Federal Contracting:
Lessons Learned from Hurricane Katrina
Executive Summary

The Project On Government Oversight (POGO) has identified the following systemic failures in federal contracting and evaporating oversight controls, and recommends that government contracting laws and regulations need to be strengthened because of:

1. Poor Planning – To make every effort to get the best results for taxpayers, the government must have an acquisition strategy based on informed market research.

2. Inadequate Competition – To better evaluate goods and services and get the lowest practical cost, the government must promote aggressive arm’s–length negotiations with contractors and encourage competition, correcting the current trend of entering into non-competitive contracts in nearly 50 percent of government dollars spent.

3. Lack of Accountability – To ensure that taxpayer dollars are being spent responsibly, the government must regularly monitor and audit contracts.

4. Minimal Transparency – To regain public faith in the contracting system, the government must ensure that the contracting process is open to the public, including requests for proposals, contract data, and contracting officers’ decisions and justifications.

As a case study demonstrating the impact of how these failures in the federal contracting system impacts the public, POGO researched and analyzed Hurricane Katrina-related federal contracting. POGO has reviewed the vast majority of Hurricane Katrina-related federal reports, and has compiled a comprehensive analysis of contracting problems and recommendations to address those issues. The intent of this report is to present lessons that need to be learned both from the mistakes made by the federal government, as well as from the occasional successes. POGO’s findings and recommendations are primarily based on government reports that have been published publicly.

The Federal Emergency Management Agency (FEMA), as the federal agency primarily responsible for relief and recovery, has issued tasks and mission assignments to at least 57 federal agencies and programs to respond to Hurricane Katrina. These agencies and programs include the Army Corps of Engineers (ACE), NASA, the Department of Health and Human Services (HHS), the Department of Housing and Urban Development (HUD), and even the Farm Service Agency, among others. All of these entities had a defined role as outlined in the National Response Plan. It was FEMA’s responsibility to manage the national disaster response, but FEMA shares the blame for the failures of Hurricane Katrina with many of its partners in the federal government.

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Overall, the federal government has struggled to track all of its spending post-Katrina. The White House Office of Management and Budget told *The National Journal* that it is the responsibility of each agency to track its own spending, but “Spokesmen at several federal agencies said they could only track ‘obligations’—what the agency has promised to pay—and not the money that had actually been dispensed.”³ The GAO also complained of the challenges of tracking all of the federal spending when documentation is not centralized.⁴ In fact, this problem is indicative of the federal government’s general failure to adequately track and report its spending.

The scale of Hurricane Katrina contracting becomes clear by reading the most recent FEMA numbers: nearly 100,000 roofs damaged by Hurricane Katrina have been temporarily covered by FEMA’s “Blue Roof” program; more than 99 million cubic yards of debris have been removed in Alabama, Louisiana, and Mississippi; more than $6 billion has been paid directly to Hurricane Katrina victims from FEMA for housing and other needs; and more than $15.3 billion has been paid out to National Flood Insurance Program policy holders.⁵

The federal government must squeeze every penny it can to ensure that relief money reaches Hurricane Katrina victims and is not exploited by disaster profiteers. Some of the government’s determinations that contracts were “appropriate” and costs and/or prices were “reasonable” most likely were based on the emergency situation and the restrictions that situation imposed. Mistakes will be made because of the urgency to conduct the relief effort, but POGO believes following these recommendations will help to minimize waste and fraud and ensure that as much money as possible goes to the victims.

For more information about Hurricane Katrina and government contracting, please visit POGO’s Katrina Contracting Resources page at http://www.pogo.org/p/x/2005katrina.html.

⁴ Ibid.
Introduction

In August 2005, a tropical storm gathered strength and inched its way toward the United States, first hitting Florida. After reaching a nearly unprecedented level of strength, the now-Hurricane Katrina hit the Gulf Coast on August 29, destroying houses, businesses, and critical infrastructure -- flooding the historic city of New Orleans, and ultimately taking the lives of approximately 1,300 people. Hurricane Katrina holds the infamous distinction of being the one of the most destructive natural disasters in American history, causing more damage and resulting in more deaths than the Chicago Fire of 1871, the San Francisco Earthquake and Fire of 1906, or Hurricane Andrew in 1992.

Unfortunately, the 2005 hurricane season was far from over. Less than a month after Katrina hit the Gulf Coast, Hurricane Rita hit the border between Texas and Louisiana.

These natural disasters forced the federal, state, and local governments to jump into action to provide essential goods and services to Katrina and Rita victims. In some cases, relief efforts started before Katrina hit landfall. Unfortunately, despite those efforts, the federal government fell far short in meeting the needs of the hurricane victims.

The Federal Emergency Management Agency’s (FEMA) role is to administer the major provisions of the Stafford Act (which authorizes the President to issue a major disaster declaration to initiate federal relief efforts) and to protect life and property “by leading and supporting the Nation in a comprehensive, risk-based emergency management program.”

The Stafford Act provides the President with permanent authority to direct federal aid to disaster areas. The federal government funds and undertakes emergency response activities, debris removal, and individual assistance and housing programs only after the President has issued a major disaster declaration that sets forth federal agency responsibilities under the National Response Plan.

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7 Ibid.
8 Ibid., p. 5.
Although the federal government had a National Response Plan in place,¹³ had conducted planning workshops using a hypothetical catastrophic hurricane scenario (Hurricane Pam¹⁴), and had the experience of being called into action for such costly hurricanes as Hugo (SC 1989), Andrew (FL & LA 1992), Floyd (Mid-Atlantic & NE U.S. 1999), Allison (TX 2001), Isabel (Mid-Atlantic 2003), Charley (FL 2004), Ivan (FL 2004), Frances (FL 2004), and Jeanne (FL 2004),¹⁵ many federal agencies failed to meet their missions before and after Hurricane Katrina hit the Gulf Coast. Even the Government Accountability Office (GAO) stated: “the federal government, in particular the Federal Emergency Management Agency (FEMA), received widespread criticism for a slow and ineffective response to Hurricane Katrina. Much of the criticism is warranted.”¹⁶

But much more can be done to provide better relief and recovery services to victims during an emergency event. In a FEMA press release advising Massachusetts residents suffering from flood damage, emergency management officials gave consumers the following suggestions for hiring a contractor: use reliable, licensed contractors; get a written estimate; check references; ask for proof of insurance; insist on a written contract; get any guarantees in writing; have work inspected; make final payments when the work is completed; pay by check and avoid on-the-spot cash payments; and cancel the contract, if necessary.¹⁷ If it had followed its own advice, FEMA could have avoided many of the mistakes made in the federal response to Hurricane Katrina.

The federal government has appropriated approximately $120 billion to respond to the relief, recovery, and reconstruction needs of the devastated areas from Katrina and Rita.¹⁸ Public outrage began to mount as evidence of the federal government’s failure to adequately meet the post-Katrina challenge became evident. As a result, the federal government mobilized one of the largest oversight operations in spending history. To date, the White House, the President’s Council on Integrity and Efficiency, the Executive Council on Integrity and Efficiency, the GAO, the Defense Contract Audit Agency, and

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¹³ Federal responsibilities, as outlined in the National Response Plan (NRP), include: meeting ice and water requirements for mass care; providing emergency health care services; locating and securing supplies of food; and providing temporary housing support. DHS, “National Response Plan.” Available at http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0566.xml.


numerous Inspectors General have published hundreds of reports assessing the federal response and spending related to Katrina and Rita. Those reports have identified logistical and contracting problems and recommended appropriate corrective actions. Congress has also been active, with House and Senate Committees holding hearings and releasing reports. The Senate Committee on Homeland Security and Governmental Affairs recently released a 700 page report entitled “Hurricane Katrina: A Nation Still Unprepared,” which reviews the nation’s emergency preparedness and response system. The House Government Reform Committee Minority staff has most recently issued, “Waste, Fraud, and Abuse in Hurricane Katrina Contracts.” The White House issued one of the most comprehensive reports, entitled “The Federal Response to Hurricane Katrina: Lessons Learned,” which is 230 pages long and includes 125 recommendations.

According to the June 30, 2006, President’s Council for Integrity and Efficiency (PCIE) Hurricane Katrina Report, there is an unprecedented level of oversight of hurricane-related spending. PCIE found that:

- Nearly 500 government staffers are investigating hurricane-related spending
- 239 arrests were made
- 283 indictments were handed down
- 80 people were convicted for hurricane-related crimes

These oversight efforts, and their results, are a step in the right direction, but they do not reveal the full picture of how the government responded to Hurricane Katrina or the overall level of oversight of federal spending. The majority of the indictments, arrests, and convictions have been against individuals who defrauded the government in petty crimes, rather than contractors caught exploiting the system on a large scale. In other words, so far the government has picked the low hanging fruit from the tree. These small cases of fraud, however, have accrued -- GAO estimated that the “range of improper and potentially fraudulent payments is from $600 million to $1.4 billion.” Investigations of

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21 Those recommendations are grouped into 17 areas: national preparedness; integrated use of military capabilities; communications; logistics and evacuation; search and rescue; public safety and security; public health and medical support; human services; mass care and housing; public communications; critical infrastructure and impact assessment; environmental hazards and debris removal; foreign assistance; non-governmental aid; training, exercises, and lessons learned; homeland security professional development and education; and citizen and community preparedness. Available at http://www.whitehouse.gov/reports/katrina-lessons-learned.pdf.
contractor waste and fraud are ongoing as the government has only reviewed approximately one third of the money that has been awarded to contractors and billions more have not been spent.  

**Hurricane Andrew (1992) Revisited: Lessons Not Learned**

Moreover, the government must do a better job at identifying what went wrong and take corrective actions to prevent it from making the same mistakes – mistakes that keep recurring in the government’s response to emergency events. It is disheartening to read a GAO report that found that:

> The causes of these breakdowns must be well understood and addressed in order to strengthen the nation’s ability to prepare for, respond to, and recover from major catastrophic events in the future—whether natural or man-made. **Unfortunately, many of the lessons emerging from Hurricanes Katrina and Rita are similar to those we identified more than a decade ago, in the aftermath of Hurricane Andrew in 1992, which leveled much of South Florida. The experience of Hurricane Andrew raised questions about whether and how national disaster response efforts had incorporated lessons from experiences with Hurricane Hugo in 1989. All critical players must do much more to learn from past mistakes and actually implement recommendations that address prior deficiencies in preparing for and responding to catastrophic disasters. However, these actions will not be cost-free—posing a range of challenges in determining the priority of various action steps and how they will be funded.**

(Emphasis added.)

The federal government’s response to Katrina and Rita addressed short-term needs such as ice, food, and shelter, and is continuing to address long-term capital reconstruction projects. The revelation of numerous abuses has shed light on weaknesses in the federal government’s contracting systems that allowed for such problems as excessive no-bid contracts, unreasonable prices and costs, and questionable expenses. The end result is that hurricane and other disaster victims do not receive the assistance they need during a time of crisis. Additionally, federal taxpayers are left paying inflated bills.

Before Hurricane Katrina, Hurricane Andrew in 1992 was the most destructive United States hurricane on record, with gusts reaching 164 miles per hour at the National Oceanic and Atmospheric Administration’s (NOAA’s) National Hurricane Center and 177 miles per

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hour at a private home. At the time, Andrew caused over $26.5 billion ($43.7 billion
when adjusted for inflation) in damage to Louisiana and South Florida. Andrew was also
responsible for 23 deaths in the United States.

Post-disaster reports for both Andrew and Katrina complained that state and local
authorities needed more flexibility in contingency planning and clearer statutory
authorization through the Stafford Act to assess the needs and the federal resources
available to them after an emergency event. In essence, federal agencies,
mostly FEMA, are limited in spending money and assisting victims because they do not
have legal authority to dispense funds without the President’s authorization.

Additional recommendations in response to these disasters expressed concern that federal
officials were inadequately trained due largely to FEMA’s poor oversight. A 1993 GAO
report pointed out that while FEMA had established training programs, the agency’s
headquarters failed to even establish performance standards or an evaluating program to
monitor state performance.

In fact, the GAO stated that “many of the lessons emerging from Hurricanes Katrina and
Rita are similar to those we identified more than a decade ago, in the aftermath of
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27 NOAA, “Hurricane Andrew.” Available at http://www.noaa.gov/hurricaneandrew.html. See
28 National Weather Service, National Hurricane Center, Tropical Prediction Center, “Costliest U.S.
5. Available at http://www.gpoaccess.gov/katrinareport/mainreport.pdf#search=%22a%20failure%20of%20initiative%22.
30 GAO Report (GAO/T-RCED-93-46), “Disaster Management: Recent Disasters Demonstrate the Need to
## FINDINGS OF THE GOVERNMENT ACCOUNTABILITY OFFICE

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<td>Preparing for Catastrophic Disasters</td>
<td>“The Congress should consider giving FEMA and other federal agencies explicit authority to take actions to prepare for catastrophic disasters when there is warning... Federal response time could be reduced by encouraging agencies to do as much advance preparation as possible prior to a disaster declaration...and even earlier for disasters, such as hurricanes, where some warning exists.”[^32]</td>
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Prepare federal agencies explicit authority to take actions to prepare for catastrophic disasters when there is warning, and 2. Removing statutory restrictions on DOD’s authority to activate Reserve units for catastrophic disaster relief.”36

The Appearance of Some Lessons Learned

Since its initial response to Hurricane Katrina, it is important to recognize that FEMA appears to have made several steps in the right direction to improve its relief and reconstruction efforts.

In response to critics, including POGO, who have pointed to FEMA’s lack of planning and pre-established contingency contracts, FEMA’s new contracting head, Deidre Lee has stated that improvements are being made.38 Lee has gone on record stating that FEMA is “doing more pre-positioning” in an effort to better prepare for the next emergency event.39

Using full and open competition, FEMA recently awarded six new Individual Assistance Technical Assistance Contracts (IA-TAC) for future disasters to Shaw Environmental & Infrastructure, Fluor Enterprises, Inc., Partnership for Temporary Housing (PaTH), Disaster Solution Alliance (DSA), Bechtel National, and CH2M Hill. Those awards are for a period of two years with a contract ceiling of $250 million each to provide temporary housing and Disaster Recovery Center support.40 The task orders for the contracts require the contractors to utilize local firms to the maximum extent practical for additional subcontracting opportunities.41 These contingency contracts follow the four no-bid contracts that were steered to Bechtel, Fluor, CH2M Hill, and Shaw and have been the subject of much criticism. While POGO applauds FEMA’s belated action, we urge contracting officials to enter into arrangements for services that are quantifiable and to oversee these contracts to assure that costs are reasonable.

39 Ibid.
41 Ibid.
To enhance future contingency plans, FEMA developed a debris contractor registry. The registry, a web-based database that allows debris removal contractors to post information about their capabilities and availability, should enhance state and local governments’ ability to plan for and manage debris removal operations either before or after emergency situations occur.\(^{42}\)

Additionally, on August 18, 2006, FEMA director R. David Paulison stated that the agency has improved its satellite and mobile communications system, digital alert system, victim management program, and policies to handle the next emergency event.\(^{43}\)

A prescient June 21, 2004, letter from Pleasant Mann, President of the American Federation of Government Employees Union at FEMA, to Senator Hillary Rodham Clinton (D-N.Y.) stated that FEMA’s “professional staff are being systematically replaced by politically-connected novices and contractors who have now ‘burrowed in’ to civil service jobs.”\(^{44}\) The obvious example is the appointment of Michael Brown (long-time friend with former FEMA Director Joe Allbaugh) as the head of FEMA. Before joining the government, Brown practiced law and was the Judges and Stewards Commissioner for the International Arabian Horse Association until 2001.\(^{45}\) Serious questions have been raised about Brown’s qualifications.

There is important new consideration as to whether the Director of FEMA should be either a career professional government employee, or a Cabinet official. Both suggestions have merit. Having the Director of FEMA be a career professional, rather than a political appointee, avoids the possibility of cronies or political allies without adequate qualifications being appointed to this important position. An additional advantage to making the FEMA Director a career professional is that frequent shuffling of authority and organization has threatened FEMA’s institutional memory and its ability to apply any lessons learned. On the other hand, a Cabinet-level Secretary would have the opportunity to quickly and be more respond to catastrophic disasters.\(^{46}\) Representative Don Young (R-AK) has introduced a bill (H.R. 5316) calling for the FEMA Director to serve a term of five years. However, FEMA made many of the same mistakes during Hurricane Andrew, when it was an independent agency, as it did during Hurricane Katrina, when it was a part of the Department of Homeland Security.


Policymakers need to give thoughtful consideration to this question, as well as review the current definition of federal government job positions to ensure that “inherently governmental” jobs responsible for emergency response are not outsourced to contractors or given to political appointees.

Problems and Solutions

Poor Government Planning

Lack of Planning and Pre-Landfall Contracts

Knowing when to buy goods or services is only part of the government’s procurement role—knowing what to buy is crucial. Without detailed planning, a clear definition of requirements, and arm’s-length negotiations, the government is limited in its ability to buy goods and services at fair and reasonable prices. During an emergency, the government is more often than not paying a premium for its purchases, and the victims are further harmed as funds intended to assist them are squandered. While mistakes are inevitable in a time of crisis, good planning will help to minimize this problem.

The lack of planning and pre-landfall contracts caused federal agencies to hustle to locate vendors, to shy away from aggressive negotiations, to enter into no-bid contracts, to use inappropriate contract types, and to pay higher prices in an effort to buy goods and services quickly. In other words, the victims and the taxpayers were not protected by normal market forces that prevent bad deals, and control waste, fraud, and abuse in government spending.

One agency that appears to have prepared and created contingency contracts was the U.S. Army Corps of Engineers (USACE). “To meet these responsibilities, USACE has pre-awarded competitively bid contracts for all of these functions to allow quick deployment of resources prior to and immediately after an event. These pre-awarded contracts are part of USACE’s Advanced Contracting Initiative (ACI), which has been in place for about six years.”

Many other federal agencies, however, had inadequate contingency plans – despite practice runs for catastrophic disasters– and were not in a position to buy goods and services at pre-established prices. For example, FEMA did not adequately anticipate needs for temporary housing. Furthermore, in some cases, evacuation of hospitals occurred without any contract at all.

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48 Ibid., p. 330.
49 Ibid., p. 289.
The GAO’s 2004 report on contingency planning found that few contingency documents adequately described federal agencies’ delegations of authority – agency personnel may not know who has the authority or responsibility to make the key decisions in an emergency, including providing critical services to citizens in the aftermath of an emergency.\textsuperscript{50}

In some cases, inadequate planning, especially for temporary housing, led to hundreds of millions of dollars of waste in recovery efforts. For instance, FEMA purchased over 25,000 transitional homes and 27,000 travel trailers for over $900 million. Unfortunately, FEMA purchased the temporary housing before planning how it would be used. As a result, there were 17,055 homes and 5,707 travel trailers waiting to be used as of April 2006.\textsuperscript{51} Not one of the homes was sent to the most damaged parts of Louisiana and Mississippi because FEMA’s own regulations prohibit the use of the homes in flood plains.\textsuperscript{52} As further evidence that some lessons have been learned, however, on August 18, 2006, Director Paulison stated that FEMA has 8,000 to 9,000 travel trailers in Hope, Arkansas, that are being maintained and that are being held in reserve for the next emergency event.\textsuperscript{53}

Poor communication between Washington and people “on the ground” exacerbated problems, even when they were all working for the same agency. For example, against the advice of FEMA officials in Alabama, FEMA paid a federal contractor $10 million to renovate 160 rooms and furnish another 80 rooms that largely went unused because few evacuees lived there. Only six occupants were living at the facility when FEMA officials decided to shut it down.\textsuperscript{54} FEMA also spent $3 million for 4,000 base camp beds that were never used.\textsuperscript{55}

To prevent abuse, the government should enter into pre-established contingency contracts, and ensure that certain contract types that have a greater propensity for abuse (including performance-based contracts, interagency contracts, time & material contracts, and purchase card transactions) are used only in limited circumstances and are accompanied by audit and oversight controls.

\textsuperscript{53}“Press briefing with FEMA Director David Paulison,” August 18, 2006. Available at rtsp://video.cspan.org/project/hur/hur081806_katrina.rm.
\textsuperscript{55}Ibid., p. 4.
Although POGO has been critical of Indefinite Delivery, Indefinite Quantity (IDIQ) contracts – frequently misused in non-emergency acquisitions – this risky contracting vehicle is actually best suited for buying goods and services required during an emergency. IDIQs can lay the groundwork for an unpredictable event by establishing terms and prices if goods and services are needed at some future time. IDIQs would have helped significantly both during and immediately after Hurricane Katrina.

Before Katrina struck, FEMA had only one contract in place relevant to the Katrina response for temporary housing. According to former FEMA director Mike Brown, FEMA in some cases had to buy goods and services off the street to meet demand because of inadequate pre-established contracts.

Perhaps the most tragic consequence of inadequate pre-established contingency contracts involved the removal of deceased victims from the devastated areas. After much finger-pointing between FEMA and Louisiana officials, on September 13, 2005, Governor Blanco directed the Louisiana Department of Health and Hospitals to sign a written contract to retrieve and transport the bodies of the deceased. Federal officials maintained that body recovery was ultimately a state responsibility with the federal government providing support only.

In another example of the kinds of goods and services that could be expected and planned for in an emergency, FEMA fumbled during its ordering of crates to rescue the many pets stranded after the storm. “With thousands of starving animals wandering New Orleans, the federal disaster agency placed an emergency $28,370 order with PetsMart for 970 wire pet crates on Sept. 9. The pet-supply chain jumped at the chance to help, even waiving delivery charges, a spokeswoman says. Over four days, FEMA first changed its order, canceled it, reinstated it, put it on hold and finally demanded it. But when the PetsMart truck arrived at a New Orleans naval base Friday, it was initially turned away. When the driver finally gained entry, he drove around the base all day, racking up 152 miles, to find someone to take delivery. The tail-chasing experience left PetsMart ‘frustrated and disappointed.’ FEMA admits ‘kinks’ in the process, but says it was its first big pet rescue.”

In instances when the government was in a position to use pre-negotiated contracts, it failed to do so. Even though one company on the General Services Administration

57 Ibid.
59 Keith Naughton and Mark Hosenball, Newsweek, “Cash and ‘Cat 5’ Chaos -- The gold rush: Contractors and prospectors are flooding the Gulf Coast to grab their piece of the biggest reconstruction ever. If only FEMA could stop fumbling,” September, 2005. Available at http://www.msnbc.msn.com/id/9379239/.
60 GSA schedules offer government buyers goods and services at pre-negotiated rates from approved vendors. Similar to a company’s catalog, government officers can look up information on which suppliers have a contract and what items are available.
(GSA) schedule to lease cars, SUVs, and light trucks could have provided FEMA with vehicles for under $600/month,\(^{61}\) FEMA instead paid Enterprise Rent-A-Car to lease 18 vehicles at the annual price of $11,232 a vehicle ($936/month).\(^{62}\)

In an effort to prevent contracting with the “usual suspects” that have long rap sheets of misconduct, the government should look for responsible vendors during its planning and contingency contracting phase. Some of the largest contractors hired to respond to the hurricanes have had checkered histories of misconduct: CH2M Hill (5 instances); Bechtel (11 instances); Halliburton/KBR (12 instances); and Fluor (18 instances). Instances of misconduct include: false claims against the government, violations of the Anti-Kickback Act, fraud, conspiracy to launder money, retaliation against workers’ complaints, and environmental violations.\(^{63}\)

In the wake of Hurricane Katrina, C. Henderson Consulting Inc. received a FEMA contract valued at $5.2 million to provide 50 ambulances a day for the month of September. GoldStar EMS, a Texas ambulance provider was subcontracted by C. Henderson Consulting to provide 45 ambulances to fulfill C. Henderson’s contractual obligations. These ambulances were available because the company was, essentially, waiting to go out of business due to an FBI investigation into alleged Medicaid fraud by top executives.\(^{64}\)

**Confusion about the Stafford Act**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act is the primary legislation governing FEMA’s response to catastrophic disasters, yet FEMA and other key federal entities have consistently struggled to enforce and understand the law. During Hurricane Katrina, FEMA and other agencies were not prepared to implement the Stafford Act preference for contractors residing or doing business in the affected area.\(^{65}\) Unfortunately, this is not a new problem: a 1993 GAO Report examining federal disaster management, especially the response to Hurricane Andrew, found that federal agencies failed to mobilize local resources and undertake advance preparations because they were unsure about what the statutory guidance required.\(^{66}\)

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\(^{63}\) POGO’s Federal Contractor Misconduct Database. Available at http://www.pogo.org.


In its examination of federal agency responses to Hurricane Katrina, the House Select Committee to Investigate the Preparation for and Response to Hurricane Katrina found that the Stafford Act’s ambiguous statutory guidance regarding local contractor participation resulted in few local firms receiving contracts and ongoing disputes over procuring contracts for debris removal and other services.67

Inadequate Competition

To better evaluate goods and services and get the lowest practical cost68 the government must encourage competition. Competition is essential to prevent waste, fraud, and abuse, and it promotes integrity in government spending. Moreover, by opening federal contracting competition to all contractors (including small and minority businesses), the government will expand its opportunities beyond the currently closed club of federal contractors. No-bid or sole source contracts may be necessary in some cases and there are existing exceptions found in federal regulations, but they should be used sparingly. During Katrina, the federal government missed giving contracts to the best and brightest contractors, instead relying on the familiar and convenient.

Lack of competition and re-competing

By the end of September 2005, it was reported that 80 percent of and approximately $1.5 billion spent on contracts had been awarded without full and open competition.69 The government estimated that 58.8 percent of the Hurricane Katrina contracts awarded before November 30, 2005, were noncompetitive. The justification for allowing no-bid contracts was the urgent need for rapid emergency response. Other government reports found that 50.5 percent of the contracts have continued to be awarded noncompetitively—despite the fact that an emergency action is no longer required and, therefore, no longer justifies no-bid contracts.70

According to the June 30, 2006, President’s Council for Integrity and Efficiency (PCIE) Hurricane Katrina Report,71

68 A policy debate continues pitting “low price” against “best value” as the preferred method for buying goods and services. Buying goods and services at the “lowest practical cost” would allow for some buying flexibility and provide a more objective criteria that would prevent the unjustified steering of contracts to non-responsible, questionable, or politically-connected companies.
• Over 7,600 contracts have been awarded, totaling $10.6 billion;
• Almost 95% ($10 billion) of the contracts awarded were in excess of $500K; and
• Almost 70% (861 out of 1237) of the contracts over $500K were awarded with less than full and open competition.

As the data above shows, competitive awards were not used for the vast majority of large contracts, causing the government to buy goods and services at non-competitive prices.

The most glaring example of the negative impacts of non-competitive contracting was the four no-bid contract awarded to Fluor, CH2M Hill, Bechtel, and the Shaw Group. Awarded after Katrina hit land, FEMA awarded each company a contract with a ceiling price of $500 million. On October 6, 2005, David Paulison testified before the Senate Homeland Security and Governmental Affairs Committee that he has “never been a fan of no-bid contracts” and that FEMA would “re-bid all of those no-bid contracts.” Re-bidding did not occur, however, until August 2006. In fact, FEMA actually raised the ceilings on those contracts, authorizing more than $3.3 billion to the four companies. 72

To off-set the public criticism, FEMA awarded up to $3.6 billion in temporary hurricane-victim housing contracts to small and minority-owned firms. 73

In another case, a sole-source printing services contract for $200,000 was awarded without any evidence of competition or justification of urgency. For one order placed under the contract, the contracting officer did not obtain a price quote for printing 60,000 brochures. The $34,015 billed for this printing service was paid without evidence of a prior agreement on price. 74

While emergency circumstances give the government some leeway in entering into contracts that lack full and open competition, 75 FEMA did not consistently re-compete contracts once the emergency period ended. 76 For example, while FEMA’s decision to hire the paramilitary security firm Blackwater to provide law enforcement assistance in the area was questionable, the government found the contract terms “appropriate” and the contract price ($950 per security officer per day) “reasonable.” However, the changing

75FAR Subpart 6.3 outlines situations that permit less than full and open competition – the exceptions are: “only one responsible source,” “unusual and compelling urgency,” “expert services,” “international agreement,” “authorized or required by statute,” “national security,” and “public interest.”
security requirements from the emergency response period meant that the government could have “reduce[d] costs by soliciting competitive proposals using a mix of armed and unarmed security personnel.” There were many out-of-work local law enforcement officers who have could been employed, and therefore the government could have saved hundreds of dollars per person each day.

Federal agencies use the excuse that because they need to buy goods and services quickly, they cannot wait to solicit competitive bids from prospective vendors. One example that disproves that myth was the Military Sealift Command’s effort to procure cruise ships to be used as temporary housing for FEMA. Although the results of this effort have met with ridicule, because the low occupancy rates caused the per person cost to skyrocket, the government did conduct a competition in 19.5 hours and received offers for 13 vessels from seven contractors.

Lack of Accountability

To ensure that taxpayer dollars are being spent responsibly the government must regularly monitor and audit contracts.

Poor Oversight of Contracts

Poor oversight in the award and monitoring stages of contracting are two of the most recurrent problems in the federal government’s response to Hurricane Katrina. Issues range from too few contracting officers to over-billing the federal government.

Adequate staffing was a huge problem for FEMA. According to one DHS official, FEMA was authorized to hire approximately 60 contracting officers prior to Katrina hitting U.S. soil -- some government reports have stated that 172 acquisition officials were needed. The agency, however, was severely understaffed – with only 36 contracting officers on staff. Director Paulison has stated that FEMA is now getting the resources it needs and that he is working with Congress to increase the size of the agency.

79 Federal Bar association, Briefing by Hugo Teufel III, DHS Associate General Counsel, January 19, 2006.
81 Federal Bar association, Briefing by Hugo Teufel III, DHS Associate General Counsel, January 19, 2006.
Many government reports attributed the lack of oversight to the frequent rotation of officials in and out of the areas, and other acquisition officials being “borrowed” from other agencies. All too often, there was no overlap in the rotation, allowing valuable institutional memory and scenario-specific information to be lost.\textsuperscript{83}

As a result of inadequate contracting staff, mistakes were multiplied, some of which have been detected by post-award audits. Members of the House Government Reform Committee found that mileage claims were overstated and duplicate bills were submitted for debris removal and other services.\textsuperscript{84} Additional examples of problems include: two temporary FEMA employees being arrested for soliciting a $20,000 bribe in return for inflating a catering contract.\textsuperscript{85} One of the most costly mistakes was an alleged computation error missed by FEMA officials that would have resulted in Bechtel double-billing the federal government $48 million, if it had not been found by the Defense Contract Audit Agency.\textsuperscript{86} These mistakes were caught because of the tremendous emphasis on after-the-fact oversight occurring, and should not be mistaken for the necessary oversight of government contracts that should have occurred during the duration of the contract.\textsuperscript{87}

Poor contract oversight is exacerbated by the lack of communication among agencies that delegated acquisition functions. For instance, FEMA tasked the General Services Administration (GSA) to write three contracts in Louisiana for base camps, hotel rooms, and ambulances, with a total value of over $120 million. GSA contracting officers awarded the contracts, but FEMA did not perform its oversight mission and the FEMA officials listed as the points of contact had no knowledge of the contracts. The GAO reported that “only after contacting multiple FEMA officials over a 3-week period were we able to determine the agency officials responsible for contract oversight.”\textsuperscript{88}

In another case, the government overpaid Clearbrook LLC $3 million because of a mathematical error.\textsuperscript{89} That contract was riddled with other problems including the


\textsuperscript{86} Ibid., p. 3.

\textsuperscript{87} The current dramatic increases in government spending, large jumps in contract actions, and leveling off of the size of the acquisition workforce offer huge concerns for how well the federal government spends taxpayer dollars.


payment of $4.9 million prior to the effective date of the contract, billing the government as if it were a “time and material plus fixed per diem rate contract” rather than the contract’s fixed price provision, and questions about the adequateness of the contract because it contained no details about the scope of work and a lack of documentation supporting price reasonableness.

The Department of Transportation Inspector General (DOT IG) reviewed the Federal Aviation Administration (FAA) contract with Landstar Express America for the transportation of commodities such as water, ice, and food. The IG found that “better internal controls over the emergency disaster relief transportation services contract are needed to ensure that the Government receives the transportation services it pays for.” Although such documentation existed, it was not sent to regional offices and therefore was “not used to verify invoices from the contractor. Instead, the contracting officers were relying on documentation provided by the contractor to verify that transportation services had been provided as billed.” In other words, the government relied on contractors to support their own invoices – an example of contractor self-policing.

Landstar had submitted 570 invoices for its services. When the DOT IG arrived to perform audits, only six of them had been paid – but those few invoices alone had resulted in $33 million in overcharges. Imagine the magnitude of overpayment likely to have been discovered if all 570 invoices had been paid.

A related example of inadequate oversight involves FEMA’s transportation support services contracts, which lacked performance standards. As a result, those services were “unresponsive and unreliable” – complaints with transportation services ranged from drivers being slow to make deliveries, drivers who were quick to turn back due to poor road or weather conditions (even in instances when the roads were open) and in one instance, “a driver claimed to be en route but a tracking device indicated he was still in a parking lot where he was found asleep.”

The “blue roof” program is another example of poor contract oversight. FEMA and the Army Corps of Engineers entered into contracts to cover wind-damaged roofs with blue tarps. The main contractors—the Shaw Group, Simon Roofing, and LJC Construction— subcontracted the work out to contractors who in turn subcontracted the work. Due to the many levels of subcontractors, the multi-tiered contracts were sometimes inflated as

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90 Ibid.; “Time and materials” contracts provide few incentives to get work done quickly because contractors make more money the longer they take to perform. See FAR Subpart 16.6.
91 Ibid.
much as 1,700% of the job’s actual cost; the taxpayer paid an average of $2,480 per roof for a job that should cost under $300.  

Vague Contracts with Inadequate Cost Controls

FEMA currently lacks a contracting template that clearly defines the expected roles, responsibilities, deliverables, and performance measures for contractors implementing FEMA’s missions.  

As a result, many of FEMA’s contracts were incomplete and included open-ended or vague terms, which raised contractors’ concerns about liability and changing requirements.  

FEMA also did not use a standard template for contract specifications for many of the products and services that it purchased, despite the fact that the same products and services were obtained on a regular basis.  

Ambiguous contractual terms often led to inefficiency and waste.

For instance, an “agreement” with Corporate Lodging Consultants, Inc. (CLC) for emergency lodging for evacuees failed to include any mechanisms to control lodging costs (i.e., incentives or penalties regarding lodging cost goals or a per night cap).  

In fact, the per-night room rate escalated from the task order estimated price of $60 to as high as $364 and, as late as December 2005 FEMA was still paying those relatively high prices because the contract did not clearly outline price expectations.  

FEMA also was charged room rates that were considerably higher rates than the hotels’ published rate -- discrepancies that ranged from $44.95 to $114.08.

The most publicized example of inadequate cost controls was seen in FEMA’s portable classroom contract with Akima.  Although the contract price increased nearly $8 million overnight, eventually bringing the final contract price to $39.5 million, federal officials...

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100 Ibid., p. 2.

did not appear to question the higher amount or ask for any justification for the “inflated” price.\textsuperscript{102}

Additionally, FEMA often did not adequately define the roles, responsibilities, expectation for deliverables, or performance measures for contractors.\textsuperscript{103} In many cases, otherwise routine contract actions were legally bypassed in order to get contractors to begin work immediately. As a result, some contracts lacked clear and definitive work statements, independent cost estimates, and various levels of competition. FEMA often simply instructed companies to begin work and submit vouchers for payment for the acquisition of food, ice, buses, and other supplies, relying in many cases on an assumption of good faith between agencies and contractors.\textsuperscript{104}

Government investigations also found that many large contracts were awarded with pre-award cost authorizations without spending limits. Even by November 1, 2005, long after the need for urgent action had past, the verbal authorizations and letter contracts with Bechtel, CH2M Hill, Fluor and Shaw Environmental for temporary housing had not been converted to formal task orders with definitive pricing.\textsuperscript{105}

**Government Purchase Cards**

In response to the immediate need to get goods and services to victims quickly, despite existing authority to do so,\textsuperscript{106} Congress and the President drastically raised government purchase card limits from $2,500 to $250,000 per purchase.\textsuperscript{107} The result of that increase was that competition requirements were waived for any purchases up to that extraordinarily high limit, therefore placing taxpayer dollars at unnecessary risk.\textsuperscript{108} Government purchase cards have a history of being outrageously abused – with government employees buying escort services, a much-publicized breast implant operation for a Hooters waitress, among others.\textsuperscript{109} After much public ridicule, on October 3, 2005, the White House announced that it was returning the government purchase card limit back to $2,500, stating “the higher purchase limits are no longer

\textsuperscript{105} Ibid., p. 33.
\textsuperscript{106} See FAR Subpart 6.3.
\textsuperscript{109} See http://pogo.org/p/contracts/PurchaseCards.html.
needed and will be used only in ‘exceptional circumstances’ in order to guard against fraud and abuse.’\textsuperscript{110}

Government purchase cards were intended to be used by government officials to buy everyday items such as cell phones, office supplies, construction equipment, computer products, clothing, sleeping bags, rental cars, lodging, refrigerators, coolers, syringes, and digital cameras. While a well-controlled purchase card program can reduce transaction processing costs and provide agencies with flexibility to achieve their mission objectives, government purchase cards in response to Hurricane Katrina were used in what GAO has described as a “weak control environment.”\textsuperscript{111}

The GAO detailed “numerous examples of potentially fraudulent, improper, and abusive or questionable transactions,”\textsuperscript{112} including the purchase of a beer brewing kit for $230, a 63-inch plasma screen television costing $8,000 that was found unused in its original box six months after being purchased, training at a golf and tennis resort for $2,000, iPods for $7,000, dog booties costing $68,000, and expensive shower units that cost $71,000.\textsuperscript{113}

To be effective, DHS’s purchase card program requires written authorization, independent documentation that items have been received, the cardholder reconciling underlying receipts/sales slips to monthly purchase card statements and the identification of any invalid charges to prepare dispute forms; and a follow-up of any dispute forms.\textsuperscript{114} Unfortunately, the Chief Financial Officer (CFO) did not make sure that these controls were consistently applied and many organizational elements failed to follow up with cardholders who failed to supply supporting documentation, resulting in approximately 10,339 transactions between December 2003 and February 2006 avoiding an audit.\textsuperscript{115}

A statistical review of DHS purchase card transactions found that 45 percent of transactions did not have the recommended prior written authorization and approximately 63 percent of transactions lacked evidence that the goods or services were actually received.\textsuperscript{116}

The controls over the government purchase card program were inconsistent and insufficient. For 60 of 96 purchase card transactions in a statistical sample, GAO found that cardholders lacked documentation showing that they had received adequate training


\textsuperscript{112} Ibid., Summary.

\textsuperscript{113} Ibid., p. 26.

\textsuperscript{114} Ibid., p. 35.

\textsuperscript{115} Ibid., p. 10.

\textsuperscript{116} Ibid., p. 4.
on the program’s key controls.\textsuperscript{117} When cardholders are unaware of the controls, the system is more vulnerable to fraud and abuse.

Another weak control identified by GAO was the high number of cards that were open, but had not been used. As of December 2005, approximately 19 percent of purchase cards (2,468) had open accounts that had not been used since January 2005, despite the fact that OMB and GSA have clearly stated that purchase cards should only be issued to individuals who have a documented need to acquire items from the government with the purchase card.\textsuperscript{118}

Additionally, GAO found that approving officials were frequently assigned more cardholders than they could effectively supervise. In one case, three Coast Guard approving officials managed over four times the number of cardholders that DHS has considered effective.\textsuperscript{119} In six instances, the cardholder and approving official was the same person, presenting a significant conflict of interest.\textsuperscript{120}

**Minimal Transparency**

To regain public faith in the contracting system, the government must ensure that the contracting process is open to the public, including pre-award decisions, contract data, and contracting officers’ decisions and justifications. This means the process should be transparent, not only for the public to see what contractor is getting paid taxpayer dollars to provide a good or service, but also for government auditors to be able to access adequate documentation to do their work.

Unlike the contracting situation in Iraq, the government has posted some, albeit limited, Katrina and Rita contract information on the web. Although the federal government has a long way to go to catch up with technology by posting actual contracts and all task and delivery orders online, GSA, the Army Corps of Engineers, and FEMA posted spread sheets that provided insights into government spending.

For example, GSA, the Army Corps, and FEMA have publicly posted contract data, including agency name, contract number, level of competition, reason not competed, contractor name, contractor dollars obligated, contract type, a description of the good or service, place of performance, and special classifications (\textit{i.e.}, small business, woman owned, minority owned, or veteran owned classifications, if any). The Army Corps went one step further including links to some of its contracts.\textsuperscript{121} Although some of those contracts were redacted and line-item costs were not associated with the services being provided, that minimal level of transparency allowed the public to better understand the actions of the government.

\textsuperscript{117} Ibid., p. 10.
\textsuperscript{118} Ibid., p. 8.
\textsuperscript{119} Ibid.
\textsuperscript{120} Ibid.
\textsuperscript{121} Available at http://www.mvn.usace.army.mil/hps/Temporary_Roofing_Repairs.htm.
In addition, many contract files for the response to Hurricane Katrina did not contain any source selection information explaining why contracts were awarded to particular contractors, and often contained little or no documentation about “price reasonableness.” In some cases, contracting officers agreed to multi-million dollar price quotes without any documentation. Other contracts were awarded with limited terms, conditions, scope of work descriptions, and prices. Many contract files did not contain any source selection information, and there was no apparent source selection process for some contract awards. Simply stated, a contracting system that allowed payments to be made and questions to be asked later exposed taxpayers to large risks.

For more information on government contracts, please visit:

GSA’s lists of Katrina and Rita contracts – https://www.fpds.gov/.

Army Corps of Engineers contracts –
http://www.hq.usace.army.mil/cepa/katrina/contracts.pdf and


**Recommendations**

**Poor Government Planning**

1. Emergency officials should review previous post-event reports to make sure that recommendations are incorporated into future contingency plans, thereby learning from prior successes and failures.

2. All major agencies should conduct reviews to pre-determine the contracts they are likely to need for goods and services during an emergency situation, including search and rescue; rapid assessment teams; medical evacuation; sheltering and temporary housing; commodity distribution; and debris removal.

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3. Agencies should enter into pre-established contingency contracts with multiple vendors, in regions throughout the entire U.S. Vendors should include small and local contractors in order to jump-start the local economy.

4. The federal government should make better use of existing contracts during emergency response situations, rather than entering into new and potentially risky contracts. This is not an endorsement of interagency contracting in non-emergency situations.

5. The government should create a centralized database which lists instances of contractor misconduct so that government procurement officials can make informed contracting decisions prior to committing federal funds. Currently, POGO provides this service on its website, www.pogo.org.

Confusion about the Stafford Act

1. Congress should review pre-declaration activities authorized under the Stafford Act to ensure agencies can adequately respond to an imminent emergency event.

2. Congress should resolve ambiguities in the Stafford Act regarding local contractor preference. In addition, clear, unambiguous remedies and penalties for failure to meet such statutorily-mandated preferences may need to be considered.

Inadequate Competition

1. Government agencies should conduct full and open competitions, to the maximum extent practicable, for all non-urgent purchases, including contingency contracts that are needed to meet any forthcoming emergency event. Agencies should require multiple competitive bids when task and delivery orders are placed.

2. Agencies should only utilize the existing exceptions to full and open competition found in federal regulations and ensure that non-competitive contract pricing is fair and reasonable.

3. Agencies should conduct limited competitions for urgent purchases, whenever possible, but obtain the lowest practical cost and rebid them once the emergency period ends.

Poor Oversight of Contracts

1. All federal agencies should rebuild acquisition and oversight staff to meet their missions and have plans in place to supplement their staff with qualified acquisition professionals in an emergency event.
2. Acquisition staff must ensure that the government is using the most appropriate contracting vehicle when the contract is awarded – entering into fixed-price contracts and avoiding high-risk performance-based and “time and materials” contracts that are prone to abuse. In the event that these risky contracts are necessary for expediency, they should include measurable performance standards and cost caps.

3. Acquisition staff must perform post-award contract oversight on the need for the goods and services, the level of competition, price/cost fairness and reasonableness determinations, type of contract used, and the length of contract.

4. Interagency contracts should be monitored by all parties, including the buying agency, the ordering agency, and the contractor.

5. FEMA should avoid rotating contracting officers. When “borrowing” is necessary, FEMA should make sure that new contracting officials are de-briefed by the previous official to decrease the loss of institutional memory.

**Vague Contracts with Inadequate Cost Controls**

1. FEMA should develop a contract mechanism that clearly defines the expected roles, responsibilities, deliverables, and performance measures for contractors.

2. Agencies should adhere to well-defined template contracts to reduce contract ambiguities and omissions.

3. Agencies should guarantee that contractors provide documentation for goods and services prior to payment of invoices.

**Government Purchase Cards**

1. Congress should pass the “Purchase Card Waste Elimination Act of 2006” (S. 457) which would require additional guidance to improve the management of the government’s purchase card program.

2. The government should consistently implement purchase card program internal controls.

3. Purchase cards should only be issued to individuals who have a documented need to acquire items for the government.

4. Purchase card accounts should be conditional on cardholders receiving training on the program’s key internal controls, which should decrease fraudulent and abusive purchases.

5. No cardholder should be their own authorizing official.
6. Agencies should confirm that approving officials review cardholder support and certify monthly statements.

**Minimal Transparency**

1. The government should post all contracting opportunities online.

2. Federal agencies awarding contracts, procuring goods or services through existing contracts or agreements, or disbursing grant money should create publicly available websites with copies of all contracts, task/delivery orders, grants, and other disbursements so that Congress and the American public can track the billions of dollars that are being spent. Congress should pass the “Federal Funding Accountability and Transparency Act of 2006” (S. 2590) to improve public access to federal spending.

3. The government should create a new online database listing all non-competitive contracts and awards.


5. Agencies need to better document contract files per the regulatory requirements. The government should not pay a contractor until applicable documentation and invoices are received and verified.