

CRS Report for Congress

Received through the CRS Web

Hurricane Katrina Recovery: Contracting Opportunities

L. Elaine Halchin
Analyst in American National Government
Government and Finance Division

Summary

Companies unfamiliar with the federal procurement process may find useful information at several government websites, including those of the General Services Administration (GSA) and the Small Business Administration (SBA). Usually, agency solicitations for goods and services valued at amounts over \$25,000 may be found on the government's Federal Business Opportunities (FedBizOpps) website. However, some agencies may not be posting solicitations on FedBizOpps yet. Monitoring several federal government websites, instead of just FedBizOpps, may be an effective way to track contracting opportunities related to Hurricane Katrina recovery and reconstruction efforts. Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5150), preference is to be given, in the expenditure of federal funds for major disaster or emergency assistance activities, to private organizations, companies, and individuals residing or doing business primarily in the affected area.

Overview of the Federal Procurement Process

Major Steps

To be eligible to compete for contracts, companies that are new to federal contracting must fulfill three requirements: obtain a data universal numbering system (DUNS) number¹, and register with the federal government's Central Contractor Registry (CCR) and Online Representations and Certifications Application (ORCA) website.² Links to

¹ A DUNS number is a nine-digit number used to identify unique business entities. (*Federal Acquisition Regulation* (FAR) § 2.101(a).) "FAR" refers to the *Federal Acquisition Regulation*. Rules governing the federal procurement process are codified in the FAR, which consists of Parts 1-53 of Title 48 of the *Code of Federal Regulations* (C.F.R.), and which is available at [<http://www.arnet.gov/far>].

² FAR §§ 4.11 and 4.12. Under certain circumstances, companies may not need to register with
(continued...)

the websites are listed on the Federal Business Opportunities (FedBizOpps) “Hurricane Recovery — Vendor Information” page, at [<http://www.fedbizopps.gov/katrina.html>].

After an agency has determined its requirements for particular goods or services, it issues a solicitation, which is a “request [to interested companies] to submit offers or quotations to the Government.”³ If the agency is using sealed bid procedures, the solicitation is called an “invitation for bid” (IFB); for negotiated procurements, the solicitation is called a “request for proposal” (RFP).⁴ With some exceptions, solicitations that exceed \$25,000 are posted on the Federal Business Opportunities (FedBizOpps) website, at [<http://www.fedbizopps.gov>], which is the single point-of-entry for federal government contracting opportunities.⁵ Posting solicitations on this website is consistent with, and supports the federal government’s policy of, full and open competition, which means that “all responsible sources are permitted to compete.”⁶

Businesses interested in competing for the opportunity to be awarded a contract must prepare their proposals according to, at a minimum, information and instructions provided in the solicitation and the *Federal Acquisition Regulation* (FAR).⁷ In addition to identifying the procuring agency, a solicitation describes the services or items to be purchased, identifies the evaluation factors that will be used in selecting a source, stipulates the format and contents of proposals, references applicable contract clauses, and provides a due date for the submission of offers.⁸ Agency officials review and evaluate bids and proposals, select one or more contractors to do the work, and award the contract(s). After a contractor has begun work, agency personnel then administer and monitor the contract.

Other Than Full and Open Competition

Several key characteristics of this process change when an agency conducts a procurement under other than full and open competition, which is popularly referred to as “sole source” or “no bid” contracting.” Notably, instead of posting a solicitation on the FedBizOpps website, agency personnel provide the solicitation to one or more

² (...continued)
the CCR. (FAR § 4.102(a).)

³ FAR Supbart 2.1.

⁴ See FAR Part 14 (sealed bidding) and Part 15 (negotiated contracting).

⁵ Contracting officers are required to publicize contract actions (for example, solicitations), and contract actions in amounts exceeding \$25,000 are to be publicized on the FedBizOpps website. (FAR §§ 5.002, 5.003, 5.101(a), and 5.102(a)(1).) However, exceptions to this requirement exist. For example, a contracting officer does not have to submit the notice of a contracting action to FedBizOpps when it involves other than full and open competition and the rationale is an unusual and compelling urgency. (FAR § 5.202(2)(2).)

⁶ 41 U.S.C. § 253; FAR Subparts 2.1 and 6.1.

⁷ While the solicitation and the FAR are the primary sources of information, other applicable documents might include, for example, the agency’s supplement to the FAR.

⁸ An offeror is a business that submits a bid or a proposal (that is, an offer) in response to a solicitation.

companies that they believe are capable of meeting the agency's requirements. Other than full and open competition is permitted under the following, as quoted from the FAR.

Only one responsible source and no other supplies or services will satisfy agency requirements. When the supplies or services required by the agency are available from only one responsible source, or, for DOD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements.

Unusual and compelling urgency. When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

Industrial mobilization; engineering, developmental, or research capability; or expert services. Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order to maintain a facility, producer, manufacturer, or other supplier ... to establish or maintain an essential engineering, research or development capability ... [or] to acquire the services of an expert or neutral person for any current or anticipated litigation or dispute.

International agreement. Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

Authorized or required by statute. Full and open competition need not be provided for when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or the agency's need is for a brand name commercial item for authorized resale.

National security. Full and open competition need not be provided for when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

Public interest. Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.⁹

A contracting officer is required to justify, in writing, other than full and open competition actions, certify the accuracy and completeness of the justification, and obtain approval from the appropriate agency authority.¹⁰ When not providing for full and open competition, a contracting officer, nevertheless, is to solicit offers "from as many potential

⁹ FAR §§ 6.302-1- 6.302-7. Statutory authority for other than full and open competition is found in 41 U.S.C. 253(c) (civilian agencies) and 10 U.S.C. 2304 (Department of Defense).

¹⁰ FAR § 6.303-1(a).

sources as is practicable under the circumstances.”¹¹ In practice, this may mean that a contracting officer contacts a small number of companies, or possibly only one, when seeking a firm that can meet an agency’s particular requirements.

Information from federal agencies and the news media indicates that, at least initially, federal agencies involved in Katrina recovery efforts have resorted to other than full and open competition for some contracts.¹² Six of the seven circumstances listed above have been used to justify other than full and open competition for some of the contracts that have been awarded by various agencies (“international agreement” has not been used).

Resources

General Information on Federal Government Contracting

The General Services Administration (GSA) and the Small Business Administration (SBA) provide information and offer assistance to firms seeking to do business with the federal government. Their websites [<http://www.gsa.gov>] and [<http://www.sba.gov>] also provide information for small businesses. Another website that offers information for would-be government contractors is Business.gov [<http://www.business.gov>].

Finding Contracting Opportunities Related to Recovery and Reconstruction Efforts

As federal agencies continue to respond to immediate needs and deal with the challenges of a massive contracting effort aimed at rebuilding the affected area, the location and extent of information about contracting opportunities may vary from agency to agency. While some agencies are using FedBizOpps to post their solicitations, others are not and may not for some time. Therefore, finding relevant contracting opportunities may necessitate visiting selected agency websites as well as FedBizOpps.

Department of Homeland Security (DHS) and Federal Emergency Management Agency (FEMA). The DHS website provides information on both direct contracting opportunities (which apparently are prime contracting opportunities) and subcontracting opportunities. This information appears to be directed at small

¹¹ FAR § 6.301(d).

¹² U.S. Army Corps of Engineers, “Debris Removal Contracts Awarded for Hurricane Recovery Efforts,” news release, PA-05-10, Sept. 15, 2005, available at [<http://www.hq.usace.army.mil/cepa/releases/Katrinacontracts.htm>]; U.S. Army Corps of Engineers, “Hurricane Katrina Consolidated Contract Listing 9/16/05,” available at [http://www.usace.army.mil/KatrinaRpt9_12HAC.pdf]; Leslie Wayne, “Cruise Ships, Spurned by Evacuees, Are Home to Displaced City Workers and Families,” *New York Times*, Sept. 16, 2005, available at [<http://www.nytimes.com/2005/09/16/national/nationalspecial/16cruise.html>]; Federal Emergency Management Agency, “FEMA Contracts to Provide Housing Relief for Displaced Hurricane Victims,” news release, HQ-05-228, Sept. 8, 2005, available at [<http://www.fema.gov/news/newsrelease.fema?id=18708>]; Kimberly Palmer, “Relief Efforts Spawn Quick Contracts,” *Government Executive*, Daily Briefing, Sept. 8, 2005, available at [<http://www.govexec.com/dailyfed/0905/090805k1.htm>].

businesses. The Web page on direct contracting opportunities [http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0727.xml] provides points of contact for categories of commodities or services that FEMA seeks. The Web page on subcontracting opportunities [http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0726.xml] lists FEMA's prime contractors and provides contact information for each. DHS also maintains a National Emergency Resource Registry at [<https://www.swern.gov/>]. Companies interested in contracting opportunities or donating goods or services may register on this website.

The Federal Emergency Management Agency has provided information about the procurement process and possible contracting opportunities at a couple of workshops in the affected region. Sessions were held in Baton Rouge, Louisiana, and Montgomery, Alabama, on October 6, 2005.¹³ The agency's news releases may be monitored at [<http://www.fema.gov/news/recentnews.fema>].

Hurricane Contracting Information Center (HCIC). Established by the Department of Commerce, the HCIC website [<http://www.rebuildingthegulfcoast.gov>] provides information on the government contracting process and enables businesses to register for contracting opportunities and to sign up to receive e-mail alerts. The HCIC does not award contracts.

FedBizOpps Website. For the time being, agencies involved in recovery efforts apparently may not be submitting solicitations to FedBizOpps. Nevertheless, the FedBizOpps "Hurricane Katrina Emergency Contracting Information" page suggests terms to use when searching the site for contracting opportunities.¹⁴ Also included on the page are links to the DUNS, CCR, and ORCA websites, and several federal agency and state websites. As recovery and reconstruction efforts continue, and as federal, state, and local governments are able to develop long-term plans for the affected area, it seems likely that, except for solicitations issued under other than full and open competition, solicitations related to reconstruction efforts will be posted on the FedBizOpps website.

GSA's "Katrina Support" E-Mail Address. A business seeking consideration as a potential source of supplies, equipment, or services to support the hurricane recovery effort may e-mail GSA via Katrinasupport@gsa.gov, including this information: company name and address; a person to contact, including business and home telephone numbers, cell phone number, fax number, e-mail address, and company website address; and a succinct description of supplies, services, or equipment the company offers. GSA will forward this information to federal contracting officers in multiple agencies involved in the recovery effort. Providing the information, however, does not guarantee that GSA or any other federal agency will award a contract to the vendor.¹⁵

¹³ Federal Emergency Management Agency, "Back to Business Workshop to Assist Businesses in New Orleans Area," news release 1603-062, Oct. 4, 2005, available at [http://www.fema.gov/news/newsrelease_print.fema?id=19419]; Federal Emergency Management Agency, "FEMA Opportunity Session for Disaster Contractors Changes Venue," news release 1605-050, Oct. 3, 2005, available at [http://www.fema.gov/news/newsrelease_print.fema?id=19357].

¹⁴ Ibid.

¹⁵ General Services Administration, "Office of Marketing, Hurricane Katrina Recovery Vendor (continued...)"

GSA Supply Schedules. GSA has noted that contracting officers working on the recovery effort are using the following GSA schedules: GSA e-Library, GSA Advantage!, and GSA e-Buy.¹⁶ By selecting the link “How to Get on Schedule” on the GSA website at [<http://www.gsa.gov>], companies will find guidance on how to get their products and services listed on the appropriate GSA schedule(s). Initial steps involve identifying applicable GSA-issued solicitations (accessible through the GSA website), and drafting and submitting a proposal or bid in response to the appropriate solicitations.

State and Local Governments. Other contracting opportunities may be found on state and local government websites. Links to state websites may be found on the FedBizOpps “Hurricane Recovery — Vendor Information” page. Interested parties should visit the state websites to determine what contracting opportunities, if any, are available, and to learn about state government contracting procedures.

U.S. Army Corps of Engineers (USACE). The USACE website includes Hurricane Katrina contracting information, including subcontracting information, on its website, at [<http://www.lrl.usace.army.mil/DisasterEquip/>]. Some of the relevant web pages may include a function where businesses interested in competing for federal contracts may register through some of the links listed. However, registering does not guarantee that a company will receive a contract.

Preference for Local Firms and Individuals

While there is no guarantee that, following a major disaster or emergency, recovery and reconstruction work will be awarded to businesses, organizations, and individuals affected by the disaster or incident, a provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288; 42 U.S.C. §§ 5121-5206) directs that preference be given “to the extent feasible and practicable” to businesses and individuals from the affected areas.¹⁷

Conclusion

Depending on the condition and needs of local cities in the affected area and the pace of recovery, the federal government’s contracting efforts might continue to include sole source contracting, in addition to full and open competition, for the foreseeable future. Monitoring several relevant federal government websites possibly could increase the chance of finding solicitations applicable to a particular company or industry.

¹⁵ (...continued)

Information,” available at [<http://www.gsa.gov>].

¹⁶ Schedules are lists of goods and services offered by vendors for purchase by all federal entities and other authorized users. GSA (and certain other agencies) establish and maintain various schedules. Schedules may also be referred to as “multiple award schedules” (MAS), meaning that the procuring agency (for example, GSA) awarded contracts to more than one vendor pursuant to a solicitation.

¹⁷ 42 U.S.C. § 5150.