



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Washington, D.C. 20201

May 7, 2018

MEMORANDUM FOR: Heads of Contracting Activity

FROM: Andrea Brandon, //s//

Deputy Assistant Secretary for Office of Grants and Acquisition Policy and Accountability and
Senior Procurement Executive

SUBJECT: Class Deviation from the Federal Acquisition Regulation - Increasing the Micro-Purchase Threshold and Simplified Acquisition Threshold

PURPOSE: This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to increase the Micro-Purchase Threshold (MPT) to \$10,000 and the Simplified Acquisition Threshold (SAT) to \$250,000.

Effective Date: June 1, 2018

Background: The National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18) (Public Law 115-91) Sections 806 and 805 respectively, increased the MPT to \$10,000 and the SAT to \$250,000. Section 217(b) of the NDAA FY-2017 (Public Law 114-328) changed a portion of the MPT definition in FAR 2.101 to increase the MPT for acquisitions from institutions of higher education or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes to \$10,000. FAR Case 2018-004 has been opened by the FAR Council to implement the appropriate statutory changes in the FAR. Pending publication of this rule it is reasonable and practical for HHS to issue a class deviation to implement the increased thresholds.

Deviation: This FAR Class Deviation implements the higher thresholds for the Department of Health and Human Services as stated in Attachment 01, HHS FAR Class Deviation 18-02.

Applicability: This class deviation applies to all solicitations and contracts.

Expiration Date: This FAR class deviation is effective upon signature and remains in effect until it is incorporated in the FAR or is otherwise rescinded.

CAAC Consultation: Attachment 02 to this memorandum from the Chairman of the Civilian Agency Acquisition Council constitutes the consultation required by FAR 1.404 for class deviations.

Questions or comments about this FAR Class Deviation may be directed to Lori Sakalos, Senior Procurement Analyst, Office of Acquisition Policy at (202) 751-5294 or Lori.Sakalos@hhs.gov

Attachment 01: HHS FAR Deviation



CAAC LETTER 2018-02

February 16, 2018

MEMORANDUM FOR CIVILIAN AGENCIES

FROM: WILLIAM CLARK 
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR)
increasing the micro-purchase threshold and the simplified
acquisition threshold

I. Background.

The National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18) (Public Law 115-91) (Sections 806 and 805 respectively) increased the micro-purchase threshold to \$10,000 and the simplified acquisition threshold (SAT) to \$250,000.

Section 217(b) of the NDAA FY 2017 (Public Law 114-328) changed a portion of the micro-purchase threshold definition in FAR 2.101 to increase the micro-purchase threshold for acquisitions from institutions of higher education or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes, to \$10,000. This change was part of the now-closed FAR Case 2017-012, which was intended to implement section 217(b) of the NDAA FY 2017.

FAR Case 2018-004 has been opened to implement the appropriate statutory changes in the FAR that are compelled by sections 805 and 806 of the NDAA FY18 and section 217(b) of the NDAA FY17. However, agencies may have a need to use the increased thresholds prior to publication of the FAR changes.

This CAAC letter constitutes consultation in accordance with FAR 1.404 with the Chair of the CAAC allowing agencies to authorize a class deviation to implement the changes.

II. Effective Date.

This CAAC letter is effective immediately, and remains in effect until the increased thresholds are incorporated into the FAR or is otherwise rescinded.

III. Instructions to agencies.

Attachment A is the FAR text with highlights of the appropriate FAR citations needing changes to implement the increased thresholds. Agencies may use Attachment A as a basis for issuing a class deviation. Note: For baselining purposes, the FAR text

includes the changes to the definitions of micro-purchase threshold and simplified acquisition threshold being promulgated under the separate FAR Case 2017-009, Special Emergency Procurement Authority. The FAR case implements sections 816 and 1641 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). The sections modify 41 U.S.C. 1903, Special Emergency Procurement Authority to expand special emergency procurement authorities to facilitate defense against or recovery from cyber attack, provide international disaster assistance under the Foreign Assistance Act of 1961, and support for an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The baseline changes are shown in light grey.

Attachment B is a chart showing the rationale for changing or not changing thresholds in the FAR related to the micro-purchase threshold and the SAT that are compelled by sections 805 and 806 of the NDAA FY18 and section 217(b) of the NDAA FY17.

Agencies need to determine how this class deviation will affect existing delegated authorities. This may depend on how the agency delegated the authority, e.g., did it refer to "the micro-purchase threshold" or to a set amount of "\$3,500".

Agencies are reminded that FAR 1.404 requires agencies to furnish a copy of each approved class deviation to the FAR Secretariat, General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd Floor, ATTN: Lois Mandell, Washington, DC 20405. Agencies may also email the deviation to Ms. Mandell at lois.mandell@gsa.gov or send by fax to (202) 501-4067.

If you have any questions or require additional information concerning this letter, please contact Charles R. Gray (703) 695-6328 or at Charles.gray@gsa.gov.

Attachments

ATTACHMENT 01; HHS FAR DEVIATION 18-02

Baseline is FAC 2005-97, effective January 24, 2018.

Changes shown in **[Bold brackets]**, and deletions shown in ~~striketrough~~.

PART 2 - DEFINITIONS OF WORDS AND TERMS

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Subpart 2.1 - Definitions

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2.101 Definitions.

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(b) * * *

"Micro-purchase threshold" means ~~\$3,500~~**[10,000]**, except it means—

(1) For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), \$2,000;

(2) For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, \$2,500; ~~and~~

(3) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) (41 U.S.C. 1903)—

(i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) ~~\$30,000~~ in the case of any contract to be awarded and performed, or purchase to be made, outside the United States~~—[; and]~~

[(4) For acquisitions of supplies or services from institutions of higher education (20 U.S.C. 1001(a)) or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes—

(i) \$10,000; or

(ii) A higher threshold, as determined appropriate by the head of the agency and consistent with clean audit findings under 31 U.S.C. chapter 75, Requirements for Single Audits; an internal institutional risk assessment; or State law.]

* * * * *

"Simplified acquisition threshold" means ~~\$150,000~~ [250,000] (41 U.S.C. 134), except for-

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 1903), the term means-

(i) \$750,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

(2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (10 U.S.C. 2302), the term means ~~\$300,000~~ [500,000] for any contract to be awarded and performed, or purchase to be made, outside the United States.

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PART 13 - SIMPLIFIED ACQUISITION PROCEDURES

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13.003 Policy.

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(b)(1) Acquisitions of supplies or services that have an anticipated dollar value exceeding ~~\$3,500~~ [the micro-purchase threshold] ~~(\$20,000 for acquisitions as described in 13.201(g)(1))~~ but not exceeding ~~\$150,000~~ [the simplified acquisition threshold] ~~(\$750,000 for acquisitions described in paragraph (1)(i) of the simplified acquisition threshold definition at 2.101)~~ are reserved exclusively for small business concerns and shall be set aside (see 19.000, 19.203, and subpart 19.5).

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Subpart 13.5—Simplified Procedures for Certain Commercial Items

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13.501 Special documentation requirements.

(a) Sole source (including brand name) acquisitions.

* * *

(2) Justifications and approvals are required under this subpart for sole-source (including brand-name) acquisitions or portions of an acquisition requiring a brand-name. If the justification is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

(i) For a proposed contract exceeding ~~\$150,000~~ **[the simplified acquisition threshold]**, but not exceeding \$700,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

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PART 19—SMALL BUSINESS PROGRAMS

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Subpart 19.2—Policies

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19.203 Relationship among small business programs.

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(b) *At or below the simplified acquisition threshold.* For acquisitions of supplies or services that have an anticipated dollar value exceeding ~~\$3,500~~ **[the micro-purchase threshold]** ~~(\$20,000 for acquisitions as described in 13.201(g)(1)),~~ but not exceeding ~~\$150,000~~ **[the simplified acquisition threshold]** ~~(750,000 for acquisitions described in paragraph (1)(i) of the simplified acquisition threshold definition at 2.101),~~ the requirement at 19.502-2(a) to exclusively reserve acquisitions for small business concerns does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, SDVOSB Program, or WOSB Program.

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Subpart 19.5-Set-Asides for Small Business

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19.502 Setting Aside Acquisitions.

19.502-1 Requirements for setting aside acquisitions.

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(b) This requirement does not apply to purchases [valued at or below the micro-purchase threshold] ~~of \$3,500 or less (\$20,000 or less for acquisitions as described in 13.201(g)(1))~~, or purchases from required sources of supply under Part 8 (e.g., Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

* * * * *

19.502-2 Total small business set-asides.

(a) Before setting aside an acquisition under this paragraph, refer to 19.203(b). Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,500 ~~(\$20,000 for acquisitions as described in 13.201(g)(1))~~ [the micro-purchase threshold], but not over \$150,000 ~~(\$750,000 for acquisitions described in paragraph (1)(i) of the simplified acquisition threshold definition at 2.101)~~ [the simplified acquisition threshold], is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. * * *

(b) Before setting aside an acquisition under this paragraph, refer to 19.203(c). The contracting officer shall set aside any acquisition over \$150,000 [the simplified acquisition threshold] for small business participation when there is a reasonable expectation that-

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19.508 Solicitation provisions and contract clauses.

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(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement

is to be set aside or reserved for small business and the contract amount is expected to exceed ~~\$150,000~~**[the simplified acquisition threshold]**. This includes multiple-award contracts when orders may be set aside for small business concerns, as described in 8.405-5 and 16.505(b) (2) (i) (F).

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Part 52-Solicitation Provisions and Contract Clauses

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Subpart 52.2-Text of Provisions and Clauses

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52.203-16 Preventing Personal Conflicts of Interest.

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(d) Subcontract flowdown. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts-

(1) That exceed ~~\$150,000~~**[the simplified acquisition threshold]**;
and

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52.219-9 Small Business Subcontracting Plan.

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(d) The Offeror's subcontracting plan shall include the following:

* * *

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

* * *

(iii) Records on each subcontract solicitation resulting in an award of more than ~~\$150,000~~**[the simplified acquisition threshold]**, indicating-

* * * * *

Alternate IV (Jan 2017). As prescribed in 19.708(b)(1)(iv), substitute the following paragraphs (c) and (d) for paragraphs (c) and (d) of the basic clause:

* * * * *

(d) The Contractor's subcontracting plan shall include the following:

* * *

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Contractor's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

* * *

(iii) Records on each subcontract solicitation resulting in an award of more than ~~\$150,000~~**[the simplified acquisition threshold]**, indicating-