

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**FEDERAL ACQUISITION REGULATION CLASS DEVIATION**

**EXPANSION OF SPECIAL EMERGENCY PROCUREMENT AUTHORITIES**

**FINDINGS**

1. This class deviation to Federal Acquisition Regulation (FAR) parts 2, 10, 12, 13, 18, and 26 implements sections 816 and 1641 of the *National Defense Authorization Act* for Fiscal Year 2017 (Pub. L. 114-328). Section 816 authorizes heads of executive agencies to raise the micro-purchase and simplified acquisition thresholds in support of an emergency or major disaster (as those terms are defined in section 102 of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*). In addition, Section 816 adds international disaster assistance under the *Foreign Assistance Act of 1961*, and Section 1641 adds special emergency procurement authority to facilitate defense against or recovery from a cyber-attack.
2. The FAR councils are currently developing FAR Case 2017-009 which will amend the FAR to implement sections 816 and 1641 of the NDAA. These changes will appear in the definitions of “micro-purchase threshold” and “simplified acquisition threshold” in FAR 2.101 as well as other applicable parts of the FAR. Until the FAR has been officially amended, this class deviation will allow EPA to increase acquisition thresholds in response to emergency or major disasters.
3. Consequently, this Determination and Findings implements Public Law 114-328 by authorizing a deviation to FAR parts 2, 10, 12, 13, 18, and 26 covering the expansion of special emergency procurement authorities.
4. Agencies were given the authorization to issue a class deviation, in accordance with FAR 1.404, under Civilian Agency Acquisition Council (CAAC) Letter 2017-03. The CAAC Letter also constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1).

**DETERMINATION**

1. Under the authority of FAR 1.404 and based upon the above findings, I grant a class deviation to FAR parts 2, 10, 12, 13, 18, and 26 as detailed in the attached FAR Deviation text. The deviations to the FAR text, attached hereto, are taken directly from CAAC Letter 2017-03.
2. This deviation is effective at the date of signature below, and shall remain in effect until the FAR has been amended to implement sections 816 and 1641 of the *National Defense Authorization Act* for Fiscal Year 2017 (Pub. L. 114-328) or is otherwise rescinded.

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09/05/2017

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Kimberly Y. Patrick, Director  
Office of Acquisition Management

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Date

## ATTACHMENT

### FAR DEVIATION TEXT

1. In FAR 2.101, add new definitions for “emergency” and “major disaster” and revise the existing definitions for “micro-purchase threshold” and “simplified acquisition threshold” as follows:

#### **FAR 2.101 Definitions. (DEVIATION 2017-03)**

“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, wind-driven 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 of 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.*); 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.

“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.*); 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 for any contract to be awarded and performed, or purchase to be made, outside the United States.

2. In FAR 10.001, add the word “cyber” as follows:

**FAR 10.001 Policy. (DEVIATION 2017-03)**

(a) Agencies shall—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting offers for acquisitions that could lead to consolidation or bundling ([15 U.S.C. 644\(e\)\(2\)\(A\)](#) and [15 U.S.C. 657q](#));

(v) Before awarding a task or delivery order under an indefinite-delivery/indefinite-quantity (ID/IQ) contract (e.g., GWACs, MACs) for a noncommercial item in excess of the simplified acquisition threshold ([10 U.S.C. 2377\(c\)](#)); and

(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) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency’s requirements exist;

(ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency’s needs are not available, nondevelopmental items are available that—

(A) Meet the agency’s requirements;

(B) Could be modified to meet the agency’s requirements; or

(C) Could meet the agency’s requirements if those requirements were modified to a

reasonable extent;

(iii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;

(v) Ensure maximum practicable use of recovered materials (see [Subpart 23.4](#)) and promote energy conservation and efficiency;

(vi) Determine whether consolidation is necessary and justified (see [7.107-2](#)) ([15 U.S.C. 657q](#));

(vii) Determine whether bundling is necessary and justified (see [7.107-3](#)) ([15 U.S.C. 644\(e\)\(2\)\(A\)](#)).

(viii) Assess the availability of electronic and information technology that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR Part 1194 (see [Subpart 39.2](#)).

3. In FAR 12.102(f), add the word “cyber” as follows:

**FAR 12.102 Applicability. (DEVIATION 2017-03)**

(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.

(2) A contract in an amount greater than \$19 million that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (f)(1) of this section but does not meet the definition of a commercial item as defined at FAR [2.101](#) shall not be exempt from—

(i) Cost accounting standards (see [subpart 30.2](#)); or

(ii) Certified cost or pricing data requirements (see [15.403](#)).

4. In FAR 13.201, revise 13.201(g) to read as follows:

**FAR 13.201 General. (DEVIATION 2017-03)**

(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; or 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; or an emergency or major disaster.

5. In FAR 13.500, revise 13.500(c) to read as follows:

**13.500 General. (DEVIATION 2017-03)**

(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; or 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. In FAR 18.001, revise the definition of “emergency acquisition flexibilities” to read as follows:

**FAR 18.001 Definition. (DEVIATION 2017-03)**

“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

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

7. In FAR 18.202, revise the text to read as follows:

**FAR 18.202 Defense or recovery from certain events. (DEVIATION 2017-03)**

(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; or 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; or an emergency or major disaster. (See [2.101](#).)

(c) Commercial items to facilitate defense and recovery. 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. (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 nuclear, biological, chemical, or radiological attack. (See [13.500\(c\)2](#).)

8. In FAR 26.202, revise the text to read as follows:

**FAR 26.202 Local area preference. (DEVIATION 2017-03)**

(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 and simplified acquisition thresholds.