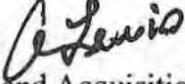


AUG 11 2011



**Homeland
Security**

MEMORANDUM FOR: Department of Homeland Security
Heads of the Contracting Activities

FROM: Ashley Lewis 
Director, Policy and Acquisition Workforce

SUBJECT: Class Deviation from the Federal Acquisition
Regulation (FAR) Subpart 42.15, Protests (Number 11-03)

Purpose: The purpose of this memorandum is to issue a class deviation pursuant to FAR 1.404 and 1.405, to revise the thresholds for performing contractor performance assessments on contracts for services and supplies. Construction contracts and contracts for architect-engineer services are not affected by this deviation.

Effective Date: Immediately.

Background: FAR Section 42.1502, Policy, requires, in general, that agencies shall evaluate contractor performance on all orders and contracts exceeding the Simplified Acquisition Threshold (SAT) (currently \$150,000). Exceptions to this requirement are construction contracts, and architect-engineer services contracts, which have thresholds of \$650,000 and \$30,000 respectively. Also, for single agency task order and delivery order contracts, the contracting officer *may* require performance evaluations for each order in excess of the Simplified Acquisition Threshold (SAT) when certain conditions are met.

Under this FAR class deviation, the contractor performance evaluation thresholds in FAR 42.1502 (b), (c), and (d) are raised Departmentwide to \$1,000,000 for contracts and orders for services, and to \$500,000 for contracts and orders for supplies. This deviation will apply to contracts awarded after the effective date of the deviation.

Raising the thresholds to \$1,000,000 for services and \$500,000, for supplies will reduce the numbers of contracts and orders requiring performance evaluations while increasing the timeliness, completeness and accuracy of the performance evaluations that are performed. Specific benefits of raising the threshold include:

- Reducing the effort needed for performance evaluations while maintaining a very high level of coverage in dollar terms is an effective and efficient use of limited Government resources.
- Allowing the workforce to focus on meaningful high quality contractor performance assessments.

- Facilitating the establishment of reasonable and realistic workload on the work force in terms of conducting contractor performance evaluations.

The reporting thresholds for architect-engineer services and construction contracts remain unchanged.

FAR 1.404(a)(1) authorizes DHS to grant this class deviation after consultation with the chairman of the Civilian Agency Acquisition Council (CAAC). A CAAC Consultation Letter was issued to Ms. Laura Auletta, Acting CAAC Chairperson, on August 9, 2011.

Expiration Date: This class deviation will remain in effect until canceled or superseded.

Attachments:

DHS Class Deviation from the Federal Acquisition Regulations (FAR) Subpart 42.15 – Contractor Performance Information

Determination and Finding: Deviation from Certain Federal Acquisition Regulation (FAR) Thresholds in FAR 42.15 for Collecting Contractor Performance Information

Additional Information: Questions or comments about this class deviation may be directed to Timothy Frank at (202) 447-5252, or by email at tim.frank@dhs.gov, or to Patricia Corrigan at 202-447-5430, email patricia.corrigan@dhs.gov.

Department of Homeland Security
FAR Class Deviation 11-03

Part 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

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Subpart 42.15—Contractor Performance Information

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42.1502 Policy. (DEVIATION)

(a) Past performance evaluations shall be prepared as specified in paragraphs (b) through (g) of this section at the time the work under the contract or order is completed. In addition, interim evaluations shall be prepared as specified by the agencies to provide current information for source selection purposes, for contracts or orders with a period of performance, including options, exceeding one year. These evaluations are generally for the entity, division, or unit that performed the contract or order. The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements.

(b) Except as provided in paragraphs (e), (f) and (h) of this section, agencies shall prepare an evaluation of contractor performance for each contract **for supplies** that exceeds **\$500,000 and for each contract for services that exceeds \$1,000,000** ~~the simplified acquisition threshold.~~

(c) Agencies shall prepare an evaluation of contractor performance for each order **for supplies** that exceeds **\$500,000 and for each order for services that exceeds \$1,000,000** ~~the simplified acquisition threshold~~ placed against a Federal Supply Schedule contract, or under a task order contract or a delivery order contract awarded by another agency (*i.e.* Governmentwide acquisition contract or multi-agency contract). This evaluation shall not consider the requirements under paragraph (g) of this section.

(d) For single-agency task order and delivery order contracts, the contracting officer may require performance evaluations for each order **for supplies** in excess of **\$500,000 and for each order for services in excess of \$1,000,000** ~~the simplified acquisition threshold~~ when such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation (*e.g.*, when the scope of the basic contract is very broad and the nature of individual orders could be significantly different). This evaluation need not consider the requirements under paragraph (g) of this section unless the contracting officer deems it appropriate.

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(e) Past performance evaluations shall be prepared for each construction contract of \$650,000 or more, and for each construction contract terminated for default regardless of contract value. Past performance evaluations may also be prepared for construction contracts below \$650,000.

(f) Past performance evaluations shall be prepared for each architect-engineer services contract of \$30,000 or more, and for each architect-engineer services contract that is terminated for default regardless of contract value. Past performance evaluations may also be prepared for architect-engineer services contracts below \$30,000.

(g) Past performance evaluations shall include an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at [52.219-9](#), Small Business Subcontracting Plan.

(h) Agencies shall not evaluate performance for contracts awarded under [Subpart 8.7](#).

(i) Agencies shall promptly report other contractor information in accordance with [42.1503\(f\)](#).

Determination and Findings

Deviation from Certain Federal Acquisition Regulation (FAR) Thresholds in FAR 42.15 for Collecting Contractor Performance Information

This Determination and Findings supports the decision for the Department of Homeland Security (DHS) to deviate from certain Federal Acquisition Regulation (FAR) thresholds in FAR 42.15 for collecting contractor performance information.

Findings

FAR 42.1502 (a) requires that past performance evaluations shall be prepared as specified in subparagraphs (b) through (g) of Section 42.1502. Subparagraphs (b), (c), (d) of 42.1502 require that contractor performance shall be evaluated for each contract or order that exceeds the simplified acquisition threshold as specified below:

1. 42.1502(b): Except as provided in paragraphs (e), (f) and (h) of this section, agencies shall prepare an evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold.
2. 42.1502(c): Agencies shall prepare an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold placed against a Federal Supply Schedule contract, or under a task order contract or a delivery order contract awarded by another agency (*i.e.* Governmentwide acquisition contract or multi-agency contract). This evaluation shall not consider the requirements under paragraph (g) of this section.
3. 42.1502(d): For single-agency task order and delivery order contracts, the contracting officer may require performance evaluations for each order in excess of the simplified acquisition threshold when such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation (*e.g.*, when the scope of the basic contract is very broad and the nature of individual orders could be significantly different). This evaluation need not consider the requirements under paragraph (g) of this section unless the contracting officer deems it appropriate.

Data collected from Federal Procurement Data System – Next Generation indicate that for Fiscal Year 2010, excluding contracts for architecture-engineer services and for construction, DHS awarded a total of 5,245 contracts or orders that exceeded the simplified acquisition threshold, and that those contracts or orders had an aggregate value of \$24,766,688,542. Those numbers are broken down below in Table 1, Transactions for Services, and Table 2, Transactions for Supplies.

Threshold	Transactions	% >= \$150K	Ultimate Contract Value Dollars	% >= \$150K
>= \$150K	3381	100%	\$16,683,195,917	100%
>= \$500K	1974	58%	\$16,281,367,378	98%
>= \$1M	1330	39%	\$15,812,086,622	95%
>= \$2M	901	27%	\$15,208,380,906	91%
>= \$5M	444	13%	\$13,769,460,267	83%

Threshold	Transactions	% >= \$150K	Ultimate Contract Value Dollars	% >= \$150K
>= \$150K	1864	100%	\$8,083,492,625	100%
>= \$500K	964	52%	\$7,835,052,833	97%
>= \$1M	696	37%	\$7,645,571,046	95%
>= \$2M	504	27%	\$7,371,900,889	91%
>= \$5M	305	16%	\$6,794,948,926	84%

Of the contracts and orders for services 1330, or 39% of the total number, exceeded \$1,000,000 in value. The *total value* of those contracts and orders over \$1,000,000 was \$15,812,086,622, or 95% of the total value of all DHS contracts and orders for services exceeding the simplified acquisition threshold.

Of the contracts and orders for supplies, 964, or 52% of the total number, exceeded \$500,000 in value. The *total value* of those contracts and orders over \$500,000 was \$7,835,052,833, or 97% of the total value of all DHS contracts and orders for services exceeding the simplified acquisition threshold.

Raising the thresholds to \$1,000,000 for services and to \$500,000, for supplies would reduce the numbers of contracts and orders requiring performance evaluations while increasing the timeliness, completeness and accuracy of the performance evaluations that are performed. Specific benefits of raising the threshold include:

- Reducing the effort needed for performance evaluations while maintaining a very high level of coverage in dollar terms is an effective and efficient use of limited Government resources.

- Allows the workforce to focus on meaningful high quality contractor performance assessments.
- Facilitates the establishment of reasonable and realistic workload on the workforce in terms of conducting contractor performance evaluations.

The reporting thresholds for architectural/engineering and construction contracts remain unchanged.

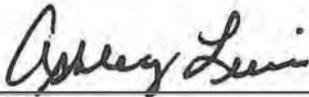
Previous thresholds will still apply to existing awards. The new thresholds will apply to awards made going forward.

Based on the data presented above, I find that raising the thresholds in FAR 42.1502 (b), (c), and (d) to \$1,000,000 for services and to \$500,000 for supplies would reduce the numbers of contracts and orders requiring performance evaluations by approximately 61% for services and by approximately 48% for supplies, while still requiring performance evaluations on contracts and orders that account for 95% of the dollar value of awards for services, and approximately 97% of the dollar value of awards for supplies. Reducing the effort needed for performance evaluations while maintaining a very high level of coverage in dollar terms is an effective and efficient use of limited Government resources.

Determination

In accordance with FAR 1.404, I hereby issue this class deviation, implementing the use of thresholds of \$1,000,000 for contracts or orders for services and \$500,000 for contracts and orders for supplies, as specified in FAR 42.1502(b), (c), and (d).

This class deviation will remain in effect until incorporated into the FAR or otherwise rescinded.



Ashley Lewis
Director, policy and Acquisition Workforce
Department of Homeland Security

AUG 09 2011

Date