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FEMA's Contracting Officer's Technical Representative Program



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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the strengths and weaknesses of the Federal Emergency Management Agency's contracting officer's technical representative program. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Matt Jadacki ,
Assistant Inspector General
Office of Emergency Management Oversight

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Abbreviations

| | |
|--------|--|
| CAO | Chief Acquisition Officer |
| CLM | continuous learning module |
| CLP | continuous learning point |
| CORE | Cadre of On-Call Response Employees |
| COTR | contracting officer's technical representative |
| CPARS | Contractor Performance Assessment Reporting System |
| DAE | Disaster Assistance Employee |
| DHS | Department of Homeland Security |
| FEMA | Federal Emergency Management Agency |
| GAO | Government Accountability Office |
| IA-TAC | Individual Assistance-Technical Assistance Contracts |
| IPT | Integrated Project Team |
| OCPO | Office of Chief Procurement Officer |
| OFPP | Office of Federal Procurement Policy |
| OIG | Office of Inspector General |
| OMB | Office of Management and Budget |
| PA-TAC | Public Assistance-Technical Assistance Contracts |

Executive Summary

In the aftermath of Hurricane Katrina, the Federal Emergency Management Agency dedicated significant resources to improve its contracting officer's technical representative program. Its Office of the Chief Procurement Officer (1) dedicated staff to oversee the program, (2) developed a tiered system, which ties training requirements to dollar values of contracts that a contracting officer's technical representative can monitor, and (3) developed an intranet site containing contracting officer's technical representative tools and news. The program office verifies that contracting officer's technical representatives are meeting training requirements and notifies them when their certification status needs to be updated.

The agency has made great strides in improving the program, but challenges remain. Many certified contracting officer's technical representatives have never served on a contract and are unsure of their ability to be effective during a disaster. Although they represent contracting officers, program office officials complete their appraisals, leading to divided loyalties. Contracting officer's technical representatives do not always follow file maintenance policies established agency-wide or complete contractor evaluations timely. The agency does not have a surge strategy for the program, instead relying on the sheer number of certified staff to handle large disasters. Also, some large contracts are monitored by untrained task monitors rather than contracting officer's technical representatives.

During this review, the agency was unable to identify its contracting officers. Furthermore, the agency does not target job announcements to attract contracting officers for its disaster reserve cadre, thus not taking advantage of programs being offered to attract and retain these skilled individuals. Should a major disaster strike, the agency will be unable to quickly deploy experienced and trained contracting officers, leaving itself at risk to the same type of contract problems it experienced in the aftermath of Hurricane Katrina.

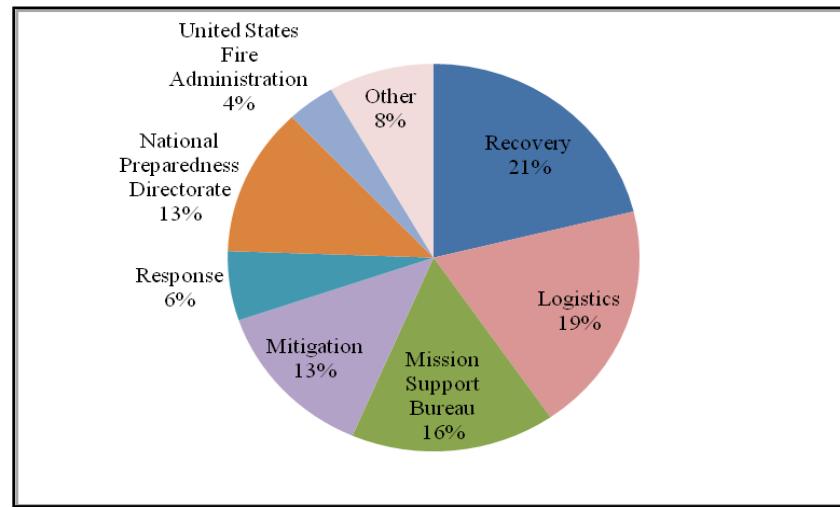
Our report contains eight recommendations to improve the program and to better sustain agency operations during a disaster.

Background

Each year, the Federal Emergency Management Agency (FEMA) spends hundreds of millions of dollars on contracts for goods and services—\$1.8 billion in 2009 and almost \$500 million in 2010.¹ More than two-thirds of all contracting dollars were spent in headquarters, Region IV, and Region VI. These contracts are overseen by contracting officials, including contracting officer's technical representatives (COTRs).

The COTR plays a critical role in the outcome of the contract administration process and functions as the “eyes and ears” of the contracting officer, monitoring technical performance and reporting any potential or actual problems to the contracting officer. The COTR must stay in close communication with the contracting officer, relaying any information that may affect contractual commitments and requirements. The COTR’s contract administration duties may be simple or complex and time-consuming, depending on the type of contract, contractor performance, and the nature of the work. The COTR is selected by the program office needing the contracted goods and services. Figure 1 shows the share of COTRs by program office.

Figure 1. FEMA COTRs by Program Office



Source: OIG analysis of FEMA data.

Successful acquisitions take a team to complete. Table 1 provides descriptions of the key personnel needed in the acquisition process.

¹ www.usaspending.gov.

Table 1. Key FEMA Acquisition Personnel

| Title | Roles/Responsibilities |
|--|--|
| Contracting Officer | The contracting officer functions as the business manager and advisor to the program office throughout the acquisition process. The contracting officer is an employee of FEMA with the delegated authority to negotiate, enter into, administer, modify, and terminate contracts on behalf of the government. Contracting officer involvement includes making determinations and findings on matters such as the appropriate contract type, method of procurement, and the fairness and reasonableness of prices. The contracting officer is the subject matter expert with technical expertise and knowledge of the rules and regulations governing federal procurement. |
| Contracting Specialist | The contracting specialist supports the contracting officer and is responsible for the processes leading to the procurement of services and supplies, including proper development of procurement package documents and the contract file. |
| Contracting Officer's Technical Representative (COTR) | The principal role of the COTR is to support the contracting officer in managing the contract. The COTR administers and directs the agreement within the confines of the contract, monitors performance, ensures that requirements meet the terms of the contract, and maintains a strong partnership with the contracting officer. Together, the COTR and the contracting officer must ensure that program requirements are clearly communicated and the agreement is performed to meet those requirements. |
| Task Monitor | Task monitors are responsible for observing contractor performance and providing technical feedback to the COTR. They have no contract execution oversight authority, nor are they able to accept deliverables. Task monitors only provide recommendations to the COTR. |

Contracting Officer’s Technical Representatives

The program office acquiring the contracted goods and services selects a COTR from its staff. The selection is sent to the contracting officer, who verifies that the nominee has the prerequisite training for the contract. The COTR is then appointed to the contract by the contracting officer and is authorized to monitor the contract on behalf of the contracting officer. However, the COTR is not authorized to make any contractual commitments or changes that may affect the contract price, terms, or conditions without the approval of the contracting officer. Some COTRs are assisted by task monitors (also known as project or technical monitors), who review and report on the technical aspects of the contractor’s performance, such as compliance with specific contract terms. The COTR role can be either part time or full time, and is often a collateral duty.² As of March 2011, FEMA employed 1,430 certified COTRs.

The Office of Management and Budget (OMB), through its Office of Federal Procurement Policy (OFPP), issues guidance for COTR training and programs. Government-wide COTR training was addressed in OMB Policy Letter 05-01.³ This letter states that the Chief Acquisition Officer (CAO) of the agency is “responsible for assessing the current skills inventory of the workforce, identifying short- and long-term agency needs, and establishing plans, including recruitment and retention strategies, for obtaining the acquisition workforce resources and skills required to meet future agency mission needs.”

The agency’s CAO⁴ is responsible for developing basic and refresher training requirements to ensure that COTRs are adequately trained. Agency COTRs are required to earn at least 40 continuous learning points⁵ every 2 years. Additionally, the OFPP Administrator prescribes specific continuous learning courses to ensure that training is provided on topics such as ethics, performance-based contracting, and strategic sourcing.

² The Office of Personnel Management does not recognize COTR as a full-time position, and therefore does not provide a job series for full-time COTRs.

³ The purpose of the policy letter is to establish a “government-wide framework for creating a federal acquisition workforce with skills necessary to deliver best value supplies and services,” allowing COTRs to “be trained and developed using common standards.”

⁴ In FEMA, the Chief Acquisition Officer is the Chief Procurement Officer.

⁵ One continuous learning point is earned for each hour of training.

COTR Program Weaknesses Previously Reported

COTRs have an important role in contract oversight. Along with the Government Accountability Office (GAO), we have conducted numerous audits and have noted weaknesses in FEMA's COTR program that have led to waste and abuse. Some of our previous recommendations have been addressed and have strengthened the program, whereas others remain outstanding.

- **Training**
 - Documentation of COTR certification and training was lacking.⁶
 - Instruction manuals and guides intended for the acquisition workforce had not been updated to reflect current federal acquisition regulations.⁷
- **Communications**
 - COTRs were unaware of the basic contract requirements they were supposed to be monitoring.⁸
 - There was an overall lack of communication between COTRs and program officials.⁹
- **File Maintenance**
 - COTRs failed to maintain quality assurance information on the contracts they were monitoring.¹⁰
 - Contract file policies and procedures, organization and maintenance regulations, and contract closeout requirements were infrequently monitored.¹¹
- **COTR Performance Feedback**
 - No process was in place for the contracting officer to provide performance feedback to the COTR's supervisor.¹²
 - COTR monitoring reports lacked required signatures, or evidence that different offices had reviewed the contractor's responses.¹³

⁶ *Acquisition Workforce Training and Qualifications* (OIG-08-56), May 2008.

⁷ *An Audit of FEMA's Acquisition Workforce* (OIG-04-12), March 2004.

⁸ *Hurricane Katrina Temporary Housing Technical Assistance Contracts* (OIG-08-88), August 2008.

⁹ *National Flood Insurance Program: Continued Actions Needed to Address Financial and Operational Issues* (GAO-10-631T), April 2010.

¹⁰ *Ineffective FEMA Oversight of Housing Maintenance Contracts in Mississippi Resulted in Millions of Dollars of Waste and Potential Fraud* (GAO-08-106), November 2007.

¹¹ *Internal Controls in the FEMA Disaster Acquisition Process* (OIG-09-32), February 2009.

¹² *Ibid.*

¹³ *National Flood Insurance Program: Financial Challenges Underscore Need for Improved Oversight of Mitigation Programs and Key Contracts* (GAO-08-437), June 2008.

FEMA's COTR Website

To assist its COTRs, FEMA has established a COTR intranet website. The site includes a COTR “Toolkit” containing forms and templates commonly used by COTRs, as well as updated policy information.

According to the data on the site, FEMA currently has 1,430 certified COTRs.¹⁴ They are categorized by tier level, reflecting their training and experience. This categorization matches COTR competency with contract complexity. Table 2 represents the COTR tiered certification requirements.

Table 2. COTR Training Requirements for Tier Designation

| Contract Responsibilities | Tier I Certification | Tier II Certification | Tier III Certification |
|----------------------------------|---|---|---|
| Training Requirements | Contracts up to \$5M <ul style="list-style-type: none">• 40 hours of Initial COTR Training<ul style="list-style-type: none">➢ Includes 2 hours of Procurement Ethics Training <p><i>Free online training for the initial COTR training requirements can be accessed through Federal Acquisition Institute</i></p> | Contracts \$5M to \$57M <ul style="list-style-type: none">• Tier I Certification• <u>3 Additional Courses:</u><ul style="list-style-type: none">1. Market Research and Commercial Item Acquisitions2. Federal Contracting Basics3. Federal COTR Training Program | Contracts \$57M and above <ul style="list-style-type: none">• Tier I and II Certification• <u>3 Additional Courses:</u><ul style="list-style-type: none">1. Negotiation Strategies and Techniques2. Performance-Based Acquisition: Preparing Work Statements3. Pre-award Business Decisions in Contracting |
| Equivalent Certifications | <ul style="list-style-type: none">• Contracting (FAC-C)* Level 2 CertificationOrFAC P/PM Certification | <ul style="list-style-type: none">• Contracting (FAC-C) Level 2 CertificationOr• PM Level II Certification | <ul style="list-style-type: none">• Contracting (FAC-C) Level 3 CertificationOr• PM** Level III Certification |
| Continuous Learning Requirements | <p><u>Biennial:</u> 40 hours of training</p> <ul style="list-style-type: none">• 20 hours of technical competency training• 18 hours of business competency training• 2 hours of ethics training | | |

*FAC-C: Federal Acquisition Certification in Contracting

**FAC P/PM: Federal Acquisition Certification for Program and Project Managers

Source: FEMA's COTR website, accessed March 15, 2011.

¹⁴ FEMA intranet as of March 15, 2011.

Results of Audit

Although FEMA has enhanced its COTR program, the following areas require additional attention: enhancing COTR training, reducing program office pressure, following records management guidance, developing a strategy to handle disasters, and training task monitors.

As part of our fieldwork, we conducted a survey on FEMA's COTR program. The survey was forwarded to 1,710 individuals, including COTRs, warranted contracting officers,¹⁵ and unwarranted contracting officers. We received greater than a 50% response rate from COTRs and an 85% response rate from warranted contracting officers. Appendix F contains the survey questions and a summary of the answers.

COTRs Would Benefit From Hands-on Training

FEMA COTR training requirements are mandated by DHS Acquisition Workforce Policy Number 064-04-003, *Contracting Officer Technical Representative Certification, Appointment and Termination*. To assume COTR responsibilities, an employee must complete 40 hours of initial training either in a classroom or online. Thereafter, 40 hours of training must be completed biennially to maintain COTR certification. Most COTRs found the initial certification training to be effective and useful, but several areas need improvement.

COTRs said that they would benefit from training that is more technical and focuses on the “how-to” of contracting. For example, COTRs would like detailed guidance on what steps to take when they are appointed to a contract and instruction on the review and approval of invoices. A contract specialist suggested that COTRs also receive business process training, including how to compile financial data and document problems. One COTR said that the training simply outlines the laws and regulations, but does not prepare them for the actual experience of performing COTR duties. In addition, many of the followup training courses are offered only through the Defense Acquisition University, with examples specific to the Department of Defense. COTRs find it hard to apply these examples to FEMA's work.

Some of the COTRs we spoke to felt they would be uncomfortable performing their duties without a supervisor or mentor. One COTR said that he was not sure he was prepared to function as a COTR if a disaster were declared. One reason for this is that program offices repeatedly

¹⁵ A warranted contracting officer carries a warrant allowing him or her to bind the government in contracts; an unwarranted contracting officer is employed as an 1102 job series, might have kept his or her education requirements current, but does not currently have a contract warrant.

appoint the same COTRs instead of taking full advantage of the entire pool of certified COTRs, leaving many COTRs with no contract oversight experience. Many COTRs said they need more real-world opportunities soon after training to remember what they have learned. A regional COTR said that she is sure she has forgotten everything she learned and would need to be recertified in order to perform effectively as a COTR. Several COTRs stated that on-the-job training was much more helpful than the classroom training.

Many COTRs agreed that a mentoring program is needed to supplement what they learn in training. A supervisor agreed that the quality of certification training varies; simply passing a course does not mean that someone can function as a COTR. Providing newly certified COTRs with an opportunity to shadow more experienced COTRs would enable them to perform COTR duties more effectively, such as identifying illegitimate invoices, holding contractors accountable, and knowing which FEMA forms and processes to use—topics that are not always covered in training. A mentoring program would also help COTRs understand what actions they can and cannot take against a contract or contractor. A regional COTR said that the best training she received was the mentoring provided by her coworker. She is now comfortable mentoring others. Other COTRs said their duties are not something that can be done right away without supervision; they require guidance and mentoring. Training alone is not enough to enable COTRs to oversee large contracts.

COTRs are taking the prescribed training and finding it useful. However, they would benefit from more hands-on experience before taking on full COTR responsibilities. This hands-on experience should familiarize the COTRs with FEMA’s business processes and help them develop the confidence needed for larger and more complex contracting actions.

Recommendation

We recommend that the Chief Procurement Officer, Federal Emergency Management Agency:

Recommendation #1: Develop and implement a contracting officer’s technical representative mentoring program led by the contracting officer’s technical representatives’ contracting officers and contract specialists; and, where practical, ensure that program offices nominate certified contracting officer’s technical representatives with appropriate skill sets for consideration for appointment by the contracting officer to gain on-the-job experience.

Management Comments and OIG Analysis

FEMA concurs with this recommendation. The Office of Chief Procurement Officer (OCPO) will develop a pilot program to evaluate the feasibility of having a COTR mentoring program, and has established an implementation date of September 30, 2011.

We consider this to be an appropriate start to developing a world-class COTR cadre. However, we are concerned that a pilot program to evaluate the feasibility of having a COTR mentoring program is not the same as having a mentoring program. By having a pilot program to evaluate the feasibility of such a program, FEMA is delaying the opportunity to strengthen its current cadre.

COTRs Can Be Influenced by Program Offices and Contractors

COTRs are selected by the program office in which they work, and the selection is submitted to the contracting officer for approval. A COTR's duties are overseen by a contracting officer; however, the contracting officer is not required to provide formal input into the COTR's annual performance appraisal. DHS Acquisition Workforce Policy¹⁶ states that when requested by a COTR's supervisor, a contracting officer is to provide input for the COTR's midpoint or annual appraisal. However, during our review, we learned that the part-time COTR's performance appraisal was generally completed by the COTR's direct supervisor or manager in the program office and did not include measures of success for COTR duties, unless the program office reached out and initiated a request. COTRs, contracting officers, and contracting specialists agree that it would be helpful if formal input were provided by the contracting officer or contracting specialist.

Because COTRs are ultimately evaluated by their program office supervisor, COTRs may be influenced into meeting the program office's needs and making contracting decisions that go against their better judgment. For example, in one instance involving the National Flood Insurance Program office, a contractor was hired to develop a new information technology system and manage the transition from the legacy system. The person appointed as COTR was a former employee of the contractor; many of the program office managers were former employees of the contractor that had developed the legacy system. The program office managers were unable to break allegiances to their former

¹⁶ Contracting Officer Technical Representative Certification, Appointment and Termination, DHS Acquisition Workforce Policy Number 064-04-003, September 30, 2010.

employer, fueling favoritism for the legacy contractor, which impeded the completion of contract services. This ultimately resulted in the termination of the contract and removal of the COTR from his duties.¹⁷

During our survey, we asked COTRs about challenges they faced, and about 16% replied that they felt excessive pressure from their program office.¹⁸ COTRs also reported instances in which contractors asked them to sign invoices or approve contract modifications, a clear violation of contracting regulations. One COTR recommended shifting the COTRs' chain of command to fall under the FEMA OCPO, thereby preventing undue influence from program officials who persist in omitting the contracting officer from contract-related discussions.

Recommendation

We recommend that the Chief Procurement Officer, Federal Emergency Management Agency:

Recommendation #2:

- Recognize contracting officer's technical representative duties and ensure contracting officer input into the contracting officer's technical representative's annual appraisal.
- Issue a memorandum annually from the Federal Emergency Management Agency Administrator reminding supervisors that exerting undue pressure on contracting officer's technical representatives to perform duties outside the contract scope of work is an ethics violation and may be subject to adverse action.

Management Comments and OIG Analysis

FEMA partially concurs with this recommendation. FEMA's OCPO does not have supervisory authority over COTRs. In accordance with FEMA Directive 228-1, supervisors may solicit the feedback of the contracting officer for the COTR's annual appraisal.

We understand that the OCPO does not have supervisory authority over COTRs, as COTRs are placed in the directorates that are

¹⁷ *Improvement Needed in FEMA's Management of the National Flood Insurance Program's Information Technology Transition* (OIG-10-76), March 2010.

¹⁸ See appendix F for the complete COTR survey results.

receiving the benefits of the contracts they oversee. However, we do not believe that FEMA Directive 228-1 goes far enough in protecting the government's interests. This directive is dated September 28, 2009. However, during the course of our audit, which occurred in late 2010 and early 2011, COTRs still expressed concerns regarding undue supervisory influence. The directive requires the COTR's supervisor to request the contracting officer's input. Until FEMA develops a way to ensure that COTRs are evaluated for their contract oversight, we believe that contracts will continue to be subject to program office interference.

FEMA concurs with the second part of this recommendation. In coordination with the FEMA Office of Chief Counsel, the OCPO will, at the start of each fiscal year, prepare a memorandum reminding supervisors that exerting undue pressure on COTRs to perform duties inconsistent with their appointment or the contract scope of work is an ethics violation and may be subject to adverse action.

Record Maintenance Policies Need Reinforcement

Contract record maintenance and retention improved after we reported that FEMA needed internal controls for records management and maintenance.¹⁹ However, record retention policies are still not effectively communicated or widely followed. Adherence to policies varies by contracting officer and COTR, as many are unaware of what the formal contract file maintenance processes entail.

The COTR website provides a checklist for COTRs to use to ensure that contract files are properly maintained. FEMA Directive 228-1, *Contracting Officer's Technical Representatives*, requires that contract files be properly maintained. However, contract files are not always complete, as (1) not all COTRs are aware that the checklist exists and (2) there has been inadequate discipline in contract file management. Some COTRs have developed their own methods for maintaining files. For example, one COTR maintains a complete file, including the checklist, COTR appointment letter, a list of responsibilities, the contract and contract modifications, and copies of invoices. On the other hand, another COTR claimed that document management was discussed in training but once she was assigned to a contract, there was no push by management to maintain files.

¹⁹ *Improvements Needed in FEMA's Disaster Contract Management* (OIG-10-53), February 2010; and *Challenges Facing FEMA's Disaster Contract Management* (OIG-09-70), May 2009.

COTRs are also unsure of what to do with files once contract terms are completed. COTRs are supposed to submit contract files to the contracting officers. The contracting officer reviews the files for completeness, packs them in boxes, and forwards them for storage. COTRs told us that files are—

- Not forwarded to the contracting officer “over 90% of the time”;
- Taken home in case there are issues later on with the contractor; and
- Personally maintained “for a long time.”

FEMA has policies and methodologies for documenting problems with contractors. The OCPO instructs employees to use the Contractor Performance Assessment Reporting System (CPARS) to capture contractor performance evaluations. However, not all COTRs are using this system. This makes it difficult for contracting officers to determine whether a contractor has had a record of performance problems when deciding whether to renew a contract. A few contracting officers request informal feedback from COTRs regarding contractor performance. Only in one office did the contracting officers ask COTRs to rate contractor performance and document it in the contract file. Some COTRs claim that there is no need for formal contractor performance documentation because they work closely with their contracting officers on a daily basis and can communicate any contractor issue to them in person. In September 2009, FEMA’s Chief Procurement Officer issued a memorandum defining the various roles in CPARS preparation and use. The Chief Procurement Officer also expressed his expectation for “everyone having a role in CPARS to perform those roles as required.”

The Federal Acquisition Regulation contains requirements for proper file maintenance. Records are necessary to support decisions made and actions taken. A standardized storage method is necessary so that documents are available if there is a change in personnel or if there is any disagreement over contract performance. Further, contractors deserve a fair and accurate evaluation of their performance. This evaluation should be captured in CPARS, where it is available for contracting officers to consider in future awards.

Recommendations

We recommend that the Chief Procurement Officer, Federal Emergency Management Agency:

Recommendation #3: Enforce Federal Emergency Management Agency Directive 228-1, *Contracting Officer’s Technical Representatives*, and provide periodic training on the use of the contracting officer’s technical representative file checklist.

Recommendation #4: Implement mechanisms to enforce established policies for oversight in the use of the Contractor Performance Assessment Reporting System.

Management Comments and OIG Analysis

FEMA concurs with recommendation #3. FEMA stated that the “OCPO conducted a pilot program for COTR file technical review. Program Offices were selected at random to ensure COTR file compliance with FEMA Directive 228-1 and the COTR appointment letter. Non-compliance of the directive and appointment letter may result in termination of the COTR appointment. Periodic training and communication to COTRs regarding COTR file maintenance is continuous.” FEMA’s response is silent as to what happened to the pilot program, whether it was found to be effective, or whether the OCPO determined that there was a better way to ensure proper COTR file maintenance. However, during the course of our audit, we became aware that the COTR technical file review was curtailed because of funding limitations. We look forward to learning more about FEMA’s plan to ensure COTR compliance with Federal Acquisition Regulation file maintenance requirements.

FEMA concurs with recommendation #4. FEMA’s OCPO will develop policy regarding the use of CPARS by January 1, 2012. We agree that policy is needed for better CPARS compliance. We also request that FEMA not only develop policy but strengthen its internal oversight of CPARS use.

Formal Surge Strategy Is Needed

FEMA currently has no system in place to quickly call up COTRs in the event of a disaster. The COTR Program Lead indicated that, at this time, the best way to handle a situation in which COTRs need to be deployed immediately would be to look at the list of COTRs based on location and then provide that information to the FEMA program office.

FEMA maintains a database listing DHS-certified COTRs, and the list is also available via FEMA’s COTR community website. However, when we administered our survey to all COTRs and contracting officers, a number of the email addresses provided were incorrect. Furthermore, the OCPO did not have a current list of its warranted contracting officers. When FEMA finally compiled a contracting officer list for us, many of the

addresses were incorrect; the OCPO was unable to provide an accurate list even after numerous conversations. Without an accurate list of names and contact information, it would be extremely difficult for FEMA to contact these contracting officers and COTRs in the event of a disaster. To ensure quick and efficient contracting activity during a disaster, FEMA needs to maintain an accurate list of its contracting officers and COTRs.

In 2008, we reported that FEMA needed to enhance its plans and policies to develop a well-prepared acquisition workforce that can respond to disasters that result in extraordinary levels of casualties, damage, or disruptions. Specifically, we recommended that FEMA—

- Develop and implement a strategic acquisition workforce plan;
- Coordinate with other FEMA components and federal acquisition organizations that have responsibilities to prepare for and respond to such disasters;
- Develop and implement detailed acquisition workforce policies and procedures;
- Complete a staffing analysis to determine the appropriate size of the Disaster Assistance Employee (DAE) contracting cadre;
- Develop a succession plan for FEMA’s Office of Acquisition Management²⁰ acquisition staff;
- Initiate a formal mentoring program;
- Design a rotation program for headquarters and regional office acquisition personnel to obtain disaster contracting experience; and
- Provide training and guidance to the field office staff in conjunction with reassignment of contract administration responsibilities.²¹

FEMA has made progress on some of these activities, but more should be done.

As of January 2010, FEMA had 16,588 federal employees, of whom 4,169 or approximately 25% were permanent. The remaining 75% of FEMA’s workforce is nonpermanent disaster-related employees. Section 306 of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* authorizes the “Appointment of temporary personnel, experts, and consultants” during a disaster. The largest group of temporary employees is classified as DAEs. DAEs are federal employees who work on an on-call, intermittent basis, forming the major FEMA workforce in times of emergency or disaster. DAEs help complete FEMA’s mission by staffing

²⁰ Now known as OCPO.

²¹ *Challenges Facing FEMA’s Acquisition Workforce* (OIG-09-11), November 2008.

joint field offices²² and disaster recovery centers; interviewing disaster survivors; conducting and verifying damage assessments; providing administrative, financial, acquisition, and logistical support; and performing a wide variety of other tasks as identified by staffing needs and operational requirements.

In the federal government, the standard way to classify employees is the use of numeric coding that is assigned to an occupational series. It provides agencies a way to group similar jobs together. FEMA has more than 130 occupational series, but regardless of their individual qualifications and experiences, all of FEMA's DAEs are classified in the Generalist-301 series. Most of FEMA's 301 series employees are program specialists in mission-critical areas such as emergency preparedness, response, or emergency management. DAEs are not given specific job titles or job descriptions that identify those qualified as contracting officers, COTRs, or acquisition-related experts.

According to FEMA officials, this legacy practice of classifying all DAEs in the 301 series has an adverse impact on the acquisition cadre and it is an impediment to recruitment, qualification, and readiness. For example, despite a government-wide increase of qualified retiring 1102 series contract specialists,²³ FEMA is unable to attract these individuals to become part-time, intermittent DAE employees because FEMA advertises openings only for generalists in the 301 series. Also, because acquisition policies are crafted to limit the financial risk to the government posed by non-1102 acquisition personnel, FEMA has limited the warrant levels for 301 series contracting officers to \$150,000. Prior to retirement, those same personnel may have held multimillion-dollar or unlimited warrants. This constraint limits the new hires' ability to contribute to the award of higher level acquisitions at disaster sites. Also, while the Office of Personnel Management provides certain waivers for retired annuitants who return to serve in 1102 series positions, it does not provide the same for 301 series positions. Consequently, the 301 series DAEs serving as contract specialists are not encouraged to be available after the first 120 days of a disaster declaration,²⁴ and according to FEMA, this results in more frequent turnover in deployments.

²² A joint field office is a temporary federal multiagency coordination center established locally to facilitate field-level domestic incident management activities related to prevention, preparedness, response, and recovery. It provides a central location for coordination of federal, state, local, tribal, nongovernmental, and private-sector organizations with primary responsibility for activities associated with threat response and incident support.

²³ "Contract specialist" is the term used for those in the 1102 series; a contracting specialist, as defined in table 1, is a job title for those who support contracting officers.

²⁴ The Office of Personnel Management states that within the first 120 days of a presidential disaster declaration, FEMA is authorized to waive the pay/retirement reduction for civilian retirees employed during presidentially declared disasters.

Readiness is also at risk as contract specialists, who as part of the Cadre of On-Call Response Employees (CORE) or permanent full-time employees are classified as 1102 series personnel, have an affirmative education and training requirement in law. These training and education requirements ensure that only qualified personnel are obligating funds for the government and are providing appropriate oversight. However, when 301 series DAEs perform these same tasks, they may do so without meeting the education, training, and continuing education requirements of their 1102 series counterparts.

Although FEMA has succeeded in increasing the size of its COTR workforce, it has not yet developed a methodology to provide the contract oversight vital in large disasters. With the administration and Congress focused on performance outcomes, now is the time for agencies to invest in the acquisition workforce directly overseeing contract performance. The federal government must attract talented individuals into the acquisition workforce, whether as permanent employees or DAEs, to ensure cost savings, reduce risk in contracting practices, and improve acquisition and project management. Contracting officers and COTRs are critical to ensuring that contracts deliver expected outcomes. To support this process, the federal government has identified hiring flexibilities and strategies that agencies should consider to improve the visibility of acquisition jobs, target specific skill sets, and reduce the administrative burden on the agency and the applicant.

Recommendations

We recommend that the Chief Procurement Officer, Federal Emergency Management Agency:

Recommendation #5: Develop a working group with the program offices to develop a surge strategy for deployment of contracting officer's technical representatives during disasters.

Recommendation #6: Develop and maintain, on a monthly basis, a database with essential information regarding warranted contracting officers.

Recommendation #7: Work in concert with the Federal Emergency Management Agency Chief Component Human Capital Officer and the Federal Emergency Management Agency Chief Counsel to review the classification of Acquisition Cadre positions in an effort to improve the recruitment and optimize the training and utility of contracting specialists in the Acquisition Cadre within the constraints of the Disaster Assistance Employee program.

Management Comments and OIG Analysis

FEMA concurs with recommendation #5. The OCPO will coordinate a working group with the program offices to assist in surge strategies for COTR deployment. We believe that having a surge strategy for disaster deployment will lessen some of the uncertainties that are bound to occur during a disaster and strengthen FEMA's effectiveness during emergencies.

FEMA concurs with recommendation #6. The OCPO Acquisition Career Manager maintains an accurate record of warranted contracting officers with their contact information.

FEMA concurs with recommendation #7. FEMA's Office of Human Capital has agreed with the change needed to have DAE reservists identified in the 1102 series. The OCPO is now working directly with the FEMA Response Directorate, within the Office of Response and Recovery, to form a pilot working group to develop a cadre of Acquisition reservists.

Task Monitors Need Training

In a recent report, we stated that FEMA was using untrained task monitors to oversee Public Assistance²⁵-Technical Assistance Contracts (PA-TAC).²⁶ These are often multimillion-dollar contracts, depending on the type and severity of the disaster. FEMA has contracts in place with three contractors to provide architectural and engineering expertise after a disaster. The contracting officer and COTR for these contracts are based at FEMA headquarters, yet the actual work is performed in the field. FEMA has assigned task monitors at disaster sites to provide contract oversight. However, these task monitors had no significant experience or training to prepare them for these duties; often they were assigned simply because they were available at the disaster site.

Individual Assistance-Technical Assistance Contracts²⁷ (IA-TAC) are used to assist individuals after a disaster with temporary housing and mass

²⁵ FEMA awards grants to assist state and local governments and certain private nonprofit entities with the response and recovery from disasters through the Public Assistance Program.

²⁶ *Improvements Needed in FEMA's Management of Public Assistance-Technical Assistance Contracts* (OIG-11-02), October 2010.

²⁷ IA-TAC differ from PA-TAC in that all PA-TAC contractors may be activated for a disaster. IA-TAC contractors each have an assigned sector of the country; they are activated on the basis of the location of the disaster.

care. The IA-TAC program office also uses task monitors to oversee contractors in the field. This program office has realized the weakness in having untrained task monitors, so it is starting to require its task monitors to become certified COTRs. By requiring this training, the IA-TAC office will improve the quality of its oversight of the disaster contractors.²⁸

FEMA is developing the Disaster Acquisition Response Team to perform disaster contract oversight, administration, and contract closeout. Although the staff will be located in regional offices, they are considered headquarters assets and can be used nationally. Their focus will be on the large task orders already issued against the pre-positioned contracts following disasters. These employees will assist joint field offices and regions in closing out those task orders issued in response to a disaster to allow for a more timely return of unobligated funds to the Disaster Relief Fund. The creation of this team is still in the planning stages.

PA-TAC and IA-TAC are just a few of the large contracts issued by FEMA headquarters. Other large contracts are overseen by COTRs based in Washington, DC, even though the actual work is performed elsewhere. The actual work is monitored by regional staff with the technical knowledge, but possibly little or no contracting training. Although personnel must be assigned to provide onsite monitoring, those assigned need to be fully trained to perform their oversight, acquisition-related duties. The COTR program is one way to provide that training.

FEMA spends millions of contract dollars annually for goods and services nationwide. COTRs cannot be at every location in which contractors are performing, so using task monitors is a reasonable method of ensuring contract monitoring. However, these task monitors need to be adequately trained and supported, so that the contractors are held to the appropriate standards and FEMA receives the goods and services it needs.

Recommendation

We recommend that the Chief Procurement Officer, Federal Emergency Management Agency:

Recommendation #8: Implement policy that requires all technical monitors to be Department of Homeland Security certified contracting officer's technical representatives, and appoint them as limited authority contracting officer's technical representatives on a contract.

²⁸ We are completing an audit of FEMA's IA-TAC.

Management Comments and OIG Analysis

FEMA concurs with recommendation #8. The COTR Program has updated the COTR Handbook to address limited authority COTRs. FEMA plans on updating FEMA Directive 228-1 with the role and responsibilities of the limited authority COTRs. FEMA's response is silent as to whether all who have functioned as technical monitors will be required to become limited authority COTRs; however, we believe that FEMA's concurrence signifies its acceptance of this additional step.

Appendix A **Purpose, Scope, and Methodology**

The objective of our audit was to determine whether FEMA has adequate controls, policies, and procedures in place to effectively manage its contracting officer's technical representative program.

We conducted interviews at FEMA headquarters, FEMA Regions II, III, IV, VI, and IX, the Louisiana Transitional Recovery Office, and the Texas National Processing Service Center. We examined documentation related to FEMA's COTR program at each location visited. We also sent a survey to 1,710 COTRs and contracting officers. The response rate was 50% for COTRs and 85% for contracting officers. We used the information gathered from our survey throughout this report; the survey questions and summaries of the answers are included as appendix F.

We conducted this performance audit between October 2010 and March 2011 pursuant to the *Inspector General Act of 1978*, as amended, and according to 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 upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

Appendix B

Management Comments to the Draft Report

U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472



FEMA

AUG 04 2011

MEMORANDUM FOR: Matt Jadacki
Assistant Inspector General
Office of Emergency Management Oversight

FROM: David J. Kaufman Director
Office of Policy and Program Analysis

SUBJECT: FEMA OCPO Response to OIG Draft Report *FEMA's Contracting Officer Technical Representative Program*, Project No.09-214-EMO-FEMA

We thank you for the opportunity to provide comments to your draft report, *FEMA's Contracting Officer Technical Representative Program*. Your report explained the actions taken by your office to review the Contracting Officer Technical Representative (COTR) Program and identified measures to enhance COTR training and mentoring, reduce program office pressure, ensure programs follow records management guidance, develop a COTR disaster strategy, and train task monitors.

Our responses to your eight recommendations follow:

Recommendation #1: Develop and implement a contracting officer's technical representative (COTR) mentoring program led by the contracting officer's technical representatives' contracting officers and contract specialists; and, where practical, ensure that Program Offices nominate certified contracting officer's technical representatives with appropriate skill sets for consideration for appointment by the contracting officer to gain on-the-job experience.

Response to Recommendation: FEMA concurs with this recommendation. FEMA's Office of the Chief Procurement Officer (OCPO) will develop a pilot program to evaluate the feasibility of implementing a COTR mentoring program by the end of this fiscal year, September, 30, 2011.

Recommendation #2: Recognize contracting officer's technical representative duties and assure contracting officer input in the contracting officer's technical representative's annual appraisal. Issue a memorandum annually from the Federal Emergency Management Agency Administrator reminding supervisors that exerting undue pressure on contracting officer's technical representatives to perform duties outside the contract scope of work is an Ethics violation and may be subject to adverse action.

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Response to Recommendation: FEMA partially concurs with this recommendation. FEMA's OCPO does not have supervisory authority over COTRs. In accordance with FEMA Directive 228-1, supervisors may solicit the feedback of the Contracting Officer for the COTRs annual appraisal. We will update our COTR nomination letter to notify Supervisors that the OCPO is available for feedback to the COTRs appraisal.

In coordination with the FEMA Office of Chief Counsel, the OCPO will, at the start of each fiscal year, prepare a memorandum reminding supervisors that exerting undue pressure on COTRs to perform duties inconsistent with their appointment or the contract scope of work is an ethics violation and may be subject to adverse action.

Recommendation #3: Enforce the Federal Emergency Management Agency Directive 228-1, Contracting Officer's Technical Representatives, and provide periodic training on the use of the contracting officer's technical representative file checklist.

Response to Recommendation: FEMA concurs with this recommendation. FEMA's OCPO conducted a pilot program for COTR file technical review. Program Offices were selected at random to ensure COTR file compliance with FEMA Directive 228-1 and the COTR appointment letter. Non-compliance of the directive and appointment letter may result in termination of the COTR appointment. Periodic training and communication to COTRs regarding COTR file maintenance is continuous.

Recommendation #4: Implement mechanisms to enforce established policies for oversight in the use of the Contractor Performance Assessment Reporting System.

Response to Recommendation: FEMA concurs with this recommendation. FEMA's OCPO will develop policy regarding the use of CPARS by January 1, 2012.

Recommendation #5: Develop a working group with the program offices to develop a surge strategy for deployment of contracting officer's technical representatives during disasters.

Response to Recommendation: FEMA concurs with this recommendation. FEMA's OCPO will coordinate a working group with the program offices to assist in surge strategies for COTR deployment.

Recommendation #6: Develop and maintain, on a monthly basis, a database with essential information regarding warranted contracting officers.

Response to Recommendation: FEMA concurs with this recommendation. FEMA's OCPO Acquisition Career Manager maintains an accurate record of warranted contracting officers including their warrant levels, experience, training and education levels, branch /office assignment, grade, series, and full performance level, and FAC-C certification level. FEMA's existing email distribution lists for all OCPO divisions and contracting personnel are adequate for the dissemination of contracting policy, guidance and contacting these individuals in the event of a disaster. The decision to notify the entire acquisition community of such changes has broadened the understanding of the OCPO function at large. In addition to the established email distribution lists in Outlook, FEMA maintains an emergency notification system that incorporates both the current email address

Appendix B

Management Comments to the Draft Report

and the home and work phone numbers for all OCPO personnel to contact them in the event of a disaster.

Recommendation #7: Work in concert with the Federal Emergency Management Agency Chief Component Human Capital Officer and the Federal Emergency Management Agency Chief Counsel to review the classification of Acquisition Cadre positions in an effort to improve the recruitment and optimize the training and utility of contracting specialists in the Acquisition Cadre within the constraints of the Disaster Assistance Employee program.

Response to Recommendation: FEMA concurs with this recommendation. As of June 16, 2011, FEMA's Office of Human Capital has concurred that change is needed to convert the DAE Reservists to the 1102 series and invited OCPO to work directly with the Office of Response and Recovery, Response Directorate, to form a pilot working group to accomplish the same for Acquisition reservists. Also, on that date, the FEMA Administrator transferred responsibility for the DAE Cadres to the Office of Response and Recovery, Response Directorate.

Recommendation #8: Implement policy that requires all technical monitors to be Department of Homeland Security certified contracting officer's technical representatives, and appoints them as limited authority contracting officer's technical representatives on a contract.

FEMA concurs with this recommendation. The COTR Program has updated the COTR Handbook to address Limited Authority COTRs (formally known as Technical Monitors). Plans are being coordinated to update FEMA Directive 228-1 with the role and responsibilities of the Limited Authority COTRs.

Due to the scope or technical complexity of some business agreements, the Contracting Officer may also designate a Limited Authority COTR in addition to a COTR. Their role is to perform specific delegated duties or tasks within the limits specified by the Contracting Officer. The Limited Authority COTR serves as the "eyes and ears" of the COTR relevant to their specified limits. These limits are stated in a letter of appointment signed by the Contracting Officer. Limited Authority COTRs are appointed to perform those functions only for that specific contract. Some duties may include, but are not limited to, acceptance of deliverables, monitoring of Contractor's performance, providing support for the certification of invoices for payment and ensuring that Government property is being used properly. At the end of the contract, the designation of duties automatically expires, unless terminated sooner by the Contracting Officer. The appointment process and training requirements for COTRs pertain equally to the Limited Authority COTR.

Again, we thank you for the opportunity to review and provide comments on your draft report. Should you have any questions regarding this response, please feel free to contact Brad Shefka, Chief, FEMA GAO/OIG Liaison Office, 202-646-1308.

Appendix C

COTR Training Requirements

Certification Requirements²⁹

To obtain initial DHS FEMA contracting officer's technical representative certification, employees must complete 40 hours of initial COTR training and apply for COTR certification within 2 years of completing the required coursework. 22 hours must cover essential COTR technical competencies, 18 hours must cover business competencies, and the remaining 2 hours must cover procurement ethics.

DHS permits two exceptions to the requirements mentioned above:

- Applicants who have previously acquired a Contracting Level 1 Certification or higher are eligible for initial COTR certification.
- Project managers with Level II Certification or higher are eligible for initial COTR certification.

Training can be obtained online or in the classroom. DHS offers free accredited classroom training for the initial training curriculum. Initial COTR training provided by vendors other than DHS-accredited vendors must be accompanied by a course description and 1 hour of ethics training. Program offices are responsible for the costs of training obtained through a training provider. Online training can be taken through the Federal Acquisition Institute.

If the training is taken online via the Federal Acquisition Institute, COTR applicants may obtain their 40 credits using one of the following two options:

- Complete Contracting Officers Representatives Online Training (32 hours). To cover the remaining 8 hours, choose one of the following three Defense Acquisition University online courses:
 - Cost Estimating (8 hours)
 - Integrated Project Team (IPT) Management and Leadership (8 hours)
 - Risk Management (8 hours)
- Plus 1 hour of ethics:
 - Ethicsburg (ethics training via the Internet)
 - Ethics Training
 - Ethics Training for Acquisition Technology and Logistics (Defense Acquisition University)

Or, the employee may complete all courses from list A and six continuous learning modules (CLMs) from list B from the table below. The remaining 10 continuous learning points (CLPs) must be from an approved CLM, which is available on FEMA's COTR website.

²⁹ Information provided as found on FEMA's COTR website. The website contains the training hour inconsistencies demonstrated above. The inconsistency is due to ethics training being required in addition to the 40 hours of technical training.

Appendix C

COTR Training Requirements

| List A: Technical Courses | | | List B: Business Courses | | |
|---------------------------|---|-----------|--------------------------|---|------|
| Course Number | Course Title | CLPs | Course Number | Course Title | CLPs |
| CLM 024 | Contracting Overview | 8 | CLM 012 | Scheduling | 12 |
| CLC ³⁰ 106 | Contracting Officer's Representative with a Mission Focus | 8 | CLM 014 | IPT Management and Leadership | 8 |
| CLC 004 | Market Research | 3 | CLM 016 | Cost Estimating | 8 |
| CLC 007 | Contract Source Selection | 3 | CLM 017 | Risk Management | 8 |
| CLM 003 | Ethics Training for Acquisition Technology and Logistics | 2 | CLB 013 | Work Breakdown Structure | 6 |
| | TOTAL | 24 | CLB 016 | Intro to Earned Value Management | 1 |
| | | | CLB 018 | Earned Value and Financial Management Reports | |

Source: FEMA intranet.

Once the training is complete, employees are instructed to fax or email scanned training certificates to COTR headquarters to be processed. After 48 hours, their updated status will be posted on the COTR list alphabetically.

Biennial Training Requirements

To maintain certification, COTRs are required to obtain 40 hours of continuous learning training every 2 years:

- Twenty-two hours must cover essential COTR technical competencies.
- Eighteen hours must cover business competencies.
- Two hours must cover procurement ethics.

³⁰ CLC = continuous learning contracts.

Appendix C

COTR Training Requirements

| Biennial Maintenance Training (Every 2 Years) | | | |
|--|-------------------------------------|---------------------|---------------------|
| Technical Competencies = 22 hours | Business Competencies = 18 hours | Ethics = 2 hours | Total = 40 hours |

Source: FEMA intranet.

COTRs have two options to complete their biennial requirement:

- Complete all 40 hours and submit as one package, or
- Submit the minimum requirement for the first year, 12 hours plus 1 hour of ethics, and remaining hours by the end of the biennial period for a total of 40 hours.

COTRs may receive also CLPs for Technical Evaluation Panel participation, conferences, and brown-bag training.

COTRs who fail to complete their biennial requirement by the biennial maintenance due date will be required to complete 40 hours of COTR training in order to be reinstated. Failure to meet this requirement may result in the revocation of COTR certification.

Appendix D

Primary COTR Appointment Letter



FEMA

Primary COTR Appointment Letter

| COMPONENT | |
|----------------------------|----------------------|
| Insert Component Name | |
| Program Office | Employee |
| Insert Program Office Name | Insert Employee Name |
| Telephone | Location |
| Insert telephone number | Insert location |

Dear Insert employee name,

You are hereby appointed as the Contracting Officer's Technical Representative (COTR) for DHS Office of Procurement Operations Agreement/ Contract number: Insert Agreement/Contract number for the amount of Insert contract dollar amount, awarded to Insert name of contractor/awardee organization effective Insert effective date.

Insert Agreement/Contract Number is a: (check one below)

Contract Purchase Order Task Delivery Order

Cooperative Agreement Grant Memorandum of Understanding (MOU)

Interagency/Intra-agency Agreement

Under this COTR appointment, you are assigned responsibilities to assist the Contracting Officer in the administration of the Agreement/ Contract referenced above. This appointment remains in effect for the duration of the business agreement, as long as your COTR certification remains current. This appointment can only be changed or rescinded in writing by the Contracting Officer.

Please carefully review the explanation of COTR authority and responsibilities herein and sign the last page of this document acknowledging your understanding and acceptance of this COTR appointment. After signing the last page of the COTR appointment letter, please return it to the DHS OPO Division within ten (10) calendar days.

SCOPE OF AUTHORITY

I, Insert COTR Name, understand and agree that:

1. The DHS Office of Procurement Operations Contracting Officer is the only agent with authority to enter into and administer business agreements. I have been delegated the authority to monitor delivery and performance under the business agreement as the Contracting Officer's Technical Representative. Other than the Contracting Officer, or the alternate COTR acting in my absence, I am the duly appointed Government employee assigned to provide technical direction for the business agreement between the Government and the Contractor.

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Primary COTR Appointment Letter

2. This appointment does not change or supersede the established line of authority and/or responsibility of any organization.
3. I shall notify the Contracting Officer immediately if I am unable to fulfill the responsibilities of this position for an extended period.
4. I shall protect the Government's interests while performing my COTR duties. I must avoid any action that places me in a real or apparent conflict of interest that may compromise security or impair public confidence in the integrity of DHS.
5. I have read DHS Management Directive 0480.1, Ethics /Standards of Conduct, and discussed any questions I have regarding my understanding of the duties and obligations under this policy.

COTR RESPONSIBILITIES

1. PREPARATION

- a. The COTR must be knowledgeable of the terms and conditions, as well as the technical content in the business agreement. To understand the terms, the COTR must read the business agreement and discuss any unclear areas with the Contracting Officer. The following is a list of topics in the Agreement that the COTR is expected to understand and manage:

| | |
|---|---|
| Business Agreement Type | Performance Standards 81 Metrics |
| Invoicing Procedures | Security Requirements |
| Packaging and Markings | Inspection, Acceptance, and Special Clauses |
| Quality Assurance | Ordering Procedures |
| Reports & Deliverable Items | Time, Place and Method of Delivery or Performance |
| Government Furnished Assets and Information | |

- b. While the official contract/agreement file is maintained by the Contracting Officer, the COTR must create and maintain a file to document COTR actions under this business agreement. The file should include:
 - A complete copy of the business agreement, a copy of the COTR Letter of Appointment;
 - Copies of any related correspondence;
 - Record of any significant telephone conversations or other communications with the Contractor;
 - Signed invoices;
 - All records of the Contractor's performance, such as performance monitoring, inspection and service reports and other documents as applicable.
 - c. In order to effectively monitor delivery and performance, the COTR must read and become very familiar with the business agreement's schedule for performance standards and metrics, deliveries, completion dates, invoice due dates, option renewal dates and other report or data submission dates. The COTR must also establish a log or tracking system.

2. GENERAL ADMINISTRATION INFORMATION

- a. Determine the need, and ensure all requirements are met for Contractor badges, background checks, and all other required clearances.

Appendix D

Primary COTR Appointment Letter

- b. Plan and coordinate as necessary with the Insert local facilities managers, real estate personnel or appropriate points of contact for the component.
 - c. Obtain and maintain a list of employees who will be working at the Insert appropriate information facility. Keep list current by making adjustments for new and terminated employees. This is important to the security of the facility. This list may be used to initiate background checks by the security office in the relevant location.
 - d. Coordinate with the Contracting Officer to ensure all Contractors (and subcontractor as applicable) have signed nondisclosure forms, as prudent or required.
 - e. Safeguard the Contractor's confidential business and technical information. Confidential information may include proposal pricing, technical documentation, or personnel data. Do not release any information without first consulting with the Contracting Officer to determine if release of such information is permissible.
 - f. Maintain communications with the Contractor and the Contracting Officer. Meet with the Contractor or his/her designated representative at the beginning of the business agreement period of performance to discuss working methods. Also, serve as the contact through which the Contractor can relay questions and problems to the Contracting Officer.
 - g. Ensure all Contractor personnel identify themselves and their company affiliation in all communications (written, telephonic, and electronic) related to the business agreement.
 - h. Monitor the Contractor's compliance with safety, security, labor and environmental law requirements.
 - i. Report any observed fraud, waste, or opportunities to improve performance or cost efficiency to the Contracting Officer.
 - j. Provide independent government cost estimates (IGCEs) and other supporting information as required by the Contracting Officer when changes to the business agreement are required.
 - k. Assist the Contracting Officer in negotiating supplemental agreements and coordinating with related Contractors on other business arrangements.
 - l. Write an evaluation of the Contractor's technical performance at least annually and at the end of performance or delivery. If a specific form is required, it will be provided by the Contracting Officer.
 - m. Keep the Contracting Officer fully informed of any technical, administrative or contractual difficulties encountered during performance and make recommendations as appropriate.
 - n. Seek guidance from the Contracting Officer for specific situations not covered in this delegation.
3. MONITORING AND SURVEILLANCE
 - a. Perform surveillance of the performance under the business agreement and conduct inspections necessary to assure performance and compliance with the terms and conditions of the agreement. Resolve day-to-day matters within the scope of your authority.

Appendix D

Primary COTR Appointment Letter

- b. Assist the Contractor in interpreting the terms and conditions or performance requirements, provided that any interpretation or clarification is within the limitations prescribed within this delegation.
- c. Immediately bring to the Contractor's attention, any potentially hazardous working conditions. The Contractor is always required to comply with Federal Occupational Safety and Health Administration (OSHA) guidelines, applicable labor and environmental laws, as well as any state or local requirements for workplace safety, whether in a Federal facility or other location. In addition, ensure that the Contractor adheres to any specific safety clauses and/or the safety plan in the business agreement.
- d. Immediately alert the Contracting Officer to any possible Contractor deficiencies or questionable practices so that corrections can be made before the problems become significant. Advise the Contracting Officer of the following situations:
 - Possible changes in Contractor management and/or key personnel;
 - Potential labor disputes or workforce problems;
 - Disagreements with the Contractor regarding performance of statement of work/objectives (SOW/SOO) requirements or other potential disputes with the Contractor about technical or other business matters;
 - Lack of performance that may jeopardize the cost or required schedule of the business agreement.
- e. Review Contractor requests for travel, overtime, Government assets, or subcontracting in a timely manner and forward to the Contracting Officer for approval.
- f. Review and analyze the Contractor's deliverables, service, and management reports.
- g. Provide feedback on Contractor performance as input to the past performance data base or as otherwise requested by the Contracting Officer.

4. INSPECTION AND ACCEPTANCE

- a. Inspect deliverables and monitor services for conformance to the performance standards, and accept or reject them.
- b. Follow the guidance within the business agreement regarding inspection and acceptance. If there are any questions, contact the Contracting Officer.

Appendix D **Primary COTR Appointment Letter**

5. INVOICES AND PAYMENT

- a. See clause Insert appropriate clause for processing of invoices and adhere to those conditions.
- b. Report any discrepancies in payment vouchers to the Contracting Officer. Provide documentation to support the representation.
- c. Evaluate progress payment requests based on costs incurred and actual work accomplished.
- d. Review Interim Cost Vouchers: If this is a cost reimbursable agreement, the Contractor is entitled to be reimbursed periodically for all reasonable costs incurred in performing the business agreement. You should review such vouchers to make sure charges are commensurate with observed performance. It is your responsibility to question or concur with direct charges such as labor, materials, travel, etc. Alert the Contracting Officer if the billing includes material or equipment charges for items that have not been delivered to the work site. The Contracting Officer is responsible for verifying correctness of indirect rates, fringe benefits and fee, if any.

6. GOVERNMENT FURNISHED ASSETS: EQUIPMENT, MATERIALS AND FACILITIES

- a. Do not authorized to provide any Government-owned (or leased) equipment or supplies or use of Government space to the Contractor, other than those specifically identified in the business agreement and authorized by the Contracting Officer.
- b. Monitor the Contractor's use and care of any Government-furnished assets. If you believe the Contractor is using the item for unauthorized purposes or is not providing adequate maintenance or security for the property, you are required to bring your concerns to the Contractor's attention. If the Contractor does not agree to remedy the problem, or indicates that corrective action will impact the cost, performance or schedule, refer the matter to the Contracting Officer.
- c. Coordinate with the Insert POC Name regarding the completion of all required documentation for the acceptance, use and return of Government-furnished assets.
- d. Assist the Insert POC Name with the disposal of excess Government furnished assets and/or Contractor acquired assets.
- e. Assist the Insert POC Name with the valuation of lost, damaged and destroyed Government furnished assets and/or Contractor acquired assets.
- f. Alert the Insert POC Name and the Contracting Officer to any potential or existing Government asset issues.

Appendix D

Primary COTR Appointment Letter

7. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

- a. The COTR is required to complete an Office of General Counsel (OGC) ethics training course annually. Upon completion of the annual ethics training, the COTR shall submit documentation (e.g., certificate or e-mail) to the Contracting Officer indicating the annual ethics training requirement has been met.
- b. In order to maintain DHS COTR Certification, one (1) hour of procurement ethics training is required annually per MD 0780.1.
- c. If applicable, the COTR appointee must submit a disclosure, such as a Statement of Financial Interest and Outside Employment or Financial Disclosure Report, to the appropriate DHS confidential reporting system.
- d. COTR appointees must adhere to standards of conduct as prescribed in Federal statutes, laws, regulations, and Departmental guidelines.

Appendix D

Primary COTR Appointment Letter

8. EXCLUSIONS FROM COTR RESPONSIBILITIES

The COTR is expressly excluded from performing or being responsible for the following.

- a. Making or giving the appearance of being able to make commitments, modifications, or any other action that would commit the Government to a change in price, performance quality, quantity, or the delivery schedule.
- b. Providing guidance to the Contractor, either orally or in writing, which might be interpreted as a change in the scope or terms of the business agreement.
- c. Signing any changes or modifications to business agreements and/or task or delivery orders.
- d. Specifying how the Contractor will accomplish performance.
- e. Imposing or placing a demand upon the Contractor to perform any task or permitting any substitution not specifically provided for in the business agreement.
- f. Increasing the dollar limit of the business agreement or authorizing expenditures not specified under the business agreement.
- g. Engaging in conduct prejudicial to the Government.
- h. Making a Government decision outside official channels.
- i. Discussing procurement plans or any other advance acquisition information that might provide preferential treatment to one firm.

The responsibilities, and exclusions set forth in this document are not Intended to be a encompassing. As a COTR, you are required to consult with the Contracting Officer when there are questions on your authority. You are not authorized to re-delegate your authority. Violation or misuse of your authority could result in abuse of DHS policy and resources at a minimum or monetary loss to the COTR or firm involved, disciplinary actions, and other measures, depending on the extent of the offense.

Contracting Officer Typed Name and Signature Date

The undersigned acknowledges the COTR appointment on Agreement/Contract Number: Insert Agreement/Contract Number and accepts the duties, responsibilities and limitations described in the appointment letter.

The Contracting Officer reserves the authority to cancel COTR appointments in accordance with HS AM, Chapter 3001.

COTR Acknowledgment:

I, Insert COTR Name, have read the COTR appointment letter herein for Agreement/Contract Number Insert Agreement/Contract Number and fully understand my responsibilities and the limits of my authority. I further understand that my performance as a COTR will be evaluated and documented on an annual basis by the Contracting Officer. I certify that I have taken the required training to obtain the DHS Acquisition Certification

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Primary COTR Appointment Letter

for COTRs or have received a waiver. In addition, I certify that I will take the mandatory skills currency training to maintain my certification during the duration of this appointment.

Signature

Date

Supervisor Acknowledgment:

I, Insert COTR Supervisor's Name, have read the COTR appointment letter herein and fully understand, support and approve my employee's responsibilities and limitations as a COTR under the above referenced contract.

Signature & Title

Date

Return no later than fill in date to: Include Fax Number, e-mail or mailing address

U.S. Department of Homeland Security – Federal Emergency Management Agency – Acquisition Management Division
COTR Program – 395 E Street SW – Washington, DC 20024

Appendix E COTR Locations

FEMA Regions



Source: FEMA.

COTRs in Each Region

| Region | COTRs |
|--------------|-------|
| Headquarters | 360 |
| Region I | 16 |
| Region II | 19 |
| Region III | 30 |
| Region IV | 47 |
| Region V | 16 |
| Region VI | 103 |
| Region VII | 20 |
| Region VIII | 28 |
| Region IX | 16 |
| Region X | 6 |
| Other | 242 |

Source: OIG survey results.

Appendix F **Survey Results**

As a part of our audit, we forwarded a survey to all COTRs and contracting officers. We obtained a list of the names and email addresses of all COTRs and contracting officers from FEMA. Each individual was sent an email with information about the survey, and an individualized link for them to use for access to the survey. The initial invitation was sent out November 17, 2010, and the survey was closed in March 2011. Periodically after the initial invitation, reminders were sent to those who did not complete the survey. The results of the survey follow:

Overall Results: Of the 1,710 people to whom the survey was initially forwarded:

- 554 people received the survey and did not respond.
- 7 people had undeliverable invitations.
- 118 invitations bounced back.
- 77 people opened the survey invitation but did not start the survey.
- 82 people started the survey but did not submit it.³¹
- 872 people completed the survey.

Survey Questions:

Question 1: Please select your primary work location

Results:

The four regions with the greatest number of COTRs and contracting officers are as follows:

- 360 individuals at headquarters
- 242 individuals at other locations (i.e., Mt. Weather, Louisiana Transitional Recovery Office, National Processing Service Centers)
- 103 individuals in Region VI
- 47 individuals in Region IV

Region X, with six individuals, has the smallest number of COTRs and contracting officers.

Question 2: Which of the following best describes your role within FEMA's COTR Program?

Results:

- 469 answered active DHS-certified COTRs.
- 296 answered DHS-certified COTRs but have not been active in the last 2 years.
- 60 answered active contracting officers.
- 26 answered not active contracting officers.
- 8 answered both DHS-certified COTRs and contracting officers.
- 39 answered neither DHS-certified COTRs nor contracting officers.

³¹ For the purposes of this analysis, we included answers provided by respondents who started the survey but did not submit it.

Appendix F **Survey Results**

Question 3: How many years of experience do you have as a contracting officer?

Results:

- 25 had 10 years of contracting officer experience.
- 10 had 6 to 9 years of contracting officer experience.
- 8 had 3 to 6 years of contracting officer experience.
- 12 had fewer than 3 years of contracting officer experience.

Question 4: What level warrant do you hold?

Results:

- 53% hold a level III warrant.
- 15% hold a level II warrant.
- 7% hold a level I warrant.
- 12% were unaware of their warrant levels.

Question 5: As a contracting officer, how many contracts are you currently responsible for?

Results:

- 56% of respondents oversaw anywhere from 1 to 25 contracts.
- 30% of respondents oversaw 25 or more contracts.
- 13% of respondents oversaw no contracts.

Question 6: Are you aware of the process for appointing COTRs to contracts?

Results:

- 5% indicated that contracting officers select their own COTRs.
- 69% indicated that their program office nominates the COTRs.
- 12% indicated that it is just their program office that does the selecting and approving.
- 5% were completely unaware of the COTR selection process.

Question 7: As a contracting officer, how frequently do you use each of the following forms of communication?

Results:

- The majority of contracting officers indicated that they use email and the phone.
- The form of communication least used was postal service.

Appendix F **Survey Results**

Question 8: When a COTR has committed an infraction against their roles and responsibilities, what corrective action(s) is taken to address the infraction?

Results:

- 62% said they would utilize options outlined in the Revocation/Termination of COTR Certification Standard Operating Procedure.
- 52% said they would reach out to the program office to nominate a replacement COTR.
- 48% said they would seek assistance from the COTR program.
- 23% said they would immediately terminate the appointment.
- 2% said they would do nothing.
- 18% said they would do something other than the options provided.

Question 9: How many of your contracts currently have COTRs appointed?

Results:

- 40% of the contracting officers said that all of their contracts currently have COTRs appointed to them.
- 28% said that most of their contracts have COTRs.
- 12% said that half of their contracts have COTRs.
- 12% said that only some of their contracts have COTRs.
- 7% said that none of their contracts have COTRs.

Question 10: On any single contract, do you have more than one COTR appointed at the same time?

Results:

- 63% have only one COTR per contract.

Question 11: How many years of experience do you have as a Contracting Officer's Technical Representative?

Results:

- 180 COTRs had fewer than 3 years of experience as a COTR.
- 150 had 3 to 6 years of experience.
- 45 had 6 to 9 years of experience.
- 75 had more than 9 years of experience.

Appendix F **Survey Results**

Question 12: What level of certification have you achieved and are currently certified?

Results:

- Tier I: 211 people
- Tier II: 51 people
- Tier III: 73 people
- 125 COTRs did not know what certification level they were.

Question 13: When questions arise while performing my COTR duties, I use the following sources as guidance:

Results:

- 86% go to the contracting officer.
- 43% use hard copies of guidance at their desks.
- 41% go to their supervisors in their program office.
- 8% go to the contractor (the least used resource).

Question 14: As a COTR, how many contracts are you currently responsible for?

Results:

- 75% are currently responsible for 1 to 5 contracts.
- 1.73% are responsible for 25 or more contracts.
- 15.55% are not responsible for any contracts.

Question 15: How many of your contracts currently have task monitors assigned?

Results:

- 70% of respondents did not have any contracts with task monitors assigned.
- 14% stated that all of their contracts have task monitors assigned.
- 16% fell somewhere in between the two and had anywhere from some to most of their contracts assigned task monitors.

Question 16: On any single contract, do you have more than one task monitor assigned?

Results:

- 85% of COTR respondents indicated that they do not have more than one task monitor assigned to their contracts.
- 15% said they do have more than one task monitor on a single contract.

Appendix F **Survey Results**

Question 17: When contacting your contracting officer, how frequently do you use the following forms of communication?

Results:

- About 240 COTRs indicated that they use email most often to communicate with their contracting officer.
- About 75 COTRs use the telephone.
- The least used form of communication was the postal service.

Question 18: How would you rate your contracting officer's responsiveness to emails?

Results:

- About 225 COTRs found their contracting officers to be extremely responsive to their emails.
- Almost 200 found the contracting officers to be responsive to emails.
- Fewer than 50 said their contracting officers are nonresponsive to emails.

Question 19: How often do you meet (telephone or in person) with your contracting officer to discuss the progress of your contract?

Results:

- Only about 9%, or 43 COTRs, stated that they meet with their contracting officer via telephone or in person very often to discuss the progress of their contract.
- Almost 50% stated that they meet sometimes via telephone or in person with their contracting officer to discuss progress.
- About 19% stated that they never meet with their contracting officer to discuss the progress of their contract.

Question 20: Have you received a copy of your COTR appointment letter from the contracting office?

Results:

- 85% of respondents indicated that they did receive a copy of their COTR appointment letter from their contracting officer.
- 15% indicated that they had not received an appointment letter.

Question 21: Were you involved in the pre-award phase of the contract?

Results:

- 59.8% of COTRs were involved in the pre-award phase of the contract.
- 40% were not involved.

Appendix F **Survey Results**

Question 22: How effective do you find each of the following areas of FEMA's COTR Program?

Results:

FEMA COTR Program Training

- About 250 people found it to be effective.
- 100 people found it to be not very effective.
- 100 people found it to be very effective.
- About 20 people found it to be not effective at all.

FEMA COTR Program Policy and Procedure

- More than 250 people found it to be effective.
- About 100 found it to be not very effective.
- Close to 90 found it to be very effective.
- Fewer than 20 found it to be not effective at all.

Overall FEMA COTR Program

- Close to 300 people found it to be effective.
- About 100 said it was not very effective.
- Fewer than 100 said it was very effective.
- About 10 said it was not effective at all.

Question 23: In the last 2 years, have you experienced any of these challenges with FEMA's COTR Program?

Results:

- 38% of all respondents (COTRs and contracting officers) experienced challenges with unclear policy and procedure.
- 36% experienced challenges with a lack of communication.
- 30% identified other challenges that were not presented as options.
- 27% said conflict between COTR responsibilities and program office duties was a challenge.
- 16% said they experienced excessive pressure from the program office.
- 10% experienced conflict between new contractors and existing contractors who are proven performers (the least common challenge).

Question 24: What improvements would you like to make to FEMA's COTR Program?

Results:

Top three categories of responses:

- Training (i.e., more training, less training, more FEMA-related training)
- Communication
- Policy, procedure, and guidance

Appendix F **Survey Results**

Question 25: Please feel free to leave any additional comments or concerns:

Results:

A few of the topics shared included comments about or concerns with the following:

- Training
- Making COTRs a full-time position
- The COTR website
- Policy and Procedure
- Consistency within the program

Appendix G **List of Related Reports**

Department of Homeland Security Office of Inspector General

Improvement Needed in FEMA's Management of Public Assistance-Technical Assistance Contracts, OIG-11-02, October 2010

Improvement Needed in FEMA's Management of the National Flood Insurance Program's Information Technology Transition, OIG-10-76, March 2010

Improvements Needed in FEMA's Disaster Contract Management, OIG-10-53, February 2010

FEMA's Temporary Housing Unit Program and Storage Site Management, OIG-09-85, June 2009

Federal Protective Service Contract Guard Procurement and Oversight Process, OIG-09-51, April 2009

Challenges Facing FEMA's Disaster Contract Management, OIG-09-70, May 2009

Internal Controls in the FEMA Disaster Acquisition Process, OIG-09-32, February 2009

Hurricane Katrina Temporary Housing Technical Assistance Contracts, OIG-08-88, August 2008

Acquisition Workforce Training and Qualifications, OIG-08-56, May 2008

FEMA's Preparedness for the Next Catastrophic Disaster, OIG-08-34, March 2008

Challenges Facing FEMA's Acquisition Workforce, OIG-09-11, November 2008

Improper Payments Assessment Disaster Relief Fund Vendor Payments, Fiscal Year 2009, October 2007

An Audit of FEMA's Acquisition Workforce, OIG-04-12, March 2004

Government Accountability Office

National Flood Insurance Program: Continued Actions Needed to Address Financial and Operational Issues, GAO-10-631T, April 2010

National Flood Insurance Program: Financial Challenges Underscore Need for Improved Oversight of Mitigation Programs and Key Contracts, GAO-08-437, June 2008

Appendix G

List of Related Reports

Ineffective FEMA Oversight of Housing Maintenance Contracts in Mississippi Resulted in Millions of Dollars of Waste and Potential Fraud, GAO-08-106, November 2007

Miscellaneous Documents

Federal Acquisition Institute: *2008 Acquisition Workforce Competencies Survey Results Report and Survey Content*, 2008

Federal Emergency Management Agency: *FEMA's Strategic Plan: Fiscal Years 2008–2013*, January 2008

Federal Emergency Management Agency: *FEMA Contracting Enhancements and Improvements Post Katrina*, FEMA Press Release, 2007

Merit Systems Protection Board: *Contracting Officer's Representatives: Managing Government's Technical Experts to Achieve Positive Contract Outcomes*, U.S. Merit Systems Protection Board, December 2005

Appendix H **Major Contributors to this Report**

Donald Bumgardner, Director
Trudi Powell, Audit Manager
Eric Young, Audit Manager
Alexandra Vega, Program Analyst
Meredith Needham, Program Analyst
Puja Patel, Program Analyst

Appendix I **Report Distribution**

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