



U.S. Department  
of Transportation

**United States  
Coast Guard**

**Coast Guard**  
**Acquisition Procedures (EXCERPT)**

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COMDTINST M4200.19F

CGAP SUBCHAPTER 1217.92  
CONTRACTING FOR CONTAINMENT AND CLEAN-UP OF OIL AND  
HAZARDOUS SUBSTANCES SPILLS



**CGAP  
SUBCHAPTER  
1217.9200 Scope of  
subpart.**

The Coast Guard responsibilities for the removal of oil and hazardous substances in waterways and adjoining shorelines are specified in the National Contingency Plan, 40 CFR 300, the Federal Water Pollution Control Act of 1971, as amended, the Comprehensive Environmental Response Cleanup and Liability Act (CERCLA) of 1980, as amended, and the Oil Pollution Act (OPA) of 1990.

**CGAP  
SUBCHAPTER  
1217.9201 General.**

In order to expedite the processing of contracts for containment and clean-up of oil and hazardous substance spills, the preferred Coast Guard method of contracting is through the placement of orders against Basic Ordering Agreements (BOAs) as defined in FAR 16.703, using a time and materials pricing arrangement; however, other methods of contracting can be used when appropriate.

**CGAP  
SUBCHAPTER  
1217.9202 Reserved.**

**CGAP  
SUBCHAPTER  
1217.9203  
Competition.**

- (a) The nature of contracting for containment and clean-up of oil and hazardous substances makes full and open competition impossible; however, competition shall be obtained to the maximum extent possible as governed by the response time needed in any given emergency. These conditions are documented by Commandant (G-CPM) in a Class Justification for Other Than Full and Open Competition which Coast Guard contracting officers can use for all contracts and orders for oil and hazardous substance clean-up services.
- (b) Market Survey. MLC contracting officers will conduct market surveys for additional sources at least annually, using Commerce Business Daily synopses and other appropriate techniques. Any sources expressing an interest in a BOA in the interim shall be provided a solicitation.
- (c) Service Contract Act wage determinations. MLC contracting officers shall request wage determinations on an annual basis, or required, from the Department of Labor (DOL). If possible, the DOL should be requested to make the wage determinations applicable to all contracts for oil and hazardous substance containment and cleanup services in the same geographic areas.
- (d) Competition Documentation for each Incident. Orders against BOAs shall not be awarded on a rotational basis among qualified contractors without pricing considerations. Orders shall be awarded to the contractor who offers the lowest price for those response times determined adequate considering the circumstances involved. Contracting officers (includes OSCs) shall document the following information which shall be included in each order file:
  - (1) The action(s) taken to obtain competition or the reasons(s) why competition was not feasible.



- (2) The name(s) and point(s) of contact for the contractors contacted.
- (3) The rationale for awarding an order to the successful offeror.
- (4) A written determination that the Service Contract Act applies if the incident is for services and exceeds \$2,500. If the incident requires construction that exceeds \$2,000, the OSC shall contact the MLC contracting officer to determine whether the Davis Bacon Act has been incorporated into the BOA. If the Davis Bacon Act has been incorporated into the BOA, provide a written determination that the Davis Bacon Act applies. If the Davis Bacon Act has not been incorporated into the BOA, and the incident requires construction that exceeds \$2,000, the MLC contracting officer must contract for the required construction.

**CGAP  
SUBCHAPTER  
1217.9204  
Authorization to  
proceed.**

- (a) Coast Guard OSCs shall issue a written Authorization to Proceed (ATP) when it becomes necessary to authorize a contractor to commence performance of oil or hazardous substance clean-up services against existing BOAs. ATPs shall not exceed \$25,000 per incident. During the initial stages of an incident, OSCs may verbally authorize a contractor to commence performance, provided an ATP is issued within 24 hours confirming the verbal authorization. As a minimum, the ATP shall include reference to: (1) the Federal Project Number; (2) the BOA number; (3) maximum dollar value of the commitment; (4) cognizant MLC point of contact; (5) accounting office address; (6) contractor's name, address, point of contact, and signature; and (7) name and signature of the OSC.
- (b) The Coast Guard OSC shall notify the MLC(fcp) by message and/or forward a copy of the ATP by overnight mail or FAX within 24 hours after issuance of the ATP.
- (c) The Coast Guard OSC shall prepare all competition documentation required by CGAP Subchapter 1217.9203 and provide it, along with a copy of the ATP, to the MLC(fcp) within 3 days after issuance of the ATP.



- (d) This subchapter is not mandatory for Coast Guard OSCs in the MLCPAC area when the incident is \$50,000 or less. When the incident is within this threshold, the Coast Guard OSC shall prepare and distribute the delivery order. The Coast Guard OSC shall forward a copy of the delivery order and the supporting competition documentation required by CGAP Subchapter 1217.9203 to MLCPAC(fcp) within 3 days of the incident.
- (e) This subchapter is also not mandatory for Coast Guard OSCs in the MLCLANT area if all of the following conditions apply: the COCO of MLCLANT (fcp) authorizes the applicable OSC to prepare and distribute the BOA order; the incident is \$50,000 or less; and the OSC forwards a copy of the BOA order and the supporting competition documentation required by CGAP Subchapter 1217.9203 to MLCLANT (fcp) within 3 days of the incident.

**CGAP  
SUBCHAPTER  
1217.9205 Issuing  
delivery orders against  
BOAs.**

The MLC(fcp) shall review the ATP issued by the OSC and issue the confirming BOA order, except see CGAP Subchapter 1217.9204(d) and (e) above. The MLC (fcp) shall distribute the order to the Coast Guard Finance Center within 7 working days of an incident for the purpose of documenting and recording the obligation of funds. All invoices will be paid by the Coast Guard Finance Center.

**CGAP  
SUBCHAPTER  
1217.9206 BOA  
delivery order  
number.**

The BOA order number consists of the BOA contract number plus the individual order number. The individual order number shall be consistent with the procedure set forth at CGAP Subchapter 1204.602-90(c)(6)(iv). If additional identification is needed, i.e., FPN, MSO port code, number of orders per incident, the identification shall be placed on the order in such a location as to separate it from the order number.

**CGAP  
SUBCHAPTER  
1217.9207 BOA order,  
file documentation,  
and file  
maintenance.**

Issuance of the BOA order, file documentation, and file maintenance is the responsibility of the MLC (fcp), except see CGAP Subchapter 1217.9204(d) and (e) above. The following minimum file documentation must be maintained for each order issued against a BOA: (1) a copy of the CANAPS message that assigns the FPN and fund ceiling (this normally includes evidence of funds availability); (2) a record of the sources contacted or, if only one source was contacted, the reasons why competition was not feasible and why the particular contractor was selected (this record should include dates, names of individuals, companies, and factors influencing choice); (3) a copy of the ATP issued by the OSC and all competition documentation required by CGAP Subchapter 1217.9203; (4) a copy of the order issued on an OF-347; (5) modifications, if any, to the order issued on an SF-30; and (6) copies of invoices certified by the OSC together with supporting documentation.



**CGAP  
SUBCHAPTER  
1217.9208 Non-BOA  
purchases of  
supplies/services.**

When supplies or services are required that are not covered under an existing BOA, the requirement shall be referred to the MLC contracting officer.

- (a) Contracting Authority (other than OSC). If the MLC(fcp) contracting officer agrees, a field contracting activity may elect to issue purchase orders for non-BOA supplies or services if the requirement is within, and is not likely to exceed at some future date, the field activities' contracting authority.
- (b) OSC Contracting Authority. If the MLC(fcp) contracting officer cannot be contacted in a timely manner, Coast Guard OSCs are authorized to issue purchase orders for non-BOA supplies or services, on an emergency basis only, not to exceed \$25,000 per incident. The OSC must contact the MLC(fcp) by message and/or forward a copy of the purchase order and competition documentation required by CGAP Subchapter 1217.9203 by overnight mail or FAX within 24 hours after exercising this authority. If a message is used to notify the MLC(fcp), all information contained in the purchase order and the competition documentation must be summarized in the message. The OSC, in his/her contracting officer capacity, is required to advise the contractor, when any purchase order for services exceeding \$2,500 is issued, that the Service Contract Act of 1965, as amended, is applicable.

**CGAP  
SUBCHAPTER  
1217.9209 Disposal of  
salvageable products.**

OSCs shall keep an accurate record of the quantity of recovered product suitable for reclamation or sale. The General Services Administration has declined to take custody of any recovered oil since they do not have appropriate storage facilities. The contracting officer may initiate action for sale of the recovered oil, with the proceeds being applied as a credit to the clean-up costs.

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## **Contracting Requirements for Use of a Basic Ordering Agreement (BOA)**

### **Maintenance and Logistics Command -- Atlantic Area**

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United States Coast Guard

Maintenance and Logistics Command Atlantic Area (fcp-2)

Norfolk, VA 23510-9113



OSC ORDERING INSTRUCTIONS MLCLANT

Amended June 2002

Ref: (a) COMDTINST M4200.19F (CH2), [Coast Guard Acquisition Procedures] 1217.92  
(b) MLCLANT SOP I-2-39  
(c) FEDERAL ACQUISITION REGULATIONS

**1. Funding:**

Obtain FPN or CERCLA funding via CANAPS.

**2. Hiring/Selection Of Boa Contractor**

A contractor is hired by the issuance of an Authorization to Proceed (ATP). A delivery order is issued by MLCLANT under an existing Basic Ordering Agreement.

a) OSC selects in accordance with ref.(a). Selection factors: capability, response time, and of BOA contractors meeting first two factors, estimated low price. Contractors shall not be selected on a rotational basis per ref (a) CGAP 1217-9203(d).

b) OSC may issue **up to \$25,000**. For ATPs that **exceed \$25,000**, the OSC must contact the Contracting Officer as soon as possible to issue the ATP. (See 4 below.)

c) Issues ATP MESSAGE\* within 24 hours. Ensure MLCLANT-"FCP 2" is "TO" addressee.

\* MLCPAC procedures differ.

d) ATP MESSAGE MUST INCLUDE:

i. Brief reason why individual BOA company chosen. For example, only one meeting response time or best response time, or lowest evaluated price, or only firm in area meeting specific technical requirements for this cleanup. Contractors should not be chosen on a rotational basis.

ii. Identify contractor not-to-exceed ceiling amount. This amount is different than the ceiling for the cleanup.

iii. Date work started.

**3. Hiring Non-Boa Contractor**

a) AT ANY DOLLAR AMOUNT: OSC requests Contracting Officer to place Simplified Acquisition or contract.

b) OSC provides company name and phone number for any firm which can perform the required cleanup services in the required time frame.



- c) **If OSC cannot reach the Contracting Officer**, which should be rare if utilizing the MLCLANT pager after-hours (see 4 below), the **OSC** is authorized under ref.(a) to issue orders for **\$25,000. or less** for non-BOA supplies or services on an emergency basis.
- d) OSC must:
  - i. advise non-BOA contractor that the Service Contract Act applies
  - ii. advise contractor to fax or mail a copy of commercial price list to the Contracting Officer (who will contact the company to negotiate prices, terms and conditions).
  - iii. OSC must **NOTIFY THE CONTRACTING OFFICER** no later than **24 hours** of exercising this emergency authority.
  - iv. Issue ATP message within 24 hours providing contractor name, address, phone number and point of contact.  
NOTE: An OSC may leave voice-mail, e-mail or FAX if unable to contact Contracting Officer via after-hours pager. (see 4(f) below.)

#### **4. Contracting The Contracting Officer After Working Hours**

After normal working hours, the MLCLANT Finance Division Contracting Officer can be reached directly via beeper. The beeper number is **1-800-SKY-8888 Pin 2024525**. As the contractor cannot be permitted to access the CDO, the OSC must make the initial CDO contact. The names and telephone numbers of all Contracting Officers, Contract Specialists and SK's can be found at the MLCLANT Intranet web site.

#### **5. Subcontracts/Non-Boa Priced Items Needed From Boa Contractor**

- a) Only the **contracting officer** may negotiate and approve pricing for any subcontracted or BOA company owned item that **has not been negotiated, approved and priced in the boa.**
- b) The OSC must notify the Contracting Officer that non BOA priced items are needed, providing when and where such is needed, the project number and funds if the cost will cause the initial estimated ceiling price of the BOA order to be exceeded.
- c) The **OSC approves the technical acceptability** of the proposed sources and/or item. The Contracting Officer approval is solely a price issue. The Contracting Officer will



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### Chapter 3: Removal Actions: Oil and Hazardous Substances

assume that the OSC has agreed to the sources solicited and/or technical issues involved in subcontracts/non BOA priced items unless notified differently by the OSC.

- d) Contractors who fail to obtain Contracting Officer approval on subcontracts or non BOA item are penalized at the time of invoice payment.
- e) All BOA contractors have agreed by signing their BOA to negotiate and obtain Contracting Officer approvals on these items. (Section H of all BOAs, Subcontracts/Non-BOA Items clause.)
- f) During **non-work hours**, the OSC must contact the Contracting Officer for the BOA contractor. (See section 4 above.) A contractor may also leave voice mail, e-mail or fax for the Contracting Officer.
- g) As with 3d above, if the need is of such urgency and a Contracting Officer cannot be reached without **an actual negative impact on the response**, the OSC may direct the BOA contractor to proceed. The OSC must advise the BOA contractor that the Contracting Officer must be contacted within 24 hours to negotiate prices.
- h) Regardless of whether subcontract source(s) are BOA companies or not, the Contracting Officer may determine that the required items can be more effectively acquired by a direct Government contract with another company in lieu of subcontracting the requirement under a BOA firm. The OSC will be contacted to determine if any special requirements exist which preclude this method.

**EXAMPLE:** Disposal costs are estimated at \$100,000. the dollars involved make this alternate method more cost effective and rarely would the cleanup BOA contractor add value to the subcontract beyond identifying sources. Cost savings would be realized by eliminating the BOA contractor's "markup", e.g. 5% on \$100,000 would be a \$5,000 savings, 10%, \$10,000 etc.



OSC ORDERING INSTRUCTIONS (USCG)  
CONTRACTOR INVOICES (OPA, CERCLA)

1. Allowable Time For Invoice Processing By Osc Unit

**TEN DAY ALLOWABLE TIME FOR INVOICE PROCESSING BY OSC UNIT**

- a) Contractor submits invoice to OSC for acceptance or rejection of charges.
- b) **THE OSC MUST DATE-STAMP THE DATE OF RECEIPT OF THE INVOICE at the OSC's office.**
- c) If receipt is not officially noted on the invoice, the date of invoice governs the payment due date and therefore interest accruals. As the date on the contractor's invoice is always earlier than the actual date of receipt of the invoice by the OSC, failure to date stamp receipt will result in excess interest charges being due the contractor.
- d) **OSC forwards invoice, within 10 calendar days of receipt,** certified either as accepted or rejected, **directly to Contracting Officer, MLCLANT, FCP-2. Facsimile or express mail should be used** so that interest does not accrue due to mailing time.

2. OSC Acceptance/Rejection Responsibilities

- a) OSC **verifies** hours, numbers of personnel, equipment, supplies.

**NOTE: USCG Basic Ordering Agreements REQUIRE MONITORING BY the OSC/R and completion of "Dailies" by the Contractor and the OSC/OSCR. Verification of invoices hours, equipment, personnel, materials then requires comparison of the numbers charged on the invoice to the "daily" records for the response..**

- b) **OSC does not verify that prices** are in accordance with the BOA; Contracting Officer/Contract Specialist/SK will verify prices on the daily(s) and invoice.
- c) **Disputed** hours, equipment should be **identified** to the Contracting Officer/Contract Specialist who will then issue written notification to contractor.
- d) Any invoices that include **correct charges** but are **not paid within THIRTY DAYS OF RECEIPT BY THE OSC accrue INTEREST.** Invoices which are received and are incorrect may still accrue interest if the Government does not furnish the contractor timely notice of invoice rejection. Three Coast Guard units plus the Treasury Department must take actions during the thirty-day period. If one of the units takes more than ten (10) calendar days, then payment of interest becomes likely.



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### Chapter 3: Removal Actions: Oil and Hazardous Substances

The unit taking more than ten days then carries the responsibility for interest being accrued. Interest is a negative entry on the CFO Financial Report; interest on OPA and CERCLA cases is scrutinized not only by MLC and FINCEN but also by G-CFS, NPFC and the DOT-IG.

- e) OSC must forward complete invoice package as received from the contractor with the OSC acceptance/rejection certification e.g. copies of signed dailies, subcontract invoices, copies of proof of legal disposal.
- f) Upon receipt of the invoice package, MLC verifies pricing and compliance with the BOA terms and conditions. Action is taken to correct improper invoices when necessary. All MLC invoice responsibilities must be completed so that the invoice with the OSC and Contracting Officer certifications is at Fincen on the tenth day after receipt at the MLC (fcp).
- g) FINCEN takes all necessary steps to input the payment data. It is electronically transmitted to Kansas City and then to the Department of Treasury who makes the actual payment to the contractor. Fincen and Treasury must complete their responsibilities within ten days of Fincen's receipt of the invoice from the MLC.

30 days from receipt of a proper invoice or interest is due:

- 10 days (OSC receives, reviews and has at MLC(fcp))
- 10 days (MLC reviews, takes action and has at Fincen)
- + 10 days (FINCEN/Treasury take all actions to effect actual payment).

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30 days

**0 days available for any delays by the OSC, MLC, Fincen or Treasury!**



Amended June 2002

**OSC ORDERING INSTRUCTIONS MLCLANT  
SPECIAL INSTRUCTIONS CONCERNING USE OF BASIC ORDERING AGREEMENTS:**

Orders under the Basic Ordering Agreement for pollution cleanup are done under the authority of Federal Acquisition Regulations, FAR 6.302-2, URGENCY.

**LONG TERM PROJECTS:**

Emergency Response needed for part of the cleanup but then remediation type rather than emergency response is sufficient:

1. (a) Contact MLCLANT, preferably in writing.
  - (b) Advise nature and scope of work (specific if possible, general at a minimum);
  - (c) Identify required completion date and est. project duration.
  
2. Contracting will evaluate in conjunction with the OSC and the technical and time requirements of the project to determine if a fixed work statement and pricing possible for later phases of the project; if possible, various types of contractual solicitation are available depending on the exact type and timing of need.

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# **Contracting Requirements for Use of a Basic Ordering Agreement (BOA)**

## **Maintenance and Logistics Command -- Pacific Area**

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United States Coast Guard

Maintenance and Logistics Command Pacific Area (fcp-1)

Coast Guard Island, Building 54-A

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## **BOA TRAINING AGENDA**

### **I. THE BASIC ORDERING AGREEMENT (BOA)**

- A. WHAT IS A BOA.
- B. WHY A BOA.
- C. CIRCUMSTANCES FOR USE.
- D. HOW BOAs ARE PROCURED.
- E. KEY AREAS OF A BOA.
- F. WHO CAN USE THE BOAs.
- G. COAST GUARD ON-SCENE COORDINATOR (OSC) AUTHORITY.

### **II. THE JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (JOTFOC)**

### **III. PROCUREMENT REQUEST (PR)**

- A. THE OSC OBTAINS INFORMATION AND PREPARES THE PR.
- B. USE OF CERCLA FUNDS FOR HAZARDOUS SUBSTANCE SPILLS INLAND

### **IV. DELIVERY ORDERS**

- A. WHAT IS A DELIVERY ORDER.
- B. WHICH OFFICE ISSUES THE DELIVERY ORDER.
- C. WHO CAN SIGN/ISSUE DELIVERY ORDERS.
- D. CONTENT AND CEILING AMOUNT.

### **V. ITEMS OR SERVICES NOT COVERED UNDER A BOA**

- A. SUBCONTRACTING.
- B. NON-BOA (OPEN MARKET) CONTRACTS.
- C. MIPRs.

### **VI. COMPLETION**

- A. PAYMENTS.
- B. DISPUTES.

### **VII. MLCPAC (fcp) CONTRACTING SUPPORT**

- A. WHEN TO CONTACT MLCPAC.
- B. CONTRACTING SUPPORT.
- C. MLCPAC CONTRACTING OFFICERS.

*(FOOTNOTE: MSRC)*

## **I. THE BASIC ORDERING AGREEMENT (BOA)**

### **A. WHAT IS A BOA:**

1. A BOA is not a contract and does not provide any contractual relationship between the Government and the Contractor.
2. A BOA is a written understanding that's already been negotiated between a contracting office and a contractor and is the preferred method of contracting for oil spill cleanup. (Refer to the JOTFOC.)
3. A BOA contains the terms and conditions that will apply to Delivery Orders that are issued against it. The terms and conditions contain i), fixed prices and a detailed description of the supplies or services to be provided, and ii), instructions on the procedures and authority for the issuance, administration and payment of Delivery Orders.
4. Every individual authorized to issue Delivery Orders against a BOA is responsible for reviewing and understanding the terms and conditions of each BOA.

### **B. WHY A BOA:**

1. The Coast Guard and other Government Agencies have a need for an ongoing agreement with contractors that can provide services, supplies and equipment to contain, cleanup and/or mitigate the harmful effects of spilled petroleum products and hazardous substances.
2. The Contractor is on-call 24 hours a day, 365 days a year and usually has to respond on short notice.
3. CGAP Subchapter 1217.9203 (a) reads: "The nature of contracting for containment and clean-up of oil and hazardous substances makes full and open competition impossible; however, competition shall be obtained to the maximum extent possible as governed by the response time needed in any given emergency. These conditions are documented by Commandant (G-CPM) in a Class Justification for Other Than Full and Open Competition which Coast Guard contracting officers can use for all contracts and orders for oil and hazardous substance clean-up services." (Refer to CGAP Subchapter 1217.92)

### **C. CIRCUMSTANCES FOR USE:**

2. BOAs are **strictly for emergency use** only. Under no circumstances may they be used for routine actions. A lack of planning does not justify using a BOA. Delivery Orders cannot be issued to order boom, sorbent pads, or take care of work that either could have, or should have, been done through normal procurement procedures.

**D. HOW BOAs ARE PROCURED:**

1. The Competition In Contracting Act (CICA) mandates that proposals be solicited to the fullest extent. In addition, the necessity for a quick response to an oil spill requires that we have as many BOAs in effect as possible. The BOAs must also provide for all of the personnel, supplies, equipment, etc., necessary for a cleanup.
2. The first step is to publicize the solicitation in the Commerce Business Daily (CBD). The CBD announces all Government solicitations and contract awards nationwide. A list of the firm's that have requested the solicitation is then compiled. Firms that presently have BOAs are not solicited because their BOAs do not expire.
3. During the announcement period the statement of work and list of items/services on the price schedule is sent to the (mso) to be updated. The (mso) then forwards their recommendations to (fcp), who in turn issues the solicitation.
4. Proposals are submitted and then evaluated by (fcp) for compliance with all of the solicitation requirements. The prices are entered into a spreadsheet which computes a competitive range for each line item based on the average offered price for the item. After this negotiations commence with each offeror. Please note that offerors are not required to submit prices on all of the items in the price schedule. (fcp) performs a preaward survey to determine that offerors are responsible. As part of the survey, the MSO may be asked to determine the response capabilities of some offerors.
5. In keeping with the requirements of paragraph 1, BOAs are awarded to all firms that fall within the competitive range, and distributed to all of the activities that are authorized to issue Delivery Orders against them.

**E. KEY AREAS OF A BOA:**

1. The Price Schedule. This is Attachment J.1 of the BOAs and lists the prices for all of the supplies, personnel and equipment that the contractor can provide.
2. Section C, Description/Specifications, contains definitions, the scope of work, contractor personnel and equipment requirements, and cleanup and disposal methods.
3. Section F, Deliveries or Performance, addresses response time, area(s) of response, contractor failure to respond, termination of Delivery Orders, annual reviews and termination of the BOA.
4. Section G, Contract Administration Data, states who can issue Delivery Orders, addresses Government and Contractor obligations, documentation, how the Government will determine allowable billing costs, and payment.
5. Section H, Special Contract Requirements, stipulates that subcontracts may be approved only by the MLCPAC Contracting Officer.

**F. WHO CAN USE THE BOAs:**

1. Only authorized Contracting Officers and On-Scene Coordinators (OSCs) located at an Authorized Ordering Office may issue Delivery Orders under a BOA. This authority may not be delegated.
2. For the purposes of consistency other Government agencies are authorized to issue Delivery Orders against the BOAs.
3. The U.S. Coast Guard has a Memorandum Of Understanding (MOU) with the Environmental Protection Agency (EPA) which states that the Coast Guard will provide contracting support. There is no Coast Guard involvement for Delivery Orders issued by the Navy, Maritime Administration, Corps of Engineers, etc. Questions from these organizations must be directed to the MLCPAC (fcp) Contracting Officer - not the (mer)s or (mso)s.

**G. COAST GUARD ON-SCENE-COORDINATOR (OSC) AUTHORITY:**

1. OSC's are not authorized to take any action, either directly or indirectly that could result in a change in the pricing, quality, established response time frames, or any other terms and conditions of the BOA; or, to direct the accomplishment of effort which would exceed the scope of the BOA. Whenever there is the potential that discussions may impact areas such as described above, the OSC must contact the MLCPAC (fcp) Contracting Officer.
2. The OSC is not required to superintend, in any manner, so as to relieve the contractor of any responsibility, or consequence of neglect by the contractor, his subordinates, subcontractors or suppliers.

## **II. THE JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (JOTFOC)**

- A. The JOTFOC is a document approved by the Commandant of the U. S. Coast Guard that authorizes emergency procurement actions during an oil spill cleanup.
- B. This authorization is a Class Justification which allows the use of BOAs, subcontracting procedures and the emergency procurement of supplies and services not covered under BOAs.
- C. The JOTFOC is only for cleanup incidents handled by the Coast Guard, and does not apply to other Government agencies.
- D. A copy of the JOTFOC is in each BOA, and a copy must be inserted in each individual Delivery Order file.

### III. PROCUREMENT REQUEST (PR)

**A. THE OSC OBTAINS INFORMATION AND PREPARES THE PR:** (Note: 1 and 2 below do not apply to CG generated spills.)

1. The OSC obtains an FPN/Ceiling via CANAPS ([www.nprf.gov/canaps](http://www.nprf.gov/canaps)). The District is automatically a recipient of the CANAPS-generated message.
2. The (mso) creates the Document Number using DAFIS instructions and the (mso) Document Number list.
3. The (mso) prepares a PR consisting of the following information:
  - a. Federal Project Number (FPN)
  - b. Fund Citation (i.e. Document No., Accounting Data)
  - c. Dollar amount of funds to be obligated under the PO/Delivery Order. (Don't include the full amount of funds issued by the NPFC for administrative support - travel, personnel, etc. Include only the amount to be obligated under the Delivery Order.)
  - d. Date(s) the services and/or equipment are required
  - e. Suggested Contractor(s) and Phone Number(s)
  - f. BOA Number(s) (if applicable).
  - g. Coast Guard POC and Phone Number.
  - h. A brief description of the project.
  - i. Reasons for no competition or for going to a higher cost source. Brief determination or sole source statement of why the OSC has determined that the services or equipment can, or should, only be obtained from one source or may only be procured from one source due to response time requirements.

**NOTE: SPACE OUT THE FUNDING** *(DON'T USE UP ALL OF YOUR MONEY AT ONCE. IF SOMETHING'S NEEDED FOR A MONTH, OBLIGATE ENOUGH FUNDS FOR A WEEK. SCHEDULE FUNDING TO RUN OUT ON THURSDAYS–NOT FRIDAYS)*

**B. USE OF CERCLA FUNDS FOR HAZARDOUS SUBSTANCE SPILLS INLAND:**

1. CERCLA fund use is now basically the same as IIIA. above.
2. CERCLA project numbers are obtained via CANAPS (e.g., C02401).

#### **IV. DELIVERY ORDERS**

##### **A. WHAT IS A DELIVERY ORDER:**

1. The document that makes a definitized written commitment between the Contractor and the Government (CG).
2. Obligates funding to cover the Government cost and allows the contractor to get paid.

##### **B. WHICH OFFICE ISSUES THE DELIVERY ORDER:**

1. FPN UNDER \$50K - If the FPN ceiling is expected to remain under \$50,000.00 the OSC/MSO issues a Delivery Order. ***MSO DISTRIBUTES THE ORDER WITHIN 8 WORKING HOURS TO CONTRACTOR AND FINANCE CENTER. SEND A COPY TO MLCPAC (fcp-1) WITHIN 3 DAYS.***
2. FPN OVER \$50K - If the FPN ceiling is expected to exceed \$50,000.00 the MLCPAC (fcp) issues a Delivery Order. ***MSO FORWARDS PR TO MLCPAC (fcp) FOR ACTION.***

##### **C. WHO CAN SIGN/ISSUE DELIVERY ORDERS:**

1. Coast Guard On-Scene-Coordinators (OCSs) as limited Contracting Officers have the authority to place orders against existing BOAs for oil and hazardous substance response actions with a limit not to exceed \$50,000 per incident. (i.e., This is the ceiling amount of the FPN.) This authority may not be delegated. (Refer to CGAP Subchapter 1217.9204(a))
2. Over \$50K per incident must be issued by authorized Contracting Officers at MLCPAC (fcp).
3. During the initial stages of an incident the OSC may verbally authorize the BOA Contractor to commence performance provided a confirmation DO is issued within 8 hours.

**D. CONTENT AND CEILING AMOUNT:**

1. Each Delivery Order must:
  - a. Specify the name and telephone number of the Ordering or Contracting Officer, amount of funds, payment office and the address of the office where the invoices are to be sent.
  - b. Be for an emergency requirement for oil spill/hazardous waste cleanup within the Scope of the BOA.
  - c. Contain:
    - 1) Federal Project No.
    - 2) The BOA, Delivery Order, and Document Numbers.
    - 3) Not To Exceed (NTE) ceiling price.
    - 4) Contractor's name, address.
    - 5) Name and signature of OSC.
    - 6) Incorporate all provisions of the BOA.
    - 7) Accounting data.
2. DO File documentation: (Refer to CGAP Subchapters 1217.9203 & 9207)
  - a. Copy of CANAPS e-mail confirmation.
  - b. Copy of the Authorization To Proceed (ATP), if one is issued.
  - c. Justification for award to other than small business.
  - d. Copy of class JOTFOC.
  - e. Copy of the determination from the individual issuing the Delivery Order (i.e., OSC or MLCPAC Contracting Officer) that the Service Contract Act applies.
  - f. Competitive documentation:
    - i. Action taken to obtain competition or why competition was not feasible.
    - ii. The name(s) and points of contact for contractor's contacted.
    - iii. Rationale for awarding DO to successful offeror.
  - g. A copy of the DO and any modifications.
  - h. Copies of invoices with supporting documentation.

## **V. ITEMS OR SERVICES NOT COVERED UNDER A BOA**

### **A. SUBCONTRACTING:**

1. Basis for limitations and how it works (Mitigation of costs requirements, etc.).
2. Subcontracts for materials versus services.

### **B. NON-BOA (OPEN MARKET) CONTRACTS:**

1. Why not just subcontract under the BOA.
  - a. Mitigation of costs.
  - b. Cheaper for CG to procure than pay Contractor handling or mark-up change.
2. Who can order off-BOA supplies or services.
  - a. The OSC only has authority for BOA items - all requirements for non-BOA cleanup services, equipment, materials and must be referred to the MLCPAC (fcp) Contracting Officer.
    - i. If the appropriate Contracting Officer cannot be contacted in a timely manner, the OSC is authorized to issue non-BOA purchase orders, on an emergency basis only, with a limit not to exceed \$25,000 per incident. The OSC must contact the MLC (or the Contracting Officer to whom this responsibility has been delegated) within twenty-four (24) hours after exercising this emergency authority and provide documentation of competition.
  - b. If the FPN is under \$25K only authorized Contracting Officer, i.e., MLCPAC or DRAT team KO, or District (a) office.
    - i. IAW COMMANDANT Instruction 16465.41, DRAT personnel shall include a KO with Level I Warrant and serve as a KO when requested by OSC. (Remember: MUST HAVE WARRANT FOR SERVICES = TO ORDERS ISSUED).
    - ii. District may have KO with warrant (again Warrant = to order \$). If the FPN is over \$25K only the MLCPAC Contracting Officer.

### **C. MIPRS:**

1. Must be issued by the MLCPAC Contracting Officer, not OSC.
2. Payment - "The Agency" (e.g., Navy) submits billing and support documents to the OSC.
  - a. The OSC forwards the billing documents to NPFC case officer within 7 days.

- b. NPFC case officer will arrange reimbursement to the Agency.

## **VI. COMPLETION**

### **A. PAYMENTS:**

1. Prompt Payment Act (FAR 52.232-25 applies)
  - a. Total 30 days from receipt of correct invoice.
  - b. Reject incorrect/incomplete invoice within 5 days.
  - c. Date stamp invoice - FINCEN uses date of receipt by the OSC as the start date for interest payment.
2. On-Scene-Coordinator
  - a. Receives and date-stamps invoice.
  - b. Verifies that supplies/services have been authorized and received. Verifies hours, number of personnel, equipment, subcontract costs (supported by posted receipts) and that removal actions were performed properly.
  - c. Forwards approved invoice with supporting documentation to cognizant KO within 7 days. Make sure invoice is marked partial or final - FINCEN will deobligate excess funds. (Refer to COMDT Message 021657Z Nov 95)
3. Contracting Officer
  - a. Reviews invoice and insures prices are the prices set forth in the BOA.
  - b. Forwards invoice to FINCEN for payment with copy to NPFC case officer within 10 days.

(NOTE: MLCPAC MUST ALWAYS SEE AND APPROVE BOA ORDER INVOICES REGARDLESS OF \$ VALUE).

### **B. DISPUTES:**

1. All clarifications and discrepancies, must be directed to the BOA Contractor or their authorized representative. When there is a conflict between the OSC's interpretation of the BOA and that of the Contractor, the OSC shall refer the matter to the Contracting Officer. If the OSC is uncertain of the intent and interpretations of the BOA, he/she shall contact the MLCPAC (fcp) Contracting Officer for the governing interpretation.
2. The OSC shall attempt to resolve any disparities in the billing with the Contractor. The OSC must document any disputed hours, equipment, etc., and send the basis for the dispute to the Contracting Officer, who will then issue a written notification to the Contractor of the items under contention, and request the Contractor to either submit another invoice, or justification for the amount invoiced.

## **VII. MLCPAC (fcp) CONTRACTING SUPPORT:**

### **A. WHEN TO CONTACT MLCPAC:**

1. Always send MLCPAC (fcp) a copy of every POLREP.
2. Contact (fcp) as soon as you think the order will exceed \$25,000.
3. Anytime you have questions regarding BOAs or Delivery Orders.

### **B. CONTRACTING SUPPORT:**

1. Contracting Officers are always available to answer questions regardless of which office issues the Delivery Order.
2. A Contracting Officer, Primary Alternate and Secondary Alternate is assigned to each spill.
3. For a major spill the MLCPAC legal office is alerted to provide assistance if large dollar non-BOA contractual actions are necessary.
4. During a major spill a Contracting Officer will be sent TDY to the Incident Command Center.

### **C. MLCPAC CONTRACTING OFFICERS:**

Pollution Incident Coordinator/Lead Contracting Officer:

Mike Leonard: (510) 437-5932 (Phone and FAX)  
(510) 437-3014

1. The Contracting Officers for the Eleventh and Seventeenth Districts are:  
Janet Weaver, Section Chief (510) 437-3010  
Isabel Burge (510) 437-5915  
Marcus Tikotsky (510) 437-3074
2. The Contracting Officers for the Thirteenth and Fourteenth Districts are:  
Lynne Beard, Section Chief (510) 437-3732  
Robert Townsend (510) 437-3009  
Joclyn Brox-Chester (510) 437-5913
3. The FAX number for the Contracting Officers is (510) 437-5913.
4. To reach an (fcp-1) Contracting Officer during non-duty hours, contact the PACAREA OPCEN at (510) 437-3700 or (510) 437-3708.

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