

# Government Contract

COMMENTARY

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## Pre-Disaster Contracting: The Use of Indefinite-Delivery/Indefinite-Quantity Contracts

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Hurricane Katrina has brought much attention to the Federal Emergency Management Agency, not only for its response to the disaster, but also for the contracts it entered into for response and recovery work in the affected areas. One of the clear lessons both FEMA and the government-contracting community as a whole learned is the need for agencies to have contract vehicles in place prior to a disaster so the government will have immediate access to contractor products and services for response and recovery work.

When contract vehicles are not in place prior to a disaster, the government has to spend precious time and effort administering emergency procurement actions that often compromise fundamental government contracting principles, such as full and open competition, and that suspend contracting safeguards, such as thresholds for disclosure of contractor cost or pricing data.

One contract vehicle that agencies can put into place prior to a disaster and use to obtain needed products and services after a disaster strikes is the indefinite-delivery and/or indefinite-quantity contract. With this type of ID/IQ contract, the government has the right to order any quantity of services or supplies it needs, within certain quantity limits, after contract award through the issuance of either task orders for services or delivery orders for goods.

ID/IQ contracts are often awarded to multiple bidders, so when the time comes for the government to issue task or delivery orders, it has the ability to select one or several companies. The use of ID/IQ contracts would allow the government to award contracts to a number of contractors that can provide disaster-related goods and services and then, once a disaster occurs, issue task or delivery orders for the exact types and quantities of goods or services needed for the particular response and recovery work.

While ID/IQ contracts clearly provide the government with significant flexibility in terms of the quantity of goods or services ordered, the timing of such orders, and the contractors from which such goods or services are ordered, they also contain provisions that offer contractors some amount of certainty and protection.

Specifically, ID/IQ contracts must specify both a minimum and a maximum total quantity that the government will order from the contractor. While the minimum total quantity serves as the consideration necessary to make the contract legally binding, it also allows the contractor to plan for sales to the government of at least that minimum amount.

The maximum total quantity protects the contractor from having the government order goods or services in amounts it has not planned for or cannot produce. In a multiple-award situation, minimum and maximum total quantities are set for each awardee.

Also, contractors are entitled to a "fair opportunity to be considered" for each task or delivery order issued under an ID/IQ contract, although the guidelines for determining the nature of a "fair opportunity" are loosely established.

The government recognizes the benefits of using the ID/IQ contract vehicle to procure needed supplies and services during or after an emergency. Indeed, less than two months after Katrina, FEMA announced that it would be using ID/IQ contracts both to continue recovery efforts in the Gulf Coast region and for response and recovery efforts for future disasters.<sup>1</sup>

FEMA stated that it intended to award multiple five-year ID/IQ technical assistance contracts for the Gulf Coast recovery work as well as multiple five-year ID/IQ contracts

for technical assistance support on a national basis for disaster response and recovery.

As of the end of 2005, FEMA had published solicitations for the Gulf Coast ID/IQ contracts.<sup>2</sup> Specifically, FEMA published eight requests for proposals intended to result in 15 five-year contracts, with an estimated value of up to \$100 million per contract. All of these contracts will be for maintenance and deactivation of temporary housing in Texas, Louisiana, Mississippi and Alabama.

As previously announced by FEMA, these solicitations are limited to small businesses and small disadvantaged businesses (certified as 8a firms by the Small Business Administration), and local companies will receive preference.<sup>3</sup> While FEMA stated that the national ID/IQ contracts would be open to businesses regardless of size, the agency will require the prime contractors to meet certain small-business subcontracting goals, including giving preference to local businesses.<sup>4</sup>

While FEMA's ID/IQ emergency contracting opportunities are already underway, other government agencies will likely consider using the same type of contracting vehicle to enable them to respond to emergencies affecting their constituencies or to be prepared to assist with the next local or national disaster response and recovery effort. Because agencies have long used ID/IQ contracts to meet their acquisition needs in non-emergency situations, use of this type of contracting vehicle for emergency purposes will not necessitate significant retooling by agency contracting shops.

For example, the General Services Administration federal supply schedule is a long-standing ID/IQ contracting program, and some of the items and services that are already on the schedule are appropriate for use in a disaster situation.

Government agencies' heightened awareness of the need for quick access to supplies and services during emergencies will likely only increase the number of ID/IQ contracts that will be awarded, including those under the federal supply schedule, and contractors that provide disaster-related supplies or services should remain vigilant for these future contracting opportunities.

### Notes

<sup>1</sup> Press Release, Federal Emergency Management Agency, Hurricane Recovery Contracting Strategy Announced (Oct. 11, 2005) ([http://www.fema.gov/news/newsrelease\\_print.fema?id=19576](http://www.fema.gov/news/newsrelease_print.fema?id=19576)).

<sup>2</sup> Press Release, Federal Emergency Management Agency, FEMA Encourages Gulf Coast Small and Small Disadvantaged Businesses to Apply Now for Contracting Opportunities (Dec. 2, 2005) ([http://www.fema.gov/news/newsrelease\\_print.fema?id=21019](http://www.fema.gov/news/newsrelease_print.fema?id=21019)).

<sup>3</sup> *Id.*

<sup>4</sup> *Supra*, note 1

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