



THE CHAIRMAN

MEMORANDUM

TO: Carlos Díaz-Rosillo, Senior Deputy Chairman, Senior Procurement Executive &
Head of NEH Contracting Activity
Robert Straughter, Director, Administrative Services Office & Contracting Officer

FROM: Jon Parrish Peede, Chairman

DATE: December 12, 2018

RE: Class Deviation from the Federal Acquisition Regulation Increasing
the Micro-Purchase Threshold and the 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 for acquisitions by the National Endowment for the Humanities (“NEH”).

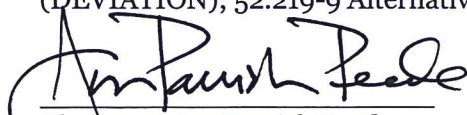
Background: The National Defense Authorization Act (“NDAA”) for Fiscal Year 2018 (Public Law 115-91), Sections 805 and 806, increased the MPT to \$10,000 and the SAT to \$250,000.

Additionally, Section 217(b) of the NDAA for Fiscal Year 2017 changed a portion of the MPT definition in Section 2.101 of the FAR 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.

The General Services Administration (“GSA”) has opened FAR case 2018-004 to implement these statutory changes in the FAR. In the interim, GSA’s Civilian Agency Acquisition Council (“CAAC”) issued CAAC Letter 2018-02, which authorized agencies to issue a class deviation permitting them to use the increased thresholds prior to revision of the FAR. CAAC letter 2018-02 constitutes consultation in accordance with Section 1.404 of the FAR.

Determination: I have hereby determined that a class deviation is appropriate to implement the changes discussed above. This class deviation is effective upon the date of signature and will remain in effect until cancelled or until GSA incorporates the new thresholds into the FAR. Effective immediately, the NEH contracting officer shall comply with the changes set forth in Attachment A.

Clause Changes: FAR Clause 52.203-16 (DEVIATION); 52.212-1 (DEVIATION); 52.219-9 (DEVIATION); 52.219-9 Alternative IV (DEVIATION).


Chairman Jon Parrish Peede

Date 2/11/2019

Attachment (Class Deviation FAR Changes)

Attachment 1: Class Deviation FAR Changes 2018-004

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

- Additions to Baseline: **[bold text and brackets]**
- Deletions by ~~striketrough~~
- Asterisks show that the preceding or following text remains unchanged.

PART 2—DEFINITIONS OF WORDS AND TERMS

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2.101 Definitions. [(DEVIATION 18-01)]

* * * * *

(b) * * *

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

(1) * * *

(2) * * *

(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) * * *

(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 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—

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

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5.206 Notices of subcontracting opportunities. [(DEVIATION 18-01)]

(a) * * *

(1) A contractor awarded a contract exceeding ~~\$150,000~~ **[\$250,000]** that is likely to result in the award of any subcontracts.

(2) A subcontractor or supplier, at any tier, under a contract exceeding ~~\$150,000~~ **[\$250,000]**, that has a subcontracting opportunity exceeding \$15,000.

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PART 13—SIMPLIFIED ACQUISITION PROCEDURES

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13.003 Policy. [(DEVIATION 18-01)]

* * * * *

(b)(1) Acquisitions of supplies or services that have an anticipated dollar value exceeding ~~\$3,500~~ **[\$10,000]** (\$20,000 for acquisitions as described in 13.201(g)(1)) but not exceeding ~~\$150,000~~

~~[\$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 ~~\$150,000~~ **[\$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.

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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~~ **[\$10,000]** (\$20,000 for acquisitions as described in 13.201(g)(1)), but not exceeding ~~\$150,000~~ **[\$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.

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19.502-1 Requirements for setting aside acquisitions.

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(b) This requirement does not apply to purchases of ~~\$3,500~~ **[\$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 ~~\$3,500~~ **[\$10,000]** (\$20,000 for acquisitions as described in 13.201(g)(1)), but not over ~~\$150,000~~ **[\$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 ~~\$150,000~~ **[\$250,000]** 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~~ **[\$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).

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PART 52 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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-~~[\$250,000]~~; and

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52.212-1 Instructions to Offerors—Commercial Items.

* * * * *

(j) *Unique entity identifier.* (Applies to all offers exceeding ~~\$3,500~~-~~[\$10,000]~~, and offers of ~~\$3,500~~ ~~[\$10,000]~~ or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.)

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52.219-9 Small Business Subcontracting Plan.

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(d) * * *

(11) * * *

(iii) Records on each subcontract solicitation resulting in an award of more than ~~\$150,000~~ ~~[\$250,000]~~, indicating—

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52.219-9 Small Business Subcontracting Plan. Alternate IV

* * * * *

(d) * * *

(11) * * *

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000
[\$250,000]. indicating—

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