




Homeland
Security

May 30, 2018

MEMORANDUM FOR: Heads of Contracting Activities

FROM: Soraya Correa 
Chief Procurement Officer

SUBJECT: Federal Acquisition Regulation Class Deviation (Number 18-01) – Increasing the Micro-Purchase Threshold and Simplified Acquisition Threshold (FAR Parts 2, 13, 19, and 52)

1. Authority and Purpose: This class deviation is issued under the authority of Federal Acquisition Regulation (FAR) 1.404. This deviation is issued following the March 28, 2018 re-consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a). The text of this deviation uses the FAR Case 2018-004 text as of April 20, 2018.

This memorandum approves a FAR class deviation to increase the Micro-Purchase Threshold (MPT) to \$10,000 (except for certain acquisitions discussed in Paragraph 4 of this document) and to increase the Simplified Acquisition Threshold (SAT) to \$250,000. The class deviation is issued to implement statutory increases to the MPT and SAT while the FAR is updated via the rulemaking process. The statutory changes reflected in this deviation were effective when enacted and are not contingent on rulemaking. This deviation is needed because DHS cannot predict when the statutory threshold increases will be fully implemented in the FAR.

2. Effective Date and Expiration: This class deviation is effective on June 1, 2018 and remains in place until incorporated into the FAR.

3. Background:

a. On December 23, 2016 the President signed into law the FY 2017 National Defense Authorization Act (NDAA), Public Law 114-328. Section 217(b) of that Act, codified at 41 U.S.C. § 1902(a)(2), changed a portion of the definition in FAR 2.101 to increase the MPT to \$10,000 for acquisitions from institutions of higher education or related or affiliated nonprofit entities.

b. On December 12, 2017 the President signed into law the FY 2018 NDAA (Public Law 115-91). Section 805, codified at 41 U.S.C. § 134, increased the SAT to \$250,000 and Section 806, codified at 41 U.S.C. § 1902(a)(1), increased the MPT to \$10,000 for supply procurements and for some service acquisitions (see Paragraph 4 for exceptions). In addition, Section 1702(a) amended the Small Business Act (15 U.S.C. § 644(j)(1)) to replace numerical threshold values with the terms “micro-purchase threshold” and “simplified acquisition threshold.”

4. Deviation/Applicability: On the effective date of this deviation, DHS contracting officers shall apply the FAR as shown in Attachment A.

Note that not all thresholds are increased by this deviation. Some thresholds are set by statutes other than those defining the SAT (41 U.S.C. § 134) and the MPT (41 U.S.C. § 1902) and therefore remain unchanged by this deviation. For example, as shown in FAR 2.101 in Attachment A, the thresholds for the *Construction Wage Rate Requirements* statute (previously known as the Davis-Bacon Act, \$2,000) and the *Service Contract Labor Standards* statute (previously known as the Service Contract Act, \$2,500) do not change. In addition, thresholds specified in the *Anti-Kickback Act of 1986* and in the fair opportunity procedures found in FAR 16.505(b) do not change.

Existing purchase card limits are not raised by this deviation and this document does not raise the single purchase limit to the increased MPT. Any revisions to purchase card limits will be made separately.

5. Action: For contracting actions in process on the effective date of this deviation, the Contracting Officers may proceed with the procurement using the old threshold, amend the RFP/RFQ, or cancel and resolicit using the new threshold. Nothing in this deviation *requires* a Contracting Officer to cancel, extend the closing date, amend a RFP/RFQ, or modify any contract action. HCAs may issue guidance to supplement or implement this deviation.

This deviation supersedes those *applicable* DHS-wide and Component acquisition guidance, procedures, job aides, and training materials where the MPT is referred to as \$3,500 or where the SAT is referred to as \$150,000. However, this deviation does not supersede existing contract language unless or until a contract/order is modified to reflect the increased thresholds.

Contracting Officers are reminded that all unclassified contract actions with a total estimated value exceeding the newly increased MPT and any modifications (regardless of dollar value) to those contract actions must be reported to FPDS in accordance with FAR 4.603(b).

Components must ensure that all contract writing system clauses and templates are updated in accordance with this deviation.

6. Questions: Direct questions on this deviation to Dave Clemens at (202) 447-0893 or david.clemens@hq.dhs.gov. Direct questions on FAR Case 2018-004 to Catherine Benavides at (202) 447-5685 or catherine.benavides@hq.dhs.gov.

DHS FAR CLASS DEVIATION: Attachment A

Deviation Text Shown **in Yellow Highlight** showing **deleted** and **[added]** text.
Gray Highlight Baseline Text is From DHS FAR Class Deviation 17-02 (7/6/2017)

PART 2 – DEFINITION OF WORDS AND TERMS

Subpart 2.1 Definitions

2.101 Definitions.

(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; to facilitate defense against or recovery from cyber, nuclear, biological, chemical or radiological attack; international disaster assistance (22 U.S.C. 2292 *et seq.*); or 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 **\$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; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; international disaster assistance (22 U.S.C. 2292 *et seq.*); or 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** [**\$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.

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(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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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 of ~~\$3,500 [valued at or below the micro-purchase threshold] 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 [the micro-purchase threshold] (\$20,000 for acquisitions as described in 13.201(g)(1))~~, but not over ~~\$150,000 [the simplified acquisition threshold] (\$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. * * *

(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:

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(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:

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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 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—

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