



September 2015

# DISASTER CONTRACTING

## FEMA Needs to Cohesively Manage Its Workforce and Fully Address Post- Katrina Reforms

# GAO Highlights

Highlights of [GAO-15-783](#), a report to congressional requesters

## Why GAO Did This Study

FEMA obligated \$2.1 billion in fiscal years 2013 and 2014 for products and services, which included almost \$770 million from offices responsible for disaster contracting. Providing disaster relief in a timely manner is essential, while adhering to contracting laws and regulations helps safeguard taxpayer dollars. Following Hurricane Katrina, Congress passed PKEMRA to improve FEMA's disaster contracting.

GAO was asked to review FEMA's disaster contracting practices. This report assesses the extent to which FEMA (1) made efforts to build and manage its contracting workforce and structure since PKEMRA, and (2) adopted PKEMRA reforms and demonstrated good management practices for disaster contracting.

GAO analyzed data on FEMA's workforce from fiscal years 2005 through 2014, reviewed workforce guidance, and reviewed 27 contracts—including 16 selected through a random sample and 11 through a nonprobability sample based on factors including high cost—to determine the extent to which PKEMRA provisions were met. GAO also met with contracting officials.

## What GAO Recommends

GAO recommends, among other things, that the FEMA Administrator establish procedures to prioritize DART's workload, revisit the agreement for oversight of regional contracting officers, and improve guidance on PKEMRA requirements. DHS concurred with GAO's recommendations.

View [GAO-15-783](#). For more information, contact Michele Mackin at (202) 512-4841 or [mackinm@gao.gov](mailto:mackinm@gao.gov).

September 2015

## DISASTER CONTRACTING

### FEMA Needs to Cohesively Manage Its Workforce and Fully Address Post-Katrina Reforms

## What GAO Found

The Federal Emergency Management Agency (FEMA) has more than tripled the number of contracting officers it employs since Hurricane Katrina in 2005, but it does not have a sufficient process in place to prioritize disaster workload and cohesively manage its workforce. Some of the workforce growth is attributed to the establishment of the Disaster Acquisition Response Team (DART) in 2010, which has the primary mission of deploying to provide disaster contracting support, such as contracting for blankets or debris removal. DART has gradually assumed responsibility for administering the majority of disaster contract spending, but FEMA does not have a process for prioritizing the team's work during disasters. Without such a process, FEMA is at risk of developing gaps in contract oversight during major disasters. Further, in 2011, FEMA established an agreement that regional contracting officers would report to headquarters supervisors for technical oversight while continuing to respond to regional supervisors—who have responsibility for administrative duties—for everyday operations. This agreement has led to challenges for FEMA in cohesively managing its workforce, including heightening the potential for an environment of competing interests for the regional contracting officers. Further, FEMA has not revisited this agreement on annual basis as called for in the agreement. As a result, it does not incorporate lessons learned since its creation 4 years ago.

FEMA has not fully implemented 2006 Post-Katrina Emergency Management Reform Act (PKEMRA) contracting reforms due in part to incomplete guidance.

#### Status of FEMA's Implementation of Selected Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) Contracting Requirements

Selected PKEMRA requirements	GAO	
	assessment	GAO observations
<b>Noncompetitive contracts</b>		
Limit noncompetitive emergency-response contracts justified as unusual and compelling urgency to 150 days unless justified.	Some progress	DHS implemented regulations to address this requirement, but 8 of the 13 noncompetitive contracts GAO reviewed exceeded 150 days without justifications. FEMA did not address this limitation in training materials, including a desk guide for contracting officers.
<b>Contracting with local businesses</b>		
Provide preference to local vendors for contracts awarded after disasters or a written justification when a non-local contract is awarded.	Some progress	FEMA officials were aware of preferences for local contracts, but the process for determining if vendors are local is not well-defined in FEMA's guidance. Only 1 of the 13 non-local contracts GAO reviewed included the required written justifications.
Transition non-local contracts awarded prior to a disaster to local vendors as soon as possible, unless justified. FEMA guidance requires such transitions within 6 months.	Some progress	Two of the 13 non-local contracts GAO reviewed were awarded before the disaster and required to transition to local vendors within 6 months but did not do so.

Source: GAO analysis of Federal Acquisition Regulations, DHS guidance, and FEMA contract data. | GAO-15-783

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## Abbreviations

DHS	Department of Homeland Security
DART	Disaster Acquisition Response Team
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
FPDS-NG	Federal Procurement Data System – Next Generation
IDIQ	indefinite-delivery indefinite-quantity
OCPO	Office of the Chief Procurement Officer
PKEMRA	Post-Katrina Emergency Management Reform Act of 2006
Stafford Act	Robert T. Stafford Disaster Relief and Emergency Assistance Act

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September 29, 2015

### Congressional Requesters

In meeting its mission to help prepare for, mitigate, respond to, and recover from disasters, the Federal Emergency Management Agency (FEMA)—a component of the Department of Homeland Security (DHS)—contracts for a variety of products and services, ranging from providing tarps and blankets for disaster survivors to computer systems support. In fiscal years 2013 and 2014, FEMA obligated more than \$2.1 billion for its disaster and non-disaster contracts. The focus of this report is FEMA's disaster contracting, which during this period included obligations of \$631 million from the FEMA headquarters contracting offices primarily responsible for supporting disasters, and almost \$137 million from FEMA's regional offices.

Buying needed products or services in a timely manner is essential, particularly when supporting an active disaster, but these needs must be balanced with other requirements, including following contracting laws and regulations. Congress passed the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) to address various shortcomings in FEMA's disaster response capabilities.<sup>1</sup> Among the more than 300 reform provisions are 4 requirements for DHS and FEMA to improve contracting practices to strengthen preparedness and accountability. In 2008, GAO reported on actions taken by DHS and FEMA to implement those requirements and found that FEMA had generally made preliminary progress but work remained to fully implement the provisions.<sup>2</sup>

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<sup>1</sup>The Post-Katrina Act was enacted as Title VI of the Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, 120 Stat. 1355 (2006). The provisions of the Post-Katrina Act became effective upon enactment, October 4, 2006, with the exception of certain organizational changes related to FEMA, most of which took effect on March 31, 2007.

<sup>2</sup>GAO, *Actions Taken to Implement the Post-Katrina Emergency Management Reform Act of 2006*, [GAO-09-59R](#) (Washington, D.C.: Nov. 21, 2008). We did not make recommendations in this report.

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You asked us to review FEMA's contracting practices in support of disasters and its efforts to implement requirements from PKEMRA. This report addresses the extent to which FEMA has (1) made efforts to build and manage its contracting workforce and structure to support disasters since the enactment of PKEMRA and (2) adopted contracting reforms identified in PKEMRA and demonstrated good management practices to enhance its disaster contracting.

To assess FEMA's efforts to build and manage its contracting workforce and structure, we reviewed and analyzed data on FEMA's workforce since Hurricane Katrina, which occurred in 2005, to identify staff size, rates of attrition, and years of experience. To assess the reliability of the workforce data used in the review, we reviewed information on the data collection process and compared key data elements from the workforce data to statements about start dates, home offices, and deployments made by officials that we interviewed. We concluded the workforce data was sufficiently reliable for the purposes of this review. To understand how FEMA manages its workforce, including the contracting officers who deploy to disaster areas, we met with officials in the Office of the Chief Procurement Officer (OCPO) that support disaster contracting activities and contracting officials and their supervisors in FEMA's 10 regional offices. We reviewed available workforce documents, including training materials and requirements for deployment, to determine the range of activities carried out by regional and headquarters contracting staff. We analyzed the agreement that governs headquarters' role in regional contracting to determine the roles and responsibilities of regional offices and headquarters in disaster contracting. We also reviewed guidance from the Office of Federal Procurement Policy and FEMA regarding training requirements for contracting officers. Further, we reviewed federal internal control standards to determine if any major performance challenges exist.<sup>3</sup> We also assessed the extent to which FEMA relies on contractors to support its acquisition function by identifying acquisition support contracts and interviewing contracting officials. We found that FEMA's use of acquisition support contracts was limited.

To assess FEMA's adoption of PKEMRA contracting reforms and good management practices that support requirements for internal controls, we

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<sup>3</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

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analyzed data from the Federal Procurement Data System-Next Generation (FPDS-NG) to identify contracts awarded by offices principally involved in planning for or responding to disasters.<sup>4</sup> Because the PKEMRA contracting reforms only apply to disaster support contracts, we focused on contracting offices most likely to award such contracts. We identified the contracting offices based on our analysis of FEMA's obligations in FPDS-NG, which we confirmed with senior FEMA contracting officials. From these offices, we selected a non-representative sample of 27 contracts and task orders with obligations in fiscal years 2013 and 2014 and confirmed that they supported disaster response efforts. Sixteen of the contracts and orders were selected using a stratified random sample that reflected key elements of PKEMRA contracting reforms and the other eleven were selected through a nonprobability sample selected based on factors including high cost. Although the information collected from our review of contracts is not generalizable to all relevant contracts, it was valuable for supplementing interviews with FEMA contracting officials in the contracting offices most likely to support disaster contracts and from FEMA's 10 regions. To understand steps taken to implement PKEMRA contracting requirements, we spoke to officials from DHS OCPO and FEMA policy officials. We also reviewed FEMA's quarterly reports to Congress on contracting activities, and spoke to officials responsible for these reports, to determine if the 27 contracts and task orders we studied were accurately reported. Further, we reviewed documentation related to good management practices, including the Federal Acquisition Regulation (FAR) and DHS guidance on required contracting reviews. Additional details on our objectives, scope, and methodology can be found in appendix I.

We conducted this performance audit from October 2014 to September 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>4</sup>The Federal Procurement Data System-Next Generation (FPDS-NG) is a system for collecting, developing, and disseminating procurement data. Since 1978, FPDS-NG has been the primary government-wide contracting database. Agency reporting requirements for FPDS-NG are in Federal Acquisition Regulation (FAR) subpart 4.6. FPDS-NG data are described in FAR § 4.606.



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## Background

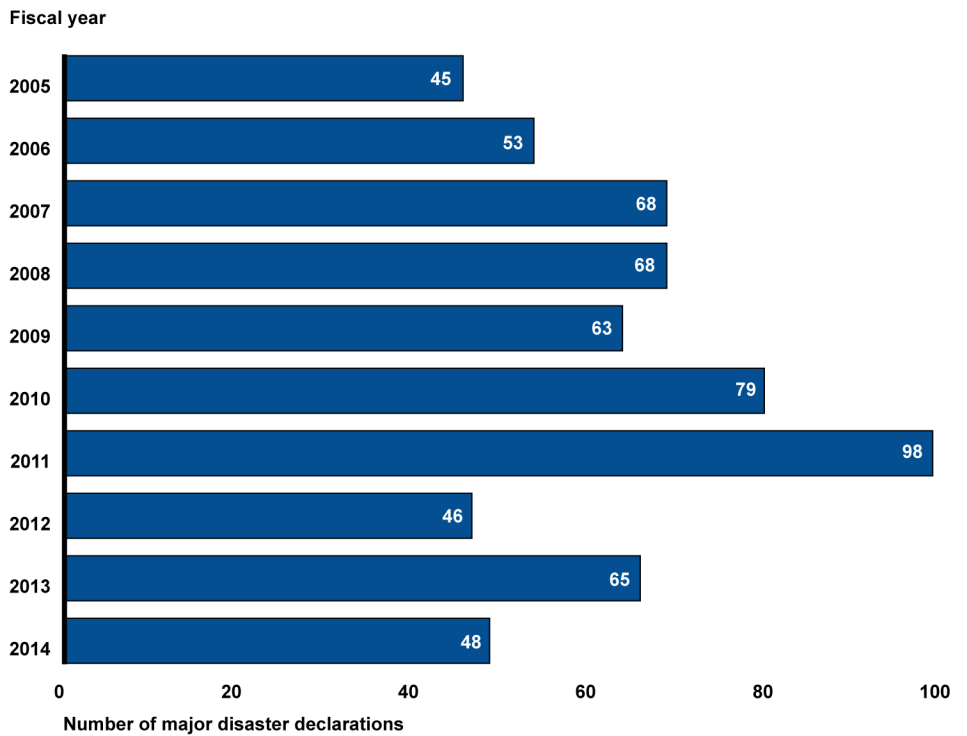
State and local entities are typically responsible for disaster response efforts, but federal law establishes the process by which a state may request a presidential disaster declaration to obtain federal assistance. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, permits the President to declare a major disaster after a governor of a state or chief executive of an affected tribal government finds that a disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and local governments and that federal assistance is necessary.<sup>5</sup> The act also generally defines the federal government's role during disaster response and recovery and establishes the programs and processes through which the federal government provides disaster assistance.<sup>6</sup> Figure 1 shows the number of major disasters declared in the United States since Hurricane Katrina, from fiscal years 2005 through 2014.

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<sup>5</sup>42 U.S.C. § 5170.

<sup>6</sup>42 U.S.C. § 5170-5189g.

**Figure 1: Major Disaster Declarations during Fiscal Years 2005 through 2014**



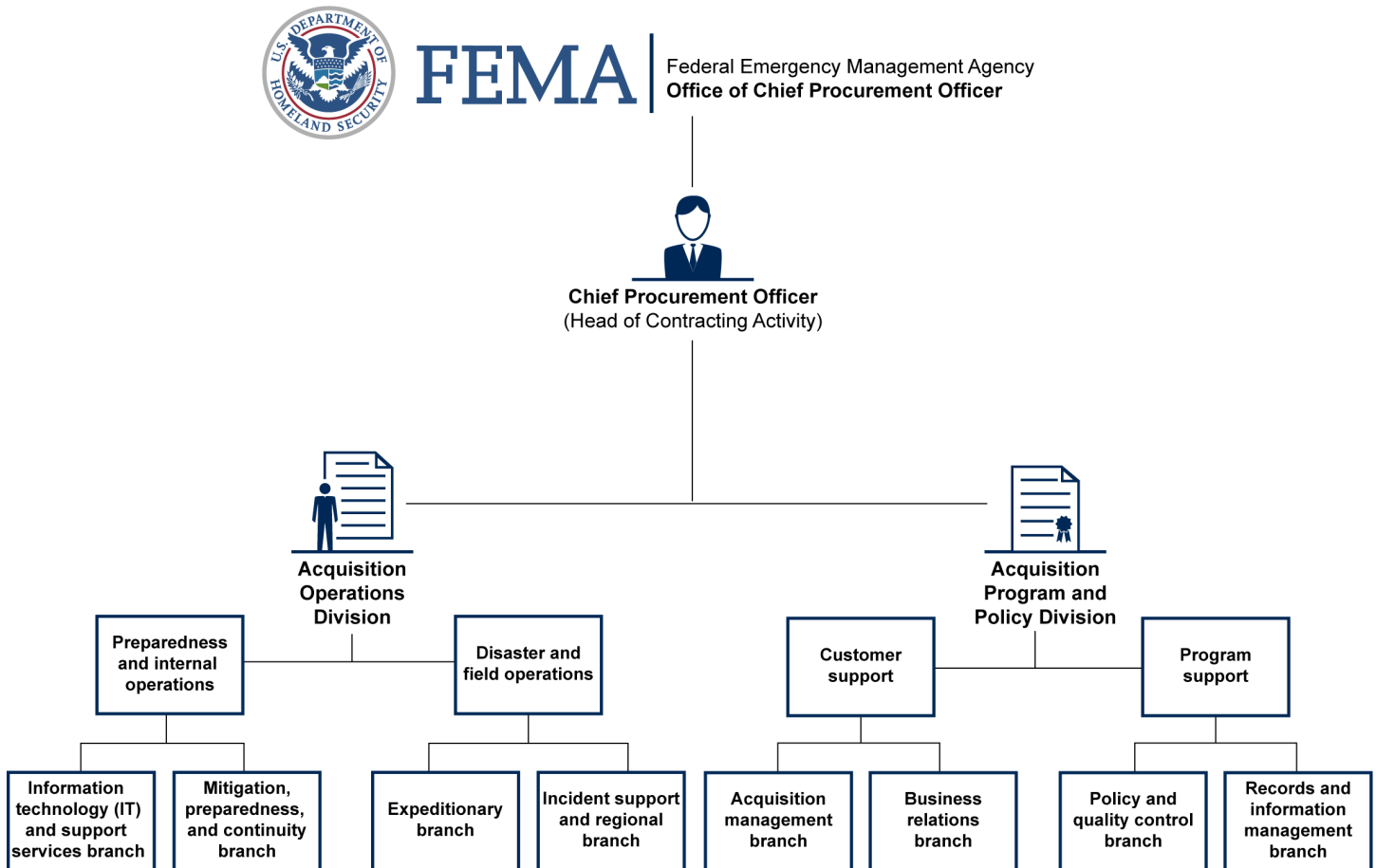
Source: GAO analysis of FEMA data. | GAO-15-783

Federal financial assistance for a major disaster comes through the Disaster Relief Fund, a source of appropriated funding that provides grants and other support to state, local, and tribal governments during disaster recovery. The fund is also used by FEMA for its administrative costs related to providing and managing disaster assistance, and for contracts in support of disaster relief efforts. For example, FEMA awarded contracts worth more than \$347 million in fiscal years 2013 and 2014 to provide technical support—such as architecture and engineering services—to the public assistance program that helps states and local governments rebuild damaged infrastructure.

## Contracting Workforce in FEMA’s Headquarters and Regions

FEMA’s contracting efforts are supported by a contracting workforce in OCPO, located in FEMA headquarters and in its 10 regions. This office is led by FEMA’s Chief Procurement Officer, who is also the Head of Contracting Activity. Figure 2 shows the current structure of the OCPO, which reflects a recent reorganization effective January 1, 2015.

Figure 2: FEMA Office of the Chief Procurement Officer



Source: GAO analysis of FEMA data. | GAO-15-783

FEMA’s contracting officers in headquarters support a variety of functions, including supporting information technology, activities to prepare for and mitigate disasters, and disaster response. The disaster and field operations division manages contracting for disaster response efforts including

- logistics—delivering goods and services to support disaster survivors and communities, including life-sustaining commodities such as meals, blankets, and electricity generators,
- response—coordinating capabilities needed immediately following a disaster, such as air and ground evacuation services and emergency sheltering, and

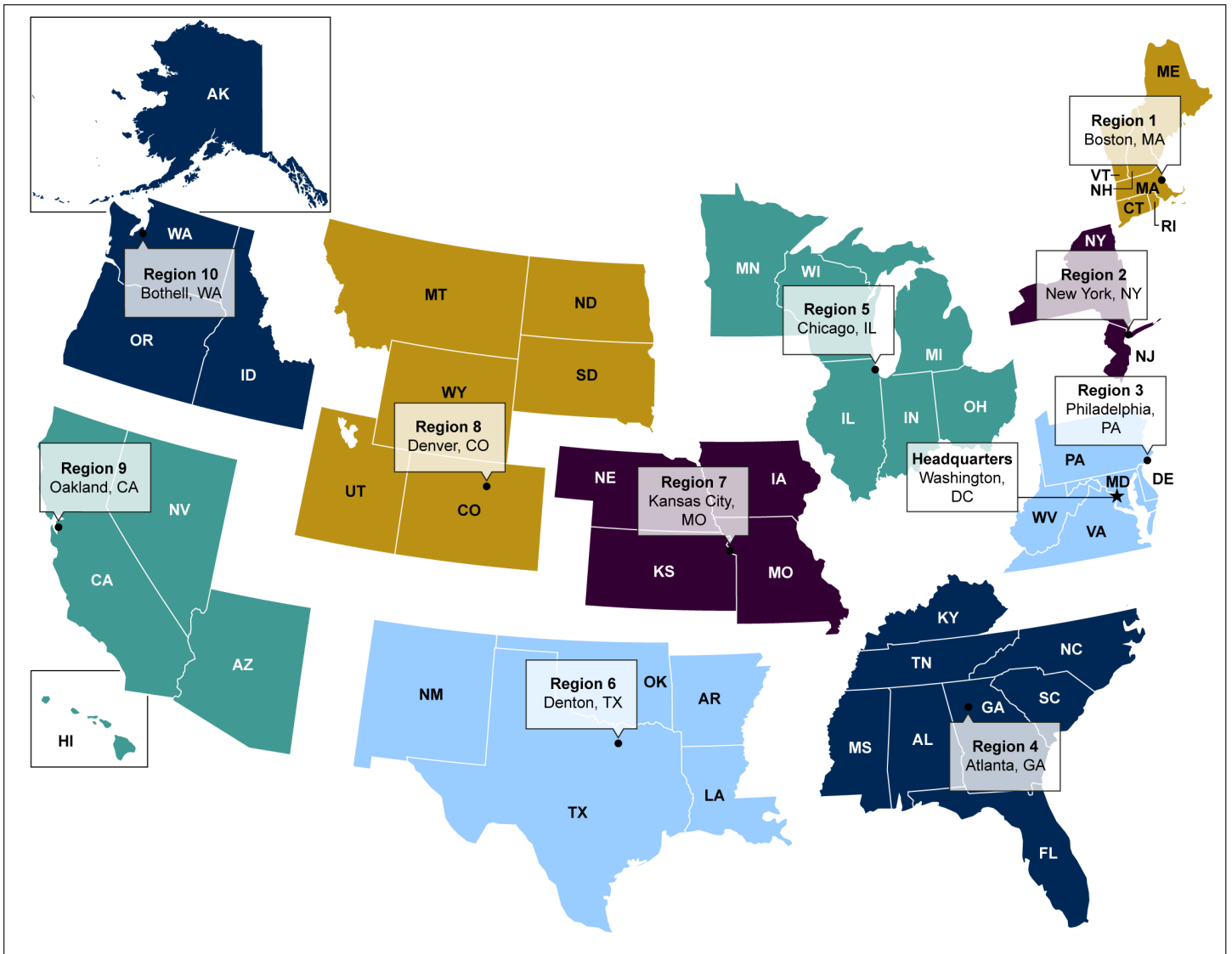
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- recovery—primarily supporting rebuilding efforts, including technical assistance programs.

In fiscal years 2013 and 2014, FEMA's headquarters contracting offices primarily responsible for supporting disaster relief efforts—including logistics, response, and recovery—obligated \$631 million in contracts and task orders.

While the majority of FEMA's contracting workforce is located in headquarters, contracting officers are also located in each of FEMA's regional offices. Figure 3 identifies the location of FEMA's headquarters and 10 regional offices.

**Figure 3: Federal Emergency Management Agency (FEMA) Headquarters and Regional Offices**

Contracting Efforts Are Supported by FEMA's Headquarters in Washington, D.C. and in FEMA's 10 Regional Offices



Source: GAO analysis of FEMA data. | GAO-15-783

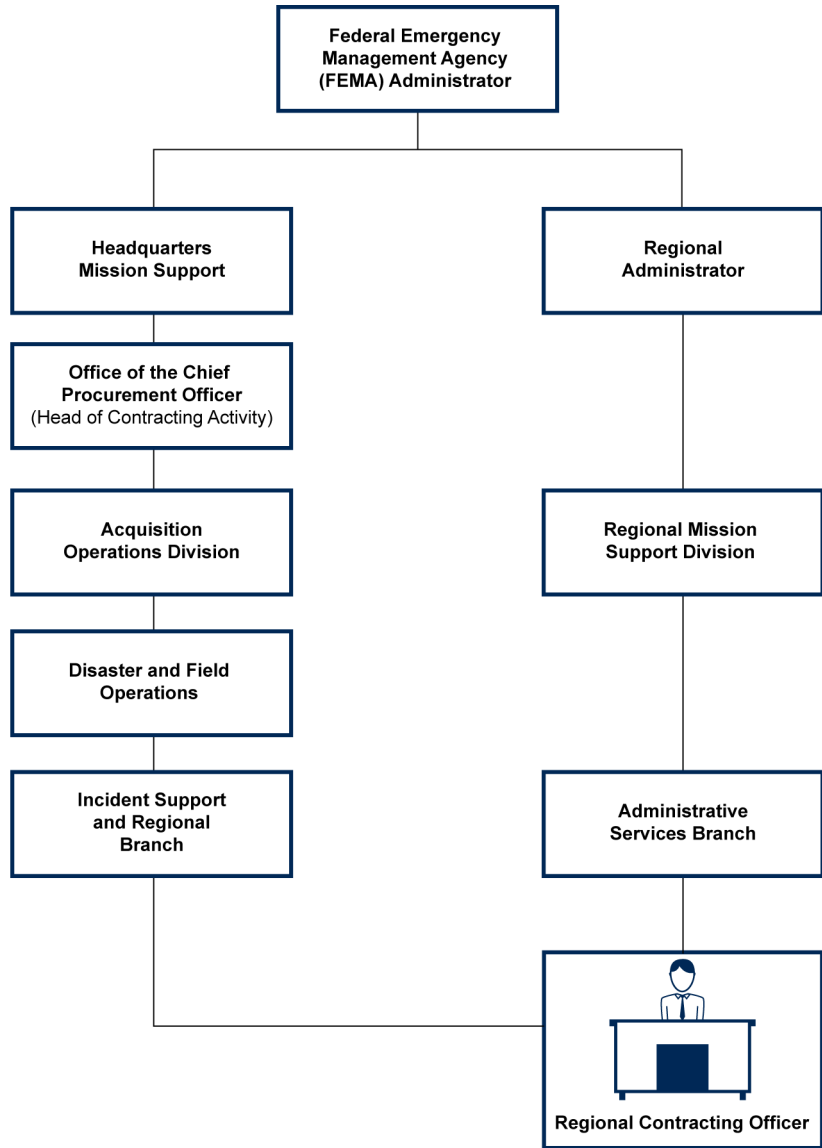
Note: FEMA's regional offices are also responsible for the District of Columbia, Puerto Rico, the Virgin Islands, United States territories in the Pacific Islands, and tribal entities.

While they support a variety of contracting functions for their respective regions, these contracting officers serve as the first response for contracting if a disaster occurs in their region. During a disaster, the

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regional offices can request additional contracting support from headquarters if needed. Contracting officers are typically located in each regional office's mission support division, which provide essential administrative, financial, information technology, and acquisition support for the region. Regional contracting officers report to both their mission support division supervisors and their OCPO supervisor in headquarters, as shown in figure 4. Each region is headed by a Regional Administrator who reports directly to the head of FEMA.

**Figure 4: Example of a Regional Contracting Officer's Reporting Chain**



Source: GAO analysis of FEMA data. | GAO-15-783

In fiscal years 2013 and 2014, FEMA's regional contracting offices obligated almost \$137 million for various efforts, including contracts for regional support, such as supplies and services to support regional offices, as well as disaster support.

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Like FEMA's overall workforce, the contracting staff consists of a combination of employees hired under different authorities. The authority under which employees are hired affects the type of work all employees—including contracting staff—can support at FEMA:

- **Title 5 employees** are both permanent and temporary employees who make up FEMA's day-to-day workforce and are responsible for administering the agency's ongoing program activities in headquarters and regional offices. During disasters, these employees can be deployed as needed. These employees are hired under title 5 of the United States Code which established the law for managing human resources in the federal government.
- **Stafford Act employees** provide support for disaster-related activities and augment FEMA's disaster workforce at facilities, regional offices, and headquarters. Stafford Act employees include a Cadre of On-Call Response/Recovery Employees, who have 2- to 4-year renewable appointments and can be deployed to fulfill any role specifically related to the incident for which they are hired and qualified, such as contracting, during disaster assistance response and recovery efforts. They also include reservists, who work on an intermittent basis and are deployed as needed.

FEMA contracting officials explained that this means title 5 contracting officers can award and administer all types of FEMA contracts, while Stafford Act employees are limited primarily to disaster-related contracting efforts. Most FEMA contracting offices, at headquarters and in the regions, include a combination of both title 5 and Stafford Act employees.

The contracting workforce includes professionals in several job series, with qualifications that are standard across civilian government contracting. These job series include the following:

- Contracting specialists in the 1102 series, which includes contracting officers who have warrants that authorize them to obligate and commit government funds. Some warrants are unlimited; others are limited to a specific dollar amount or functions, such as construction. To maintain their warrants, contracting officers must meet core



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education, training, and experience requirements set by the Office of Federal Procurement Policy.<sup>7</sup>

- Purchasing agents in the 1105 job series who are qualified to contract for smaller purchases, typically under \$150,000.

For the purposes of this report, we refer to staff in the contracting specialist job series, not purchasing agents, as the contracting workforce.

After a major disaster is declared, FEMA establishes a joint field office, a temporary office through which it coordinates disaster response and recovery efforts with state and local governments and organizations. Led by a federal coordinating officer, the joint field office is supported by incident management staff of various FEMA teams that are deployed to support the disaster. One of these teams includes contracting support staff that may come from headquarters or regional offices. Once the need for disaster response and recovery ends and a joint field office is closed, the contracts supporting the disaster are returned to the cognizant regional contracting office. In cases where long-term recovery is needed, FEMA may transition a joint field office into a long-term recovery office. For example, the joint field offices established in New York and New Jersey to support Hurricane Sandy in 2012 became long-term recovery offices in 2014.

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## PKEMRA Contracting Requirements

PKEMRA was enacted to address various shortcomings identified in the preparation for and response to Hurricane Katrina.<sup>8</sup> In a November 2008 report, we identified more than 300 provisions associated with PKEMRA and we described actions that DHS and FEMA had taken toward implementation of the law.<sup>9</sup> These included 4 provisions related to FEMA's contracting:

- restricting the contract period to 150 days for noncompetitive disaster support contracts justified as an urgent need,

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<sup>7</sup>Office of Management and Budget. *Memorandum: Revisions to the Federal Acquisition Certification in Contracting (FAC-C)* (Washington, D.C.: May 7, 2014). Agencies may also set additional agency-specific requirements.

<sup>8</sup>Pub. L. No. 109-295, §§ 601-699 (2006).

<sup>9</sup>[GAO-09-59R](#).

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- identifying products and services suitable for advance contracts—for example, food and cots for survivors and engineering services—and establishing such contracts,
  - providing a contracting preference to local vendors for disaster response contracts, justifying awards made to non-local vendors, and transitioning any contracts awarded prior to disasters, such as housing inspection contracts, to local vendors, and
  - limiting the use of subcontracts to 65 percent of the cost of cost-reimbursement contracts, task orders, or delivery orders.<sup>10</sup> This applies to contracts and orders that exceed \$150,000 and are used to support disaster response and recovery efforts.

In our 2008 report, we reported that FEMA had taken preliminary action on the PKEMRA provisions we reviewed. For example, we found that FEMA had drafted a regulation to limit the use of subcontracting in certain contracts, but it was still under review at the time of our report.

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## FEMA Has Expanded Its Contracting Workforce since 2005 but Does Not Have Sufficient Processes to Prioritize Disaster Workloads or Cohesively Manage Contracting Officers

FEMA's contracting officer workforce has grown significantly since Hurricane Katrina, but the agency has struggled with attrition at times. Turnover in FEMA's contracting officer workforce has had particular impact on smaller regional offices which, with only one or two contracting officers, face gaps in continuity. FEMA's workforce increases are due in part to the creation of the Disaster Acquisition Response Team (DART) in 2010, headquarters staff charged with supporting disasters. DART has gradually assumed responsibility for administering the majority of FEMA's disaster contract spending, but FEMA does not have a process for how the team will prioritize its work when they are deployed during a disaster. Further, in 2011, FEMA established an agreement between the regions and headquarters to revise regional contracting staff reporting responsibilities; however, we found challenges with how the agreement is being implemented, particularly in that it heightens the potential for an environment of competing interests for the regional contracting officers. FEMA has not updated the agreement, even though the agreement states it will be revisited each year, leaving it in conflict with more recent guidance that increases contracting officer training requirements.

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<sup>10</sup>Cost-reimbursement contracts allow the contractor to be paid based on allowable costs incurred, rather than delivery of a completed product or service. The contract establishes an estimate of the total cost and a ceiling that the contractor may not exceed without the contracting officer's approval. FAR § 16.301-1.

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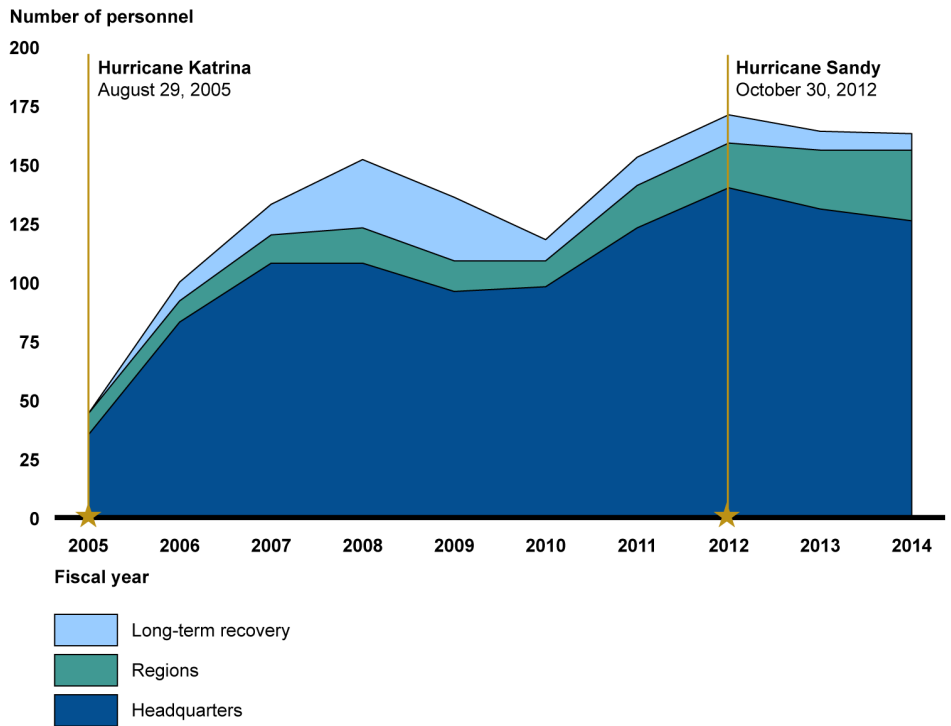
## FEMA Has Increased the Size of Its Contracting Workforce since Hurricane Katrina

The size of FEMA's contracting officer workforce at the end of fiscal year 2014 was more than triple the size of its workforce at the time of Hurricane Katrina. When Hurricane Katrina struck in 2005, FEMA had a total of 45 contracting officers in its headquarters and regional offices. In addition to hiring headquarters and regional contracting officers after Hurricane Katrina, FEMA also established long-term recovery offices to assist with lengthy recovery efforts in Louisiana and elsewhere. By the time Hurricane Sandy landed in 2012, the workforce had grown to over 170 contracting officers. This number has declined slightly since then, with FEMA having 163 contracting officers by the end of fiscal year 2014.<sup>11</sup> See figure 5 for additional information.

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<sup>11</sup>Analysis of FEMA's contracting officer workforce excludes reservists, who are Stafford Act employees that work for FEMA intermittently as needed to support of disaster efforts; they are not employed on a permanent basis.

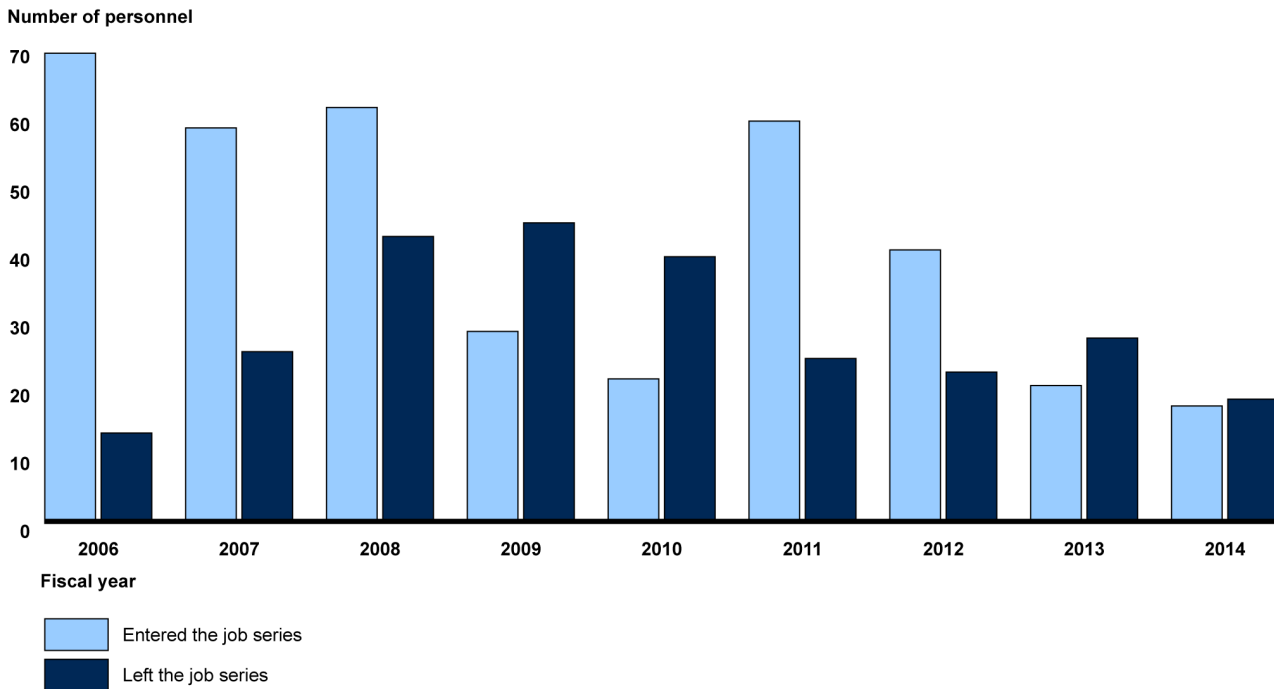
**Figure 5: Number of Federal Emergency Management Agency (FEMA) Contracting Officers from Fiscal Year 2005 through Fiscal Year 2014**



Source: GAO analysis of FEMA data. | GAO-15-783

During this period of growth, FEMA struggled with attrition at times, experiencing years in which the number of contracting officers leaving the job series outpaced the number of new additions. As seen in figure 6, FEMA was able to replace about two-thirds of the departures in fiscal years 2009, 2010, and 2013.

**Figure 6: Federal Emergency Management Agency (FEMA) Additions and Losses in the Contracting Officer Job Series from Fiscal Year 2006 through Fiscal Year 2014**



Source: GAO analysis of FEMA data. | GAO-15-783

FEMA officials noted that some of these departures were to be expected due to the natural decline in workload at long-term recovery offices for various disasters, including Hurricane Katrina. FEMA officials also explained that this slowdown in hiring occurred at FEMA due to budget shortfalls, but they received authorization to hire additional staff in 2014 and began to fill these positions in 2015.

Turnover has disproportionately affected some of FEMA’s 10 regions, where each office had two to five contracting officers at the end of fiscal year 2014. For example, at the end of fiscal year 2014, 6 of FEMA’s 10 regional offices had contracting officers with an average of 3 years or less of contracting experience at FEMA. This turnover results in gaps in continuity, particularly for regions that have a smaller number of contracting officers; for example:

- Officials stated that, as of July 2015, one region was without contracting officers due to recent staff departures and relied on headquarters assistance to meet its contracting needs. The

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headquarters staff is providing the assistance in addition to their usual duties, so the region has limited contracting capacity and potential continuity challenges.

- In two regions, officials said they received complaints from unhappy vendors due to unpaid invoices left by previous contracting officers.
- Another contracting officer noted that the contracting staff only know about open contracts when unspent funds remain and do not know how many open contracts were complete but waiting to be closed.

The turnover also limits the cumulative amount of disaster contracting experience within each regional office. As a result, some regional offices have contracting officers with limited hands-on disaster experience, yet they are tasked with being the first response for contracting should a disaster occur in his or her region.

In a 2008 memorandum about assessing the acquisition functions of an agency, the Office of Federal Procurement Policy stated that retention and turnover issues can be signs of potential staff loss or indicators of other matters related to morale, cautioning agencies that high turnover can impact mission accomplishment. Senior level FEMA officials said that morale was a challenge in addition to the high demand for contracting officers across the government. In one region, a regional supervisor stated that contracting officers can easily find other opportunities for advancement without the hassles of disaster contracting, especially if they hold certain kinds of warrants, such as for construction contracts. Headquarters officials noted that the recent reorganization was implemented partly to create more opportunities for promotion and improve morale because staff will leave if there are not enough opportunities. In addition, the officials said they have also prioritized hiring efforts to rebuild their workforce after recent years of limited hiring, which affected morale.

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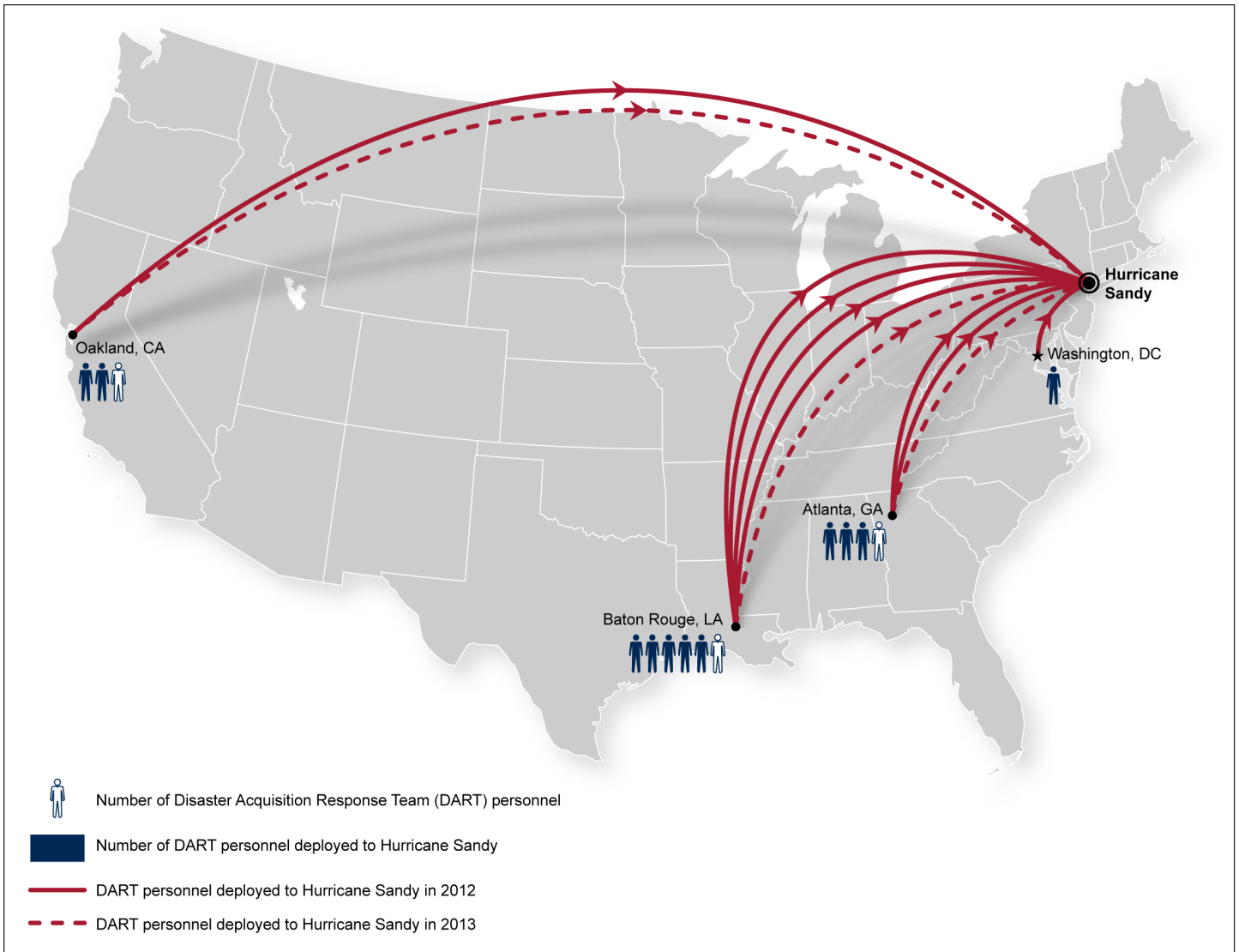
FEMA Created a Team of Disaster Contracting Officers to Provide Increased Oversight, but Has Not Established a Process for Prioritizing Workload

In a 2010 business case to justify hiring additional contracting staff, OCPO officials said it had substantially added to the size of its contracting workforce in the years since Hurricane Katrina, but that it did not have enough specialized contracting staff to manage the contract administration and oversight requirements of several simultaneous large-scale disasters or a catastrophic event. FEMA identified contract oversight as a priority after a DHS Inspector General report found that FEMA incurred over \$5 million in excessive contract costs because of inadequate controls during Hurricane Katrina.<sup>12</sup> To address the need for improved contract oversight, in 2010, FEMA created 18 new contracting officer positions to form DART, a team whose primary purpose is to support contract administration for disasters. Most DART members are located in three regional offices when not deployed to disasters, but are considered headquarters staff for management purposes. If a region needs additional contracting assistance for a disaster, it can come from reservists, who have limited procurement authority as purchasing agents and can support smaller disasters, and from DART if larger contracts or contracts that require specific warrants are needed. For example, FEMA officials reported that a DART member was deployed to a recent disaster in Alaska because none of the regional contracting officers had the architecture warrant needed to support the disaster. To illustrate how FEMA deploys DART, Figure 7 shows how and when DART members were deployed to support Hurricane Sandy response efforts. For example, two of the three DART contracting officers in Oakland, California deployed to Hurricane Sandy.

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<sup>12</sup>Department of Homeland Security Office of Inspector General, *Costs Incurred for Rejected Temporary Housing Sites*, OIG-08-86 (Washington, D.C.: August 11, 2008).

**Figure 7: DART Contracting Officers Deployed to Support Hurricane Sandy, 2012-2013**



Source: GAO analysis of FEMA data. | GAO-15-783

Note: The analysis reflects DART personnel who had been hired as of June 2013.

In its 2010 business case, OCPO stated that with DART, FEMA would be able to deploy experienced personnel to joint field offices to provide increased oversight of complex contracts during a disaster. These oversight duties would include making necessary modifications to complicated contracts and monitoring of contractor performance, such as



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assessing contractor compliance with the terms of awarded contracts and tracking costs and invoice payments.

Since its establishment in 2010, DART has gradually assumed more responsibility for administering the majority of FEMA's disaster contract spending, which senior officials explained was the original intent. Much of this expansion in their responsibilities has occurred during a time period in which FEMA has responded to fewer disasters. In addition to deploying and supporting joint field offices during disasters, DART's duties also now include the following:

- **Administering FEMA's national contracts** for housing inspection services, telecommunication services, and construction of temporary camps for disaster response personnel. Some contracts are multimillion dollar contracts. For example, FEMA obligated more than \$117 million in fiscal years 2013 and 2014 for housing inspection services, and the estimated overall value of these contracts ranges from \$550 to \$800 million. A FEMA official stated that permanent full-time contracting officers at headquarters previously handled most of these contracts.
- **Preparing to manage FEMA's public assistance contracts**, which are used to assess the extent of damage to public facilities and critical infrastructure and account for the largest share of FEMA's disaster support contracts—\$348 million of the \$631 million obligated by contracting offices in headquarters that support disasters in fiscal years 2013 and 2014. Further, officials explained that a permanent full-time contracting officer at headquarters previously handled these contracts.
- **Assisting other non-disaster efforts in FEMA.** For example, in a 2014 memo, FEMA's Head of Contracting Activity noted that he had asked for DART's assistance in augmenting headquarters staff to close out contracting actions, even though DART is normally reserved for disaster response support. In addition, FEMA officials stated that DART has been called upon to provide support in a region that was without a contracting officer since November of 2014.

As DART has assumed more responsibilities, FEMA has not established a process for prioritizing workload during busy disaster seasons. FEMA officials in charge of DART said that they review requests for DART's assistance on an ad hoc basis and follow FEMA's standard agency policy about how to redistribute their work if DART members were suddenly deployed to a disaster. While FEMA policy addresses the process for

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transitioning contract files from one contracting officer to another, it does not address how decisions will be made to prioritize which contracts the deployed DART member will remain responsible for during their deployment and which contracts will transition to another contracting officer. If a disaster were to strike, DART contracting officers said they would take some of their current workload with them while other tasks might have to wait until they could return to their normal contracting duties, or be reassigned to other contracting officers. Federal internal control standards call for agencies to document responsibilities through policies and have mechanisms in place to react to risks posed by changing conditions.<sup>13</sup> Although disaster response often occurs in a changing environment, FEMA's 2010 business case for establishing DART and the policy for transitioning contract files do not provide a standardized process through which requests for assistance will be assessed and prioritized, or how individuals' workloads will be prioritized during disasters. Without additional guidance that specifies FEMA's criteria for prioritizing DART contracts and is tailored for a workforce expected to frequently deploy in support of disasters, FEMA risks creating oversight gaps that may affect its largest contracts.

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### Agreement Establishing Headquarters and Regional Responsibilities Poses Challenges for FEMA to Cohesively Manage Its Contracting Workforce

In 2011, FEMA created a formal agreement between the regions and headquarters to establish a new role for FEMA's OCPO in overseeing regional contracting staff. Prior to the agreement, regional contracting officers only reported to their respective supervisor in the region, with no formal link to OCPO. FEMA instituted this agreement in response to a 2009 DHS Inspector General report which recommended, in keeping with DHS guidance and federal internal control standards, that only contracting officials should manage the technical performance of contracting officers.<sup>14</sup> The report stated that having the contracting officer's performance and career advancement controlled by someone who is not a contracting professional was an internal control risk and created a potential conflict-of-interest situation for the contracting officer. As a result of this agreement, regional contracting officers have a dual reporting chain to both OCPO and their supervisor within the region.

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<sup>13</sup>GAO/AIMD-00-21.3.1.

<sup>14</sup>Department of Homeland Security Office of Inspector General, *Internal Controls in the FEMA Disaster Acquisition Process*, OIG-09-32 (Washington, D.C.: Feb. 19, 2009).

The 2011 agreement outlines responsibilities of the regional contracting officer’s supervisors in OCPO and in the region. OCPO serves as the contracting officers’ official performance reviewer, while a regional supervisor manages their day-to-day activities. Table 1 details the responsibilities established through the agreement.

**Table 1: Key Elements of the Agreement for Oversight of Regional Contracting Staff**

Area of responsibility	FEMA headquarters Office of the Chief Procurement Officer	FEMA regional management
1. Operational Control	Assigns tasks to regional staff with concurrence from regional management	Manages day-to-day activities and assigns tasks in support of the region
2. Administrative Control	Submits official performance evaluations	Provides input into performance evaluations Approves time and attendance and leave requests
3. Hiring	Provides input regarding technical qualifications of candidates Chief Procurement Officer serves as selecting official of record	Recommends final candidates to Chief Procurement Officer
4. Certifications and Training	Manages all contracting certification and warrants Advises regional management about specialized training Funds headquarters-initiated training	Determines whether employees should advance to higher certification or warrant levels Funds courses necessary to advance to higher certification or warrant levels

Source: GAO analysis of FEMA data. | GAO-15-783

The agreement states that its intent is to establish roles and responsibilities for an oversight arrangement that requires greater collaboration between headquarters OCPO and regional supervisors in order to be successful. While the current arrangement is an improvement over the prior situation, where regional contracting officers had no reporting chain to the headquarters Chief Procurement Officer, we found four challenges with the current agreement that limit cohesive implementation: it creates the potential for competing interests, limits full visibility into the contracting officers’ workload, does not mitigate the potential for miscommunication between headquarters and regions, and does not reflect new training requirements.

**Competing interests.** With respect to operational control, we found that the dual reporting chain to both headquarters and regional mission support, set forth in the service level agreement, heightens the potential for an environment of competing interests for the regional contracting officers. Specifically, in some regions, supervisors have assigned duties outside of a contracting officer’s responsibilities. In other cases, contracting officers have experienced pressure from program officials to

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make decisions that may not be appropriate. In both situations, being physically located in a regional office where their regional supervisor is not a contracting professional gives contracting officers less standing to resist requests; for example:

- Based on our discussions with regional supervisors and contracting officers, we found that regional supervisors in three regions had asked contracting officers to take on additional duties outside of their contracting responsibilities. In one case, an internal review at FEMA showed that a regional contracting officer did not deploy to a disaster because he was carrying out non-contracting tasks as requested by a regional supervisor not typically responsible for overseeing contracting officers. As a result of the internal review, FEMA reassigned the contracting officer to a regional mission support supervisor to follow the management structure used in other regions.
- Contracting officers in four regions reported resistance from regional program staff in following contracting processes, such as meeting competition requirements. One mission support supervisor explained that when there are questions about contracting processes, she does not necessarily understand what the contracting officer is required to do in order to adhere to contracting regulations. In one case contracting officers reported that program staff wanted them to eschew contracting requirements and award a noncompetitive contract. The program officials complained to the regional supervisor, who in turn pressured the contracting officers to make the award.

In a July 2010 report, we found that the potential exists for program offices, which play a significant role in the contracting process, to exert pressure on contracting officers or that may not result in the best use of taxpayer dollars.<sup>15</sup> Further, a 2008 Office of Federal Procurement Policy memorandum states that agencies should consider where an acquisition function is placed because it may be viewed as an administrative support rather than as a business partner, so that contracting requirements are circumvented.<sup>16</sup> Under the current agreement, the risks associated with

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<sup>15</sup>GAO, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*, [GAO-10-833](#) (Washington, D.C.: July 26, 2010).

<sup>16</sup>Office of Management and Budget, Office of Federal Procurement Policy, *Conducting Acquisition Assessments under OMB Circular A-123*, Memorandum for Chief Acquisition Officers (Washington, D.C.: May 21, 2008).

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the divided structure of FEMA's regional contracting offices, and actions that may be taken to mitigate these risks, are not specifically addressed.

**Limited insight into contracting officers' work.** Dividing supervisory responsibilities between headquarters and regional staff has resulted in cases where neither had full insight into contracting officers' work, in both the operational control and training areas of responsibility. In some cases, problems were not detected by management and led to gaps in oversight; for example:

- A regional supervisor reported discovering poor contract administration after the departure of a contracting officer. The problems included: awarding a contract to an incorrect vendor, miscommunicating about the period of performance on a contract, and neglecting to send a copy of a contract to a vendor.
- Contracting officers in three regions discovered overdue invoices, and contracting officers in one of the regions said they had to reestablish creditability with the local vendor community that had been lost due to unpaid invoices left by previous contracting staff. Contracting officers said this situation increased some vendors' unwillingness to work with FEMA, and cited it as a potential barrier to competition in geographic areas where there are relatively few vendors available.
- Regional supervisors in one region stated that they were unaware of the extent of the training requirements for contracting officers until one of their contracting officers temporarily lost his warrant after not meeting them. Regional supervisors noted that it was difficult to operate without one of their contracting officers and ultimately decided to ask for help from headquarters and said that DART temporarily supported the region.

Senior FEMA officials noted that they recently established a quality review team in headquarters that will provide more oversight to help ensure contract actions and documentation prepared by regional and headquarters contracting officers adhere to government-wide and agency-specific regulations. The quality review team is to examine contract files for contracts starting at \$500,000 and above, while contracting staff are to conduct peer reviews of contracts below \$500,000.

**Challenges with communication and coordination.** Overall, headquarters and regional supervisors said that even with the agreement in place, communication and coordination are challenging across most of

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the areas of divided responsibilities. For example, one regional supervisor said that it was difficult to address personnel issues without being the official performance reviewer, as headquarters retains this function under the agreement. In another region, the regional supervisor said he was not made aware of an escalating disagreement between a regional contracting officer and headquarters, until the day before a task order needed to be awarded. With the current task order set to expire, the regional supervisor said that the region ultimately ceded to headquarters' preferences, even though the contracting officer felt pressured to do so. The regional supervisor noted that the current agreement with OCPO does not adequately address the roles of headquarters or regional supervisors, especially when there is a difference of opinion about how to manage staff, and further, it was difficult to find someone at headquarters to discuss how to handle the situation. A headquarters supervisor noted that the dual reporting structure sometimes created confusion about who was supposed to make specific decisions. For example, regional staff were not sure who would decide how workload would be covered while contracting officers were at training. Key practices for successful collaboration among government agencies include clear roles and responsibilities, compatible policies and procedures, and articulation of a common outcome. Additionally, internal control standards require the easy flow of information throughout the organization, especially between functional activities such as procurement and production.<sup>17</sup>

**Addressing changes in training requirements.** The agreement does not reflect current training requirements for contracting officers. Specifically the agreement states that contracting officers could satisfy their ongoing training requirements through online courses available at the time the agreement was written and that these online courses would not require the regions to pay for contracting officers' travel costs to take the training. However, in 2014, FEMA issued guidance that required contracting officers to obtain classroom training to fulfill their requirements for ongoing training, and the Office of Federal Procurement Policy increased classroom requirements needed for contracting officers to advance to the next certification level. Contracting officers in three regions told us that meeting these requirements would likely require travel

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<sup>17</sup>GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005); and GAO, *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001).

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funds due to the scarcity of course availability in some regions. One regional supervisor noted that these travel funds would be paid out of the region's training budget, even if there is no fee for a course. In one region, a contracting officer reported that she had to cancel her travel plans the day before her scheduled departure for a course due to lack of funding. The Office of Federal Procurement Policy had previously established guidance in 2008 that encourages agencies to provide contracting staff with resources for continuous learning efforts, as skills and knowledge gaps can inhibit contracting officers' ability to properly oversee the types of contracts used. Without addressing recent changes to training requirements, there is a risk that contracting officers will not meet training requirements.

Although the formal agreement between the regions and OCPO states that both parties are to revisit it on an annual basis, senior FEMA headquarters officials stated this has not occurred and that they did not see a need to revisit it because they had not received feedback that the regions wanted to do so. As a result, the agreement does not address the concerns identified above, and has not been updated in the more than 4 years since its creation to reflect good practices or lessons learned.

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## Contracting Reforms Are Not Fully Implemented and Disaster Contract Management Practices Are Inconsistent

FEMA has taken actions to address most of the four PKEMRA requirements we examined, but the agency has not fully implemented them. Additionally, inconsistent contract management practices during disaster deployments—such as incomplete contract files and reviews—create oversight challenges.

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## FEMA Has Not Fully Implemented Required Contracting Reforms Following Hurricane Katrina

Based on our review of 27 disaster support contracts from fiscal years 2013 and 2014, FEMA has made progress in addressing some aspects of the contracting reforms required by PKEMRA, including the use of contracts established prior to a disaster for goods and services that are typically needed during a disaster response—known as advance contracts. However, we found that confusion exists about key requirements, including the 150-day limit on certain noncompetitive contracts and transitioning awards to local vendors. This confusion is

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furthered by a lack of specific guidance on how to implement these requirements, including a clear definition of the term local contracting. In addition, DHS has taken no action on the requirement involving limits on subcontracting. See table 2 for more information.



**Table 2: Status of FEMA’s Implementation of Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) Contracting Reforms**

<b>PKEMRA requirement</b>	<b>GAO assessment</b>	<b>GAO observations</b>
<b>Noncompetitive contracts</b>		
Restrict the contract period to 150 days for noncompetitive emergency-response contracts justified as unusual and compelling urgency—as opposed to 365 days for non-disaster contracts—unless otherwise justified by the Head of Contracting Activity.	Some progress	In November 2008, we found that DHS implemented regulations to limit such contracts to 150 days unless justified. <sup>a</sup>  In this report, our case study review found that more than half of FEMA’s 13 noncompetitive contracts in our sample exceeded 150 days and did not contain appropriate justifications. FEMA did not address this 150-day limitation in training materials, including a desk guide for contracting officers.
Provide quarterly reports to Congress on contracts not using competitive procedures.	Some progress	FEMA has issued quarterly reports that include information on noncompetitive contracts since 2007, but did not report all noncompetitive contracts to Congress prior to fiscal year 2014.
<b>Advance contracting</b>		
Identify goods and services that are suitable for establishing in advance of a disaster, present a plan for maximizing use of these advance contracts, and enter into said contracts.	Some progress	In November 2008, we found that FEMA identified suitable goods and services in a 2007 report to Congress and presented a plan to maximize the use of advance contracts. <sup>a</sup>  In this review, we found that FEMA has established contracts in many of these categories but that awareness and use of these contracts varies.
Coordinate advance contracts with state and local governments and encourage local governments to engage in similar advance contracting.	Some progress	FEMA’s efforts to coordinate with state and local governments are inconsistent across the regions.
<b>Contracting with local businesses</b>		
Provide preference to local vendors when awarding contracts in the aftermath of a disaster or written justification when a non-local contract is awarded.	Some progress	Contracting officers were aware of the preference for local contracting, but we found that the process for determining local contracts is not well-defined in the guidance. Only 1 of the 13 non-local contracts we reviewed included the required justification.
Transition non-local contracts awarded prior to a disaster declaration to local vendors as soon as possible following a disaster unless justified in writing in the contract file. FEMA guidance states that such transitions should take place within six months of the disaster.	Some progress	Two of the 13 non-local contracts we reviewed were awarded before disasters and exceeded six months and thus were subject to this requirement; neither had been transitioned to local vendors or had written justification in the files, as required by PKEMRA and FEMA guidance.
<b>Limitations on tiered subcontracting</b>		
Prohibits contractors from using subcontracts totaling more than 65 percent of the contract cost in cost-reimbursement type contracts, task orders, or delivery orders that exceed \$150,000.	Little or no progress	In 2010, DHS published a proposed rule to implement this requirement, but delayed implementation due to concerns that it would have a negative impact on small businesses. No further action has been taken.

Source: GAO analysis of Federal Acquisition Regulations, DHS guidance, and FEMA contract data. | GAO-15-783

<sup>a</sup>GAO-09-59R.

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## Noncompetitive Contracts

Our review of 27 disaster support contracts and task orders included 13 that were not competitively awarded, which contracting officers explained as necessary due to unusual and compelling urgency. More than half—8 of the 13—exceeded the PKEMRA time limit of 150 days, which was put in place to reduce the use of noncompetitive contracts. However, we found that FEMA had not approved any of these to exceed 150 days, as required. These 8 contracts and task orders exceeded this time limit from a few months to one and a half years. DHS acquisition regulations require that this approval be given by FEMA’s senior acquisition official, the Head of Contracting Activity, who reported that he had rarely been asked to approve extensions beyond the 150 days during his time in office.<sup>18</sup>

For the eight contracts and task orders that exceeded the 150-day limit, contracting officers were either unaware of the time limitation or did not take steps to get approval from the Head of Contracting Activity as required. For example, five of the eight were for hotels to house FEMA employees in the immediate aftermath of Hurricane Sandy. Contracting officials explained that these contracts, which totaled almost \$6 million in fiscal year 2013 and 2014 obligations, were urgent because of difficulties FEMA faced in finding enough hotel rooms at government per diem rates for deployed FEMA employees. A FEMA report following the hurricane noted that almost 10,000 employees were deployed to support Hurricane Sandy. At the same time, more than 11,000 displaced survivors from New York and New Jersey were housed in hotels and motels in the area. While this situation was clearly urgent in the immediate aftermath of the hurricane, we found no documentation in the contract files as to why the hotel rooms were still needed more than 150 days after the disaster or why they did not obtain the necessary approval to extend the contracts. The other three contracts that exceeded the 150-day time limit included:

- A \$66 million task order for architect and engineering technical assistance awarded after Hurricane Sandy, which was extended a year and a half beyond the 150-day limit. Contracting officials did not realize that the 150-day PKEMRA limit applied to the order.
- A \$200,000 contract for leases of mobile home park spaces to provide temporary housing for Hurricane Sandy disaster victims, which was extended more than a year beyond the 150-day limit. Contracting

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<sup>18</sup>Department of Homeland Security Acquisition Regulation, § 3006.302-270 Unusual and Compelling Urgency (d)(1)(iii) (June 2006).

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officials explained that such services are often not competed because of the limited number of available vendors in disaster areas, but the contract file did not contain a justification for exceeding the PKEMRA requirement.

- A \$200,000 contract for security services after Hurricane Irene, which struck the New York area in August 2011. The contract had a justification but was not approved by the Head of Contracting Activity as required. This contract exceeded the 150-day limit by about a year.

Contracting officers in two regions and DART contracting officers said they might not transition a noncompeted contract to a competed award after 150 days because it may not be a priority, noting that adequate vendor performance, workload prioritization, and the potential costs to re-compete the contract as factors that may be considered.

In addition to the case studies we reviewed, FEMA contracting officials in five regions were confused by the 150-day requirement for noncompeted disaster support contracts or the appropriate use of the “urgent and compelling” justification for noncompetitive contract awards. For example, in several instances we were told that the 150-day restriction was not absolute, or that all contracts are considered urgent in a disaster. While the FAR provides some flexibility for disaster contracting, officials are to justify noncompeted contracts and meet the 150-day restriction for disaster contracts justified based on an urgent need. One official also said they were not aware of any guidance on the appropriate use of the urgency justification for disaster contracts. While this information is included in the DHS’s justification and approval guide<sup>19</sup> and a 2008 FEMA standard operating procedure for sole source justification and approvals, FEMA does not address this requirement in training materials or other guidance to its contracting officers. For example, FEMA’s desk guide and disaster contracting training course do not mention this disaster-specific 150-day restriction. Senior FEMA contracting officials said the requirements will be reviewed in future training updates.

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<sup>19</sup>U.S. Department of Homeland Security Office of the Chief Procurement Officer, *Justification and Approval For Other than Full and Open Competition Guide, Version 2.2* (Washington, D.C.: July 2013).

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In accordance with PKEMRA, FEMA has submitted quarterly reports to Congress since December 2007 that list all disaster contracting actions, including details on contracts awarded by noncompetitive means. However, in our review of reports to Congress in fiscal years 2013 and 2014, we found that some did not capture all of FEMA's noncompetitive task order actions. We found that \$32 million in noncompetitive obligations were not reported in fiscal year 2013. This number included more than \$14 million in obligations to a \$66 million technical assistance award that was not competed because of an urgent need for services immediately following Hurricane Sandy. A FEMA official explained that there had been an error in the data compilations prior to mid-2013 that inadvertently excluded noncompeted task orders issued under competitively awarded contracts. The official stated that FEMA has since updated its process to capture these types of awards, including implementing additional quality control reviews such as comparisons with federal procurement data sources and adding more people in the review process. As a result, the FEMA official stated that the quarterly reports submitted after the third quarter of fiscal year 2013 are accurate. We confirmed that similar task orders were included in FEMA's fiscal year 2014 reports, but FEMA officials told us that they have not notified Congress of the errors in prior reports and do not plan to do so. Without accurate information, Congress does not know the full extent of FEMA's past noncompetitive awards and cannot use these reports to evaluate FEMA's noncompetitive spending over time.

## Advance Contracting and Agreements

PKEMRA required FEMA to identify and establish contracts for goods and services that can be obtained before a disaster and FEMA has done so for many of the categories identified, such as nonperishable food items and housing assistance. PKEMRA also required FEMA to develop a contracting strategy that maximized the use of advance contracts to the extent practical and cost-effective. As we found in 2006 following Hurricane Katrina, agencies need to have competitively awarded contracts in place before a disaster to be effective.<sup>20</sup> According to FEMA, establishing contracts for goods and services in advance ensures they can rapidly mobilize resources in immediate response to disasters and can reduce the need to buy disaster relief and recovery items through noncompetitive contracts. In 2008 we found that FEMA provided

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<sup>20</sup>GAO, *Hurricane Katrina: Improving Federal Contracting Practices in Disaster Recovery Operations*, [GAO-06-714T](#) (Washington, D.C.: May 4, 2006).

Congress with a list of categories of the products and services suitable for establishing contracts in advance and a plan for maximizing the use of these contracts, as required by PKEMRA.<sup>21</sup> FEMA officials explained that indefinite-delivery indefinite-quantity (IDIQ) contracts facilitate the goal of having contracts available if there is a disaster.<sup>22</sup> In addition, as part of their overall acquisition strategy, FEMA officials said that they use other advance vehicles through which they obtain goods and services, including interagency agreements and mission assignments, which are work orders directed to other federal agencies to complete a specified task. See table 3 for examples of these contracts and agreements.

**Table 3: Examples of FEMA’s Advance Contracts and Agreements for Fiscal Year 2015**

Category	Description	Procurement Vehicle
Communication gear	Telecommunication services including equipment and supplies	Indefinite-delivery indefinite-quantity contract
Engineering services	Public Assistance Technical Assistance Contract (PA-TAC III) providing assessments of damaged public facilities and critical infrastructure	Indefinite-delivery indefinite-quantity contract
Food items	Commercial nutritious short shelf life meals for survivors	Indefinite-delivery indefinite-quantity contract
Logistics and transportation support	Supplies and services in response to disasters including tarps, cots, equipment rentals, pet supplies and hygiene kits	Interagency agreement with General Services Administration
Power equipment and generators	Generators, heating units, ventilation units, power supplies	Work order directed to the Army Corps of Engineers

Source: GAO analysis of FEMA data. | GAO-15-783

Although the contracting officers we spoke with were aware of certain headquarters advance contracts, such as for housing inspections and technical assistance—which made up the majority of FEMA’s fiscal year 2013 and 2014 obligations from disaster support and regional contracting offices—they reported varying awareness of information available on other advance contracts. FEMA headquarters maintains a list of these contracts through its shared document management system and identifies additional contracts in training sessions, but we found that contracting officers in three regions were not aware of such information

<sup>21</sup> [GAO-09-59R](#).

<sup>22</sup> Indefinite-delivery and indefinite-quantity (IDIQ) contracts may be used when the exact times or quantities of future deliveries are not known at the time of contract award. FAR Subpart 16.5.

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and did not know how to access the contracts. These contracting officers only learned about the list when they were told to use the list for certain items, such as fuel and translation services. In one case, a regional contracting officer tried to establish a contract in advance for fuel but was stopped because he was not aware that these efforts violated policy to use a headquarters contract for this item. Another contracting officer had a similar experience when trying to award a contract for translation services. We found that the information in FEMA's lists and training material do not comprehensively identify all of the advance contracts or vehicles available. For example, officials told us that FEMA has an interagency agreement with another agency to provide law enforcement and security forces, which is one of the service categories that FEMA previously identified as appropriate for advance contracts. However, this interagency agreement is not identified in FEMA's lists or training materials. A senior contracting official explained that these services may no longer need to be on the advance contract list since FEMA makes an effort to award security contracts to local law enforcement as part of their local business efforts. Fire and rescue support services are another requirement met by mission assignment to another agency that is not identified in FEMA's list or training materials.

PKEMRA also requires that FEMA coordinate advance contracts with state and local governments and that FEMA encourage state and local governments to engage in similar pre-planning for contracting. Our review found that outreach with state and local governments varied greatly, limiting FEMA's ability to support advance contracting efforts. Several regions, including two with a larger number of contracting staff and more disaster contracting experience, described how they engage in advance contracting efforts.

- One region's contracting officers began disaster pre-planning and conducted outreach to state vendors in an effort to build internal advance contract capacity. Contracting officers said these efforts have since expanded to help several states access contracts awarded in advance, such as General Services Administration schedule contracts.<sup>23</sup>

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<sup>23</sup>The General Services Administration Federal Supply Schedule program provides agencies with a simplified way to purchase commercial products and services. State and local governments are eligible to use these contracts for certain purchases, including those supporting disaster recovery efforts.

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- Similarly, contracting officials from another region emphasized that they take the initiative to engage in strategic planning to identify needs and conduct regular outreach to local businesses across the region. They told us these activities facilitate local awards and provide for multiple sourcing options during a disaster. They said these pre-planning efforts are often efficient enough to have the bulk of a disaster's contracting in place soon after the disaster.

In contrast, contracting staff in the other FEMA regions have more limited capacity for outreach or do not know that it is expected. One regional contracting officer said that he does not have any contacts within the state and has not taken steps to coordinate regional advanced contracts. Other regional contracting officials said they would like to do more outreach to states, but find it difficult with their current workloads or staffing shortages. FEMA's existing guidance and training for contracting officers does not address their relationship with state and local contracting counterparts or the expectation for how they will support advance contracts.

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## Contracting with Local Businesses

The FAR, which implements the PKEMRA requirement to provide a contracting preference to local firms where feasible, offers contracting officers some flexibility to increase local awards, including setting work aside for only local firms to compete.<sup>24</sup> The FAR requires that contracting officers document any decision to award disaster contracts to non-local firms—those companies or individuals that do not reside or primarily do business in a declared disaster area—in the contract file.<sup>25</sup> The FAR also requires transitioning non-local contracts awarded before a disaster strikes to local vendors as soon as possible, with FEMA policy stating that this should be accomplished for contracts awarded within 180 days.<sup>26</sup>

### **Federal Acquisition Regulation 26.201-26.202 Local area preference**

When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42.U.S.C 5121, et seq.), **preference shall be given to the extent feasible and practicable, to local firms.**

“**Local firm**” means a private organization, firm, or individual residing or doing business primarily in a major disaster or emergency area.

“**Major disaster or emergency area**” means the area included in the official Presidential declaration(s) and any additional areas identified by the Department of Homeland Security.

Source: Federal Acquisition Regulation | GAO-15-783

Figure 8 is an example of a FEMA disaster declaration that depicts which counties are included in which the vendors would be considered local.<sup>27</sup>

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<sup>24</sup>FAR §§ 26.202 and 26.202-1.

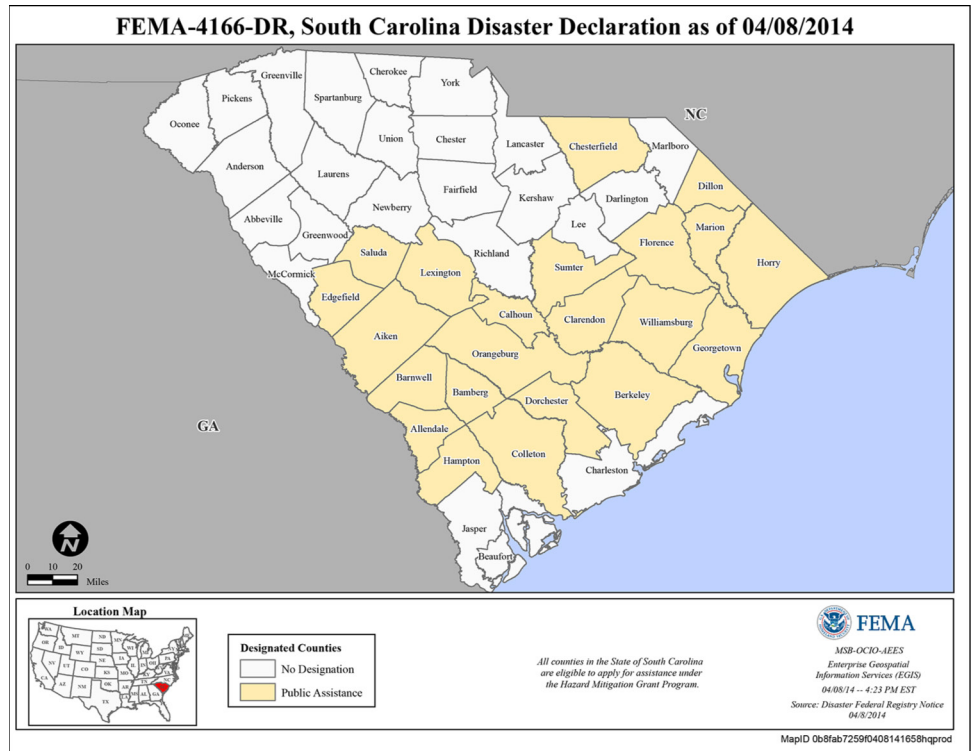
<sup>25</sup>FAR § 26.204.

<sup>26</sup>FAR § 26.203.

<sup>27</sup>The FAR also permits contracts to be set aside for award to local contractors who reside or primarily perform business in a designated area (FAR §§ 26.201 and 26.202-1). To determine if a potential vendor primarily performs business in a designated area, the related contract provision includes factors to consider, including whether the office generates at least half of its gross revenues and employs at least half of its permanent employees in the area (FAR § 52.226-3).



**Figure 8: Example of a FEMA Disaster Declaration Map Showing the Designated Counties in Which Vendors Are Considered Local**



Federal Emergency Management Agency (FEMA) disaster declaration

Source: FEMA (image). | GAO-15-783

While contracting officials recognized the importance of local contracting, in five of the 10 regions we met with, contracting officers either showed a great degree of confusion about determining which awards were local or told us that the process for determining if a vendor is local is not well-defined; for example:

- One official said that vendors could be considered local if they are in the same zip code of the designated disaster zones, even though the FAR says location is based on the area’s declared disasters, which are typically counties.
- Other officials said that contracting officers could exercise their discretion as to what constituted a local award, regardless of the declared area, with one contracting officer noting that if vendors in the declared area were unavailable due to the disaster, then going to vendors in nearby counties could be considered local. While this is

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permissible, the contracting officer would not be able to call the contract local and would have to document the action in the contract file.

- Several contracting officers said that they would like additional clarification on local area contracting requirements, specifically what could be considered local. One said there were so many different approaches that she was not sure which ones were correct.

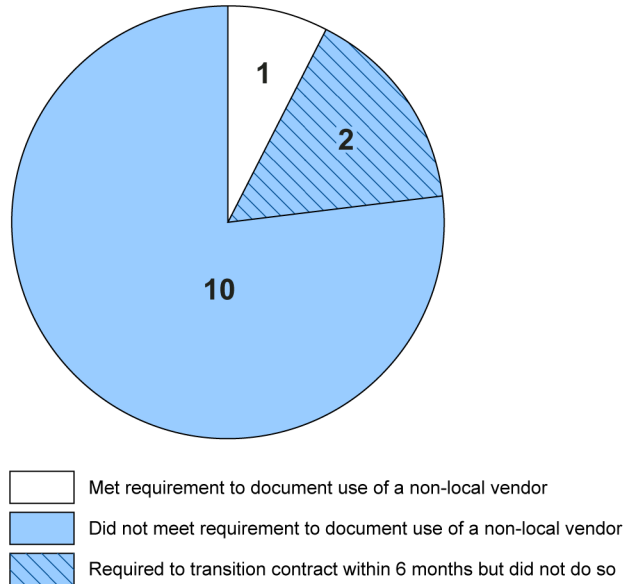
Confusion over the definition of local was evident in the contract files we reviewed. Our analysis found that FEMA awarded 13 of the 26 contracts or task orders to vendors located outside the counties declared as disasters, but in only one of the cases was the award to a non-local vendor documented or otherwise addressed as required.<sup>28</sup> Among these were two task orders issued under contracts that had been awarded before the disaster; these task orders exceeded 180 days but were not transitioned to local vendors as required by FEMA policy. See figure 9.

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<sup>28</sup>Our analysis accounts for 26 of the 27 contracts and task orders reviewed. The excluded contract provided support in advance of a winter storm—which is a permissible use of funds—but did not result in a disaster declaration, so we could not compare the contractor’s location to the locations specified in a disaster declaration.

**Figure 9: Non-Local Awards That Met Documentation and Transition Requirements**

**One award met the requirement to document the use of a non-local vendor**



Source: GAO analysis of FEMA data. | GAO-15-783

The two awards that did not transition to local vendors after 6 months were housing inspection and technical assistance task orders, which are services that account for the majority of FEMA’s disaster contract obligations. A contracting official explained that they do not have a process for moving these awards to local vendors after 6 months, although FEMA’s 2010 guidance specifies that such contracts require transition. Further, contracting officials had incorrectly identified 4 of the 13 contracts as local in FEMA’s data systems. FEMA created a Local Business Transition Team in 2007 as a pilot program in part to support the transition to local vendors, and officials said they folded the team into FEMA’s broader industry outreach efforts that can provide virtual assistance.

FEMA’s training materials and guidance do not fully address the requirement to document the contract file when making awards to non-local vendors. For example, FEMA’s existing training does not reflect the FAR provision that requires documentation in any cases where local vendors are not used. Further, FEMA’s Emergency Contracting Desk Guide misconstrues the local requirement, incorrectly stating that contracts must be set aside for local vendors unless a written justification

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Limits on Tiered  
Subcontracting

is provided. In contrast, the FAR states that local preference may take the form of local area set-asides or an evaluation preference.<sup>29</sup> As a result of our review, a FEMA official responsible for developing the contracting officers' training curriculum said that local contracts will be addressed in more detail in a future revision to a course on disaster contracting planned for late fiscal year 2015.

In 2010, DHS published a proposed rule to implement Section 692 of PKEMRA, the provision of the law that prohibits the use of subcontracts for more than 65 percent of the cost of cost-reimbursement type contracts that exceed the simplified acquisition threshold—which is generally \$150,000—and are used to support disaster response and recovery efforts. However, DHS has not issued a final rule. DHS policy officials said they have delayed implementing this rule because of comments they received that indicate the limitation would have a negative impact on small businesses. Officials explained that FEMA uses cost-type contracts primarily for construction services that often brings an array of specialists together on one job, creating the need for subcontracting. These officials explained that construction specialists are often small businesses; they noted that limitations imposed by this rule could inhibit these businesses' ability to get work. While we understand DHS's concern about the potential limitations this could place on small businesses, the requirement has not been addressed. DHS officials said they are considering requesting a congressional amendment to the law which would delete the requirement to limit the use of subcontractors under Section 692 of PKEMRA. However, other than publishing the proposed rule in 2010, DHS has taken no further action regarding implementation of Section 692. Without taking further action, DHS risks not addressing Congress's direction to limit the use of subcontracts as is required under Section 692 of PKEMRA.

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<sup>29</sup>FAR § 26.202.

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## FEMA Experienced Challenges with Contract Management during Disasters

Contract management is the primary part of the procurement process that assures the government gets what it paid for, of requisite quality, on time, and within budget. We have previously reported that contract management presents challenges for agencies within the federal government.<sup>30</sup> For FEMA, contract management is further complicated by the dynamic environment in which contracting officers operate during a disaster. FEMA contracting officials must respond quickly to acquire goods and services to assist survivors, but they must do so while complying with federal law and FAR requirements. They must also work within the joint field office structure and deployment processes that may result in multiple contracting officials supporting individual contracts at different points in time, particularly in cases where staff is deployed to support the region. These conditions can present challenges to good management of disaster support contracts. The issues we saw in the files reviewed and heard from contracting staff included the following:

- **Incomplete documentation:** In one region, mission support and contracting staff reported not receiving any files from contracts that had been awarded at the joint field office; others only learned of contracts when they received vendor invoices after the joint field office had closed. In another region, a deployed contracting officer awarded several contracts for hotels during the immediate response to Hurricane Sandy but returned to headquarters shortly thereafter before having an opportunity to bring the contract files up to date. This resulted in key documents missing from the file, including justifications for noncompetitive awards. Additionally, a \$66 million task order for technical assistance services did not have the justification and approval required for a noncompetitive award.
- **Lack of contract closeouts:** Contracting officers in several regions told us that they have backlogs of contracts to be closed out. Contract closeout begins when all services have been performed and products delivered and closeout completes when all administrative actions have been completed and final payment to the vendor has been made. Prompt contract closeout is critical to ensure that all government debts are paid and unneeded funds are de-obligated. FEMA officials told us they are trying to address this issue by setting the goal for deployed staff to close out 90 percent of files before returning to their home office. FEMA training that included contracting

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<sup>30</sup>GAO, *High Risk Series, An Update*, [GAO-15-290](#) (Washington, D.C.: Feb. 11, 2015).

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officer metrics from fiscal years 2011 to 2014, showed that FEMA had de-obligated over \$116 million and that over 1,900 contracts were available for closeout.

- **No evidence of higher-level reviews:** Nine of the 27 contract files we reviewed required review and approval by a person at least a level above the contracting officer. Three files contained some evidence of communication with a reviewer at the appropriate level, but only one of the files documented the required approval. For example, a \$1.8 million security contract did not include evidence of the required review.

DHS's Office of the Chief Procurement Officer has conducted several internal reviews and found similar problems with FEMA contracts. A major finding from the most recent review, in September 2014, was that FEMA's poor contracting practices had extended over a period of time, and that FEMA required significant improvement in the quality, documentation and management of their contract actions to comply with laws and regulations. For example, the audit found problems with missing or incomplete contract files, lack of funding documentation, and a lack of required Congressional notifications. The report also cited FEMA's inability to comply with their corrective action plans from prior reports, which FEMA acknowledged. In our discussions with the DHS reviewers, we were told that FEMA is now responding to its corrective action plan and that management was responsive to addressing the issues raised.

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## Conclusions

FEMA often contracts for products and services under extreme pressures to deliver these items to disaster survivors, and sometimes under the scrutiny of the entire nation. FEMA can leverage different resources to provide contracting support in a disaster, with regional contracting officers being the first to respond. Although FEMA has taken steps to increase the size of its contracting workforce, it does not manage its headquarters and regional workforce in a cohesive manner resulting in contracting problems that are sometimes missed or overlooked. FEMA's development of DART in 2010 has helped to increase its capacity to provide contracting support for disasters, but the relatively low number of disasters in recent years led FEMA to increase the responsibilities of this team when not deployed, including taking on responsibility for some of FEMA's largest disaster-related contracts. Without updated guidance on this team's prioritization of workload in the event of a disaster, FEMA is at risk of not having complete coverage of its contracts during a disaster.

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Hurricane Katrina occurred 10 years ago and spurred the PKEMRA contracting requirements discussed in this report. Even after 10 years, we found variation in the extent to which contracting officers were aware of and complied with the statutory requirements of PKEMRA, putting efficient use of taxpayer dollars at risk. Additionally, decision makers in FEMA and Congress need timely and accurate information, but FEMA has not informed Congress of errors it made in its quarterly reports on noncompetitive contracts prior to 2014. Without this information, Congress does not know the full extent of FEMA's past noncompetitive awards and cannot use these reports to evaluate spending over time. Finally, without taking steps to implement Section 692 of PKEMRA, the provision regarding limits to subcontracting or seeking an amendment to the law which would delete the requirement, DHS runs the risk of never addressing this statutory requirement.

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## Recommendations for Executive Action

We are making eight recommendations to the FEMA Administrator and one recommendation to the Secretary of Homeland Security.

- To help ensure that FEMA is prepared to manage the contract administration and oversight requirements of several simultaneous large-scale disasters or a catastrophic event, we recommend that the FEMA Administrator update its guidance to establish procedures for prioritizing DART team members' workloads when deployed to a disaster.

To improve coordination and communication between FEMA OCPO and region mission support officials, we recommend that the FEMA Administrator

- direct OCPO and the regional administrators to revisit the 2011 service level agreement to: add details about the extent of operational control headquarters and regional supervisors should exercise to minimize potential competing interests experienced by regional contracting officers; further detail headquarters and regional supervisors' roles and responsibilities for managing regional contracting officers to improve coordination and communication; and ensure that the agreement reflects any new requirements, including recent changes in training that may require travel funds, and
- establish a plan to ensure that the agreement is reviewed on an annual basis as intended.

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To improve implementation of the contracting provisions of PKEMRA, we recommend that the FEMA Administrator provide new or updated guidance to ensure all contracting officers are aware of requirements concerning

- the 150-day limit on noncompetitive contracts justified as urgent and compelling,
- current information on available advance contracts and how they should be accessed and used,
- the need to conduct outreach to state and local governments to support their use of advance contracts, and
- how to contract with local vendors, including an understanding of the regulatory definition of “local,” the documentation requirements for the use of non-local vendors, and the process for transitioning non-local awards to local vendors within required timelines or documenting why the transition was not completed.

To ensure the accuracy of information provided under PKEMRA, we recommend that the FEMA Administrator

- inform Congress of errors in reporting noncompetitive task orders in quarterly reports issued prior to 2014.

To address PKEMRA, we recommend that the Secretary of Homeland Security should:

- take action to address the requirements of Section 692 to implement subcontractor limitations or request that Congress amend the law to delete Section 692.

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## Agency Comments

We provided a draft of this report to DHS for review and comment. In its written response, reproduced in appendix II, DHS agreed with our findings and recommendations. The written response also includes information on the steps that FEMA and DHS will take to address each recommendation and provides an estimated completion date for these actions.

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We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, and the Administrator of FEMA. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.



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Should you or your staff have questions about this report or need additional information, please contact me at (202) 512-4841 or [mackinm@gao.gov](mailto:mackinm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Other staff making key contributions to the report are listed in appendix III.



Michele Mackin  
Director  
Acquisition and Sourcing Management

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*List of Requesters*

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Michael T. McCaul  
Chairman  
The Honorable Bennie G. Thompson  
Ranking Member  
Committee on Homeland Security  
House of Representatives

The Honorable Martha McSally  
Chairman  
The Honorable Donald M. Payne, Jr.  
Ranking Member  
Subcommittee on Emergency Preparedness, Response, and  
Communications  
Committee on Homeland Security  
House of Representatives

The Honorable Susan W. Brooks  
House of Representatives

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# Appendix I: Objectives, Scope, and Methodology

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To assess the Federal Emergency Management Agency's (FEMA) efforts to build and manage its contracting workforce and structure, we reviewed and analyzed data on FEMA's workforce since Hurricane Katrina, which occurred in 2005, to identify staff size, rates of attrition, and years of experience. To assess the reliability of the workforce data used in the review, we reviewed information on the data collection process and compared key data elements from the workforce data to statements about start dates, home offices, and deployments made by officials that we interviewed. We concluded the workforce data was sufficiently reliable for purposes of this report. To understand how FEMA manages its contracting workforce, including staff that support disasters, we met with contracting officers in FEMA's 10 regional offices and in headquarters offices in Washington, D.C. that support disaster contracting activities. We also analyzed available workforce documents, including training materials and requirements for deployment, to determine the range of activities carried out by regional and headquarters contracting staff. We analyzed the agreement that governs headquarters' role in regional contracting to determine the roles and responsibilities of regional offices and headquarters in disaster contracting. We also met with the FEMA headquarters officials responsible for regional contracting officers and the mission support officials from each of FEMA's regional offices to discuss FEMA's contracting workforce. We reviewed Office of Federal Procurement Policy and FEMA guidance regarding training requirements for contracting officers. Further, we reviewed federal internal control standards to determine if any major performance challenges exist. We also assessed the extent to which FEMA relies on contractors to support its acquisition function by identifying acquisition support contracts in federal procurement data, reviewing available files, and interviewing contracting officials in FEMA's headquarters and regional offices regarding whether such contracts are in use. We found that FEMA's use of acquisition support contracts was limited.

To assess the adoption of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) contracting reforms and good management practices, we analyzed data from the Federal Procurement Data System-Next Generation (FPDS-NG) to identify contracts awarded by offices principally involved in planning for or responding to disasters. Because the PKEMRA contracting reforms only apply to disaster support contracts, we focused on contracting offices most likely to award such contracts. We identified the contracting offices based on our analysis of FEMA's obligations in FPDS-NG, which we confirmed with senior FEMA contracting officials. These included contracting offices responsible for response, recovery, and logistics in FEMA's headquarters and the

contracting offices in FEMA's 10 regions, which award contracts for both disaster and non-disaster support efforts. From these offices, we selected a non-representative sample of 27 contracts and task orders with obligations in fiscal years 2013 and 2014 and confirmed that they supported disaster response efforts. Our selection process was as follows:

- Sixteen of the contracts and orders were selected using a stratified random sample that reflected key elements of PKEMRA contracting reforms. These included contracts and orders that were (1) not competed and justified based on an unusual and compelling urgency; (2) not awarded in advance through indefinite-delivery indefinite-quantity contracts (IDIQs) to understand how decisions regarding advance and local contracts were made; and (3) from the products and services FEMA obligated the most money during the time period to understand how FEMA spends the majority of its contracting dollars for disaster-support.
- Eleven contracts and orders were selected from the random sample or to reflect the regional offices we visited, based on factors including their representation of PKEMRA elements, such as local contracts in that region, or significant obligations relative to other contracts awarded by the region.

We reviewed the contract files for the 27 contracts and task orders to identify the documents related to the PKEMRA requirements, such as justifications for noncompetitive contracts exceeding 150 days and documentation of non-local awards, and compared this information to requirements stated in PKEMRA, the Federal Acquisition Regulation (FAR), and Department of Homeland Security (DHS) and FEMA acquisition guidance. Although the information collected from our review of contracts is not generalizable to all relevant contracts, it was valuable in supplementing interviews with FEMA contracting officials in the contracting offices most likely to support disaster contracts and from FEMA's 10 regions.

To understand steps taken to implement PKEMRA contracting requirements, we spoke to DHS officials from the Office of the Chief Procurement Officer (OCPO) and FEMA policy officials. We also reviewed FEMA's quarterly reports to Congress on contracting activities, including noncompetitive awards, and spoke to officials responsible for these reports, to determine if they accurately reported information identified in the 27 contracts and orders we reviewed. We compared

FEMA's 2007 report on the categories of products and services most appropriate for advance contracting and compared the categories to FEMA's current lists of available advance contracts to determine the extent to which FEMA has established contracts for products and services identified in 2007 and how that information is made available in FEMA's training and guidance. We also met with contracting officers in FEMA's 10 regional offices and from the headquarters offices most likely to award contracts supporting disaster relief efforts to discuss their understanding of PKEMRA's requirements. In addition, we met with officials responsible for FEMA's Local Business Transition Team to discuss their role in supporting local vendors. We reviewed documentation related to good management practices, including the FAR and DHS guidance on required contracting reviews. Additionally, we met with contracting officials responsible for most of the contracts and orders we examined to clarify questions we had regarding the contract files.

We conducted this performance audit from October 2014 to September 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: Comments from the Department of Homeland Security



September 18, 2015

Ms. Michele Mackin  
Director, Acquisition and Sourcing Management  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Draft Report GAO-15-783, "DISASTER CONTRACTING: FEMA Needs to Cohesively Manage Its Workforce and Fully Address Post-Katrina Reforms"

Dear Ms. Mackin:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS acknowledges GAO's recognition of the progress the Federal Emergency Management Agency (FEMA) has made to improve its disaster contracting practices following the implementation of 2006 Post-Katrina Emergency Management Reform Act (PKEMRA). Of specific note is FEMA's efforts to triple the number of contracting officers it employs since Hurricane Katrina in 2005. FEMA relies heavily on contracted goods and services to fulfill its mission. This exponential increase in its contracting force structure has positioned FEMA to respond to several simultaneous large-scale disasters. In addition, FEMA recently reorganized its contracting work activities around commodities to create greater buying power and provide more opportunities for upward mobility for our staff. Lastly, recent years of limited hiring has also adversely affected employee morale and turnover of personnel, which the aforementioned efforts should help mitigate moving forward.

The draft report contained nine recommendations with which the Department concurs. Specifically, GAO recommended:

**Recommendation 1:** That the FEMA Administrator update its guidance to establish procedures for prioritizing DART [Disaster Acquisition Response Team] team members' workloads when deployed to a disaster.

**Response:** Concur. As the report mentions, FEMA's Office of the Chief Procurement Officer (OCPO) has guidance in place for transitioning workload from one contracting officer to another. This guidance applies to both steady-state operations and disaster support operations. FEMA's OCPO will augment this guidance to include procedures for prioritizing the work of DART team members when they are deployed to a disaster. Estimated Completion Date (ECD): May 31, 2016.

**Recommendation 2:** That the FEMA Administrator direct FEMA's OCPO and the Regional Administrators to revisit the 2011 service level agreement to: add details about the extent of operational control headquarters and regional supervisors should exercise to minimize potential competing interests experienced by regional contracting officers; further detail headquarters and regional supervisors' roles and responsibilities for managing regional contracting officers to improve coordination and communication; and ensure that the agreement reflects any new requirements, including recent changes in training that may require travel funds.

**Response:** Concur. FEMA's OCPO will work with its Regional Administrators to update the 2011 service level agreement by: (1) clarifying the extent of the operational control OCPO has with regard to regional contracting officers; (2) detailing further the roles and responsibilities for managing regional contracting officers; (3) including recent changes in training that may require travel funds; and, (4) adding any new requirements not currently included in the 2011 service level agreement. ECD: May 31, 2016.

**Recommendation 3:** That the FEMA Administrator establish a plan to ensure that the agreement is reviewed on an annual basis as intended.

**Response:** Concur. FEMA's OCPO will conduct a management-level review of the service level agreements on an annual basis. This annual review will be used to inform FEMA's normal procedures in accordance with FEMA Directive 112-12, "Policy, Directive, and Doctrine Process Guidance," issued August 31, 2011. Per the 112-12, all respective policies, directives and doctrine documents must be reviewed, maintained, and if necessary revised every three years. ECD: January 31, 2016.

**Recommendation 4:** That the FEMA Administrator provide new or updated guidance to ensure all contracting officers are aware of the requirement concerning the 150-day limit on noncompetitive contracts justified as urgent and compelling.

**Response:** Concur. FEMA's OCPO will issue new guidance to ensure that all contracting officers are aware of requirement concerning the 150-day limit on noncompetitive disaster support contracts justified as urgent and compelling. ECD: December 31, 2015.

**Recommendation 5:** That the FEMA Administrator provide new or updated guidance to ensure all contracting officers are aware of requirements concerning current information on available advance contracts and how they should be accessed and used.

**Response:** Concur. Since 2011, FEMA's OCPO has provided, and will continue to provide annual guidance updates for contracting officers on availability and usage of its advance contracts (i.e. pre-positioned contracts). This guidance is provided through a number of mechanisms including annual Disaster Contracting Webinars, the next one to be held on October 14, 2015, and updates to the OCPO Disaster and Field Operations SharePoint site. The Disaster and Field Operations SharePoint site, which all contracting officers have access to, contains a section titled "PrePositioned Contracts" with the list of contracts and a section titled "Training Material" where previous Disaster Contracting Webinars reside. FEMA's OCPO will also send out an acquisition alert in December 2015 to notify contracting officers of many updates and will include a reminder about this updated guidance as well. ECD: December 31, 2015.

**Recommendation 6:** That the FEMA Administrator provide new or updated guidance to ensure all contracting officers are aware of requirements concerning the need to conduct outreach to state and local governments to support their use of advance contracts.

**Response:** Concur. FEMA's OCPO will host its annual Disaster Contracting Webinar reminding all contracting officers of the need for conducting outreach to state and local governments to support their use of advance contracts and identifying best practices from regions that have been doing this type of outreach. ECD: October 31, 2015.

**Recommendation 7:** That the FEMA Administrator provide new or updated guidance to ensure all contracting officers are aware of requirements concerning how to contract with local vendors, including an understanding of the regulatory definition of "local", the documentation requirements for the use of non-local vendors, and the process for transitioning non-local awards to local vendors within required timelines or documenting why the transition was not completed.

**Response:** Concur. FEMA's OCPO will host its annual Disaster Contracting Webinar reminding all contracting officers of the requirement to use local vendors during disasters, the need to document the use of a non-local vendor solution, and the process for transitioning work from a non-local vendor to a local vendor or documenting why the transition did not occur. ECD: October 31, 2015.

**Recommendation 8:** That the FEMA Administrator inform Congress of errors in reporting non-competitive task orders in quarterly reports issued prior to 2013.

**Response:** Concur. FEMA's OCPO will inform Congress of errors in reporting non-competitive task orders as cited in GAO's finding that there was \$32 million in non-



competitive obligations contained in the fiscal year 2013 quarterly reports.  
ECD: March 31, 2016.

**Recommendation 9:** That the Secretary of Homeland Security should take action to address the requirements of the Section 692 to implement the subcontractor limitations or request that Congress amend the law to delete Section 692.

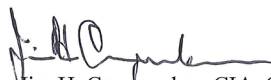
**Response:** Concur. The Headquarters Office of the Chief Procurement Officer (OCPO), in coordination with the Office of General Counsel, is comparing Section 692 and the subsequently enacted Section 866 from the Fiscal Year 2009 National Defense Authorization Act. Section 866, which has the same stated purpose as Section 692, was implemented in the Federal Acquisition Regulation (FAR) and also applies to DHS.

The Department spent considerable time addressing the implementation of Section 692. Initially, DHS issued a proposed rule and received extensive comments expressing concern with the significant and adverse impact the rule would have on small businesses, as well as the Department's ability to protect health and public safety in the face of disasters. After careful consideration of these comments and the subsequent implementation of Section 866, the Department discussed with Senate staff the inherent difficulties with implementing two statutes that conflict although the intended purpose of each is the same. The Senate introduced a bill in the 112<sup>th</sup> Congress, S. 1546, which would have repealed Section 692, and the report accompanying that bill, Senate Report 112-249 states that the FAR renders Section 692 obsolete. S. 1546, however, was not enacted.

Section 692 requires the regulations promulgated by the Secretary preclude a contractor from excessive use of subcontracts "unless the Secretary determines that such requirement is not feasible or practicable." The Headquarters OCPO is considering the basis for making the determination that the subcontracting preclusion is not feasible or practicable as authorized by Section 692, and that DHS contracting officers are to comply with Section 866 as implemented in the FAR. ECD: December 31, 2015.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumacker, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

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# Appendix III: GAO Contacts and Staff Acknowledgments

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## GAO Contact

Michele Mackin, (202) 512-4841 or [mackinm@gao.gov](mailto:mackinm@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Molly Traci, Assistant Director; Jennifer Dougherty; Brett Caloia; LeAnna Parkey; Manuel A. Valverde; Jocelyn Yin; Julia Kennon; Virginia Chanley; John Krump; Emily Bond; and Roxanna Sun made key contributions to this report.

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