



This document is scheduled to be published in the Federal Register on 05/16/2016 and available online at <http://federalregister.gov/a/2016-10999>, and on FDsys.gov

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 13, 18, and 19

[FAC 2005-88; FAR Case 2015-020; Item II; Docket No. 2015-0020; Sequence No. 1]

RIN 9000-AN09

Federal Acquisition Regulation: Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement a section of U.S. Code which establishes a higher simplified acquisition threshold for overseas acquisitions in support of humanitarian or peacekeeping operations.

DATES: **Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202-550-0935, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat

Division at 202-501-4755. Please cite FAC 2005-88, FAR Case 2015-020.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the Federal Register at 80 FR 60832 on October 8, 2015, soliciting public comments on this rule, drafted to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. FAR Case 2003-022 was published in the Federal Register as an interim rule at 69 FR 8312, on February 23, 2004, and as a final rule published at 69 FR 76350, on December 20, 2004. Drafters of that rule had revised the definition for SAT contained at FAR 2.101: Definitions, but had also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. The civilian statute at the time was numbered 41 U.S.C. 259(d)(1); it is now at 41 U.S.C. 153. The purpose of this rule is to reinstate the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Conforming changes are made in FAR parts 4, 13, 18, and 19.

One public comment was received.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in development of the final rule.

A. Summary of significant changes

There were no changes made to the rule as a result of the comment received. There were no comments on the Initial Regulatory Flexibility Analysis.

B. Analysis of public comments

Comment: One respondent stated that the FAR definition of simplified acquisition needed to clarify that construction is included as part of supplies or services in a contingency environment, noting that construction projects are very important to contingency operations. The respondent indicated that contracting professionals generally understand that the FAR covers two broad categories of acquisition: supplies and services. Services include everything that is not a commodity (supplies), and is therefore inclusive of construction, which is a type of service.

Response: The Councils appreciate the comment and acknowledge the broad understanding that services are inclusive of construction services.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The final rule, in order to implement 41 U.S.C. 153, sets forth a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule.

The rule applies only to overseas acquisitions in support of humanitarian or peacekeeping

operations. In Fiscal Year 2014, 1545 awards were made in support of humanitarian or peacekeeping operations, and 585 (37.86 percent) of those were to small businesses. Additionally, only 81 (5.24 percent) of the awards were valued between the former threshold of \$150,000 and the new threshold of \$300,000. Therefore, it is not anticipated that this rule will have a significant economic impact on small businesses.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 4, 13, 18, and 19

Government Procurement.

Dated: May 5, 2016.

William Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 2, 4, 13, 18, and 19 as set forth below:

1. The authority citation for FAR parts 2, 4, 13, 18, and 19 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by revising the definition “Simplified acquisition threshold” to read as follows:

2.101 Definitions.

* * * * *

Simplified acquisition threshold means \$150,000, 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 nuclear, biological, chemical, or radiological attack (41 U.S.C. 1903), the term means—

(i) \$300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$1 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.

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PART 4—ADMINISTRATIVE MATTERS

4.1102 [Amended]

3. Amend section 4.1102 by removing from paragraph (a) (3) (i) "peacekeeping operations as defined in 10 U.S.C. 2302(7)" and adding "peacekeeping operations as defined in 10 U.S.C. 2302(8)" in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.003 [Amended]

4. Amend section 13.003 by removing from paragraph (b) (1) "described in paragraph (1)" and adding "described in paragraph (1) (i)" in its place.

PART 18—EMERGENCY ACQUISITIONS

18.204 [Redesignated as 18.205]

5. Redesignate section 18.204 as section 18.205.

6. Add a new section 18.204 to read as follows:

18.204 Humanitarian or peacekeeping operation.

(a) A humanitarian or peacekeeping operation is defined in 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 support a humanitarian or peacekeeping operation. (See 2.101.)

PART 19—SMALL BUSINESS PROGRAMS

19.203 [Amended]

7. Amend section 19.203 by removing from paragraph (b) "described in paragraph (1)" and adding "described in paragraph (1)(i)" in its place.

19.502-2 [Amended]

8. Amend section 19.502-2 by removing from paragraph (a) "paragraph (1) of the Simplified Acquisition Threshold" and adding "paragraph (1)(i) of the simplified acquisition threshold" in its place.

Billing Code: 6820-EP

[FR Doc. 2016-10999 Filed: 5/13/2016 8:45 am; Publication Date: 5/16/2016]