

U.S. ENVIRONMENTAL PROTECTION AGENCY

FAR CLASS DEVIATION

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2018

FINDINGS

1. 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 to \$250,000. Additionally, 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 related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes, to \$10,000.

FAR Case 2018-004 has been opened to implement the appropriate statutory changes in the FAR. However, EPA desires to use the increased thresholds prior to publication of the FAR changes.

Since FAR Case 2018-004 is not final and amending the FAR is a lengthy process, the Chairman of the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2018-02 Class Deviation from the FAR to implement increasing the micro-purchase threshold and the simplified acquisition threshold. CAAC Letter 2018-02 authorizes agencies to deviate from the FAR until the FAR has officially been amended to incorporate the change in the MPT and SAT.

2. Consequently, this Determination and Findings implements Public Law 115-91 and Public Law 114-328 by authorizing a deviation to FAR text provided in CAAC Letter 2018-02.

3. Agencies were given the authorization to issue a class deviation, in accordance with FAR 1.404, under CAAC Letter 2018-02. The CAAC Letter also constitutes consultation with the Chair of the CAAC as required by FAR 1.404(a)(1).

DETERMINATION

1. Under the authority of FAR 1.404 and based upon the above findings, I grant a class deviation to FAR in accordance with the Deviation Text attached hereto. The Deviation Text is taken directly from language contained in Attachment A of CAAC Letter 2018-02.

2. This deviation is effective at the date of signature below, and shall remain in effect until incorporated into the FAR, superseded, or is otherwise rescinded.

/Signed/

April 20, 2018

Kimberly Y. Patrick, Director
Office of Acquisition Management

Date

Attachment A

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FAR DEVIATION TEXT
FAR CLASS DEVIATION
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2018
Increase Micro-Purchase and Simplified Acquisition Thresholds

The baseline for the following is Federal Acquisition Circular (FAC) 2005-97, effective January 24, 2018.

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2.101 Definitions.

* * * * *

(b) * * *

“Micro-purchase threshold” means \$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; to facilitate defense against or recovery from cyber, nuclear, biological, chemical or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122), 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 \$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; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122), (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 \$500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

13.003 Policy.

* * * (b)(1) Acquisitions of supplies or services that have an anticipated dollar value exceeding \$10,000 (\$20,000 for acquisitions as described in 13.201(g)(1)) but not exceeding \$250,000 (\$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). * * * * *

13.501 Special documentation requirements.

(a) * * * (2) * * *

(i) For a proposed contract exceeding \$250,000, 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. * * * * *

19.203 Relationship among small business programs.

* * * (b) At or below the simplified acquisition threshold. For acquisitions of supplies or services that have an anticipated dollar value exceeding \$10,000 (\$20,000 for acquisitions as described in

13.201(g)(1)), but not exceeding \$250,000 (\$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.

* * * * *

19.502-1 Requirements for setting aside acquisitions.

* * *

(b) This requirement does not apply to purchases of \$10,000 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 \$10,000 (\$20,000 for acquisitions as described in 13.201(g)(1)), but not over \$250,000 (\$750,000 for acquisitions described in paragraph (1) (i) of the simplified acquisition threshold definition at 2.101), 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. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract as described in 19.203.

(b) Before setting aside an acquisition under this paragraph, refer to 19.203(c). The contracting officer shall set aside any acquisition over \$250,000 for small business participation when there is a reasonable expectation that— * * * * *

19.508 Solicitation provisions and contract clauses.

* * * (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 \$250,000. 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).

52.203-16 Preventing Personal Conflicts of Interest.

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

(1) That exceed \$250,000; and * * *

52.212-1 Instructions to Offerors—Commercial Items.

* * * (j) *Unique entity identifier*. (Applies to all offers exceeding \$10,000, and offers at any dollar level if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) * * * * *

52.219-9 Small Business Subcontracting Plan.

* * * (d) * * * (11) * * *

(iii) Records on each subcontract solicitation resulting in an award of more than \$250,000, indicating— * * *

52.219-9 Small Business Subcontracting Plan.

Alternate IV

* * *(d) * * * (11) * * * (iii) Records on each subcontract solicitation resulting in an award of more than \$250,000, indicating—