

CHANGE REQUEST COVER SHEET

Change Request Number: 10-94

Date Received: 8/25/2010

Title: Prohibited and Restricted Purchases

Name: Larry Wyborski

Phone: 202-493-4638

Policy OR Guidance: Guidance

Section/Text Location Affected: T3.2.1.5 and T3.2.2.5.A.4.

Summary of Change: Add items to prohibited purchase list and alleviate restrictions on trophy/plaque purchases.

Reason for Change: Request from HR and CFO.

Development, Review, and/or Concurrence: AGC, CFO, HR and Contracting Offices.

Target Audience: Contracting Officers and purchase card holders.

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS EDITED:

Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method

Simplified Purchasing

Section 4 : Prohibited and Restricted Purchases [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.2.1.5 - Disaster or Emergency Preparedness and Response

Appendix

Section 1 : Appendix - Emergency Procurement Guide [\[Old Content\]](#)[\[New Content\]](#)

[\[RedLine Content\]](#)

SECTIONS EDITED:

Section 4 : Prohibited and Restricted Purchases

Old Content: Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method

Simplified Purchasing

Section 4 : Prohibited and Restricted Purchases

a. This guidance is intended to assist FAA personnel determine whether a particular item or service would be a permissible purchase using appropriated funds. There is no ironclad rule or readily available list that describes in every case whether a particular purchase using appropriated funding is permissible. FAA personnel should use common sense and sound judgment, based on appropriations law and related decisions of the Comptroller General.

b. The Government Accountability Office (GAO) established a "*necessary expense*" doctrine. This doctrine is described fully in Volume I, Third Edition, of "Principles of Federal Appropriations Law," (GAO Red Book) issued by GAO, Office of the General Counsel. This publication states, in part, that for an expenditure to be justified under the necessary expense theory, it must meet certain tests, including: "The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available" (GAO Red Book, Volume I, Chapter 4, Section B.1.). By projection, the necessary expense doctrine does not allow use of appropriated funds to purchase items or services that can be reasonably interpreted to meet personal convenience and are not for a necessary Governmental function. The CO or cardholder in consultation with budget officials and legal counsel should make determinations in this area about questioned or questionable items or services. Almost any listing of prohibited items of purchase is subject to exceptions. To quote the GAO Red Book "The Comptroller General has never established a precise formula for determining the application of the necessary expense rule. In view of the vast differences among agencies, any formula would almost certainly be unworkable. Rather, the determination must be made essentially on a case-by-case basis."

c. For FAA, the following are prohibited or restricted items of purchase (this is not a complete list):

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(i) FAA personnel reasonably anticipate that drinking water at the site will be unsafe for human consumption;

(ii) The drinking water is for FAA personnel responding to or at the emergency or disaster site;

(iii) The amount of drinking water is commensurate with the anticipated response time at the site or the estimated time for the local drinking water to be considered safe for human consumption, whichever is shorter;

(iv) The drinking water is purchased in a reasonable time-frame in advance of an imminent emergency or disaster, and the time-frame does not exceed the time required to purchase, stage, and properly distribute the drinking water; or

(d) The drinking water is provided in a controlled environment as may be necessary to enable collections for drug use analysis for safety sensitive positions.

(2) *Food and beverage items* for meetings and conventions, except as detailed in AMS Procurement Guidance T3.2.2.5 A.5., FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops.

(3) *Gifts*.

(4) *Membership fees* for individual employees (FAA may purchase membership in a society or association in its own name).

(5) *Subscriptions to publications or magazines* not relating to official duties.

(6) *Clothing (or personal apparel of any description).*

(a) Special type clothing required by FAA requires written justification from the requestor's supervisor and should be coordinated with legal counsel.

(b) Clothing and equipment classified as personal protective equipment (PPE) requires justification from the requestor's supervisor, but does not need coordination with legal counsel when the value of the procurement is below \$100,000. All PPE must:

(i) Have proper controls established to ensure that PPE is appropriate; and

(ii) Be maintained and used in accordance with standards established by the Occupational Safety and Health Administration (OSHA). (More information can be found at <http://www.osha.gov/SLTC/personalprotectiveequipment/index.html>)

(7) *Rental of aircraft by persons not in aircraft related positions.*

(8) *Fans, air conditioning and cooling equipment, space heaters and heating equipment, except as properly installed for general use in connection with the maintenance and operations requirements for the site.*

(9) *Water coolers, or vacuum cleaners and other household appliances (i.e. refrigerators, microwaves, etc), except as requisitioned for general use by the authorities charged with building maintenance and equipment.*

(10) *Cellular or communication devices and services covered by the National Wireless Program Office (NWPO). Devices provided through this program include:*

(a) Cellular Phones;

(b) One and two-way pager devices;

(c) Multi-functional server-based devices (e.g. Blackberries); and

(d) Satellite phones.

d. *Non-Monetary Awards.*

(1) When procuring non-monetary awards (gifts remain a prohibited item) for employee contributions and/or accomplishments that further the FAA's mission, the requirements in the HRP, Recognizing Employees, PM-9.2, must be followed. Each office is responsible for maintaining records on all recognition and awards purchased and given. These records must contain the following:

- (a) The justification for granting the award;
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(2) Gift cards or gift certificates can be non-monetary awards. However, the purchase of store gift cards or gift certificates must not be made with the Government purchase card due to a statutory prohibition.

(3) Plaques, trophies, or other types of awards given to employees for high quality work or special projects must not exceed \$75.00. IRS considers merchandise with a value exceeding \$75.00 given to FAA employees taxable.

(4) Reasonable purchases (i.e., decorations and related supplies) used to enhance an awards ceremony and foster public recognition of employees' accomplishments are allowable. This does not apply to food and beverage, which is addressed in AMS Procurement Guidance T3.2.2.5.A.5.

e. Purchasing or Renting Portable Storage Units or Procuring Short-term Storage Services.

(1) Before purchasing or renting storage units or procuring storage services, a determination must be made that existing storage space is not available from other sources within FAA or elsewhere in Government. Contracting Officers (CO) or cardholders must coordinate storage requirements with a warranted Real Estate Contracting Officer (RECO). This coordination is intended to ensure:

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(3) When possible, storage requirements for a construction project should be incorporated into the Statement of Work (SOW) or specification under the associated construction contract.

(4) Purchase cards cannot be used:

(a) For the purchase, rental, or lease of land or buildings;

(b) To purchase real property, which is defined as land, buildings, structures or rights over or under the land, or things that are permanently affixed or attached to the land such as improvements to make it more productive or to make it serve a more beneficial end than the land itself; and

(c) For long-term storage unit rental or services (long-term is defined as six months or more), unless the purchase card is being used as a payment vehicle against a contract or lease signed by a CO/RECO and:

(i) The total cost of the rental or purchase of storage services does not exceed the cardholder's delegated authority;

(ii) The portable units are not classified as real property (as defined above); and

(iii) The terms and conditions of the rental or storage services (i.e. termination authority) are set forth in writing and signed by both parties.

New Content: Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method

Simplified Purchasing

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(11) *Printing personalized stationery*, including paper pads with the name, logo, or office of FAA personnel.

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- (c) For long-term storage unit rental or services (long-term is defined as six months or more), unless the purchase card is being used as a payment vehicle against a contract or lease signed by a CO/RECO and:
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Section 1 : Appendix 1- Emergency Procurement Guide

Old Content: Procurement Guidance:

T3.2.1.5 - Disaster or Emergency Preparedness and Response

Appendix

Section 1 : Appendix 1- Emergency Procurement Guide

FAA Emergency Procurement Guide

This guide is for the use of FAA personnel when responding to a bona fide emergency, incident of national significance, or aiding in disaster relief efforts. This guide supplements and summarizes FAA Acquisition Management System (AMS); specific policy and guidance for FAA procurement can be found at <http://fast.faa.gov>.

Emergency: A sudden, unforeseen event that requires action to correct or to protect lives or property.

The flexibilities in this guide may be used:

1. In support of FAA contingency operations or restoration of the NAS;
2. To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the

United States; or

3. When the President declares an incident of national significance, emergency declaration, or a major disaster declaration.

Unauthorized Commitments: DO NOT make commitments or promises of any kind to bind the Government if you are not a properly warranted Contracting Officer (CO) or an authorized holder of a purchase card and the requirement is within your warrant or delegation.

When purchasing goods or services in an emergency, COs and cardholders **must** ensure that applicable FAA security standards are properly addressed and adhered to.

Purchase Cards

The purchase card is a valuable tool that can be utilized to procure requirements in times of emergency. Despite the presence of an emergency situation:

- Single and monthly limits established for the card account by the Chief of the Contracting Office (COCO) in the cardholder's Delegation of Purchasing Authority (DPA) must still be strictly adhered to; and
- The person making the purchase must be the cardholder on the card account and have a valid DPA issued by the COCO.

Emergency Spending Limits

The maximum single purchase limit that can be assigned to purchase card is \$100,000, while the maximum billing cycle or monthly limit is \$999,900. The COCO establishes both limitations based on justification and recommendations of a cardholder's approving official. If a cardholder is designated or tasked to respond to emergencies or participate in relief efforts, that individual's single and monthly limit can be raised to a level that allows for an efficient and effective emergency response.

A warranted CO can make purchases up to \$100,000 using a purchase card (if within their warrant limits); however the maximum Single Purchase Limit that may be issued to an unwarranted cardholder is \$10,000. If a non-warranted cardholder wishes to have a single purchase limit above \$10,000 (up to the \$100,000 maximum) for emergency operations, the individual must receive written approval from the COCO.

Prohibited Purchases

The following items cannot be purchased using a government purchase card:

- Long-term rental or lease of land or buildings
- Cash advances, including money orders
- Telephone services controlled by the GSA or the local Office of Information Services or Regional Communications Office
- Cellular or communication devices and services covered by the National Wireless Program Office (NWPO)
- Gifts
- Personal purchases or services
- Travel-related expenses
- Obtain Government owned or leased vehicles

Restricted Purchases

- Drinking water, except when:
 - A duly constituted health authority pronounces the drinking water to be unsafe for human consumption at the site;
 - A viable and safe water source for FAA personnel is not available on or within a reasonable distance of the worksite;
 - FAA personnel reasonably foresee a disaster or emergency, such as the imminent landfall of a hurricane (See AMS Procurement Guidance 3.2.2.5 for additional restrictions); or

- The drinking water is provided in a controlled environment to enable collections for drug use analysis for safety sensitive positions.
- Food items for meetings and conventions, except as detailed in AMS Procurement Guidance 3.2.2.5.
- Membership fees for individual employees (the agency may purchase membership in a society or association in its own name)
- Subscriptions to publications or magazines not relating to official duties
- Clothing (or personal apparel of any description); requirements for special type clothing necessitated by agency requires written justification from the requestor's supervisor and should be coordinated with legal counsel
- Rental of aircraft by persons not in aircraft related positions
- Fans, air conditioning and cooling equipment, space heaters and heating equipment, except as properly installed for general use in connection with the maintenance and operations requirements for the site.
- Water coolers, or vacuum cleaners and other household appliances (i.e. refrigerators, microwaves, etc), except as requisitioned for general use by the authorities charged with building maintenance and equipment Plaques, trophies, etc. (exceeding \$75.00) given to employees for high quality work or special projects (See AMS Procurement Guidance 3.2.2.5 for additional information) Services over \$2,500
- Construction over \$2,000
- Store gift cards or gift certificates (see AMS Guidance T3.2.2.5.A.4.d.(3)).

Purchase Card Flexibilities

See the *Emergency Procurement Flexibilities* section below in this guide.

Purchase Card Dos and Don'ts

- Be sure not to charge travel related expenses on the purchase card.
- Ensure that funding is available and approvals are received. Despite the presence of an emergency, funding must be available prior to purchase.
- Never allow anyone else to use your purchase card.
- Secure the card at all times and immediately report lost or stolen cards to the Agency Program Coordinator (APC) and bank.
- Ensure that vendors understand that FAA is exempt from sales tax.
- Never exceed assigned single or monthly purchase limits.
- Never split a purchase to avoid single or monthly purchase limits.

Credit Card Checks

- For those vendors that don't accept a purchase card, credit card checks have a single purchase limit of \$2,500.

Procurement Resources and Tools for Emergencies

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Other Federal Resources

GSA

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 - Description of requirement and RFQ number;
 - Rationale for use of oral quotations;
 - Sources solicited: Include date, time, and name of individuals contacted, and prices offered; and
 - Best value determination.
- Central Contractor Registration (CCR): Contractors do not have to be registered in CCR before award of a contract, agreement, or lease in response to an emergency or disaster. (AMS Procurement Guidance T3.3.1)
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- Local Area Set-Asides for Disaster or Emergency: The CO may set-aside procurements for competition among only offerors residing or doing business primarily in an area where the President has declared a major disaster or emergency. (AMS Procurement Guidance T3.2.1.5)
- Bonds: For emergency acquisitions, the CO may waive the requirement to obtain a guarantee when performance bond and/or payment bonds are usually required. (AMS Procurement Guidance T3.4.1)
- Legal Coordination: At Headquarters, the Assistant Chief Counsel for Procurement, and at Regions and Centers, the Region or Center Counsel, may make written exceptions to the Coordination Policy described in T1.15, adjust dollar minimums, or in appropriate cases, waive the Coordination Policy. (AMS Procurement Guidance T1.15)

- **Overtime:** Approval of contractor overtime should be prospective, but if justified by emergency circumstances, approval may be retroactive. (AMS Procurement Guidance T3.6.2)

New Content: Procurement Guidance:

T3.2.1.5 - Disaster or Emergency Preparedness and Response

Appendix

Section 1 : Appendix - Emergency Procurement Guide

FAA Emergency Procurement Guide

This guide is for the use of FAA personnel when responding to a bona fide emergency, incident of national significance, or aiding in disaster relief efforts. This guide supplements and summarizes FAA Acquisition Management System (AMS); specific policy and guidance for FAA procurement is available on the FAST website.

Emergency: A sudden, unforeseen event that requires action to correct or to protect lives or property.

The flexibilities in this guide may be used:

1. In support of FAA contingency operations or restoration of the NAS;
2. To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the

United States; or

3. When the President declares an incident of national significance, emergency declaration, or a major disaster declaration.

Unauthorized Commitments: DO NOT make commitments or promises of any kind to bind the Government if you are not a properly warranted Contracting Officer (CO) or an authorized holder of a purchase card and the requirement is within your warrant or delegation.

When purchasing goods or services in an emergency, COs and cardholders **must** ensure that applicable FAA security standards are properly addressed and adhered to.

Purchase Cards

The purchase card is a valuable tool that can be utilized to procure requirements in times of emergency. Despite the presence of an emergency situation:

Single and monthly limits established for the card account by the Chief of the Contracting Office (COCO) in the cardholder's Delegation of Purchasing Authority (DPA) must still be strictly adhered to; and

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The person making the purchase must be the cardholder on the card account and have a valid DPA issued by the COCO.

Emergency Spending Limits

The maximum single purchase limit that can be assigned to purchase card is \$100,000, while the maximum billing cycle or monthly limit is \$999,900. The COCO establishes both limitations based on justification and recommendations of a cardholder's approving official. If a cardholder is designated or tasked to respond to emergencies or participate in relief efforts, that individual's single and monthly limit can be raised to a level that allows for an efficient and effective emergency response.

A warranted CO can make purchases up to \$100,000 using a purchase card (if within their warrant limits); however the maximum Single Purchase Limit that may be issued to an unwarranted cardholder is \$10,000. If a non-warranted cardholder wishes to have a single purchase limit above \$10,000 (up to the \$100,000 maximum) for emergency operations, the individual must receive written approval from the COCO.

Prohibited Purchases

The following items cannot be purchased using a government purchase card:

Long-term rental or lease of land or buildings

Cash advances, including money orders

Telephone services controlled by the GSA or the local Office of Information Services or Regional Communications Office

Cellular or communication devices and services covered by the National Wireless Program Office (NWPO)

Gifts

Personal purchases or services

Travel-related expenses

Obtain Government owned or leased vehicles

Restricted Purchases

- Drinking water, except when:
 - - A duly constituted health authority pronounces the drinking water to be unsafe for human consumption at the site;

- A viable and safe water source for FAA personnel is not available on or within a reasonable distance of the worksite;
- FAA personnel reasonably foresee a disaster or emergency, such as the imminent landfall of a hurricane (See AMS Procurement Guidance 3.2.2.5 for additional restrictions); or
- The drinking water is provided in a controlled environment to enable collections for drug use analysis for safety sensitive positions.
- Food items for meetings and conventions, except as detailed in AMS Procurement Guidance 3.2.2.5.
- Membership fees for individual employees (the agency may purchase membership in a society or association in its own name)
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- Clothing (or personal apparel of any description); requirements for special type clothing necessitated by agency requires written justification from the requestor's supervisor and should be coordinated with legal counsel
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- Fans, air conditioning and cooling equipment, space heaters and heating equipment, except as properly installed for general use in connection with the maintenance and operations requirements for the site.
- Water coolers, or vacuum cleaners and other household appliances (i.e. refrigerators, microwaves, etc), except as requisitioned for general use by the authorities charged with building maintenance and equipment Plaques, trophies, etc. given to employees for high quality work or special projects (See AMS Procurement Guidance 3.2.2.5 for additional information) Services over \$2,500
- Construction over \$2,000
- Store gift cards or gift certificates (see AMS Guidance T3.2.2.5.A.4.d.(3)).

Purchase Card Flexibilities

See the *Emergency Procurement Flexibilities* section below in this guide.

Purchase Card Dos and Don'ts

- Be sure not to charge travel related expenses on the purchase card.
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- Secure the card at all times and immediately report lost or stolen cards to the Agency Program Coordinator (APC) and bank.
- Ensure that vendors understand that FAA is exempt from sales tax.
- Never exceed assigned single or monthly purchase limits.
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Red Line Content: Procurement Guidance:

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- Purchase Card: See section *Purchase Cards*.
- Credit Card Checks: See section *Purchase Cards*.
- Letter contracts: If the situation demands immediate response, a CO may issue a letter contract to a vendor. A letter contract includes identification of the requirement and a brief description of the work, a total amount for which the contractor shall be limited to expend and the FAA shall be required to pay; and the period of performance by the contractor. (AMS Procurement Guidance T3.2.4)
- Verbal Authorization: A CO may give a vendor a verbal authorization to begin work once funds are committed and complete the remaining contract phases after the fact. (AMS Policy 3.2.2.4.1.1)
- Oral Solicitations and Quotations: Oral solicitations may be used when processing a written solicitation would delay the acquisition of supplies or services in an emergency to the detriment of the FAA. Oral quotations may be authorized to allow for quicker receipt of pricing for goods and services. Documentation for each oral Request for Quote (RFQ) should include:
 - Description of requirement and RFQ number;
 - Rationale for use of oral quotations;
 - Sources solicited: Include date, time, and name of individuals contacted, and prices offered; and
 - Best value determination.
- Central Contractor Registration (CCR): Contractors do not have to be registered in CCR before award of a contract, agreement, or lease in response to an emergency or disaster. (AMS Procurement Guidance T3.3.1)
- Electronic Fund Transfer (EFT): Payment by EFT is not required during emergencies or contingency operations. (AMS Procurement Guidance T3.3.1)
- Local Area Set-Asides for Disaster or Emergency: The CO may set-aside procurements for competition among only offerors residing or doing business primarily in an area where the President has declared a major disaster or emergency. (AMS Procurement Guidance T3.2.1.5)
- Bonds: For emergency acquisitions, the CO may waive the requirement to obtain a guarantee when performance bond and/or payment bonds are usually required. (AMS Procurement Guidance T3.4.1)
- Legal Coordination: At Headquarters, the Assistant Chief Counsel for Procurement, and at Regions and Centers, the Region or Center Counsel, may make written exceptions to the Coordination Policy described in T1.15, adjust dollar minimums, or in appropriate cases, waive the Coordination Policy. (AMS Procurement Guidance T1.15)

- Overtime: Approval of contractor overtime should be prospective, but if justified by emergency circumstances, approval may be retroactive. (AMS Procurement Guidance T3.6.2)
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