster relief efforts following a Presidential disaster declaration. FEMA pays Lessors directly through a monthly invoice submitted by the Lessor to FEMA. Invoicing instructions are contained in section 6 of the FEMA Supplemental Office and Land Lease Requirement template. As described more fully in Part 5 of this chapter, FEMA uses a special funding document, the FEMA Form 146-0-2, "Requisition and Commitment for Supplies and Services," to commit funding to a contract in lieu of the BA53 approval used for routine leasing actions. **The LCO must never execute any lease contract or amendment without receiving a written funding commitment in advance in an amount at least sufficient to cover the rent for the firm term of the lease and any additional lump sums for improvements authorized through the lease.** FEMA may, at times, utilize the Lessor to complete limited tenant improvements. Those improvements will also be paid through a direct invoice submitted to FEMA and the cost for these improvements must be committed through a 146-0-2 in addition to the required rent funding. These funds can be included in the same funding document as the lease or through a separate 146-0-2 document. When separate funding documents are used, the LCO should note the appropriate funding control number in the lease or lease amendment for the Lessor to use when invoicing.

Part 2 - Market Survey Process

1. Prepare for the Market Survey/Market Research

As discussed in Part 1, FEMA will often engage the regional OMA office prior to the receipt of the actual disaster declaration to prepare GSA to respond to the forthcoming MA and RRFs. During this advance notice period, the LCO should begin conducting research in and around the anticipated affected area, begin contacting building representatives to confirm available space, and prepare the building representative for a potential need to view the space in the near future with little advance notice. LCOs should not actually schedule market survey appointments until FEMA transmits a RRF through OMA. Until the RRF is received, only preliminary market research should be conducted. Once the RRF is received, the LCO should begin arranging the itinerary for the market survey. When there is no advance notice, or for additional requests submitted after the declaration has already been issued, the LCO should move immediately to locating space and arranging a market survey. During disaster response, time is of the essence. It is not uncommon to perform market research and arrange a survey for the next day.

Alternative sources of space

When searching the market for space that can meet the requirements of a traditional lease procurement, LCOs search for space that meets all of the government's requirements within a set delineated area. When no spaces are found that fully meet the requirements, the LCO can reconsider the requirements, including the delineated area, and then conduct revised market research and/or surveys until suitable space is located. This repetitive approach is not appropriate for disaster lease procurements where time is of the essence. FEMA's unique requirements often limit the opportunities to find suitable space in the traditional office space market. In order to avoid losing time doing multiple rounds of market research and surveys, LCOs should include non-traditional sources of space in their market research and market surveys whenever there is any concern of finding suitable space in a traditional office space environment. For example, when no traditional office space is available, FEMA may operate out of a vacant big box retail space under a non-fully serviced lease. However, if traditional office space is located during the survey process which is capable of offering a fully serviced lease, that location should be pursued before entering into negotiations for less desirable locations. Whenever possible, FEMA should be provided space that meets the office quality standards that apply for any agency.

Delineated Area Considerations

In traditional procurement actions it is important to set distinct boundaries for the procurement action which serves as a "go/no-go" requirement to determine if a building is capable of meeting the Government's requirements. Buildings that are outside the established delineated area are considered not to be capable of meeting the requirements and are excluded from further consideration unless the delineated area is formally amended, which in some cases may require new advertisements and delays to the procurement schedule. In a disaster lease procurement, due to the urgency of the acquisition action and the likely shortage of available space, it is recommended that the LCO utilize the widest possible search area when conducting preliminary market research. Then, depending on the number and location of options identified, the LCO may choose to refine the delineated area in consultation with FEMA or may need to make FEMA aware of possibilities outside of the original area if no spaces are found within the original boundaries. This is especially important when conducting research in advance of an event, as the precise nature and location of the damage is yet unknown. Having market research on a wide area will allow for quick refinement after the event and save time from having to attempt to

contact building representatives for the first time following a disaster event when it can be difficult to contact individuals.

2. Traveling to Assist FEMA - Deployment

The act of traveling to support FEMA is commonly referred to as “deploying.” Unlike market surveys for other agencies, when an LCO is assigned to assist FEMA with their disaster relief effort by obtaining a lease, that LCO becomes a part of the FEMA team responding to a disaster under the NRF and should be considered to be temporarily assigned to FEMA. The regional leasing program relieves the LCO from all other duties until the end of their deployment. This allows the LCO to focus all of their time on FEMA’s leasing requirements and also prevents the LCO from performing work for other agencies while FEMA is paying the salary cost for that LCO. Additionally, the LCO should be prepared to remain at the assigned location until FEMA releases that individual unless the regional leasing program has arranged for a substitute LCO to replace them. This is in contrast to the normal market survey process where the LCO travels to conduct the survey and then returns to their regular duty station immediately following the survey to complete the acquisition. This difference and the extended nature of the travel required should be considered by the regional leasing program when determining who to assign to a FEMA leasing support request.

Preparing to Deploy

Deployment involves traveling to the assigned location and remaining at that location for days or even possibly weeks in the case of an extended deployment. Preparing for these longer trips contains many more considerations, both professionally and personally for the LCO than traveling for a typical market survey. When FEMA issues an MA to OMA, the size and extent of the disaster event will dictate the number of LCOs that FEMA requests from PBS and the amount of time that PBS must provide this support. The regional leasing program may elect to fill a long term need for an LCO resource with a single individual or multiple individuals on an rotating basis. However, LCOs should not be substituted in the middle of the initial JFO leasing procurement as this can result in unacceptable delays in the JFO becoming operational. The usual JFO leasing process occurs over one to several days. The LCO who is assigned to the JFO lease request should be prepared to stay on site until this is completed.

Traveling to the Assigned Deployment Location

When the regional leasing program selects an LCO to be assigned to FEMA, their name and contact information should be transmitted to the regional OMA office and then relayed to FEMA’s Log Chief. The LCO should also be given the name and contact information of the Log Chief and should contact them to provide an estimated time of arrival at the assigned location. For safety and accountability purposes, as well as operational coordination, the Log Chief must know when to expect the LCO to report for duty so that they can be checked in to the FEMA workforce assigned to that disaster. Similarly, at the end of an individual’s deployment, either because they are released or they are replaced with another LCO, that LCO should coordinate their exit with the Log Chief so that FEMA can account for that individual leaving the assigned workforce.

The selected LCO should be provided with an appropriate FEMA travel code by their regional OMA contact so that the cost for travel can be billed to the appropriate RWA provided by FEMA. However, at the beginning of a disaster, it may be necessary to use a standard travel code for authorizing travel and then use the FEMA travel code for voucher purposes once the code is established. Traveling for FEMA disaster relief may involve the LCO traveling the same day, or early the next day after an RRF is received. Regions should develop expedited travel authorization procedures for FEMA deployments which may require the use of paper

authorization forms that can be emailed or faxed to the travel company to allow them to book travel on the same day.

Finding suitable hotel accommodations can be difficult following large disasters as the demand for temporary lodging can increase significantly due to the number of state, local, and federal personnel as well as contractors who will be traveling to the area to assist with the relief effort. When searching for hotel locations, all efforts should be made to stay within per diem; however, the local OMA director can authorize hotel costs above per diem when required. It is extremely important that LCOs do **NOT** deploy without having confirmed hotel accommodations. If GSA's travel coordinator is unable to find suitable locations, the OMA regional director should contact the FEMA Log Chief who may be able to assist. FEMA's billeting team will often reserve large blocks of hotel rooms following large disasters which LCOs may be able to utilize as a last resort. Available car rentals can also become difficult to find following a disaster or may only be available at off airport locations. If a rental car cannot be found, the LCO can contact the Log Chief to determine if FEMA can provide transportation.

Supporting the Deployed LCO

Regional offices should be prepared to support the deployed LCO on an as-needed basis. This includes, but is not limited to, the following types of support:

- CoStar search services if the LCO does not have direct access
- Appraisal support/consultation with regional appraisers, in particular for land leases
- Policy guidance/assistance
- Customer management support

3. Conducting the Market Survey

The process of touring buildings for a FEMA disaster lease is similar to regular market surveys but the process must be completed in a very expedited manner. The LCO should arrange a time with the building representative to walk through the building with the FEMA representatives. For the initial JFO market tour, the LCO should coordinate with the FEMA Log Chief to ensure that all necessary representatives are on the tour to validate if a building will meet FEMA's requirements.

The usual FEMA representatives required for the JFO market survey are:

- Logistics
- Operations
- IT
- Safety
- Security

FEMA's SMEs will review buildings and land according to the FEMA **Facilities Review and Approval** process. This process involves SME reviews using FEMA's deployed SMEs including security, safety, and operational/logistics considerations. These reviews replace a number of reviews conducted using office based PBS personnel for regular procurement actions including fire safety, accessibility, and environmental and historical reviews. Following the facility review FEMA's team will complete the facility review and approval paperwork which the LCO should retain a copy in the official G-REX file. This on-site review process allows the LCO to move from touring a building to negotiating a lease without further delay. Until FEMA has indicated that they have completed their entire approval process, the LCO should not engage the Lessor in detailed negotiations. The result of the review process can be that FEMA may not ultimately approve the building or that FEMA may require certain modifications to the building to make it acceptable for

occupancy. It is best to know of any required modifications, such as accessibility or fire safety upgrades, before finalizing negotiations.

Due to the urgency of the requirement, only buildings which are acceptable for occupancy immediately or can be made acceptable with nominal modifications that can be installed quickly or without interrupting FEMA's operations can be considered (such as installing a handicap ramp for handicap access). Buildings which require more significant alterations that may otherwise be acceptable in a normal lease acquisition may not be acceptable for disaster leases, even if the Lessor is willing to perform those alterations. Discuss any concerns or required alterations with the owner to determine if they are willing to perform this work and how quickly the work can be completed. Proceed through each location identified and determine which building(s) are capable of meeting the requirement.

When the LCO can locate a space which fully meets the needs of the Government, that space should be pursued before considering spaces which do not fully meet the requirements. When the LCO cannot locate an ideal location for FEMA, the urgency of the situation will not generally allow for multiple rounds of reconsidering requirements and performing new market research. In this case, LCOs may have to make qualitative decisions not commonly found in standard lease procurements. Based on the time and buildings available in the market who are interested in the procurement, the LCO should consult with FEMA to determine the most suitable location considering the pros and cons of each location. After discussing the relative benefits offered by the different spaces available, determine which location best meets the government's needs and pursue that space when no space is found that meets all of the requirements. The LCO must still make a determination that the price is fair and reasonable. It is generally better to locate space which meets most of the requirements immediately rather than delay FEMA's occupancy to continue searching for a perfect match. When more than one space is found to be equal, the LCO should solicit offers from all of those spaces and award to the lowest priced offeror.

Documenting the Survey

LCOs must document the results of the market survey; however, due to the expedited nature of the acquisition, LCOs may do so in a more abbreviated manner than for traditional lease procurements, using either the Lease Summary Form, or using market survey forms. A separate market survey report is not required. The LCO should document the file with the appropriate form as soon as practical, which may come after award. The LCO should limit the delay between the survey and the documentation to ensure that their recollection of events is current and that important information is not lost. Any FEMA SME reviews, such as the Facility Review and Approval documents, will become part of the official file.

Part 3 – Solicitation Process

Prepare the Solicitation Package

The Office of Leasing has developed customized documents for FEMA disaster leases which reflect the unique nature of these types of lease acquisitions. As noted elsewhere in this chapter, these documents are intended for use with short term leases. Longer term office leases, including Long Term Recovery Offices, acquired for FEMA disaster relief with initial terms longer than 18 months should utilize the appropriate standard leasing documents, such as the Small or Global Lease package. The documents are based on the Small Lease documents and have been significantly shortened in length to assist LCOs in negotiating agreements "on the spot" with Lessors who may not be otherwise familiar with the GSA leasing process. For national

consistency, these documents should be used for all FEMA disaster leases that are being acquired for short term leases in response to a Presidential disaster declaration.

The FEMA solicitation package uses the following components:

- Oral Request for Lease Proposals
- Short Form Lease – GSA Form 3626
- FEMA Office Space or Land Lease Supplemental Lease Requirements as applicable
- General Clauses – 3517A (SLAT or below) or 3517B (over SLAT)
- Representation and Certifications – GSA Form 3518 (not required if offeror is registered in SAM at the time of award)
- SF3881 - FEMA Vendor Payment Information (not required if offeror is registered in SAM at the time of award)

Oral Request for Lease Proposals

FAR 15.203(f) authorizes the use of oral solicitations for emergency acquisitions. LCO's should be familiar with the requirements of FAR 15.203(f), particularly supporting information required in the lease contract file. When LCOs are deployed to work with FEMA for disaster assistance, they may be required to execute multiple leasing actions quickly and without access to traditional office resources. Additionally, the time required to complete separate RLP packages for each disaster lease may unduly delay the acquisition at critical points in the relief effort where time is of the essence. The Oral RLP document is distributed to the Offerors along with the rest of the RLP package and serves as a guide to ensure that Offerors receive all of the required information, including the terms under which the contract acquisition is being conducted. The information normally inserted into the RLP, such as the square footage, delineated area, and terms, are conveyed orally by the LCO to the Offerors.

Short Form Lease – GSA Form 3626

Form 3626, also known as the short form lease, allows Offerors to complete the form with their offer and for the LCO to counter-sign the form, effectively executing a lease agreement. In disaster lease acquisitions, this is a useful tool as leases can be completed “on the spot.” The Offeror completes Part 1 Sections A, C, and D. The LCO completes Part 1 Section B and Part 2. For more information on using the 3626, the LCO should refer to LAC 2016-03.

Best Practice:

FEMA leases are often completed in the field, LCOs should carry several or more blank lease packages with them as they may not have access to printing capability.

FEMA Supplemental Office or Land Lease Requirements

There are two versions of this document, one intended for leasing office space and the other for leasing land (unimproved land or improved land without office space). These documents are based on the Supplemental Lease Requirements used for the Small Lease model. Paragraphs that are not applicable to short term disaster leases have been removed and additional paragraphs required by FEMA, such as FEMA's invoicing requirements, have been added. LCOs should reference the hidden instructional (blue) text when making additional deletions. For example, it is acceptable for an LCO to remove a paragraph pertaining to elevators from a lease in a single story building but that paragraph should not be removed from a building containing an elevator.

The FEMA lease documents are intended to be completed in the field. Section 6 of the supplemental lease requirements template contains special language unique to the FEMA disaster leasing process and contains a paragraph for open text to include additional items agreed upon during the negotiation process. The office supplemental requirements document also contains a series of check boxes which allow the LCO to easily customize the lease to include or delete services based on the negotiated agreement. The LCO should attempt to negotiate fully serviced leases whenever possible. However, when leasing space from alternative sources, such as retail space, it may be difficult to secure fully serviced leases. The management company may not provide these services to other tenants and may not be able or willing to secure contracts to provide these services for one tenant for a short term lease. Before agreeing to a less than fully serviced lease, the LCO should always secure written confirmation of the FEMA Log Chief and advise them of what services they will need to procure separately. For less than fully serviced leases, FEMA will generally contract for these services directly.

Part 4 – Pre-Negotiation/Negotiation Process

1. Overview

The negotiation process for FEMA disaster leases occurs in a fast-paced setting. This abbreviated schedule makes prior research and preparation even more important. The JFO search process is often conducted within 2-3 days, including market research, touring the properties, and negotiating the lease. This accelerated process may exclude some Offerors who have internal processes that preclude it from being able to enter into direct negotiations quickly. The primary objective of the disaster leasing process is to acquire space for FEMA which meets or substantially meets their requirements within a timeframe that allows FEMA to establish JFO operations within 72 hours of the disaster declaration. The emphasis on speed may cause a particular location to be more or less desirable than it otherwise would be. The FEMA Log Chief, in conjunction with the FEMA Federal Coordinating Officer, will communicate appropriate time guidelines to the LCO based on the urgency of the need. The LCO should strive to deliver space within those guidelines. In the early stages of disaster relief, the urgency is typically greatest and then begins to decline as FEMA progresses through their efforts. Where possible, allowing for a more standard negotiation process is desirable and will help the LCO obtain the best price possible for the government.

2. Preparing Negotiation Objectives

Disaster leases are often negotiated “on site” or immediately following the market survey. It is important that the LCO performs appropriate market research prior to the survey to be ready to engage in negotiations, especially if the LCO is working outside of their usual territory. Through the market research process the LCO should establish negotiation objectives in a similar fashion to regular lease acquisitions. When the LCO is deployed outside of their home region, the LCO should rely on resources and expertise from the host region to assist them in preparing proper negotiation objectives. The LCO may need to incorporate adjustments to reflect the short term nature of the lease and for FEMA’s extended operating hours. For large scale disasters, the market may have shifted significantly from pre-event rates and therefore publicly available information, such as CoStar, may not reflect the current market. However, even in large scale responses requiring multiple leases, the Federal Government should exercise care not to agree to pay significant premiums solely for expediency. While FEMA is seeking to acquire space on an immediate need basis, there are advantages to the Lessor to lease space to FEMA, even for a short time, and the LCO must be able to properly justify the price as fair and reasonable.

3. Negotiating the Disaster Lease

After viewing all of the properties on the market survey and determining which property or properties will be solicited, the LCO should engage the building representatives in negotiations. Any required improvements identified by FEMA should be discussed with the Offeror and become a part of any lease signed. The LCO should attempt to conclude negotiations as quickly as circumstances allow while achieving a fair and reasonable rental rate.

Negotiations for disaster leases reflect the urgency of the circumstances. The LCO has broad authority to assess the situation and make decisions in the best interest of the government. LCOs may set an appropriate deadline for negotiations to end based on the results of the market survey and the urgency of the situation. In many instances, only a single location will be found which can meet or reasonably meet the identified requirements. When an LCO has performed reasonably diligent market research and can only locate one eligible and willing Offeror, the LCO may proceed to negotiate with that Offeror and execute a lease. The LCO is not obligated to expand the search area or continue searching for competition when such actions would delay the establishment of disaster relief operations. In situations where more than one location is found which can fully meet the terms of the solicitation, the LCO should solicit offers from those buildings. The LCO may determine an appropriate deadline for receipt of offers which should reflect the urgency of the situation but also provide Offerors with a reasonable opportunity to submit an offer. For procurements at or below SLAT, FAR 18.110 allows LCOs to negotiate directly with a single source when the urgency of the situation reasonably precludes soliciting and negotiating with multiple sources.

Negotiations for Land Leases

FEMA requires unimproved land as a part of many disaster relief operations for uses such as temporary housing of displaced individuals, debris sorting, and staging areas for goods and materials. Since it is uncommon to lease unimproved land elsewhere in the leasing program, LCOs may not be experienced with the practice of leasing land. When determining appropriate negotiation objectives the LCO should utilize regional support services, such as the regional appraiser, to assist in determining an appropriate rental rate for land. In the absence of market research on rental rates, the LCO should consider the fair market value for the land and negotiate a rental rate based on a fair return to the owner. For example, if the fair market value of the land is estimated at \$50,000, a lease for one year totaling \$5,000 represents 10% of the value of the land, which is a reasonable return for the owner. Alternatively, a rental rate of \$2,000 per month (\$24,000 per year), or roughly 50% of the value of the land, would not be a reasonable rental rate.

Restoration Rights for Land Leases

GSA's standard leases include a waiver of restoration which provides GSA the right to leave any tenant improvements in place at the end of the lease. Obtaining this waiver of restoration is usually not an issue for commercial leased space, and the improvements that remain may even increase the value of that space in the release market. However, the previous and future intended use of raw land (for example, pasture land), is not always compatible with the improvements made by FEMA to convert the raw land to a mobile housing unit, which includes installing concrete pads for trailers and gravel roads. In these instances, the owner of the land may not be willing to enter into a lease without the Government agreeing to remove some or all of these improvements at the end of the lease term. In these instances, the LCO should consider what other options exist to fulfill this need which may not require that the Government agree to restoration rights. When other options are not available or practical, the LCO should strike the waiver of restoration paragraph in the lease and insert the following language into the lease. Prior to executing the lease, the LCO must obtain an estimate for the cost to restore the premises

to its current condition from FEMA and receive funding to cover the cost of restoration in addition to the required funding for rent.

Optional Restoration Clause Language:

The Government, at the end of the Term and, at the Government's expense, shall remove any physical additions and improvements, repair any alterations, and restore the premises to the condition existing at the lease commencement date, normal wear excepted.

Emergency Prospectus Leasing Authority

GSA may enter into leases above the prospectus threshold for a period not to exceed 180 days for presidentially declared disaster relief efforts under 40 USC 3307(e). LCOs must have approval from the regional Leasing Director prior to entering into any lease that will exceed the prospectus limit. The Leasing Director must then promptly notify the Office of Leasing and provide details regarding the lease, including rent, address, and expected occupancy duration. This will allow for proper monitoring of the use of this special authority to ensure that GSA does not exceed the time period granted. Regions should not use this authority to enter into a lease above the prospectus limit when the expected occupancy may exceed 180 days. Any housing need that exceeds the prospectus limit and the 180 day emergency authority require approval through the prospectus process which must be coordinated with the appropriate regional and national representatives from the Office of Leasing and the Office of Portfolio Management and Customer Engagement. As the approval timeline for a prospectus lease cannot be precisely determined, this emergency authority should not be used to enter into a longer term lease while relying on the prospectus to be approved by congress prior to the expiration of the 180 day limitation.

Part 5 – Award Determination

1. Overview

In order to ensure that suitable space is located as quickly as necessary to mitigate the suffering following a disaster, FEMA will often submit their RRF with a broad delineated area and may be willing to accept facilities which would otherwise not meet GSA's normal office standards. As a result, FEMA may be willing to accept some locations when no other space is available that more closely meets their operational needs. When identifying potential locations, those locations which more closely meet GSA and FEMA's operational requirements should be considered before pursuing sub-standard space. When two locations are identified which are equal to each other in terms of their ability to meet the requirements, the LCO should pursue negotiations with both options and award to the location using the lowest price, technically acceptable methodology.

2. Basis for Award

For FEMA disaster lease procurements, the basis of award follows the procedures for lowest price technically acceptable. As with the Small Lease, the LCO shall use the undiscounted lease rate rather than present value analysis (PVA) to determine the lowest price when there is more than one offer.

3. Funding

Funding for disaster leases comes from FEMA on a form 146-0-2 (formally known as the 40-1). This funding document takes the place of the BA53 approval in the regular leasing process. The LCO must receive funding certification in the amount of the rent of the **firm term** of the lease contract. The designated FEMA COR will be responsible for ensuring that additional funds are committed for the remaining term of the lease in FEMA's internal funding system and for reviewing and approving rental invoices. Prior to exercising renewal options or extending, the LCO must receive fund certification sufficient to cover the cost of the rent for the firm term of the renewal or extension period.

4. Environmental and Historic Preservation Compliance

Leases performed in support of disaster relief operations are eligible for many exemptions specifically implemented through the Stafford Act. The LCO should take note of applicable exemptions and operational policy to ensure appropriate compliance with applicable rules and regulations while maintaining operational efficiency.

National Environmental Policy Act (NEPA)

GSA relies on categorical exclusions to the maximum extent possible when performing disaster lease acquisitions. Disaster leases for office or warehouse space as covered in this chapter are short term leases which are awarded to existing buildings and do not involve extraordinary actions such as building or site modifications. These actions qualify for automatic categorical exclusions (auto-CATEX) in accordance with the PBS NEPA Desk Guide. FEMA is typically the entity that will perform the environmental reviews for lease actions and will provide a copy of the review to the LCO who should retain this documentation in the lease file. If FEMA requests that GSA perform the environmental reviews for any lease, the LCO should coordinate with the appropriate regional resources for the host region where the disaster leasing action is occurring and provide the Log Chief with a timeframe for completion of the analysis. Once the analysis is complete, the LCO should provide FEMA with a copy of the analysis.

Floodplain Compliance

GSA and FEMA policy both prohibit leasing space in a 100-year floodplain whenever there are available alternatives. Locating a disaster relief operation within a 100-year floodplain can lead to that location later becoming subject to flooding and cause disruption to the disaster relief process. However, depending on the delineated area and the availability of vacant space following a disaster, the only available options for a lease may be located within the 100-year floodplain. GSA's floodplain policy exempts disaster lease acquisitions performed in support of disaster relief operations under the Stafford Act from the usual compliance process. If the LCO is unable to find any alternatives to leasing space within the 100-year floodplain, the LCO shall, prior to awarding any lease in the floodplain, obtain written confirmation from the Log Chief acknowledging that they are accepting space in a 100-year floodplain and FEMA accepts the risk of flooding. This written confirmation can be received in the form of an email from the Log Chief which is placed in the file.

FEMA may perform additional due diligence pursuant internal FEMA policy. When FEMA performs this due diligence, a copy should be obtained by the LCO and placed in the lease file.

National Historic Preservation Act (NHPA)

FEMA will typically perform any required historical reviews for lease locations. Prior to leasing space on or in historic properties (including land in an historic district), the LCO shall obtain a copy of any historical reviews conducted by FEMA and retain a copy of this analysis in the file. If

FEMA requests that GSA perform the analysis, the LCO should engage the regional historic preservation officer (RHPO) for appropriate consultation. After consulting with the RHPO, the LCO should provide the Log Chief with a timeframe for completion of the analysis. Following the appropriate analysis, the LCO may proceed to execute the lease, incorporating any requirements provided in the review documentation. The LCO must also consult the RHPO for any post-award alterations affecting historic properties.

5. Completing the FEMA Lease Package

Using the 3626, the Offeror should insert the details of their building, ownership, and financial offer into Part 1 of the 3626, sections A, C, and D. The LCO completes Part 1 section B and Part 2. The LCO will execute the lease by counter-signing at the bottom of Part 2. The lease package must also include the following:

- FEMA Supplemental Lease Requirements (Office or Land)
- GSA Form 3517A or 3517B
- GSA Form 3518 (if the Offeror is not registered in SAM at the time of award)
- SF 3881 (if the Offeror is not registered in SAM at the time of award) **[NOTE: This form is completed by the Offeror but does NOT become a part of the lease contract]**
- Floor plan and parking plan (where available). In lieu of a floorplan or parking plan, the LCO should incorporate other means of identifying the leased premises, such as a suite number or other narrative description.
- Any additional terms and conditions, such as agreed-upon alterations or upgrades to be made by the Lessor

It is customary for disaster leases to be completed in the field where LCOs do not have access to office resources such as printing capability. Accordingly, modifications to disaster leases are often made using “pen and ink” changes. This method of making changes to a typed or printed document involved modifying the form directly with a pen, not a pencil. The LCO and the Lessor should initial next to every pen and ink change in addition to initialing the bottom of each page where indicated. Initialing next to every change is required to note that both the Lessor and the Government agreed to the change and that the modification was part of the document when the contract was executed. The LCO must take care to ensure that the same pen and ink changes are made to every copy of the lease to be executed in identical fashion.

Part 6 – Design, TI and BSAC Negotiations, and Notice to Proceed

This section does not generally apply to FEMA disaster leases. In rare instances, FEMA may require some minor alterations at some locations. The cost for these alterations should be negotiated up front as part of the initial lease rate negotiation. FEMA will pay for the cost of any tenant improvements through the same invoice process used for monthly rent payments. The LCO should ensure that the cost of the alterations is covered by the amount of funding provided in the 146-0-2 funding certification either by inclusion in the funding certification for contract award or a separate funding certification. Alterations in longer term leases, such as Long Term Recovery Offices (discussed later in this chapter), should utilize the appropriate lease documents (Global, Small, Simplified, etc.) and any requested alterations handled according to the provisions of those documents.

Part 7 – Construction Phase

This section does not generally apply to FEMA disaster leases. FEMA will typically occupy space immediately upon award. Minor alterations may occur at some locations which should be specified in the lease. These alterations should not require the normal design and construction activities involved in regular lease locations. As noted earlier in this chapter, alterations may be required for longer term occupancies which should utilize the appropriate lease templates and utilize the provision for build-out of tenant improvements in those documents.

Part 8 – Lease Commencement and Closeout

1. Overview

Lease commencement and occupancy occur simultaneously for most FEMA disaster leases. Once the lease is executed FEMA takes immediate occupancy to begin the process of standing up JFO operations. The LCO must note the specific date of lease commencement either through incorporating it into the 3626 or through a Lease Amendment.

2. Designating a FEMA Contracting Officer Representative (COR)

Following lease award, the LCO should request the name of a FEMA employee to be named as the COR for the lease. The FEMA COR must provide the LCO with a current copy of their FAC-COR designation. The LCO will then issue a letter naming the individual as the COR for the lease and provide a copy of that letter to the Lessor. The FEMA COR is able to work directly with the Lessor on behalf of the LCO to handle routine matters that do not require a warranted contracting officer. The FEMA COR is responsible for ensuring that FEMA finance obligates funds for the lease term beyond the firm term in the event that FEMA elected to provide funding for less than the initial term of the lease. The FEMA COR is also responsible for working with FEMA finance to receive and accept monthly rent invoices in FEMA's payment system.

3. Extensions and Renewals

The exact length of occupancy for disaster leases is difficult to determine with precision. After the initial term of the lease, it is common for FEMA leases to contain a number of renewal options which must be exercised according to the procedures for executing renewal options for other leases. Notably, land leases may utilize the automatic renewal provision where FEMA may continue to use the site on a month to month basis without further action required by the LCO. Prior to extending or renewing a lease over SLAT which would result in the total term of the lease exceeding one year, the LCO should check the file for the exceptional circumstances D&F or prepare a new D&F if one is required.

When executing a renewal or extension, the LCO should upload any new lease documents and update the lease term in the G-REX disaster lease module. This is necessary to track the lease terms of FEMA disaster leases. Extension and renewals for FEMA disaster leases do not require a REXUS project to be established. FEMA will submit a request through the regional OMA office for a lease action to extend or renew an existing lease for a specific term. OMA will validate that the request is valid and submitted from an appropriate source before forwarding to the leasing program for fulfillment. The LCO should receive funding from FEMA to cover the term of the renewal or extension before executing any agreement. It should be noted that the time involved in processing renewals or other lease modifications should also result in the LCO tracking time

and submitting a timecard to OMA for reimbursement as GSA does not receive the PBS fee which normally covers the cost of processing these actions.

4. Long Term Disaster Leases

FEMA disaster leases are typically short term leases acquired following a disaster and in support of immediate disaster relief efforts. Most of these leases will be terminated within a few months and the MA associated with that disaster will be closed. Occasionally, FEMA will have a need to retain a presence in a community and will require facilities on a longer term basis. These offices are generally called a Long Term Recovery Office (LTRO). LTROs are offices that support disaster relief operations and are funded under the Stafford Act. It is important that LCOs verify that the facility is being funded by Stafford Act funding as opposed to FEMA's regular rent account. Spaces to be paid using FEMA's regular rent account should follow normal agency ordering and acquisition procedures. The LCO will need to obtain a determination of exceptional circumstances for leases over the SLAT if the initial term, including renewal options, will exceed 1 year. If the initial term will exceed 18 months, the LCO should use one of the standard lease templates. The urgency of placing facilities immediately following a disaster requires that GSA use an abbreviated document which is appropriate for short term occupancies. Occupancies that will continue for years warrant that GSA have the usual standards and protections present in the regular lease documents. Where available, these longer term office space requirements should be placed in traditional office space under a fully serviced lease.

The lease acquisition process should follow the process for disaster leases while considering that the level of urgency present at the time that the LTRO is typically acquired is not the same as the urgency to acquire the JFO. This means that LCOs should give due consideration to allowing for competition and a more robust negotiation process. An acquisition plan should be documented and approved according to standard procedures. FEMA often accepts office space for immediate disaster relief operations that does not meet our usual commercial office standards in an effort to find and occupy space quickly in the desired area.

5. Lease Administration Management

The LCO should include the applicable LAM or field office in the acquisition process to the extent practical under the circumstances. Involving the LAM early in the process can provide the LCO with additional sources of information and will help the LAM to be more effective if their services are needed post occupancy. During occupancy, GSA Property Management may be requested to perform lease administration duties for FEMA disaster leases (see LDG Chapter 17 for COR letter template). GSA Property Management personnel should track their hours when supporting FEMA requests and submit those hours to the regional OMA director for reimbursement to PBS.

6. Close-Out

The process of closing out and terminating disaster leases follows the same procedures that apply to regular leases as described in Chapter 17, Lease Administration. The LCO should provide any required termination notice according to the terms of the lease and work with the FEMA Log Chief and property management to arrange a walk-through of the space and complete the GSA Form 1204. Disaster lease terminations do not require a project to be established within REXUS, but the LCO should update the lease term in the G-REX disaster lease module and change the status of the lease to terminated.

Attachment 1: Class Justification for Other Than Full and Open Competition

GENERAL SERVICES ADMINISTRATION CLASS JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

ACQUISITIONS OF SPACE AND RELATED SERVICES TO SUPPORT FEDERAL AGENCIES ACTING IN RESPONSE TO EMERGENCIES OR MAJOR DISASTER SITUATIONS AS HEREIN SPECIFIED.

Identification and description of action being approved,

This class justification for other than full and open competition is for use by the General Services Administration's (GSA's) contracting activities in the acquisition of space and related services for the Federal Emergency Management Agency (FEMA) and other Federal agencies responding to emergency situations and major disasters as specified below. This class justification is applicable to the following emergencies:

a. National emergencies declared by the President under applicable provisions of law, including, but not limited to, the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (P. L. 100-707);

b. Emergencies declared by responding Federal agencies' pursuant to statutorily authorized emergency plans or other applicable provisions of law; and

c. Emergencies of a health/safety or other (HSO) nature which so adversely impact the mission of an agency in a Government-owned or leased building as to necessitate the agency's expeditious relocation therefrom.'

Description of supplies or services required.

GSA Order ADM P 2400.16A dated January 8, 1992, entitled Domestic Emergency Assistance Program, establishes GSA's overall guidance for providing assistance to Federal agencies in emergencies. The Order states that GSA "must ensure that the requesting agency is provided space that meets its needs," and "other services currently provided to the Federal establishment."

Identification of statutory authority.

Section 303(c)(2) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 253(c)(2)), provides for contracting without full and open competition when there is an unusual and compelling urgency.

Demonstration that the acquisition requires use of the authority cited.

Pursuant to the authority and responsibilities contained in the Federal Property and Administrative Services Act of 1949, as amended, GSA is often called upon to provide work space and related support services to Federal agencies in emergency situations. The need to provide such work space and services in support of disaster relief efforts is of unusual and compelling urgency, and any delay will seriously harm a critical Government program and the recipients of Federal assistance. This class justification is applicable only to individual acquisitions of work space and related supporting services provided to Federal agencies in response to the emergency or major disaster situations specified in the first paragraph of this Justification for Other Than Full and Open Competition.

Description of efforts to obtain as many offers as practicable.

A market survey shall be conducted and competition shall be solicited to the maximum extent possible from as many potential sources as is practicable, consistent with the circumstances of the particular emergency.

Determination that the anticipated cost will be fair and reasonable.

The Government anticipates being able to negotiate a fair and reasonable price, taking into account market conditions existing at the time of acquisition.

Description of the market survey conducted.

It is impossible to identify sources capable of providing space for emergency or disaster relief in advance of the determination of individual need. As the need for space arises, a market survey will be conducted. All potential sources which can be located within the timeframe, and which can provide habitable space suitable for the needs of the responding agency, will be solicited.

Other facts supporting the use of other than full and open competition.

None.

List of sources that expressed an interest in the acquisition.

Not applicable.

Statement of actions to overcome barriers to competition.


Under the circumstances described herein, there are no actions that the agency can take to overcome the barriers to full and open competition.

Contracting officer certification.

This class justification may be used by GSA contracting activities only when, with respect to each proposed lease contracting action taken pursuant to this class justification, the contracting officer executes and includes in the appropriate lease contract file the following certification:

"I certify that, to the best of my knowledge and belief, the requirement for space falls within the scope and applicability of the class justification for other than full and open competition for the acquisition of work space and related supporting services in response to emergencies or major disaster situations specified in the first paragraph of the class justification for other than full and open competition, entitled Identification and Description of Action Being Approved. The Contracting Officer anticipates being able to negotiate a fair and reasonable price consistent with market conditions and the Government's requirements."

This class justification for other than full and open competition is hereby made and approved in accordance with Section 303(c)(2) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 253(c)(2)).


Milton Hermon
Commissioner
Public Buildings Service

Date: NOV 5 1992

CONCURRENCE:


Arthur E. Ronkovich
Agency Competition Advocate

Attachment 2: Disaster Lease File Checklist

FEMA disaster leases have a significantly abbreviated process and a reduced set of documentation requirements. The FEMA disaster lease file should be maintained electronically in G-REX. Paper copies of documents should be maintained according to regionally-approved document retention procedures for lease files. When an LCO is deployed to a different region from their home region, they should consult with the hosting region for their document retention and tracking procedures for paper documents. Any regional electronic drives or other forms of file retention may only be used in addition to, not in place of, uploading all lease and project documents into G-REX.

The lease file for disaster leases uses many of the same forms used for regular lease acquisitions. In some instances, forms are substituted with the applicable form for disaster leases, such as the Resource Request Form replacing the traditional SF-81. A listing of the required lease file checklist items follows along with a brief description of their applicability and use specific to disaster lease acquisitions.

Tab 1:

Resource Request Form - Form documenting FEMA's request for leasing assistance. This form functions as a substitute for the SF-81. In lieu of a paper form, an email from the logistics or deputy Logistics Chief or memo to file should be used to document the space request.

Vacant Federal Space Check – GSA should perform a due diligence check of vacant Federally controlled owned and leased space.

Delineated Area – The search area should be documented through a memo to file explaining the search area used and any refinements to that area that occurred during the search process. The search area for FEMA disaster leases may be expressed more generally than those for standard procurements and it is common to shift this area in the field based on available space inventory.

Evidence of Acquisition Planning – The LCO should document evidence of acquisition planning using, at a minimum, a memo to file or the appropriate acquisition plan template available on the Office of Leasing Google site.

Tab 2:

Market Survey Forms and Market Survey Report or Lease Action Summary – The LCO should document the locations surveyed and whether they are capable of meeting the requirements and the agency's concurrence with that decision. The market survey should be documented in a market survey report or lease action summary (for actions at or below the SLAT) as soon as practical following the survey.

Contracting Officer's Certification for Use of Class Justification – FEMA disaster lease procurements are conducted under a Class Justification which is located in Attachment 1. To utilize this class justification, LCOs are required to sign the certification statement which is contained in the justification and place that signed certification in the file.

Determination and Findings of Exceptional Circumstances (Over SLAT) – This D&F is required whenever the term of a lease contract over SLAT acquired using Unusual and Compelling Urgency will exceed one year (including extensions or renewals). The D&F must be signed by the HCA, but may be executed after lease award in the event that obtaining signature prior to award would unreasonably delay the acquisition.

Tab 3:

FEMA Solicitation Package – A complete copy of the lease package issued to Offerors should be retained in the file.

Lease Package Distribution List – A list of all Offerors who received a copy of the lease package.

Amendments to Lease Package – Any amendments to the lease package following issuance should be noted in the lease file. Amendments are not common for disaster lease procurements.

Tab 4:

Negotiation Objectives – The LCO should develop negotiation objectives prior to engaging in negotiations. These negotiation objectives should be documented in the lease file before the start of negotiations or as soon as practical afterwards where circumstances do not permit documentation before negotiations. Negotiation objectives should be supported by market based research commensurate with the dollar value of the procurement.

Tab 5:

Note: It is not common to have multiple offers for disaster procurements, but in some situations it may be possible to solicit offers from multiple sources. When this occurs, the unsuccessful Offeror(s) information should be retained in the lease file.

Offer(s) and Related Correspondence – When the Lease Package was distributed to more than one Offeror, a copy of any offer(s) received in response to that package and any correspondence with that Offeror(s). This will be N/A for most disaster lease procurements.

Scoring Memorandum or Workbook – LCOs should complete the scoring memo for all leases less than 5 years. Disaster leases over 5 years should be rare, but must follow the appropriate scoring rules.

Post Award Notice and Rejection Letters – If more than one offer was received, the LCO should provide the unsuccessful Offeror(s) with the standard post award rejection notice. This item will be N/A for most disaster lease procurements.

Post Award Debriefings/Protests and Resolution/Congressional Inquiries and Response – Protests for disaster leases are rare; however, congressional inquiries may be received as elected officials are concerned about the status of the disaster relief efforts impacting their constituents. This item will be N/A for most disaster lease procurements.

Tab 6:

Offer(s) and Related Correspondence – Most FEMA disaster lease negotiations occur in person and often do not involve multiple rounds of written offers. The final offer accepted by the Government will be documented on the GSA Form 3626 which becomes part of the lease and will be filed in tab 7(B). If more than one written offer was received, they should be retained in the file in this section. This item will be N/A for most disaster lease procurements.

Price Negotiation Memorandum (PNM) or Lease Action Summary – PNMs are required per FAR 15.406-3. Guidance on PNMs is available in Chapter 2 of this desk guide. Disaster lease negotiations are often conducted in person and concluded quickly. The level of documentation should capture the relevant items discussed and be commensurate with the dollar value of the acquisition.

Offeror's Proof of Authority and Ownership – The LCO should obtain some proof of the signing official's ability to enter into the agreement. Guidance on proof of authority and ownership is contained in Chapter 2 of this guide. In lieu of formal documentation, based on the urgency of the situation, the LCO may utilize a written statement from the signing official.

EISA Compliance Memo – The LCO must discuss energy efficiency upgrades when leasing space in any building that does not have a current Energy Star label. Due to the short term nature of disaster leases, it is not common for upgrades to be cost effective. The LCO should document in a memo that the topic was discussed and, if no energy efficient upgrades were agreed upon, a summary of the rationale from the Lessor which must be acceptable to the LCO.

Floodplain Acknowledgement – Whenever leasing space in a 100 year floodplain, the LCO must obtain a written acknowledgement from the FEMA Logistics Chief. Disaster leases are exempt from the 4 or 8 step compliance process but the LCO must document FEMA's acknowledgement that they are being placed in a 100 year floodplain. This may be in the form of an email.

FEMA Facility Review and Approval Process – FEMA will complete their review process to ensure that the space is fit for occupancy. These forms should be retained in the file. In urgent situations, the LCO may use an email from the Log Chief or Deputy Log Chief noting that the process has been completed and obtain the forms as soon as practical afterward. This review takes the place of the safety and accessibility reviews typically conducted by PBS personnel.

Environmental and Historical Reviews – FEMA conducts environmental and historical reviews as applicable for disaster leases. These forms should be obtained and retained in the file. This review replaces the environmental and historic reviews typically conducted by PBS personnel.

Tab 7(A):

FEMA Fund Certification – FEMA must provide fund certification to the LCO that funds are available to cover the cost of the lease in an amount sufficient to cover a minimum of the firm term of the lease. FEMA will generally provide fund certifications using a form 146-0-2. This document replaces the BA53 fund certification. This document must be received by the LCO prior to signing the lease.

Tab 7(B):

Fully Executed Lease – This is a copy of the executed lease package, including attachments.

Lease Amendment(s) – Any lease amendments such as lease extensions, etc. should be filed under this item.

Delivery Confirmation of Lease to Lessor – For FEMA disaster leases, it is common to conduct the negotiations in person and to provide the Lessor with a copy of the lease at the conclusion of those negotiations. When this occurs, the LCO should document delivery of the lease contract via email to the Lessor or another method, such as a memo to file.

Tab 8:

Post Award Synopsis – Disaster lease awards should be synopsisized in FBO when over SLAT.

Posting of Justification for Other Than Full and Open Competition – Disaster leases awarded under the class action justification contain in this chapter do not require redaction. A copy of the justification and the LCO certification should be posted with the FBO award notice for awards over SLAT.

FEMA COR Letter – This document names a properly certified FEMA representative to act as the COR. A template for this letter is located in the forms library on the National Office of Leasing google site.

Transmittal of Lease to FEMA

Attachment 4: Memorandum of Agreement

**MEMORANDUM OF AGREEMENT
BETWEEN THE
DEPARTMENT OF HOMELAND SECURITY AND THE
GENERAL SERVICES ADMINISTRATION**

ARTICLE I – PARTIES AND PURPOSE

This Memorandum of Agreement ("MOA" or "Agreement") is entered into by and between the Federal Emergency Management Agency ("FEMA"), Department of Homeland Security, and the General Services Administration ("GSA"), (collectively, "the Parties") to establish a framework for the provision of resource support and other real and personal property and non-personal services (collectively, "supplies, space or services") by GSA pursuant to Emergency Support Function #7 ("ESF-7") and other provisions of the National Response Plan ("NRP").

This Agreement is intended to improve emergency and disaster response efforts in the following primary areas:

1. Ordering and provision of supplies, services or space;
2. Contract administration and support;
3. Payment and reimbursement for supplies, services, or space;
4. Coordination between the Parties; and
5. Dispute resolution.

This Agreement applies to GSA supplies, space or services provided to FEMA pursuant to Mission Assignments issued by FEMA. Pursuant to 44 C.F.R. §206.208(d), Mission Assignments generally remain active for a 60 day period unless extended. Supplies, space or services provided to FEMA following expiration or conclusion of a Mission Assignment are not subject to this Agreement and shall be provided by GSA consistent with Article IV.C below.

This Agreement is not intended to address FEMA disaster preparedness or recovery needs after expiration of a Mission Assignment. However, GSA will provide supplies, space or services to FEMA for disaster preparedness and recovery needs to the maximum extent available under existing GSA authorities and normal agency ordering and payment procedures.

ARTICLE II - AUTHORITY

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.) ("Stafford Act"), Executive Order 12148, regulations at 44 C.F.R. Part 206, and the NRP, among other authorities, FEMA is the primary agency responsible for coordination of Federal disaster relief, emergency assistance and emergency preparedness. GSA is the Primary Agency responsible for providing Resource Support under ESF-7 of the NRP.

This Agreement is entered into pursuant to and in furtherance of the above referenced authorities, including sections 402, 403 and 502 of the Stafford Act (42 U.S.C. §§5170a, 5170b, and 5192).

ARTICLE III - SCOPE

GSA shall provide FEMA, upon receipt of a specific Mission Assignment, with any supplies, space or services that GSA may provide to Federal agencies. (For purposes of this Agreement, a Mission Assignment includes an Action Request Form (ARF), Task Order, or other tasking document approved and issued by FEMA to GSA under a Mission Assignment.) The supplies, space or services to be provided by GSA include, but are not limited to, the following:

- Delivery of existing and available supplies and services from GSA's Office of General Supplies and Services;
- Access to GSA-operated Governmentwide Acquisition Contracts ("GWACs");
- Establishment of Blanket Purchase Agreements ("BPAs");
- Assisted Acquisition Services to procure supplies or services through open market procurements or competitive Multiple Award Schedule purchases;
- Lease/Purchase of Motor Vehicles;
- Other Assisted Acquisition Services to procure supplies and services from existing contract vehicles;
- Assignment of existing Federally owned or controlled space; and
- Acquisition of leasehold or other interests in real property.

ARTICLE IV – SPECIFIC RESPONSIBILITIES OF THE PARTIES**A. Responsibilities of GSA. GSA will:**

1. Provide FEMA with supplies, space or services in accordance with Mission Assignments issued by FEMA.
2. Identify and assign an adequate number of qualified and trained GSA personnel to perform required tasks, including designation of ESF-7 Leaders who will be responsible for coordinating GSA actions on Action Request Forms submitted by FEMA.
3. Meet FEMA's needs through appropriate methods, including utilization of contractors.
4. Ensure that any special needs arising from FEMA's extended hours of duty and security requirements at its facilities are specifically addressed in leases and other agreements.
5. Maintain adequate records and reports as described in Article VII.
6. In consultation with FEMA, provide qualified and trained, or designate qualified and trained FEMA personnel as, Contracting Officer Representatives (CORs) and Contracting Officer Technical Representatives (COTRs), and maintain contact and coordinate closely with such FEMA CORs and COTRs, for purposes of contract administration, including, as appropriate, inspection, acceptance, operation, use, management and maintenance of supplies, space or services provided by GSA contractors.

7. Retain general contract administration responsibility for agreements entered into by GSA pursuant to a Mission Assignment. Contract administration responsibilities include maintaining master contract file documentation, making payments (except where FEMA is responsible for making payment pursuant to Article VI, below), processing contract modifications, issuing final decisions, terminating agreements, handling claims or appeals, and performing contract close-out. Upon request of FEMA, GSA will transfer or delegate the administration of contracts, leases or other agreements entered into by GSA to FEMA, except GSA Office of General Supplies and Services and GSA Office of Motor Vehicle Management contracts, which will be retained by GSA and not be subject to delegation or transfer.

8. Where GSA is responsible for doing so, make timely payments to contractors or vendors and be responsible for any Prompt Payment Act penalties arising out of GSA's failure to make timely payment to such contractors or vendors.

B. FEMA Responsibilities. FEMA will:

1. Notify GSA of activations of NRP interagency entities if FEMA anticipates that GSA will be called upon to participate or provide support.

2. Submit requests for supplies, space or services in writing using an Action Request Form, FEMA Form 90-136 ("ARF"), Task Order, or other appropriate form or instrument. All ARFs, Task Orders, or similar instruments will be approved by the appropriate FEMA Emergency Response Team Operations Section Chief or Acting Operations Section Chief (as required by National Incident Management System ("NIMS") or other appropriate FEMA official. FEMA will order supplies or services from the GSA Office of General Supplies and Services and the GSA Office of Motor Vehicle Management using GSA's designated ordering systems.

3. Subject to VI.B.2 below, provide GSA with a valid funding commitment (FEMA Form 40-1) or other appropriate instrument (i.e. Reimbursable Work Authorization) prior to GSA's award of a contract, task order, lease, or other binding agreement pursuant to a Mission Assignment or other appropriate form or instrument. A funding commitment will contain a FEMA- issued "PIID" number, the amount of funds committed, potential sources for the required supplies, space or services (if known), a delivery address, and the name of the FEMA Project Manager, any designated COR or COTR responsible for inspection, acceptance, operation, use, management and maintenance of the required supplies, space or services.

4. Provide GSA with reimbursement for reasonable and allocable costs incurred by GSA in connection with providing or arranging for the provision of supplies, space or services provided to FEMA under a Mission Assignment. Such reasonable and allocable costs shall include, but not be limited to, wages (regular, premium, and overtime pay), travel and per diem expenses of GSA employees, as well as facilities and contract costs incurred specifically to support GSA's actions.

5. Communicate any special needs arising from FEMA's extended hours of duty and security requirements at its facilities that need to be specifically addressed in leases and other agreements entered into by GSA.

6. Comply, and instruct its contractors to comply, with all terms and conditions of agreements entered into by GSA.

7. Where FEMA is responsible for doing so, make timely payments to contractors or vendors and be responsible for any Prompt Payment Act penalties arising out of FEMA's failure to make timely payment to such contractors/vendors.

8. Provide qualified and trained agency personnel to serve as CORs and COTRs for agreements entered into by GSA if necessary. FEMA CORs and COTRs will maintain contact and coordinate closely with GSA contracting officers to facilitate GSA's contract administration responsibilities hereunder.

9. In instances where FEMA personnel are designated as CORs or COTRs, be responsible for inspection, acceptance, operation, use, management and maintenance of supplies, space or services provided by GSA. COR or COTR duties will be specifically enumerated by the GSA contracting officer and generally will include performance of inspections, ensuring vendor or contractor compliance with contract requirements, and acceptance of deliverables. FEMA will provide GSA with such information, documentation, and other support necessary to enable GSA to perform its contract administration functions. FEMA will be responsible for any liabilities, including Prompt Payment Act penalties, arising out of FEMA's failure to perform its COR or COTR responsibilities in a timely manner so as to permit GSA to fulfill its contract administration functions.

10. Provide GSA with written notice as soon as possible regarding the planned cessation of GSA support activities under a Mission Assignment. The notice should include the planned closure date for space and other facilities provided by GSA in order to facilitate GSA's contract administration responsibilities.

C. Successor Agreements. Upon the expiration or conclusion of a Mission Assignment, FEMA will determine which supplies, space or services provided by GSA hereunder are still required, including support or other special requirements related to the utilization, donation or disposal of excess or surplus personal property, if any. GSA and FEMA will enter into successor agreements, where appropriate, with respect to such supplies, space or services on terms consistent with GSA's normal agency ordering and payment procedures. Upon request by FEMA, GSA will prepare a written transition plan designed to ensure that continued, uninterrupted supplies, space or services are provided to FEMA pending the formalization of a successor agreement. Any successor reimbursable agreement (e.g., an Interagency Agreement ("IA") or Reimbursable Work Agreement ("RWA")) will serve as the obligating document and, as a minimum, will include a description of the supplies, space or services to be provided; the source and amount of funding; the terms and conditions of the intergovernmental relationship (reimbursable rates, etc.); and such other background information as is necessary in connection

with the specific request. Where an RWA is utilized as the form of reimbursable agreement, all relevant funding/billing information on the RWA will be verified by FEMA. For any supplies and services billed by GSA to FEMA, FEMA's funding document must be used to clarify proper billing information.

D. Both agencies recognize and acknowledge that Mission Assignments issued by FEMA to GSA hereunder are of paramount importance and may involve the protection, saving or sustainment of lives and property. Both agencies agree to deploy and commit resources to meet FEMA needs as expeditiously as possible. The parties intend that this Agreement will assist each agency to act effectively and rapidly to deliver assistance essential to saving lives or protecting or preserving property or public health and safety in a natural disaster, act of terrorism, or other man-made disaster.

ARTICLE V – COMPETITION REQUIREMENTS

All GSA procurement and acquisition activities shall comply with the Competition in Contracting Act and related regulations, including the Federal Acquisition Regulation and the General Services Administration Acquisition Manual, as well as section 307 of the Stafford Act to the extent practicable. It is GSA's policy to seek full and open competition when acquiring property or services. FEMA agrees to cooperate with GSA to structure GSA procurement actions undertaken pursuant to an ARF in a manner designed to achieve full and open competition to the maximum extent practicable. Where other than full and open competitive procedures are determined to be necessary to meet FEMA's needs in the timeframe required, FEMA agrees to provide GSA such backup documentation as GSA requires in order to support such actions. Where procurement actions are undertaken on the basis of "unusual and compelling urgency" pursuant to 41 U.S.C. §253(c)(2), FEMA agrees to cooperate with GSA in identifying maximum practicable competition under the circumstances. For contract actions entered into by GSA, GSA retains final authority to make determinations regarding the adequacy of competition and compliance with competition laws and regulations.

ARTICLE VI – BILLING, REIMBURSEMENT AND RECONCILIATION

A. Contract Payments

1. Except as provided below or as otherwise directed by FEMA, GSA will be responsible for making timely payments to vendors or contractors for contracts entered into by GSA hereunder. Under this "reimbursable billing" approach, GSA will utilize FEMA funding codes/citations to support contract awards and payment of costs; however, the vendor or contractor will bill GSA.

2. For real property leases or contracts--

a. FEMA will initially be responsible for making timely payments to the lessor. Under this "direct billing" approach, GSA will utilize FEMA funding codes/citations to support lease awards, and such leases will instruct lessors to bill FEMA directly.

b. No later than six (6) months following lease award, FEMA, in consultation with GSA, will determine whether a given lease should continue to utilize the "direct billing" approach or be converted to the "reimbursable billing" approach.

c. If it is determined to convert a given lease to the "reimbursable billing" approach, GSA will issue a supplemental lease agreement ("SLA") or other appropriate contract modification directing the lessor to bill GSA thereafter. GSA will continue to utilize FEMA funding codes/citations to support payment of lease costs, except as otherwise provided in IV.C above.

3. In situations where GSA delegates contract administration to FEMA (see Art. IV.A.7, above), the contract will be modified to provide for direct billing to FEMA for costs associated with the particular contract.

B. Reimbursement

1. Under either the direct or reimbursable billing approaches, FEMA will provide GSA with reimbursement for all reasonable and allocable costs incurred by GSA. Allocable costs are those incurred specifically for the contract(s) or services without regard to assessments or fees normally applicable under GSA services or programs. As previously noted, such costs shall include, but not be limited to, wages (regular, premium, and overtime pay), travel and per diem expenses of GSA employees, as well as facilities and contract costs incurred specifically to support GSA's actions.

2. All of FEMA's reimbursement obligations hereunder are subject to Sections 402 and 502 of the Stafford Act.

3. Upon issuance of a Mission Assignment to GSA, FEMA will provide GSA with a Reimbursable Work Authorization (RWA) in an amount agreed to by the agencies to cover GSA's expected costs of providing administrative overhead during the Mission Assignment. The RWA will allow GSA to obtain payment from FEMA through the Intra-Government Payment and Collection (IPAC) system.

4. All reimbursable billing under this Agreement shall be handled through the IPAC system. GSA shall provide as many of the following Treasury Fields for IPAC as are possible for a given IPAC transaction, depending on the GSA financial management system affected:

- ALC Transaction Contact (COTR/POC)
- Contact Phone
- Purchase Order Number (FEMA's document control number)
- Invoice Number
- Sender's Treasury Account Symbol
- Receiver's Department Code
- Obligating Document Number (FEMA's)
- Sender's SGL Transaction
- Transaction Description field should identify if advance or disbursement.

Subject to Article VI.C., FEMA will not charge back any funds as a result of any of the above-listed IPAC fields not being initially provided.

5. As part of, or in connection with, a reimbursable agreement, FEMA will provide a valid funding citation, an estimated amount for the supplies, space or services to be provided, the signature of an authorized FEMA official certifying and obligating funds, and a billing office address for GSA to which bills or invoices may be forwarded. GSA will presume that any validly issued and fully approved Mission Assignment from FEMA represents a bona fide need of FEMA for the supplies, space or services required. Where an RWA is utilized as the form of reimbursable agreement, an additional funding document is not required.

C. Reconciliation

1. The Parties agree to promptly discuss and resolve issues and questions regarding payments. GSA will promptly initiate year-end and closeout adjustments, as appropriate, once final costs are known.

2. FEMA will provide GSA advance written notice of any proposed FEMA charge back of funds. GSA will have 30 days from receipt of any such notice to provide FEMA with information and supporting documentation to satisfy FEMA concerns regarding use of FEMA funding. If, following receipt of such information and supporting documentation, FEMA still intends to charge back the funds in question, and GSA does not agree to the charge back, the matter shall be handled in accordance with Article XI prior to any FEMA charge back.

3. Within ninety (90) calendar days of completing work related to a Mission Assignment, GSA will conduct an accounting to determine the reasonable and allocable costs (as described above) of the work. Within thirty (30) calendar days of completion of this accounting, GSA will authorize FEMA to deobligate any funds in excess of the reasonable and allocable costs as then known, or FEMA will provide any additional funds necessary to cover the costs as then known.

ARTICLE VII - RECORDKEEPING AND REPORTING

A. GSA agrees to provide FEMA, upon request, with reports related to GSA actions taken in furtherance of a Mission Assignment. GSA's record keeping and reporting shall be sufficient for FEMA to meet its obligations under the Stafford Act and its implementing regulations, specifically including 44 C.F.R. §§ 206.13 and 206.16. In furtherance thereof, GSA agrees to maintain and provide information on all funds received, obligated and expended, as well as forecasts of future obligations and expenditures, related to Mission Assignments, Interagency Agreements, RWAs, or similar instruments.

B. As the awarding agency, GSA will be responsible for entering required contract data into the Federal Procurement Data System (FPDS) or any successor system, except for any FPDS entries required to be made after contract administration has been delegated to FEMA. In those instances, FEMA will be responsible for entering appropriate data in FPDS.

C. FEMA agrees to obtain GSA's concurrence on reporting required pursuant to a Mission Assignment, and otherwise minimize any special reporting requirements for support provided by GSA.

D. Both parties agree that records will be retained in compliance with National Archives and Records Administration guidelines.

ARTICLE VIII - LIABILITY

A. The Parties agree that they shall be and remain liable for the acts or omissions of their respective agency personnel acting within the scope of their employment, subject to the provisions of the Federal Tort Claims Act.

B. FEMA agrees to defend and be responsible for addressing claims, disputes, appeals and other legal actions that arise from actions of FEMA personnel, contractors and other agents. FEMA also will defend and address claims, disputes, appeals and other legal actions related to contracts for which contract administration has been delegated or otherwise transferred to FEMA with its consent.

C. GSA agrees to defend and address claims, disputes, appeals and other legal actions related to contracts awarded by GSA and for which GSA retains contract administration responsibility. However, FEMA agrees to cooperate and otherwise provide support to GSA related to defense of such claims, disputes and appeals. FEMA also agrees to remain financially responsible for any settlements, judgments or other monetary liabilities arising out of FEMA's use of supplies, space or services pursuant to contracts awarded by GSA. GSA agrees to consult with FEMA regarding defense of claims, disputes and appeals where FEMA has ultimate financial responsibility; however, GSA retains ultimate authority to direct the means and methods of how claims, disputes and appeals are handled.

E. Each party agrees to provide the other with prompt notice of any claim, dispute, appeal or other legal action submitted to the party for which the other is responsible under this Article.

ARTICLE IX - INTERAGENCY COMMUNICATIONS

A. National Points of Contact. To provide for consistent and effective communications between the agencies, each Party will name a primary Point of Contact ("POC") at the Agency Headquarters level to address matters relating to this Agreement.

B. Working Group. To provide for efficient implementation of and effective operations under this Agreement, the Parties agree to establish a bilateral working group to meet at least on an annual basis. Each Party agrees to appoint a senior level agency official to serve as a co-chair of the working group.

ARTICLE X- APPLICABLE LAWS

Unless otherwise required by law, all supplies, space or services provided by GSA under this Agreement shall be governed by GSA's authorities, policies and procedures, any delegation of authority that exists from FEMA to GSA, Sections 402 and 502 of the Stafford Act, and 44 C.F.R. §206.8. FEMA agrees to cooperate with GSA in providing any delegations of authority that may be required in order for GSA to provide such supplies, space or services.

ARTICLE XI - DISPUTE RESOLUTION

- A. The Parties intend that disputes regarding this Agreement, including any Mission Assignment, Interagency Agreement, RWA or other instrument issued hereunder, be resolved informally to the maximum extent practicable.
- B. Disputes or disagreements regarding a Mission Assignment, Interagency Agreement, RWA or other instrument shall be resolved in the first instance at the servicing level by the respective agency officials tasked with requesting, coordinating and providing supplies, space or services. The existence of any such dispute, and its resolution, shall be reported to the agency points of contact identified pursuant to Article IX. In the event any such dispute cannot be resolved at the servicing level, the dispute shall be elevated to the respective agency points of contact identified pursuant to Article IX for resolution.
- C. A dispute concerning the interpretation of the provisions of this MOA shall be resolved by the agency points of contact identified pursuant to Article IX.
- D. If a dispute cannot be resolved either at the servicing level or by the agency points of contact identified pursuant to Article IX, it shall be elevated to appropriate levels of each agency as identified by the respective agency point of contact.
- E. If a dispute cannot be resolved at the agency level, the Parties may jointly refer it for resolution to the Office of Management and Budget.
- F. The parties agree that, to the maximum extent practical, any dispute should not interfere or delay in the provision of disaster response services to FEMA hereunder.

ARTICLE XII - PUBLIC INFORMATION

Justification and explanation of FEMA's programs before Congress, other agencies, departments, and offices of the Federal Executive Branch, the Judiciary, and the press shall be the responsibility of FEMA. GSA will provide, upon request, any assistance necessary to support FEMA's justification or explanations of FEMA's programs conducted under this Agreement. GSA may make public announcements and shall respond to inquiries relating to the procurement, contract award and contract administration functions for which GSA is responsible. FEMA and GSA each shall use their respective best efforts to give the other party advance notice before making any public statement regarding supplies, space or services requested or provided

pursuant to a Mission Assignment. GSA agrees to cooperate with FEMA in facilitating FEMA's response to inquiries or requests related to a Mission Assignment.

Each agency shall remain responsible for responding to requests for records submitted to that agency under the Freedom of Information Act (FOIA). However, the Parties agree to coordinate regarding any proposed FOIA response related to a Mission Assignment issued pursuant to the Stafford Act.

ARTICLE XIII - MISCELLANEOUS

A. Other Relationships or Obligations. This Agreement supersedes a Memorandum of Understanding between FEMA and GSA dated February 2, 1989 (the "1989 MOU"). Any Mission Assignment issued by FEMA under the Stafford Act or this Agreement after the effective date shall be governed by the terms of this Agreement and the specific Mission Assignment. FEMA taskings issued prior to the effective date of this Agreement are governed by the terms of the 1989 MOU or other agreements as may have been entered into between FEMA and GSA. Otherwise, this Agreement shall not affect any pre-existing or independent relationships or obligations between FEMA and GSA.

B. No Obligation of Funds. Nothing in this Agreement obligates funds of the Parties.

C. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed a duplicate original.

ARTICLE XIV - AMENDMENT, MODIFICATION AND TERMINATION

A. This Agreement may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this Agreement by providing written notice to the other party's National Point of Contact by e-mail or facsimile transmission. The termination shall be effective upon the sixtieth calendar day following receipt of such notice, unless a later date is set forth. In the event of termination, FEMA shall be responsible for reasonable and allocable costs as described above that may have been incurred by GSA prior to termination.

B FEMA and GSA agree that the working group established under Article IX will review the terms of this MOA on an annual basis to determine whether any modifications to the terms and conditions stated herein are necessary.

ARTICLE XV – NO RIGHTS CREATED IN THIRD PARTIES

Nothing in this Agreement is intended or will be construed to create any rights or remedies for any third party, and no third party is intended to be a beneficiary of this Agreement.

ARTICLE XVI - EFFECTIVE DATE

This Agreement is effective upon the last date of signature by the Parties hereto.



R. David Paulison
Administrator
Federal Emergency Management Agency
U.S. Department of Homeland Security



Lurita A. Doan
Administrator
U.S. General Services Administration

DATE: 6-12-07

DATE: 6-18-07

Attachment 5: Determination of Exceptional Circumstances

General Services Administration
Region [X] Public Buildings Service (PBS)
Determination and Findings

Determination of Exceptional Circumstances Pertaining to Emergency Acquisitions of Leasehold Interests in Real Property for Federal Emergency Management Agency (FEMA) Disaster Relief Operations located at [Address]

1. Nature and/or Description of Action Being Approved

On [Date], the President of the United States issued disaster declaration [DR number] under the Robert T. Stafford Disaster and Emergency Assistance Act of 1988 (P.L 100-707), for [Event Name]. In accordance with that declaration, the Federal Emergency Management Agency (FEMA) requires office and related space to house disaster relief operations. In order to fulfill those needs, PBS, Region [X], is proposing to enter into a lease for approximately [SF] square feet of office and related space for a term of [X].

2. Citation of Appropriate Statute or Regulation Upon Which Determination and Findings is Based

Contracting without full and open competition is authorized when there is a justification of unusual and compelling urgency. 41 U.S.C. § 3304(a)(2). Leases acquired under urgent and compelling circumstances are limited to a maximum performance period of one year unless the head of the agency determines that exceptional circumstances apply. 41 U.S.C. 3304(c)(1)(B). The authority to make determinations required in connection with the acquisition of leasehold interests has been delegated by the Administrator down through appropriate agency officials to the Head of the Contracting Activity (HCA), the PBS Regional Commissioner for Region [X]. 48 C.F.R. § 502.101, PBS 5450.1, March 4, 2015. The determination may be made after award when making the determination before award would unreasonably delay the award. FAR 6.302-2(d)(5). This determination and findings documents the decision by the HCA that exceptional circumstances apply to this acquisition.

3. Findings That Detail the Particular Circumstances, Facts, or Reasoning Essential to Support the Determination

GSA is often called upon to provide space and related services to federal agencies in emergency situations. The need to provide space and related services for FEMA disaster relief operations is of an unusual and compelling nature.

[Describe the specific need for this location and why the agency's need for this space will continue beyond one year.]

4. This lease is being acquired under the Class Justification for Other than Full and Open Competition, for Acquisitions of Space and Services to Support Federal Agencies Acting in Response to Emergencies and Major Disaster Situations, dated November 5, 1992. The contracting officer certification that this particular requirement falls within the scope of that class justification is attached hereto as Attachment 1.

5. Any delay in providing space and related services under such emergency situations will seriously harm a critical government operation and recipients of federal assistance. Further, it is necessary for GSA to continue to provide the space and related services required for the duration required to support the space needs of the agency during disaster relief operations.
6. FEMA has submitted a request for space for a period of [X] months, based on their reasonable expectation of the time required to complete their mission for this location. Due to the magnitude of [Event Name], in order to secure operational stability, it is necessary to obtain a leasehold interest for the period of time reasonably expected by FEMA to complete their mission.

Determination, Based on the Findings, That the Proposed Action is Justified Under the Applicable Statute or Regulation.

On the basis of the above Findings, I hereby determine that exceptional circumstances require that a temporary lease for the immediate housing needs of FEMA operations in [Location], [State], be for a term exceeding 1 year, but not longer than [X] years.

Prepared By:


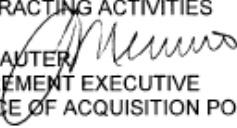
[Name] [Date]
Lease Contracting Officer

Approved:

[Name] [Date]
Head of the Contracting Activity
Region [X], Public Buildings Service

Attachment 6: Acquisition Order MV-2011-07

This acquisition order authorizes warrants to be used outside of their normal regional limitations (p.4). Therefore, for leases in response to declared disasters, LCOs may travel outside their region and execute lease contracts without the need for a new warrant to be issued.

	SEP 27 2011	GSA Office of Governmentwide Policy Acquisition Letter MV-2011-07
MEMORANDUM FOR HEADS OF CONTRACTING ACTIVITIES		
FROM:	JOSEPH A. NEURAUTER  SENIOR PROCUREMENT EXECUTIVE DIRECTOR, OFFICE OF ACQUISITION POLICY	
SUBJECT:	Emergency Warrant Authority	
Purpose:		
<p>The purpose of this letter is to establish GSA-wide expedited processes to modify or issue new warrants for personnel deployed to support Presidential emergency declarations, major disaster declarations, or other emergency responses. This Letter provides guidance to Heads of Contracting Activities (HCAs) and Regional Emergency Coordinators (RECs) on ensuring effective contracting support during emergency response and recovery. This letter cancels Acquisition Letters and Alerts related to Hurricane Katrina.</p>		
Background:		
<p>Each emergency is different as is each region's capability to respond. The Federal Emergency Management Agency (FEMA) is the designated lead Federal agency for coordinating contracting support for emergency operations under a Presidential emergency or major disaster declaration. However, not all emergencies may be FEMA-led responses. Thus, there is no "one size fits all" when it comes to emergency contracting. HCAs and RECs are in the best position to ensure adequate contracting support in order to respond effectively to regional emergency needs.</p>		
Instructions and Procedures:		
<p>The Emergency Acquisition Guide prepared by the Office of Federal Procurement Policy, referenced below, is an invaluable resource to HCAs to prepare for emergencies before an emergency. The guide offers government-wide lessons learned from past disasters and incorporates self-assessment and preparation techniques in order for HCAs to pre-position emergency contracting resources effectively.</p>		
<small>U.S. General Services Administration 1800 F Street, NW Washington, DC 20405-0002 www.gsa.gov</small>		

-2-

The Chief Acquisition Officer (CAO), the Senior Procurement Executive (SPE) and leadership in both Public Buildings Service (PBS) and Federal Acquisition Service national acquisition management offices are committed to providing support to HCAs during emergency responses.

HCAs need to consider the needs of the response first in determining the right fit of acquisition workforce and warranted personnel required. The needs of the emergency encompass all elements of contracting, from cradle to grave. Simply awarding contracts without ensuring adequate contract administration leaves such contracts open to fraud, waste and abuse. Statutory and regulatory requirements are not waived for emergency conditions. Considerations often overlooked include:

- File documentation;
- Availability of key advisors, including managerial, competition advocate, legal, budget support;
- Availability of systems support in awarding or modifying contracts, delivery/task orders (Comprizon, ITSS, for example);
- Contract administration functions, such as contractor oversight and approval of invoices through closeout;
- Reporting, including validation, such as FPDS-NG;
- File transfer procedures, if GSA is not the lead agency.

Therefore, taking the above into consideration, there are a number of options available to HCAs, depending upon the specific needs of the emergency:

- Need to increase existing warrant levels of Regional contracting officers (COs) and/or purchase card threshold only
- Need for additional CO support on-site
- Need for additional CO support remotely (reach back capability)
- Need for contract administration support, including documentation and reporting:
 - a. Administrative contracting officers
 - b. Contracting Officer Technical Representatives (COTRs)

In determining resource needs, HCAs should choose individuals who have demonstrated sound business judgment, consistent with law and within the limits of their authority. Individuals chosen should be familiar with emergency procedures outlined in FAR Part 18 and FAR Subpart 26.2.

-3-

Attachment A provides a snapshot of the roles and responsibilities for the CAO/SPE, the requesting HCA and the servicing HCA with regards to warrants and determining acquisition workforce needs.

Attachment B outlines the purchase card increases pursuant to FAR Subpart 18.2 and GSA Order 4200.1A, as authorized by the SPE.

Proposed Activation Process

This process flow is meant to be a representation of the likely steps involved with the issuance of GSA emergency warrants across organizational or regional lines in the event of declared domestic disasters or national security emergencies. This is not meant to show the entire activation and response process. Actual steps and communications may vary, depending on the size and nature of the declared emergency or disaster.

Step 1: Major domestic disaster or national security emergency operation declared. The CAO or SPE notifies the HCAs.

Step 2: GSA activates its regional or service emergency response coordination process in accordance with the Office of Emergency Response and Recovery (OERR).

Step 3: The HCA determines its needs and assesses if its existing workforce is sufficient to meet the needs, considering award, administration, documentation and reporting requirements:

- a. The HCA looks within its own Service lines before reaching outside the organization, including an examination of existing purchase card authority.
- b. For long, protracted responses, the HCAs should work with the REC in developing rotational staffing and other advisory support such as legal and budget, to support the needs of the response. In this step, HCAs may also determine if supplemental contracting personnel are necessary to complete the assignment.
- c. The HCA will ensure there is documented oversight and internal control processes over the pre-award through post-award contractual activities of supplemental emergency contracting personnel.

-4-

Step 4: If supplemental emergency contracting personnel are required, then pursuant to existing policy:

- a. GSA's CAO or HCA may grant higher temporary contracting authority to already warranted COs to support declared domestic or national security emergencies.
- b. GSA's CAO or HCA may direct a CO to enter into contracts on behalf of a GSA organization different from the organization specified in their Certificate of Appointment in response to a declared domestic or national security emergency. Thus, warranted Cos may assist PBS responses without need of a new warrant.
- c. HCAs and RECs work to find supplemental staff, targeting personnel within its own organization first before requesting external resources.
- d. Service/ Regional HCAs may seek CAO/SPE approval to appoint Contracting Officers with authority limited to entering into contracts required to respond to declared domestic or national security emergencies:
 - (i) If temporary emergency warrant authority is granted in support of declared domestic or national security, the HCA must provide the CAO or SPE with reasonable assurance that the associate is eligible to be warranted, and has the requisite experience.
 - (ii) Temporary warrants or increases in limits to authority are rescinded after the emergency/disaster is over
- e. If internal GSA resources have been exhausted, CAO or SPE assists HCAs by reaching out to government wide contingency contracting corps to provide relief.

Effective Date: Upon signature.

Termination Date: Upon incorporation into the GSAM

Cancellation: The following documents are hereby cancelled in their entirety:

- a. SPE Memorandum signed May, 28, 2003, Emergency Procurement Authority
- b. Acquisition Alert 2005-05, Emergency Procurement Authority
- c. Acquisition Letter V-05-17, including Supplements 1 through 3, Class Deviation Applicable to Acquisitions for Hurricane Katrina Response and Relief

-5-

- d. Acquisition Letter V-05-19, Class Deviation Applicable to Leasehold Interests in Real Property in Support of Hurricane Katrina
- e. Acquisition Letter V-05-21, GSA Stewardship Action Plan for Significant Acquisitions Related to Hurricane Katrina
- f. Acquisition Letter 06-01, Transfer of Contracts to FEMA

Applicability: This Acquisition letter applies to the acquisition workforce, particularly the HCAs and those involved in emergency acquisitions.

References:

- a. GSAM 501.603-3 (e), per Acquisition Letter V-06-06, Transitional Guidance, GSA Contracting Officer Warrant Program (COWP)
- b. Office of Federal Procurement Policy, Emergency Acquisitions, dated January, 2011 (http://www.whitehouse.gov/omb/procurementindex_guides/)
- c. GSA Acquisition Letters, Alerts and Memoranda listed for cancellation above. These historical documents provide an understanding of what was done after September 11, 2001 in support for Hurricanes Katrina and Rita in 2005.
- d. Acquisition Alert 2011-05, prepared for Hurricane Irene

Attachments

- A. Roles and Responsibilities Matrix
- B. Increase in Purchase Card Program procedures pursuant to contingency or Presidential or major disaster declarations