



MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS

FROM: IRIS B. COOPER,
SENIOR PROCUREMENT EXECUTIVE,
OFFICE OF THE PROCUREMENT EXECUTIVE

SUBJECT: **Class Deviation— The Federal Acquisition Regulation (FAR) to Implement Revised Statutory Conditions for the Exercise of Special Emergency Procurement Authorities.**

- 1. PURPOSE:** This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) 1.404 to implement revised statutory conditions for the exercise of special emergency procurement authorities as expanded under Sections 816 and 1641 of the FY17 National Defense Authorization Act (NDAA) until such time the FAR is amended to implement the expanded authorities.
- 2. EFFECTIVE DATE:** Upon issuance
- 3. EXPIRATION DATE:** Until superseded, incorporated in the FAR or otherwise rescinded.
- 4. APPLICABILITY:** This class deviation applies to all contract actions where the special emergency procurement authorities described in the FAR are in effect.
- 5. BACKGROUND:** On December 23, 2016 the President signed into law the National Defense Authorization Act (NDAA) for Fiscal Year 2017 ([Pub. L. 114-328](#)). The NDAA included Sections 816 and 1641 which revised 41 U.S.C. 1903, Special Emergency Procurement Authority. Section 816 of the NDAA expanded the permissible uses of special emergency procurement authorities to include facilitating international disaster assistance and supporting domestic emergency or natural disaster relief efforts as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In addition, Section 1641 of the NDAA made special emergency procurement authorities applicable to defense against or recovery from a cyber attack.

The FY17 NDAA was effective when enacted and was not contingent upon any implementing regulation. Additionally, FAR case 2017-019, which will amend the FAR to implement this expanded authority, is currently still in process of being finalized. Therefore, in light of the recent emergency declarations issued by the President for Texas and Louisiana as a result of Hurricane/Tropical Storm Harvey (see <https://www.fema.gov/disaster/4332> and <https://www.whitehouse.gov/the-press-office/2017/08/28/president-donald-j-trump-approves-louisiana-emergency-declaration>) which impacts both Treasury and its customers, Treasury needs to quickly move forward with the issuance of this class deviation until such time the FAR is amended to implement these expanded authorities. Accordingly, the class deviation amends FAR parts 2, 10, 12, 13, 18, and 26 as described in Attachment 1 of this AB.



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Though FAR 1.404(a)(1) requires civilian agencies to consult with the chairperson of the Civilian Agency Acquisition Council (CAAC), it affords agencies the ability to issue such a deviation in the event urgency precludes such consultation. The recent events surrounding Hurricane/Tropical Storm Harvey are of an urgent nature to Treasury and its customer that such consultation was not held. However, notification of Treasury's intent was sent to the CAAC Chair on August 30, 2017. The CAAC Chair responded to Treasury's notification stating that they did not have any issue with Treasury proceeding with a class deviation. Therefore, the Senior Procurement Executive has determined that the issuance of this class deviation is authorized based on circumstances stated herein and the actions required herein are necessary to implement these expanded authorities until such time the FAR is amended.

6. DESCRIPTION OF THE DEVIATION: This class deviation amends FAR parts 2, 10, 12, 13, 18, and 26. See Attachment 1 of this AB for a complete description of the amendments being made to the FAR under this class deviation. This class deviation does not impact any Department of Treasury Acquisition Procedures (DTAP) requirements that implement or supplement the parts within the FAR that are being amended by this class deviation.

7. REQUIRED BUREAU ACTIONS: Bureau Chief Procurement Officers shall take immediate steps to:

- a. Ensure dissemination of this AB to all acquisition personnel;
- b. Notify the SPE in the event a determination is made to use these expanded authorities as required by the DTAP (see subparts 13.2, 13.5 and 18.2); and
- c. Update related Bureau policies and procedures impacted by this APU.

8. ADDITIONAL INFORMATION: The point of contact for this AB is Mr. Thomas O'Linn, who may be reached at thomas.olinn@treasury.gov or OfficeoftheProcurementExecutive@treasury.gov.

9. ATTACHMENT: Attachment A - Acquisition Bulletin No. 17-02 – Class Deviation (Deviation No. 2017-00002)



**Attachment A –
Acquisition Bulletin No. 17-02 –
Class Deviation (Deviation No. 2017-00002)**

Deviations to the FAR are shown by **yellow highlighted [bolded bracketed additions]** and ~~strikeouts~~. Baseline is FAC Number 2005-94, 2005-95, effective January 19, 2017.

1. FAR 2.101(b) is amended to add new definitions for “emergency” and “major disaster” and to revise the existing definitions for “micro-purchase threshold” and “simplified acquisition threshold” as follows:

[“Emergency” as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203 and subpart 26.2 means an occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States (42 U.S.C. 5122).

“Major disaster” as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203 and subpart 26.2 means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President, causes damage or sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby (42 U.S.C. 5122).

Micro-purchase threshold” means \$3,500, 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 **[cyber,] nuclear, biological, chemical or radiological attack[; international disaster assistance (22 U.S.C. 2292 et seq.); 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.



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“Simplified acquisition threshold” means \$150,000 (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 **[cyber,]** nuclear, biological, chemical, or radiological attack**[-; international disaster assistance (22 U.S.C. 2292 et seq.); 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 \$300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

2. FAR 10.001(a)(2)(vi)(A) is amended to add the word “cyber” as follows:

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities (see 26.205); and

3. FAR 12.102(f)(1) is amended to add the word “cyber” as follows:

(f)(1) Contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items.

4. FAR 13.201(g) is amended to read as follows:

(g)(1) 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 **[cyber,]** nuclear, biological, chemical, or radiological attack**[-; international disaster assistance; an emergency or major disaster,]** the micro-purchase threshold is —

(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.

(2) Purchases using this authority must have a clear and direct relationship to the support of a contingency operation or the defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack**[-; international disaster assistance; an emergency or major disaster].**



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5. FAR 13.500(c) is amended to read as follows:

(c) Under 41 U.S.C. 1903, the simplified acquisition procedures authorized in this subpart may be used for acquisitions that do not exceed \$13 million when—

(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack; **[international disaster assistance; an emergency or major disaster]**; or

(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).

6. FAR 18.000 is amended to revise the definition of “emergency acquisition flexibilities” to read as follows:

“Emergency acquisition flexibilities”, as used in this part, means flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used—

(a) In support of a contingency operation as defined in 2.101;

(b) To facilitate the defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack against the United States; ~~or~~

[(c) In support of a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate the provision of international disaster assistance; or]

(e[d]) When the President issues an emergency declaration, or a major disaster declaration.

7. FAR 18.202 is amended to read as follows:

18.202 Defense or recovery from certain ~~attacks~~ **[events].**

(a) Micro-purchase threshold. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack **[:international disaster assistance; an emergency or major disaster]**. (See 2.101.)

(b) Simplified acquisition threshold. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack **[:international disaster assistance; an emergency or major disaster]**. (See 2.101.)

(c) ~~Commercial items to facilitate defense and recovery~~ **[Treating certain items as commercial]**. Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial items if the head of the agency determines the acquisition is to be used to facilitate the defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack **[:international disaster assistance; an emergency or major disaster]**. (See 12.102(f)(1) and 13.500(c).)

(d) Simplified procedures for certain commercial items. The threshold limits authorized for use of this authority may be increased when it is determined the acquisition is to facilitate defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack **[: international disaster assistance; an emergency or major disaster]**. (See 13.500(c).)



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8. The title of FAR subpart 26.2 is amended to read as follows:

Subpart 26.2—[Major] Disaster or Emergency Assistance Activities

9. FAR 26.202 is amended to read as follows:

26.202 Local area preference.

(a) When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.), preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through a local area set-aside or an evaluation preference.

(b) When using the authority under the Stafford Act, see 2.101 for the authority to increase the micro-purchase threshold and simplified acquisition threshold.]