

[Back to Original](#)

Disaster Recovery Purchasing

1. What is Disaster Recovery Purchasing?
2. Can state and local governments purchase from all GSA Schedules?
3. Can state and local governments use other GSA contracts?
4. When did the Disaster Recovery Purchasing Program go into effect?
5. How are state and local governments defined?
6. Are Disaster Recovery Purchasing orders subject to the Industrial Funding Fee (IFF)?
7. Will GSA waive, or give a portion of, the IFF to state and local government entities?
8. Are state and local government entities required to use the GSA Schedules Program?
9. Are Schedule contractors required to accept orders from state and local government entities?
10. How do state and local government entities place orders against Schedule contracts? Do such orders against Schedule contracts meet competition requirements?
11. If the contractor does not perform acceptably under a Disaster Recovery Purchasing order issued by a state or local entity, should the ordering activity request the GSA contracting officer take corrective measures?
12. Under Disaster Recovery Purchasing, can ordering activities include terms and conditions required by state or local statutes, ordinances, regulations, or orders?
13. Are any GSA Schedule contract terms and conditions not incorporated by reference into Disaster Recovery Purchasing orders?
14. Are Prompt Payment provisions incorporated into Disaster Recovery Purchasing orders?
15. Are state and local government preference programs affected by Disaster Recovery Purchasing?
16. May state and local government entities use credit cards to purchase products and services under this program?
17. Can state and local governments issue Blanket Purchase Agreements (BPAs) under the Schedule contracts?
18. Can state and local government entities be granted additional price reductions under the Schedule contracts?
19. Will a spot discount to state and local government entities under the GSA Schedule contract trigger the Price Reductions clause?
20. Does the Trade Agreements Act apply to contracts between the Schedule contractor

and state and local government entities?

21. Can state or local government grantees purchase from GSA Schedules? If state or local governments themselves receive grant money, can they use these funds to purchase products and services from GSA Schedules?
22. Can state and local government entities use GSA <I>Advantage!</I>#174; to place orders under Disaster Recovery Purchasing?

Disaster Recovery Purchasing

1. What is Disaster Recovery Purchasing?

Section 833 of the John Warner National Defense Authorization Act for fiscal year 2007 (Public Law 109-364) amended 40 U.S.C. 502 to authorize the Administrator of General Services to provide for the use of Federal Supply Schedules by state and local governments for the purchase of products and services to be used to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attacks.

2. Can state and local governments purchase from all GSA Schedules?

Yes. The Department of Homeland Security has determined that all of the products and services available under GSA Schedules could potentially be used for recovery from a disaster or a terrorist attack.

3. Can state and local governments use other GSA contracts?

No. Disaster Recovery Purchasing authority is limited to GSA Schedule contracts and does not include any other GSA programs. GSA eLibrary (formerly Schedules e-Library) contains a list of all GSA Schedules subject to Disaster Recovery Purchasing.

4. When did the Disaster Recovery Purchasing Program go into effect?

Disaster Recovery Purchasing was effective upon publication of the interim rule in the Federal Register on February 1, 2007. Since the issuance of the interim rule, GSA Schedule contracts have been and will continue to be modified, as mutually agreed between the Schedule contractor and GSA, to allow Schedule contractors to participate in the Disaster Recovery Purchasing Program.

Vendors submitting new offers for Schedule contracts are also required to indicate whether they will offer Disaster Recovery Purchasing.

5. How are state and local governments defined?

The General Services Administration Acquisition Manual (GSAM), Part 538.7001, Definitions, offers the following definition of state and local governments:

"The States of the United States, counties, municipalities, cities, towns, townships, tribal

governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges, and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments."

The term does not include contractors or grantees of state or local governments.

6. Are Disaster Recovery Purchasing orders subject to the Industrial Funding Fee (IFF)?

Yes. Each Schedule contract price includes an industrial funding fee, which is represented in the prices paid by ordering activities and passed on to GSA by Schedule contractors. The IFF reimburses GSA for procurement and administrative costs incurred to operate the GSA Schedules Program.

7. Will GSA waive, or give a portion of, the IFF to state and local government entities?

No.

8. Are state and local government entities required to use the GSA Schedules Program?

No. Disaster Recovery Purchasing is voluntary for both state and local government entities and for Schedule contractors. State and local entities have full discretion to decide if they wish to make a GSA Schedule purchase, subject to any limitations that may be established under state and local laws and procedures.

9. Are Schedule contractors required to accept orders from state and local government entities?

Schedule contractors have the option of deciding whether they will accept orders placed by state or local government buyers. Schedule contractors will make this decision on two levels. First, at the contract level, Schedule contractors will decide whether they want to offer Disaster Recovery Purchasing and either enter into a mutual agreement with GSA to modify the existing Schedule contract or indicate, prior to contract award, their intent to offer their Schedule products and services under Disaster Recovery Purchasing. Second, even after an existing contract is modified or a new contract awarded, a Schedule contractor will retain the right to decline orders received from state or local government entities on a case-by-case basis. Schedule contractors may decline an order, for any reason, within a five-day period after receipt of the order; however, credit card orders must be declined within 24 hours.

10. How do state and local government entities place orders against Schedule contracts? Do such orders against Schedule contracts meet competition requirements?

State and local government entities are encouraged to use GSA's Schedule Ordering Procedures to ensure the benefit of receiving the best value from GSA Schedule

contractors. **When state and local governments follow the GSA Schedule Ordering Procedures**—i.e., the Ordering Procedures for Supplies, and Services Not Requiring a Statement of Work (Federal Acquisition Regulation (FAR) 8.405-1) or the Ordering Procedures for Services Requiring a Statement of Work (FAR 8.405-2)—use of the GSA Schedules Program is considered to be a "competitive procedure" under the Competition in Contracting Act of 1984 (CICA). State and local entities may include terms and conditions required by statute, ordinance, regulation, or order to the extent that these terms and conditions do not conflict with the terms and conditions of the GSA Schedule contract.

11. If the contractor does not perform acceptably under a Disaster Recovery Purchasing order issued by a state or local entity, should the ordering activity request the GSA contracting officer take corrective measures?

No. Acceptance of an order by the Schedule contractor under Disaster Recovery Purchasing constitutes the formation of a new contract between the non-federal ordering activity and the Schedule contractor. The ordering activity's contracting officer is responsible for all contract administration under the new contract.

While the majority of the terms and conditions of the Schedule contract are incorporated by reference into the Disaster Recovery Purchasing order (see Questions 13 and 14, below, for exceptions), the federal government is not liable for the contractor's performance, or non-performance. Disputes that cannot be resolved by the parties may be litigated in any state or federal court with jurisdiction, using the principles of federal procurement law and the uniform commercial code, as applicable and appropriate.

However, state and local government entities may submit information concerning a contractor's performance to the GSA contracting officer for consideration when evaluating the contractor's overall performance under the GSA Schedule contract.

12. Under Disaster Recovery Purchasing, can ordering activities include terms and conditions required by state or local statutes, ordinances, regulations, or orders?

Yes. However, the additional terms and conditions must be included as a part of the Statement of Work (SOW) or the Statement of Objectives (SOO) and must not conflict with the terms and conditions of the GSA Schedule contract.

13. Are any GSA Schedule contract terms and conditions not incorporated by reference into Disaster Recovery Purchasing orders?

Yes. The following contract terms and conditions are not incorporated by reference into Disaster Recovery Purchasing orders:

- Disputes Clause;
- Patent Indemnity Clause; and
- Certain Commercial Item Contract Terms and Conditions. Portions of the commercial item contract terms and conditions that specify compliance with laws unique to federal government contracts are not applicable to Disaster Recovery

Purchasing orders.

14. Are Prompt Payment provisions incorporated into Disaster Recovery Purchasing orders?

Yes. GSAM 552.232-81, Payments by Non-Federal Ordering Activities, allows for the terms and conditions of a state's prompt payment law to apply to orders placed by eligible non-federal ordering activities. However, if the ordering activity is not otherwise subject to a state prompt payment law, the activity is covered by the federal prompt payment act in the same manner as federal ordering activities.

15. Are state and local government preference programs affected by Disaster Recovery Purchasing?

No. Disaster Recovery Purchasing does not affect state and local government preference programs.

16. May state and local government entities use credit cards to purchase products and services under this program?

Yes. Schedule contractors may accept any state and local government-issued credit cards for orders placed under Disaster Recovery Purchasing. Contractors are required to accept credit cards for orders up to the micro-purchase threshold and contractors may voluntarily accept credit cards for orders exceeding the micro-purchase threshold.

17. Can state and local governments issue Blanket Purchase Agreements (BPAs) under the Schedule contracts?

Yes. State and local government entities may issue BPAs under the Schedule contracts. In order to qualify as a GSA Schedule BPA, the competition underlying the award of the BPA must be conducted in accordance with the GSA Schedule ordering procedures.

18. Can state and local government entities be granted additional price reductions under the Schedule contracts?

Yes. State and local government entities may be granted additional price reductions under Disaster Recovery Purchasing.

19. Will a spot discount to state and local government entities under the GSA Schedule contract trigger the Price Reductions clause?

No. Granting state and local government entities additional price discounts under the GSA Schedule contract will not trigger the Price Reductions clause.

20. Does the Trade Agreements Act apply to contracts between the Schedule contractor and state and local government entities?

Yes. All Schedule contract terms and conditions, except those stated in Questions 13 and 14, apply to contracts between the GSA Schedule contractor and state and local government entities.

21. Can state or local government grantees purchase from GSA Schedules? If state or local governments themselves receive grant money, can they use these funds to purchase products and services from GSA Schedules?

Under the Disaster Recovery Purchasing Program, only *state and local government entities*, as defined in General Services Administration Acquisition Manual (GSAM) 538.7001, are eligible to purchase from GSA Schedules. As noted in the definition, the term, *state and local government entities*, "...does not include contractors of, or grantees of, state or local governments." Thus, state or local government grantees cannot purchase Schedule products or services under the Disaster Recovery Purchasing Program.

With regard to state or local governments themselves receiving grant money, these entities are eligible users under the Disaster Recovery Purchasing Program by virtue of meeting the definition of *state and local government entities*; the source of funding for these entities is irrelevant.

22. Can state and local government entities use GSA Advantage![®] to place orders under Disaster Recovery Purchasing?

Yes. In addition to their previous capability to "browse" on GSA Advantage![®], state and local government entities may now use the GSA Advantage![®] online shopping and ordering system to purchase products and services from Schedule contractors that have agreed to offer Disaster Recovery Purchasing. Products and services available for Disaster Recovery Purchasing are identified on GSA Advantage![®] with the Disaster Recovery Purchasing icon.

Payments for state and local government purchases on GSA Advantage![®] are limited to credit card payments using a state or local government issued credit card. No other form of payment will be accepted at this time. State and local government customers must also register and obtain the necessary approvals from a supervisor or approving official as part of the registration process. State and local government ordering activities are responsible for ensuring that only authorized representatives of their governments place orders, and that the products and services purchased will only be used for governmental purposes.

Orders placed through GSA Advantage![®] will be transmitted directly to GSA Schedule contractors. Schedule contractors will, in turn, ship the products and/or perform the services prior to billing the customer's credit card. GSA does not ship merchandise or bill the customer's credit card. All order/billing problems and/or discrepancies must be addressed directly with Schedule contractors.

