



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202 and 252

[Docket DARS-2018-0027]

RIN 0750-AJ34

Defense Federal Acquisition Regulation Supplement: Micro-Purchase Threshold (DFARS Case 2017-D027)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 that increase the micro-purchase thresholds for certain Department of Defense acquisitions.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement sections 217(a) and 821 of the National Defense Authorization Act (NDAA) for Fiscal Year

(FY) 2017 (Pub. L. 114-328). Section 821 increases the micro-purchase threshold for the Department of Defense procurements to \$5,000. Section 217(a) further increases the micro-purchase threshold to \$10,000 for purposes of DoD basic research programs and for the activities of the DoD science and technology reinvention laboratories. Accordingly, DFARS section 202.101, Definitions, is amended to add a new micro-purchase threshold definition as it relates to DoD procurements, to be used in lieu of the definition in the Federal Acquisition Regulation (FAR). To align with the addition of the new DoD micro-purchase definition, a cross-reference to the definition at FAR 2.101 is revised in DFARS clause 252.232-7009, Mandatory Payments by Governmentwide Commercial Purchase Card.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule amends DFARS 202.101 to add an alternate definition for "micro-purchase threshold" in lieu of the definition of "micro-purchase threshold" at FAR 2.101. This rule simply clarifies the application of the micro-purchase threshold as it relates to DoD procurements, and does not apply additional requirements to contracts at or below the SAT or for the acquisition of commercial items, including COTS items.

III. Publication of this Final Rule for Public Comment is not Required by Statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it clarifies the application of the micro-purchase threshold as it relates to DoD procurements, and does not have significant effect beyond the internal operating procedures of the agency issuing the policy. These requirements affect only the internal operating procedures of the Government.

IV. 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.

V. Executive Order 13771

This rule is not an E.O. 13771, Reducing and Controlling Regulatory Costs, regulatory action, because this rule is not significant under EO 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The 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 202 and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 202 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

2. Amend section 202.101 by adding a definition for "Micro-purchase threshold" in alphabetical order to read as follows:

202.101 Definitions.

* * * * *

Micro-purchase threshold, for DoD acquisition of supplies or services funded by DoD appropriations, in lieu of the definition at FAR 2.101, means \$5,000 (10 U.S.C. 2338), except—

(1) For DoD acquisition of supplies or services for basic research programs and for activities of the DoD science and technology reinvention laboratories (https://www.acq.osd.mil/rd/laboratories/labs/list_str1.html), it means \$10,000 (10 U.S.C. 2339);

(2) For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), \$2,000;

(3) For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, \$2,500; and

(4) For acquisitions of supplies or services that, as determined by the head of the contracting activity, are to be used to support a contingency operation; or 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.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.232-7009 by–

- a. Removing the clause date "(DEC 2006)" and adding "(MAY 2018)" in its place;
- b. In the clause text, removing "Part 2 of the Federal Acquisition Regulation" and adding "part 202 of the Defense Federal Acquisition Regulation Supplement" in its place.

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