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**This AAPD 18-04 Revised 1 is archived effective August 31, 2020 because it has been replaced by the AAPD 18-04 Revised 2.**

**The new AAPD leaves only the AIDAR deviations having to do with Competition and Publicizing and removes the FAR deviations in the previous version.**

**The previous FAR deviations having to do with the SAT, MPT, and threshold for Cost 5 been formally incorporated into the FAR through rulemaking.**



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# Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: **June 18, 2020**

## **AAPD 18-04 (Revision 01)**

### **Increase in Thresholds and Competition and Publicizing (Class deviations from the FAR and the AIDAR)**

Subject Category: Acquisition Management  
Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: ☐ Is New ☐ Replaces/ ☒ Amends AAPD 18-04

Applicable to:

- ☒ Existing awards; ☒ Modification required
- ☐ No later than
- ☒ As noted in guidance below\*
- ☒ All applicable RFPs and new awards issued after the effective date of this AAPD.
- ☐ Other

Precedes change to:

- ☒ FAR Part(s) 2, 13, 15, 19, 30, 42 and 52, AIDAR Parts 705 and 706
- ☐ USAID Automated Directives System (ADS) Chapter
- ☐ Code of Federal Regulations
- ☐ Other
- ☐ No change to regulations

☒ New or Revised Provision/Clause Provided Herein: If checked, scheduled update to GLAAS:

/s/

Mark Walther, Senior Procurement Executive

## 1. **PURPOSE:**

The purpose of this AAPD is to inform Acquisition and Assistance professionals of two class deviations (M/OAA-DEV-FAR-20-04c and M/OAA-DEV-AIDAR-20-04c) that

- continue to authorize the use of the increased Micro-Purchase Threshold (MPT), Simplified Acquisition Threshold (SAT) and the threshold for requiring certified cost or pricing data until such changes are formally incorporated into the FAR (see the table below), and
- revise the regulatory text related to publicizing and competition in AIDAR 705 and 706.

THRESHOLD	From	To	Effective Date	Expiration Date
Micro-Purchase Threshold (MPT)	\$3,500	\$10,000	June 18, 2018	June 17, 2022
Simplified Acquisition Threshold (SAT)	\$150,000	\$250,000	June 18, 2018	June 17, 2022
Certified Cost or Pricing Data	\$750,000	\$2,000,000	July 1, 2018 <sup>1</sup>	June 17, 2022

### **Required Actions:**

- COs must follow the guidance in Section 3 below when using the increased thresholds, and following the publicizing and competition requirements for solicitations and awards.

## 2. **BACKGROUND:**

### Thresholds

Sections 806 and 805 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18) (Public Law 115-91) increased the MPT to \$10,000 and the SAT to \$250,000. Additionally, Section 217(b) of the NDAA FY 2017 (Public Law 114-328) increased 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. Section 811 of the FY 18 NDAA amended 10 U.S.C. 2306a and 41 U.S.C. 3502 to increase the threshold for requiring certified cost or pricing data from \$750,000 to \$2,000,000.

While the FAR Cases 2018-004 and 2018-005 are going through the final stages of the rulemaking process to implement these statutory changes in the FAR, the M/OAA Director approved a FAR class deviation to allow for continued use of the increased thresholds.

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<sup>1</sup> See 10 U.S.C. 2306a and 41 U.S.C. 3502 and the applicable guidance in Section 3.

## Publicizing and Competition

The publicizing revisions in AIDAR 705.102 and 705.202 were initially published in the original version of this AAPD 18-04 and is now being continued unchanged in this revised AAPD.

The revised AIDAR text in 706.302-70 relating to Impairment of foreign aid programs was approved and incorporated into the Mandatory Reference ADS 309mad. This approved AIDAR text is now being moved to this AAPD to maintain all AIDAR publicizing and competition requirements in one location.

### **3. GUIDANCE:**

#### **3.1 FAR and AIDAR revisions:**

The FAR text increasing the SAT and MPT, as authorized by deviation No **M/OAA-DEV-FAR-20-04c**, is included in Attachment 1. Note that with the changes in the definitions, all references to SAT and MPT in the FAR will reflect the new thresholds in this AAPD. However, not all dollar amounts currently in the FAR will be increased by the deviation. The amounts that were set by other statutes or previously increased as a matter of policy will not be changed. For more information about the rationale for revising (or not) the applicable thresholds in the FAR, please see Attachment 2.

AIDAR deviation **M/OAA-DEV-AIDAR-20-04c**, included in AIDAR 705.202 in Attachment 1, provides overseas contracting activities an exception from publicizing in the GPE, actions at or below \$250,000 when the award is issued under the authorities in 706.302-70(b)(2), or in accordance with FAR part 13. The revised language in 706.302-70 found in Attachment 1, provides an exception to other than full and open competition due to impairment of foreign aid programs.

#### **3.2 Agency A&A Plans (ADS 300<sup>2</sup>):**

Missions and bureaus are required to enter all actions that are above the new SAT<sup>3</sup> threshold into the Agency A&A Plan system. Operating Units may also include in their A&A Plans acquisitions below the SAT, if deemed necessary.

#### **3.3 Set-Aside to Small Businesses (ADS 300):**

In accordance with FAR19.502-2, ADS 300.3.11.1 is revised to require set-aside of certain procurement actions for small businesses, unless the CO determines that there is not a reasonable expectation of obtaining offers from two or more responsible small businesses that are competitive, in terms of market prices, quality, and delivery. With the issuance of the class deviations from the FAR, this threshold is revised to “above MPT but below SAT”.

#### **3.4 Revised MPT and SAT under the Purchase Card Program (ADS 331):**

The Purchase Card Program will be updated to include the increased MPT and SAT. However, the individual single/monthly purchase limits will not be automatically updated and will be established on a case-by case basis, in accordance with the guidance in ADS 331. Other cardholder limitations in ADS 331, like the one for CCN and TCN cardholders will remain at the current dollar levels.

#### **3.5 Publicizing Requirements for Awards Issued Using Simplified Acquisition Procedures (SAP):**

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<sup>2</sup> Changes to ADS chapters 300 and 331 discussed below are effective on Jun 18, 2018. To the extent that there are any conflicts with the thresholds in ADS chapters 300 and 331 (see Section 3) that predate this AAPD, the guidance in this AAPD prevails.

<sup>3</sup> Set at \$250,000 by the class deviation **M/OAA-DEV-FAR-20-04c**

Even though acquisitions below the SAT conducted under FAR part 13 are exempt from full and open competition requirements in FAR part 6, the requirement for public display and synopsis in FAR 5.101 and 5.203 for all actions above \$25,000 (see FAR 13.105) still applies. However, USAID has an exception to the publicizing requirements for procurements by an overseas contracting activity for \$250,000 or less. The class deviation from the AIDAR (**No. M/OAA-DEV-AIDAR-20-04c**), included in Attachment 1, will continue to provide overseas contracting activities with an exception from publicizing in GPE actions at or below \$250,000, when the award is issued under the authority in AIDAR 706.302-70(b)(2), or in accordance with FAR part 13. This publicizing exception does not apply to awards issued by COs in the U.S.

The table below provides a summary of competition and publicizing actions COs must take when awarding contracts at or below the SAT:

<b>Question:</b>	<b>Overseas CO</b>	<b>CO in the U.S.</b>
Should I use the procedures in FAR part 13?	Yes, to the maximum extent practicable	Yes, to the maximum extent practicable
Can I use the exception in AIDAR 706-302-70(b)(2)?	Yes, but only when the use of FAR part 13 is not practicable	This exception cannot be used in the U.S.
Do I need to prepare a J&A if I follow the procedures in FAR 13.104?	No	No
Do I need to prepare a J&A if I use the exception in AIDAR 706-302-70(b)(2)?	Yes	This exception cannot be used in the U.S.
Can I use the class J&A in <a href="#">ADS 309mad</a> if I use the exception in AIDAR 706.302-70(b)(2)?	No	No
Do I need to publicly display awards between \$15,000 and \$25,000?	No	Yes
Do I need to publicize awards above \$25,000 in the GPE (FedBizOpps)?	No	Yes

### 3.6 Competition Requirements for Awards Issued Using Simplified Acquisition Procedures (SAP):

With the increase of the SAT, COs must use the procedures in FAR part 13 when awarding contracts at or below \$250,000, to the maximum extent practicable. COs in a Mission (an overseas contracting activity) must also use FAR part 13 when awarding procurements at or below \$250,000. When using the simplified acquisition procedures in FAR part 13 for procurements below the SAT, a Justification and Approval (J&A) per FAR part 6 is not required to limit competition. The CO must follow the procedures in FAR 13.104 and document the file accordingly.

However, if the CO does not use FAR part 13 and uses the exception in AIDAR 706.302-70(b)(2), then the CO must prepare a J&A following the requirements in FAR parts 6.303 and 6.304. The class J&A in [ADS 309mad](#) no longer covers procurements made using this AIDAR exception..

### 3.7 Certified Cost or Pricing Data:

The class deviation **M/OAA-DEV-FAR-20-04c** increased the threshold for requiring cost or pricing data to \$2 million. Per 10 U.S.C. 2306a, **contracts entered into on or before June 30, 2018 are excluded from the threshold increase.** However, a contractor may request a contract modification, i.e., without a

correlated change in the amount or quantity of service or supplies,<sup>4</sup> to authorize the use of the new threshold.

The following thresholds apply to contracts awarded on or before June 30, 2018:

- 1) Modification of the prime contract made after July 1, 2018: \$750,000.
- 2) When applicable, an offer for a subcontract (at any tier) or a modification of a subcontract (at any tier) entered into after July 1, 2018 under a prime contract that has been modified at the contractor's request, as specified above: \$2,000,000.
- 3) When applicable, an offer for a subcontract (at any tier) or a modification of a subcontract (at any tier) entered into after July 1, 2018 under a prime contract that did not request a contract modification as specified above: \$750,000.

**4. POINTS OF CONTACT:**

COs may direct their questions about this AAPD to the "[Ask M/OAA Policy](https://pages.usaid.gov/M/OAA/aa-policy-mailbox)" Group at <https://pages.usaid.gov/M/OAA/aa-policy-mailbox>.

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<sup>4</sup> Per 10 U.S.C. 2306a, such a modification would be issued without requiring consideration

## **Attachment 1 –FAR DEVIATION TEXT**

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

Changes shown in **[bold brackets]**, and deletions shown in ~~strikethrough~~.

## **PART 2 – DEFINITIONS OF WORDS AND TERMS**

### **SUBPART 2.1 – DEFINITIONS**

#### **2.101 Definitions.**

**(M/OAA-DEV-FAR-20-04c)**

\* \* \* \* \*

(b) \* \* \*

“Micro-purchase threshold” means ~~\$3,500~~**[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 or to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack 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 ~~\$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 or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (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~~

[500,000] for any contract to be awarded and performed, or purchase to be made, outside the United States.

\* \* \* \* \*

## **PART 13 – SIMPLIFIED ACQUISITION PROCEDURES**

### **13.003 Policy.**

\* \* \* \* \*

(b)(1) Acquisitions of supplies or services that have an anticipated dollar value exceeding \$3,500[the micro-purchase threshold](\$20,000 for acquisitions as described in [13.201\(g\)\(1\)](#)) but not exceeding \$150,000[the simplified acquisition threshold] (\$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](#)).

\* \* \* \* \*

## **SUBPART 13.5—SIMPLIFIED PROCEDURES FOR CERTAIN COMMERCIAL ITEMS**

### **13.501 Special documentation requirements.**

**(M/OAA-DEV-FAR-20-04c)**

(a) Sole source (including brand name) acquisitions.

\* \* \*

(2) Justifications and approvals are required under this subpart for sole-source (including brand-name) acquisitions or portions of an acquisition requiring a brand-name. If the justification is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

(i) For a proposed contract exceeding \$150,000[the simplified acquisition threshold], 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.

\* \* \* \* \*

## **PART 15 CONTRACTING BY NEGOTIATION**

### **SUBPART 15.4 -- CONTRACT PRICING**

#### **15.403 Obtaining certified cost or pricing data.**

##### **15.403-4 Requiring certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).**

**(M/OAA-DEV-FAR-20-XXc)**

(a)(1) The contracting officer shall obtain certified cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403-1(b) applies. However, if the contracting officer has reason to believe exceptional circumstances exist and has sufficient data available to determine a fair and reasonable price, then the contracting officer should consider requesting a waiver under the exception at 15.403-1(b)(4). The threshold for obtaining certified cost or pricing data is \$750,000[\$2,000,000]. Unless an exception applies, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).



- (ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required 4 to furnish certified cost or pricing data (but see waivers at 15.403-1(c)(4))
- (iii) The modification of any sealed bid or negotiated contract (whether or not certified cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (e.g., a ~~[\$500,000] \$200,000~~ modification resulting from a reduction of ~~[\$1,500,000] \$500,000~~ and an increase of ~~[\$1,000,000] \$300,000~~ is a pricing adjustment exceeding ~~\$750,000 \$2,000,000~~). This requirement does not apply when unrelated and separately priced changes for which certified cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if—
- (A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or
- (B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

## **PART 19-SMALL BUSINESS PROGRAMS**

### **SUBPART 19.2-POLICIES**

#### **19.203 Relationship among small business programs.**

**(M/OAA-DEV-FAR-20-04c)**

\* \* \* \* \*

(b) *At or below the simplified acquisition threshold.* For acquisitions of supplies or services that have an anticipated dollar value exceeding \$3,500~~[the micro-purchase threshold] (\$20,000 for acquisitions as described in 13.201(g)(1))~~, but not exceeding \$150,000~~[the simplified acquisition threshold] (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.

\* \* \* \* \*

### **SUBPART 19.5-SET-ASIDES FOR SMALL BUSINESS**

#### **19.502 Setting Aside Acquisitions.**

##### **19.502-1 Requirements for setting aside acquisitions.**

**(M/OAA-DEV-FAR-20-04c)**

\* \* \* \* \*

(b) This requirement does not apply to purchases **[valued at or below the micro-purchase threshold]** of \$3,500 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.**

(M/OAA-DEV-FAR-20-04c)

(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 (\$20,000 for acquisitions as described in 13.201(g)(1))~~ **[the micro-purchase threshold]**, but not over \$150,000 (~~\$750,000 for acquisitions described in paragraph (1)(i) of the simplified acquisition threshold definition at 2.101~~) **[the simplified acquisition threshold]**, 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. \* \* \*

(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~~ **[the simplified acquisition threshold]** for small business participation when there is a reasonable expectation that—

\* \* \* \* \*

#### **19.508 Solicitation provisions and contract clauses.**

(M/OAA-DEV-FAR-20-04c)

\* \* \* \* \*

(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~~ **[the simplified acquisition threshold]**. 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).

\* \* \* \* \*

### **PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION**

#### **SUBPART 30.2—CAS PROGRAM REQUIREMENTS**

##### **30.201-4 Contract clauses.**

(M/OAA-DEV-FAR-20-04c)

\* \* \*(b) Disclosure and consistency of cost accounting practices.

(1) Insert the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated 5 contracts when the contract amount is over ~~\$750,000~~ **[\$2,000,000]**, but less than \$50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR Appendix)), unless the clause prescribed in paragraph (c) of this subsection is used.

\* \* \* \* \*

### **PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

#### **SUBPART 42.7—INDIRECT COST RATES**

##### **42.709-O Scope**

(M/OAA-DEV-FAR-20-04c)

(a) This section implements 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 4303. It covers the assessment of penalties against contractors which include unallowable indirect costs in—

(1) Final indirect cost rate proposals; or

- (2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.
- (b) This section applies to all contracts in excess of ~~\$750,000~~ **[\$2,000,000]**, except fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items.

\* \* \* \* \*

**42.709-6 Contract clause.**

**(M/OAA-DEV-FAR-20-04c)**

Use the clause at 52.242-3, Penalties for Unallowable Costs, in all solicitations and contracts over ~~\$750,000~~ **[\$2,000,000]** except fixed-price contracts without cost 6 incentives or any firm-fixed-price contract for the purchase of commercial items. Generally, covered contracts are those which contain one of the clauses at 52.216-7, 52.216-16, or 52.216-17, or a similar clause from an executive agency's supplement to the FAR.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**SUBPART 52.2—TEXT OF PROVISIONS AND CLAUSES**

**52.203-16 Preventing Personal Conflicts of Interest.**

\* \* \* \* \*

**(M/OAA-DEV-FAR-20-04c)**

(d) Subcontract flowdown. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts—

- (1) That exceed ~~\$150,000~~ **[the simplified acquisition threshold]**; and

\* \* \* \* \*

**52.219-9 Small Business Subcontracting Plan.**

\* \* \* \* \*

**(M/OAA-DEV-FAR-20-04c)**

(d) The Offeror's subcontracting plan shall include the following:

\* \* \*

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

\* \* \*

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

\* \* \* \* \*

Alternate IV (Jan 2017). As prescribed in [19.708](#)(b)(1)(iv), substitute the following paragraphs (c) and (d) for paragraphs (c) and (d) of the basic clause:

\* \* \* \* \*

(d) The Contractor's subcontracting plan shall include the following:

\* \* \*

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Contractor's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

\* \* \*

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

\* \* \* \* \*

#### **52.230-1 Cost Accounting Standards Notices and Certification.**

**(M/OAA-DEV-FAR-20-04c)**

As prescribed in 30.201-3, insert the following provision:

**COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (OCT 2015) \*\*\* I.**  
**DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION** (a) Any contract in excess of ~~\$750,000~~ **[\$2,000,000]** resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

\* \* \* \* \*

#### **52.230-2 Cost Accounting Standards.**

**(M/OAA-DEV-FAR-20-04c)**

As prescribed in 30.201-4(a), insert the following clause:

##### **COST ACCOUNTING STANDARDS (OCT 2015)**

\* \* \* (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or 7 Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of ~~\$750,000~~ **[\$2,000,000]**, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

\* \* \* \* \*

#### **52.230-3 Disclosure and Consistency of Cost Accounting Practices.**

**(M/OAA-DEV-FAR-20-04c)**

As prescribed in 30.201-4(b)(1), insert the following clause:

##### **DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2015)**

\* \* \* (d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of

any tier, except that— (1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. (2) This requirement shall apply only to negotiated subcontracts in excess of ~~\$750,000~~ [\$2,000,000].

\* \* \* \* \*

#### **52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.**

**(M/OAA-DEV-FAR-20-04c)**

As prescribed in 30.201-4(c), insert the following clause:

##### **DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES— FOREIGN CONCERNS (OCT 2015)**

\* \* \*

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that— (1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause prescribed in FAR 30.201-4 shall be inserted. (2) This requirement shall apply only to negotiated subcontracts in excess of ~~\$750,000~~ [\$2,000,000].

\* \* \* \* \*

#### **52.230-5 Cost Accounting Standards—Educational Institution.**

**(M/OAA-DEV-FAR-20-04c)**

As prescribed in 30.201-4(e), insert the following clause:

##### **COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (AUG 2016)**

\* \* \* (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that— (1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of ~~\$750,000~~ [\$2,000,000]; and

\* \* \*

## **AIDAR DEVIATION TEXT**

### **705.102 Availability of solicitations.**

**(M/OAA-DEV-AIDAR-20-04c)**

In accordance with FAR 5.102(a)(5)(iii), the Senior Procurement Executive has determined that access through the GPE is not in the Government's interest for the following solicitations:

- (a) A locally hired personal services contractor (Resident Hire USPSC and Cooperating Country National or Third Country National personal services contractor paid under the local compensation plan) awarded under the authorities in 706.302-70(b)(1). This includes extensions and renewals with the same individual for the same services at the same mission.
- (b) A USPSC for six months or less in duration for services abroad awarded under the authorities in 706.302-70(b)(1). Such awards cannot be extended or renewed.
- (c) An award of \$250,000 or less by an overseas contracting activity issued under the authorities in 706.302-70(b)(2), or in accordance with the requirements in FAR part 13.
- (d) An extension or renewal of a USPSC with the same individual for the same services at the same mission or operating unit within a Bureau or Independent Office awarded under the authorities in 706.302-70(b)(5).

### **705.202 Exceptions.**

**(M/OAA-DEV-AIDAR-20-04c)**

- (a) [Reserved]
- (b) The head of the U.S. Agency for International Development has determined after consultation with the Administrator of the Office of Management and Budget's Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable for the following:
  - (1) Contract actions described in 706.302-70(b)(1) through (b)(3); or
  - (2) an award of \$250,000 or less by an overseas contracting activity issued in accordance with the requirements in FAR part 13.
- (c) [Reserved]

## **706.302-70 Impairment of foreign aid programs.**

(M/OAA-DEV-AIDAR-20-04c)

(a) *Authority.* (1) Citation: 40 U.S.C. 113.

(2) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.

(b) *Application.* This authority may be used for:

(1) An award under section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, involving a personal services contractor serving abroad;

(2) An award of \$250,000 or less by an overseas contracting activity;

(3)(i) An award for which the Assistant Administrator responsible for the project or program makes a formal written Determination and Findings (D&F), that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program; or

(ii) Awards for countries, regions, projects, or programs for which the Administrator of USAID makes a formal written Determination and Findings (D&F), that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.

(4) Awards under (48 CFR) AIDAR 715.370-1 (Title XII selection procedure—general) or 715.370-2 (Title XII selection procedure—collaborative assistance).

(5) An award for the continued provision of highly specialized services when award to another resource would result in substantial additional costs to the Government or would result in unacceptable delays.

(c) *Limitations.*

(1) A contract awarded using the authority in paragraph (a) of this section must be supported by the written justification and approval (J&As) described in (48 CFR) FAR 6.303 and 6.304, except that a determination made under 706.302-70(b)(3) will not be subject to the requirement for contracting officer certification or to approvals required in (48 CFR) FAR 6.304.

A class justification has been approved by the Senior Procurement Executive to meet the requirements in (48 CFR) FAR 6.303 and is available in internal agency policy at ADS chapter 309, for use under the following circumstances:

(i) When competition is limited based on the authorities in 706.302-70(b)(1) for the following categories of personal services contractors serving abroad:

(A) Resident Hire U.S. personal services contractors (USPSCs), as defined in (48 CFR) AIDAR Appendix D.

(B) Cooperating country national (CCN) or third country national (TCN) personal services contractors paid under a local compensation plan, as defined in (48 CFR) AIDAR Appendix J.

(ii) When using the class justification, the contracting officer must ensure that all conditions and file documentation requirements of the class justification have been met.

(2) Proposals must be requested from as many potential offerors as is practicable under the circumstances;

(3) When using the authorities in 706.302-70(b)(4) and 706.302-70(b)(5) the contracting officer must publicize the advance notice of proposed contract action as required in (48 CFR) FAR 5.201. However, when the authorities at 706.302-70(b)(1) through 706.302-70(b)(3) are used, advance notice of proposed contract action is not required in accordance with (48 CFR) AIDAR 705.202.

(4) The authority in 706.302-70(b)(3)(i) shall be used only when no other authority provided in (48 CFR) FAR 6.302 or (48 CFR) AIDAR 706.302 is suitable. The specific foreign assistance objective that would be impaired must be identified and explained in a written Determination and Finding (D&F). Prior consultation with the Agency Competition Advocate (see 706.501) is required before executing the written D&F, and this consultation must be reflected in the D&F. In addition, the contracting activity must prepare a J&A as required in paragraph (c) (1) of this section.

(5) Use of the authority in 706.302-70(b)(5) for proposed follow-on modifications and awards for the continued provision of highly specialized services in excess of one year or over \$250,000 is subject to the approval of the Agency Competition Advocate. For all other follow-on modifications and awards using this authority, the contracting officer's certification required in (48 CFR) FAR 6.303-2(b)(12) will serve as approval.



## Attachment 2 - ANALYSIS OF FAR SECTIONS THAT WERE ELIGIBLE TO BE RAISED

### A. MICRO-PURCHASE THRESHOLD

The FAR sometimes refers to “\$3,500” rather than “the micro-purchase threshold”. Each reference was individually examined to see whether the NDAA is authority for making a change.

<b>FAR sections related to \$3,500 threshold</b>	<b>Regulatory reference</b>	<b>Question – are the threshold in this section changed to \$10,000? Answer:</b>
2.101 definition micro-purchase threshold: \$3,500	41 USC 1902	Yes.
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.
8.605(e)		No. Did not originate under the micro-purchase statute.
9.104-5(a)(2)		No. Threshold is a policy decision, not based in statute
9.406-2(b)(1)(v)		No. Threshold is a policy decision, not based in statute
9.407-2(a)(7)		No. Threshold is a policy decision, not based in statute
13.003(b)(1)	41 USC 1902	Yes.
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.
19.502-1(b), 19.502-2(a)	15 USC 644(j)	Yes. See section 1702 of NDAA FY18.
25.703-2(a)(2), 25.703-4(c)(5)(ii), (c)(7)(iii), (c)(8)(iii) (Iran)		No. Threshold is a policy decision, not based in statute
52.209-5(a)(1)(i)(D)		No. Did not originate under the micro-purchase statute.
52.212-1(j)		Yes.

52.212-3(h)(4)		No. Threshold is a policy decision, not based in statute
52.212-3(o)(2)(iii) Iran		No. Threshold is a policy decision, not based in statute
52.222-54(e)(2)		No. Threshold is a policy decision, not based in statute
52.225-25(c)(3) Iran		No. Threshold is a policy decision, not based in statute

## **B. SIMPLIFIED ACQUISITION THRESHOLD.**

The FAR sometimes refers to “\$150,000” rather than “the SAT”. Generally these thresholds derived 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 was individually examined to see whether the NDAA is the authority for making a change.

<b>FAR sections related to \$150,000 threshold</b>		<b>Question – are the threshold in this section changed to \$250,000?</b> <b>Answer:</b>
2.101 definition SAT \$150,000	41 USC 134	Yes.
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).
3.502-2(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.
13.003(b)(1)		Yes.
13.005(a)(5)		No. See analysis for 23.406(d).
13.501(a)(2)(i)		Yes.

16.206-2, 16.206-3(a), 16.207-3(d)		No, Threshold is based on policy, not statute
19.203(b)		Yes.
19.502-2(a), (b)	15 USC 644(j)	Yes. See section 1702 of NDAA FY18.
19.508(e)	15 USC 644 (j)	Yes.
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.
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.
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, Threshold is based on policy, not statute