

National Science Foundation
2415 Eisenhower Avenue
Alexandria, Virginia 22314


**CLASS DEVIATION
FINDINGS AND DETERMINATION
REMOVAL OF REQUIREMENT FOR BEST PROCUREMENT APPROACH
DETERMINATION TO USE AN INTERAGENCY ACQUISITION**

Findings

1. Section 875 of the National Defense Authorization Act (NDAA) for 2019 (Public Law 115-232) removes the requirement for a best procurement approach determination to use an interagency acquisition.
2. The Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2018-04 on September 27, 2018 which authorizes agencies to issue class deviations implementing this provision pending publication of the formal amendment to the Federal Acquisition Regulation (FAR) via FAR case 2018-015.
3. CAAC Letter 2018-04 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.

Determination

It is hereby determined that a class deviation (using the FAR Deviation text included in CAAC Letter 2018-04) is appropriate to implement Section 875 of the National Defense Authorization Act for Fiscal Year 2019. This class deviation is effective upon the date of signature and will remain in effect until cancelled or until the FAR is amended.



Keith Boyea
Contracts Branch Chief
Head of Contracting Activity



Patrick Breen
Division Director

Effective Date: 4/15/2019

Attachment: CAAC Letter 2018-04 with FAR Deviation text



CAAC LETTER 2018-04

SEP 27 2018

MEMORANDUM FOR CIVILIAN AGENCIES

FROM:

WILLIAM CLARK

CHAIR

CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) to remove the requirement that contracting officers make a best procurement approach determination to use an interagency acquisition.

This CAAC letter is being issued to serve as consultation in accordance with FAR 1.404 allowing agencies to authorize a class deviation to implement a section of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 to remove the best procurement approach determination requirement to use an interagency acquisition in FAR 17.502-1(a).

The objective of the statute and this deviation is to implement Section 875 of the NDAA for FY 2019 (Pub. L. 115-232) which amends section 865 of the NDAA for FY 2009 (Pub. L. 110-417).

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have undertaken rulemaking to formally incorporate this change. The attached FAR text identifies the additions and deletions anticipated to implement Section 875 of the FY19 NDAA in the FAR. These rulemaking changes will be published in the Federal Register. Pending publication of the amendment to the FAR via FAR Case 2018-015, Governmentwide and other Interagency Contracts, agencies may authorize a class deviation to remove the best procurement approach determination requirement to use an interagency acquisition in FAR 17.502-1(a). (See Attachment).

This CAAC letter constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1). Once processed, agencies are requested to share the deviation widely among their workforces to ensure full awareness of and compliance with Section 875 of FY19 NDAA. It is recommended that the deviation be made effective until the FAR is amended by the FAR case.

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: Joanne Sosa, Washington, DC 20405. Agencies may also email the deviation to GSARegSec@gsa.gov.

If you have any questions or require additional information about this Letter, please contact Zenaida Delgado on (202) 969-7207 or at zenaida.delgado@gsa.gov.

Attachment

FAR Deviation Text

Baseline is FAC 2005-100, published in the Federal Register on August 22, 2018.

Additions shown in **[bold brackets]**;
Deletions shown as ~~strike-throughs~~; and
FAR text unchanged shown as asterisks ***** or *******.

PART 4-ADMINISTRATIVE MATTERS

Subpart 4.6-Contract Reporting

4.603 Policy.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Program/Funding Agency and Office Codes from the applicable agency codes maintained by each agency at FPDS. These codes represent the agency and office that has provided the predominant amount of funding for the contract action. For assisted acquisitions, the requesting agency will receive socioeconomic credit for meeting agency small business goals, where applicable. Requesting agencies shall provide the appropriate agency/bureau component code as part of the written interagency agreement between the requesting and servicing agencies (see 17.502-1([a]b)(1)).

PART 8-REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 8.4-Federal Supply Schedules

8.404 Use of Federal Supply Schedules.

(b) (1) ***

(2) For orders over \$550,000, see subpart 17.5 for additional requirements for interagency acquisitions. ~~For example, the requiring agency shall make a determination that use of the Federal Supply Schedule is the best procurement approach, in accordance with 17.502-1(a).~~

PART 17--SPECIAL CONTRACTING METHODS

Subpart 17.5--Interagency Acquisitions

17.502 Procedures.

17.502-1 General.

~~(a) Determination of best procurement approach--(1) Assisted acquisitions. Prior to requesting that another agency conduct an acquisition on its behalf, the requesting agency shall make a determination that the use of an interagency acquisition represents the best procurement approach. As part of the best procurement approach determination, the requesting agency shall obtain the concurrence of the requesting agency's responsible contracting office in accordance with internal agency procedures. At a minimum, the determination shall include an analysis of procurement approaches, including an evaluation by the requesting agency that using the acquisition services of another agency--~~

~~(i) Satisfies the requesting agency's schedule, performance, and delivery requirements (taking into account factors such as the servicing agency's authority, experience, and expertise as well as customer satisfaction with the servicing agency's past performance);~~

~~(ii) Is cost effective (taking into account the reasonableness of the servicing agency's fees); and~~

~~(iii) Will result in the use of funds in accordance with appropriation limitations and compliance with the requesting agency's laws and policies.~~

~~(2) Direct acquisitions. Prior to placing an order against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach and shall obtain the concurrence of the requesting agency's responsible contracting office. At a minimum, the determination shall include an analysis, including factors such as:~~

~~(i) The suitability of the contract vehicle;~~

~~(ii) The value of using the contract vehicle, including-~~

~~(A) The administrative cost savings from using an existing contract;~~

~~(B) Lower prices, greater number of vendors, and reasonable vehicle access fees; and~~

~~(iii) The expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle.~~

~~(b) Written agreement on responsibility for management and administration-~~ (1) *Assisted acquisitions.* (i) Prior to the issuance of a solicitation, the servicing agency and the requesting agency shall both sign a written interagency agreement that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract execution, and administration and management of the contract(s) or order(s). The requesting agency shall provide to the servicing agency any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract. In the event there are no agency unique requirements beyond the FAR, the requesting agency shall so inform the servicing agency contracting officer in writing. For acquisitions on behalf of the Department of Defense, also see subpart 17.7. For patent rights, see 27.304-2. In preparing interagency agreements to support assisted acquisitions,

agencies should review the Office of Federal Procurement Policy guidance, Interagency Acquisitions, available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/procurement/interagency_acq/iac_revised.pdf.

(ii) Each agency's file shall include the interagency agreement between the requesting and servicing agency, and shall include sufficient documentation to ensure an adequate audit consistent with 4.801(b).

(2) *Direct acquisitions.* The requesting agency administers the order; therefore, no written agreement with the servicing agency is required.

(**[b]**e) *Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts.* In order to establish a multi-agency or governmentwide acquisition contract, a business-case analysis must be prepared by the servicing agency and approved in accordance with the Office of Federal Procurement Policy (OFPP) business case guidance, available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf>. The business-case analysis shall-

(1) Consider strategies for the effective participation of small businesses during acquisition planning (see 7.103(u));

(2) Detail the administration of such contract, including an analysis of all direct and indirect costs to the Government of awarding and administering such contract;

(3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, e.g., will it have a negative effect because it dilutes other existing contracts;

(4) Include an analysis concluding that there is a need for establishing the multi-agency contract; and

(5) Document roles and responsibilities in the administration of the contract.

PART 35--RESEARCH AND DEVELOPMENT CONTRACTING

35.017 Federally Funded Research and Development Centers.

35.017-3 Using an FFRDC.

(b) Where the use of the FFRDC by a nonsponsor is permitted by the sponsor, the sponsor shall be responsible for compliance with paragraph (a) of this subsection.

(1) The nonsponsoring agency shall ~~prepare a determination in accordance with 17.502-1(a) and~~ provide the documentation required by 17.503(e) to the sponsoring agency.

(2) When a D&F is required pursuant to 17.502-2(c), the nonsponsoring agency ~~may incorporate the determination required by 17.502-1(a) into~~ **[shall prepare]** the D&F and provide the documentation required by 17.503(e) to the sponsoring agency.

(3) When permitted by the sponsor, a Federal agency may contract directly with the FFRDC, in which case that Federal agency is responsible for compliance with part 6.
