



U.S. Chemical Safety and
Hazard Investigation Board

U.S. Chemical Safety and Hazard Investigation Board

Memorandum

To: Thomas Zoeller, Senior Advisor
Anna Brown, Director of Administration
Amy McCormick Driver, Contracting Officer
Bea Robinson, Finance Director
Kara Wenzel, Acting General Counsel
Ray Porfiri, Deputy General Counsel

Cc: Board Members

From: Vanessa Allen Sutherland, Chairperson

Subject: Approval of FAR CLASS DEVIATION CSB18-01 (Increase of Micro-Purchase Threshold)

Date: May 11, 2018

**FINDINGS AND DETERMINATION TO
INCREASE MICROPURCHASE THRESHOLD TO \$10,000**

Findings:

- 1) On December 12, 2017, The National Defense Authorization Act (NDAA) for 2018 (Public Law 115-91) was signed by the President and became law.
- 2) Section 806 of the NDAA amended section 1902(a)(1) of title 41, United States Code, by striking “\$3,000” and inserting “\$10,000.”¹
- 3) Although the *statutory threshold* has been increased to \$10,000, the micro-purchase authority is implemented through the FAR (41 U.S.C. § 1902(f)). Amendment of the FAR is not automatic, and instead the FAR Council follows a set of procedures and then publishes amendments to the FAR in the Federal Register.
- 4) The FAR Council opened FAR Case 2018-004 to amend the FAR micro-purchase threshold in accordance with the amendment to 41 U.S.C. § 1902(a)(1) and as required under § 1902(f).
- 5) Section 1.4 of the FAR authorizes an agency head (or designee) to deviate from most provisions of the FAR, provided the following requirements are satisfied:

¹ The current edition of the FAR establishes a micro-purchase threshold of \$3,500. See FAR 2.101. The statutory threshold set out in 41 U.S.C. §1902(a)(1) remained \$3,000 until the NDAA became law in December 2017. In 2015, however, the micro-purchase threshold in the FAR was increased from \$3,000 to \$3,500 based on 41 U.S.C. § 1908. This statute requires that the FAR Council make periodic adjustments to acquisition thresholds in the FAR due to increases in the cost of living. See generally *Federal Register*, Vol. 80, No. 127 dated July 2, 2015, item I, Inflation Adjustment of Acquisition-Related Threshold.

- a) Prior to approving any deviation, the agency approving official must consult with the chairperson of the Civilian Agency Acquisition Council (CAAC); and
 - b) The agency approving official must furnish a copy of any approved deviation to the FAR Secretariat.
- 6) On February 16, 2018, the CAAC issued CAAC Letter 2018-02. (See attached). The CAAC Letter was issued to assist federal agencies interested in issuing a class deviation to increase the micro-purchase threshold to \$10,000 without waiting for the completion of the regulatory process to amend the FAR.
- 7) CAAC Letter 2018-02 also states that this letter satisfies the consultation requirement of FAR 1.404. (See finding 5.a. above).²
- 8) As of May 10, 2018, the FAR Council has not amended the FAR. There is no estimated date for the amendment of the FAR provision to increase the micro-purchase threshold. While a final amendment may be published within weeks, it may take longer. Until the FAR is amended or until the CSB approves a class deviation, the CSB micro-purchase threshold must remain at \$3,500 for most purchases.³
- 9) Approval of the class deviation at this time will allow the CSB to begin processing certain procurements of up to \$10,000 using micro-purchase procedures.
- 10) A review by the CSB Contracting Officer determined that 15 of the CSB's 56 active procurements could have been processed as micro-purchases if a \$10,000 threshold was in place.
- 11) The CSB is about to enter the fourth quarter, which is an extremely busy period for Contracting Officers. The reduced workload resulting from simpler micro-purchase procedures could be significant.

Determinations:

- 12) Based on the findings above, I have determined that a class deviation is appropriate to implement Section 806 of Pub L. 115-91 (increasing the micro-purchase threshold to \$10,000).
- 13) This class deviation encompasses all provisions of the FAR pertinent to micro-purchases as addressed in Exhibits A and B of CAAC letter 2018-02.
- 14) Approval of this class deviation is effective upon the date of signature noted below and will remain in effect until cancelled or until the new micro-purchase threshold is incorporated into the FAR.
- 15) The Senior Advisor, Thomas Zoeller, will consult with appropriate staff to determine what, if any, delegations and/or warrants should be amended and to prepare proposed amendments to such delegations or warrants for my review and signature no later than May 16, 2018.

² CAAC Letter 2018-02 also addresses the statutory increase to the simplified acquisition threshold from \$150,000-\$250,000.

³ Certain other purchases, such as those subject to Service Contract Labor Standards, are subject to lower thresholds.

16) Nothing in line 15 prohibits an authorized CSB employee from exercising the authority to implement the new threshold, provided the employee currently possesses the authority to approve micro-purchase requests.

Limitations:

17) Purchase Card Holders. The approved deviation does not result in the automatic increase of a purchase cardholder's single purchase limit or modify any other prescribed purchase card holder limits or Charge Card Program policies and procedures.

18) Increased Threshold Does not apply to all Micro-purchase Categories: Not all thresholds related to the micro-purchase threshold are increased by this deviation. Some dollar amounts are set by statute, and are therefore not affected by this deviation. For example, the thresholds for the Construction Wage Rate Requirements statute (previously known as the Davis-Bacon Act) (i.e., \$2,000), the Service Contract Labor Standards (previously known as the Service Contract Act) (i.e., \$2,500), the Anti-Kickback Act of 1986, the Fair Opportunity Procedures found in 16.505(b) and a few other statutorily established thresholds do not change as a result of this deviation.



Vanessa Allen Sutherland
Chairperson
Chemical Safety and Hazard Investigation Board

Date: May 11, 2018.

Attachments:

CAAC LETTER 2018-02

CAAC LETTER 2018-02

February 16, 2018

MEMORANDUM FOR CIVILIAN AGENCIES

FROM: WILLIAM CLARK 
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR)
increasing the micro-purchase threshold and the simplified
acquisition threshold

I. Background.

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 (SAT) to \$250,000.

Section 217(b) of the NDAA FY 2017 (Public Law 114-328) changed a portion of the micro-purchase threshold definition in FAR 2.101 to increase the micro-purchase threshold 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. This change was part of the now-closed FAR Case 2017-012, which was intended to implement section 217(b) of the NDAA FY 2017.

FAR Case 2018-004 has been opened to implement the appropriate statutory changes in the FAR that are compelled by sections 805 and 806 of the NDAA FY18 and section 217(b) of the NDAA FY17. However, agencies may have a need to use the increased thresholds prior to publication of the FAR changes.

This CAAC letter 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.

II. Effective Date.

This CAAC letter is effective immediately, and remains in effect until the increased thresholds are incorporated into the FAR or is otherwise rescinded.

III. Instructions to agencies.

Attachment A is the FAR text with highlights of the appropriate FAR citations needing changes to implement the increased thresholds. Agencies may use Attachment A as a basis for issuing a class deviation. Note: For baselining purposes, the FAR text

includes the changes to the definitions of micro-purchase threshold and simplified acquisition threshold being promulgated under the separate FAR Case 2017-009, Special Emergency Procurement Authority. The FAR case implements sections 816 and 1641 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). The sections modify 41 U.S.C. 1903, Special Emergency Procurement Authority to expand special emergency procurement authorities to facilitate defense against or recovery from cyber attack, provide international disaster assistance under the Foreign Assistance Act of 1961, and support for an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The baseline changes are shown in light grey.

Attachment B is a chart showing the rationale for changing or not changing thresholds in the FAR related to the micro-purchase threshold and the SAT that are compelled by sections 805 and 806 of the NDAA FY18 and section 217(b) of the NDAA FY17.

Agencies need to determine how this class deviation will affect existing delegated authorities. This may depend on how the agency delegated the authority, e.g., did it refer to "the micro-purchase threshold" or to a set amount of "\$3,500".

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: Lois Mandell, Washington, DC 20405. Agencies may also email the deviation to Ms. Mandell at lois.mandell@gsa.gov or send by fax to (202) 501-4067.

If you have any questions or require additional information concerning this letter, please contact Charles R. Gray (703) 695-6328 or at Charles.gray@gsa.gov.

Attachments

Attachment A

* * * * *

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-
* * * * *

Attachment B:

FAR section	Statute	Analysis
FAR sections related to \$3,500 threshold		Question – should the threshold in this section be changed to \$10,000? ¹ Answer:
2.101 definition micro-purchase threshold: \$3,500	41 USC 1902	Yes. The FAR is directly based on the statute 41 USC 1902: "(a) Definition.- (1) Except as provided in <u>sections 2338 and 2339 of title 10</u> and paragraph (2) of this subsection, for purposes of this section, the micro-purchase threshold is \$10,000." (Statute changed by section 806 of NDAA FY18). Also, paragraph (4) of the definition is new, based on the section 217 of the NDAA FY17.
2.101 definition micro-purchase threshold: the related thresholds of \$2,000, \$2,500, \$20,000 and \$30,000	40 USC ch 31, 40 USC ch 67, 41 USC 1903	No. Make no change. These are based on other statutes which are not changed; the NDAA FY18 is not authority for making changes to these thresholds.
8.405-1 through 8.405-6		Yes; However, the language is written already as "the micro-purchase threshold". The 2.101 definition change applies automatically--the change to \$10,000 in the FAR is self-executing. Wherever this is the case, no formal change to the text is required.
8.605(e)		No. Did not originate under the micro-purchase statute.
9.104-5(a)(2)		No. Did not originate under the micro-purchase statute.
9.406-2(b)(1)(v)		No. Did not originate under the micro-purchase statute.
9.407-2(a)(7)		No. Did not originate under the micro-purchase statute.

¹ The FAR sometimes refers to "\$3,500" rather than "the micro-purchase threshold". Each reference had to be individually examined to see whether the NDAA FY18 is authority for making a change.

13.003(b)(1)	41 USC 1902	Yes. The FAR is directly based on the statute 41 USC 1902, at the original lowest amount.
16.505(b)(1), (b)(2)(i), (b)(2)(ii)(A) fair opportunity	41 USC 4106(c)	No. Statute set amount at \$2,500. FAR inflation case increased to \$3,500. Cannot change to \$10,000.
19.203(b)		Yes. The FAR is directly based on the statute 41 USC 1902, at the original lowest amount.
19.502-1(b), 19.502-2(a)	15 USC 644(j)	Yes. See section 1702 of NDAA FY18. SEC. 1702. UNIFORMITY IN PROCUREMENT TERMINOLOGY. (a) IN GENERAL.—Section 15(j)(1) of the Small Business Act (15 U.S.C. 644(j)(1)) is amended by striking “greater than \$2,500 but not greater than \$100,000” and inserting “greater than the micro-purchase threshold, but not greater than the simplified acquisition threshold”.
25.703-2(a)(2), 25.703-4(c)(5)(ii), (c)(7)(iii), (c)(8)(iii) (Iran)		No. Did not originate under the micro-purchase statute. From the team report for FAR Case 2012-030 interim rule published 12-10-12: The Team discussed the meaning of "significant transaction" and decided, in consultation with representatives from the Department of State and the Department of the Treasury, that in this context, to require the certification with regard to any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps (or officials, agents, or affiliates).
52.209-5(a)(1)(i)(D)		No. Did not originate under the micro-purchase statute.
52.212-1(j)		Yes. Based on prescription at 4.1102 which refers to the micro-purchase threshold.
52.212-3(h)(4)		No. Did not originate under the micro-purchase statute.
52.212-3(o)(2)(iii) Iran		No. See 25.703-2 explanation.
52.222-54(e)(2)		No. Did not originate under the micro-purchase statute.
52.225-25(c)(3) Iran		No. – see 25.703-2 explanation.

FAR sections related to \$150,000 threshold		Question – should the threshold in this section be changed to \$250,000? Answer:
2.101 definition SAT \$150,000	41 USC 134	Yes. The FAR is directly based on the statute 41 USC 134: "In division B, the term "simplified acquisition threshold" means \$250,000." (Statute changed by section 805 of NDAA FY18).
2.101 definition SAT – the related thresholds of \$750,000 and \$1.5 million	41 USC 1903	No. These are based on statutes which are not changing.
2.101 definition SAT – the related threshold for humanitarian or peacekeeping operations: \$300,000	41 USC 1903 (PL 108-436 sec 1443)	This is supposed to be a doubling of the SAT so change \$300,000 to \$500,000 (not to \$250,000). ³
3.502-2(i)	41 USC 8703 Kickback	No. Statute set at \$100,000.
3.804, 3.808(a) and (b)	31 USC 1352(d)(2)(B) Byrd/Antilobby	No. Statute set at \$100,000.
5.206(a)(1), (2)	15 USC 637(k)	No. Statute does not specifically address.
8.405-1 through 8.405-6		Yes; However, the language is written already as "the simplified acquisition threshold". The 2.101 definition change applies automatically--the change to \$250,000 in the FAR is self-executing. Wherever this is the case, no formal change to the text is required.

² The FAR sometimes refers to "\$150,000" rather than "the SAT". Generally these thresholds derive from statutes which were set at \$100,000, which appear in the FAR as \$150,000 due to the FAR inflation cases (see FAR 1.109). Each reference had to be individually examined to see whether the NDAA FY18 is authority for making a change.

³ The \$300,000 amount in the SAT definition will change. It is calculated based on the SAT amount: "in the case of a contract to be awarded and performed, or purchase to be made, outside the United States in support of a humanitarian or peacekeeping operation, the term means an amount equal to two times the amount specified for that term in section 134 of this title." (41 U.S.C. 153). Therefore that threshold will be changed to \$500,000.

13.003(b)(1)		Yes. See analysis for 19.502-2.
13.005(a)(5)		No. See analysis for 23.406(d).
13.501(a)(2)(i)		Yes. Based on 41 USC 1901(e) which refers to 41 USC 3304, which has reference at paragraph (c)(2) to the SAT.
16.206-2, 16.206-3(a), 16.207-3(d)		No. Amount set at \$100,000 in original publication of the FAR in 1983; is not related to the establishment of the SAT.
16.505(b) (multiple references)		Yes; However, the language is written already as "the simplified acquisition threshold". The 2.101 definition change applies automatically--the change to \$250,000 in the FAR is self-executing. Wherever this is the case, no formal change to the text is required.
19.203(b)		Yes. See analysis for 19.502-2.
19.502-2(a), (b)	15 USC 644(j)	Yes. See section 1702 of NDAA FY18.
19.508(e)		Yes. See analysis for 19.502-2.
22.305(a)	40 USC 3701(b)(3)(iii)	No. Statute set at \$100,000.
22.1303(a), (c), 22.1310(a)(1)	38 USC 4212 Vet	No. Statute set at \$100,000.
23.406(d)	42 USC 6962(c)(3)	No. Statute set at \$100,000.
28.102-1(a), (b)(1), 28.102-2(b), (c), 28.102-3(a), (b)	40 USC 3131 Miller Act	No. Statute set at \$100,000.
32.503-6(g)(4)		No. Did not originate under the SAT statute.
33.211(a)(4)(v)(1)		No. Did not originate under the SAT statute but under 41 U.S.C. 7106, under the Board of Contract Appeals claims procedures.
42.1502		Yes; However, the language is written already as "the simplified acquisition threshold". The 2.101 definition change applies automatically--the change to \$250,000 in the FAR is self-executing. Wherever this is the case, no formal change to the text is required.
52.203-7(c)(5)		No. See analysis for 3.502-2(i).
52.203-12(g)(1), (3)		No. See analysis for 3.804.
52.203-16(d)		Yes. This is the flowdown paragraph, which should be consistent with the original clause prescription at 3.1106 which is the SAT.

52.204-8(c)(1)(ii)		No. See analysis for 3.502-2.
52.212-3(e)		No. See analysis for 3.502-2.
52.213-4(b)(1)(iv), (vi)		No. See analysis for 22.1303-1310.
52.219-9(d)(11)(iii) and Alt IV (d)(11)(iii)		Yes. Needs to be consistent with the SAT change in part 19.
52.222-35(c)		No. See analysis for 22.1303-1310.
52.222-37(g)		No. See analysis for 22.1303-1310.
52.228-15(b)		No. See analysis for 28.102.
52.248-1(l)		No. Amount set at \$100,000 in original publication of the FAR in 1983; is not related to the establishment of the SAT. In the 2005 inflation case the prescription for 52.248-1 was changed to the SAT but the flowdown paragraph was not, apparently inadvertently.