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AAPD 17-02 “Class Deviation from the FAR to Implement Adjusted Thresholds for the Trade Agreements” is archived as the revised thresholds were incorporated into the applicable sections of the FAR.



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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: December 29, 2017

AAPD 17-02

CLASS DEVIATION FROM THE FAR TO IMPLEMENT ADJUSTED THRESHOLDS FOR THE TRADE AGREEMENTS.

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 CIB/AAPD

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:

AIDAR Part(s) Appendix

USAID Automated Directives System (ADS)

Code of Federal Regulations

Federal Acquisition Regulations

No change to regulations

New or Revised Provision/Clause Provided Herein: If checked, scheduled update to GLAAS: As noted in guidance below

/s/

Mark Walther

I. Background:

On December 11, 2017, the United States Trade Representative (USTR) published new trade agreements procurement thresholds (82 FR 58248). These revised thresholds (see the table below) became effective on January 1, 2018.

M/OAA Director has approved the FAR class deviation 2018-01 to allow for immediate use of the revised thresholds. The deviation will remain in effect until the revisions are formally incorporated into the Federal Acquisition Regulation pursuant to the FAR case 2018-001.

Note: This AAPD does not apply to Personal Services Contracts.

II. REQUIRED ACTIONS

Effective January 1, 2018, COs must use the thresholds below in lieu of those in the table at FAR 25.402(b) whenever the Trade Agreement thresholds apply. COs must further substitute the thresholds with the revised ones wherever they appear in the FAR. For details see the FAR deviated language in the Attachment 1.

| Trade Agreement | Supply Contract | Services Contract | Construction Contract |
|--|--------------------------------|--------------------------|------------------------------|
| | (equal to or exceeding) | | |
| WTO GPA | \$180,000 | \$180,000 | \$6,932,000 |
| FTAs | | | |
| Australia FTA | 80,317 | 80,317 | 6,932,000 |
| Bahrain FTA | 180,000 | 180,000 | 10,441,216 |
| CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) | 80,317 | 80,317 | 6,932,000 |
| Chile FTA | 80,317 | 80,317 | 6,932,000 |
| Colombia FTA | 80,317 | 80,317 | 6,932,000 |
| Korea FTA | 100,000 | 100,000 | 6,932,000 |
| Morocco FTA | 180,000 | 180,000 | 6,932,000 |
| NAFTA | | | |
| —Canada | 25,000 | 80,317 | 10,441,216 |
| —Mexico | 80,317 | 80,317 | 10,441,216 |
| Oman FTA | 180,000 | 180,000 | 10,441,216 |
| Panama [FTA] | 180,000 | 180,000 | 6,932,000 |
| Peru FTA | 180,000 | 180,000 | 6,932,000 |
| Singapore FTA | 80,317 | 80,317 | 6,932,000 |
| Israeli Trade Act | 50,000 | — | — |

Note: The changes in the thresholds have resulted in revisions to several FAR clauses. GLAAS will be updated to include the revised thresholds. Meanwhile, **COs must use the deviated language in the Attachment 1 below when incorporating the following provisions/clauses into new solicitations and contracts issued or awarded after January 1, 2018.**

- FAR 52.204-8, Annual Representations and Certifications;
- FAR 52.222-19, Child Labor-Cooperation with Authorities and Remedies, with conforming changes to the clause dates in 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, and 52.213-4, Terms and Conditions - Simplified Acquisitions (Other Than Commercial Items).

III. POINT OF CONTACT:

USAID Contracting and Agreement Officers may direct their questions about this AAPD to Lyudmila Bond, M/OAA/P, at (202) 567-4753 or email: lbond@usaid.gov.

Attachment 1 – FAR DEVIATION TEXT

Attachment I - Trade Agreements Thresholds

Additions are [**bolded and bracketed**], deletions are ~~struck through~~.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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Subpart 12.15 – Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor.

* * * * *

22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(FAR Deviation 2018-001)

* * * * *

(b) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a solicitation or contract if the identified country of origin on the List is—

- (1) Canada, and the anticipated value of the acquisition is \$25,000 or more (subpart 25.4);
- (2) Israel, and the anticipated value of the acquisition is \$50,000 or more (see 25.406);
- (3) Mexico, and the anticipated value of the acquisition is ~~\$77,533~~ [**\$80,317**] or more (see (subpart 25.4); or

- (4) Armenia, Aruba, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is ~~\$191,000~~ [**\$180,000**] or more (see 25.402(b)).

* * * * *

PART 25—FOREIGN CONTRACTING

* * * * *

Subpart 25.2—Buy American—Construction Materials

* * * * *

25.202 Exceptions.

(FAR Deviation 2018-001)

* * * * *

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of ~~\$7,358,000~~ [**\$6,932,000**] or more, see subpart 25.4.

* * * * *

Subpart 25.4—Trade Agreements

* * * * *

25.402 General.

(FAR Deviation 2018-001)

* * * * *

(b) The value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

| Trade Agreement | Supply Contract (equal to or exceeding) | Service Contract (equal to or exceeding) | Construction Contract (equal to or exceeding) |
|---|--|---|--|
| WTO GPA | \$191,000[\$180,000] | \$191,000[\$180,000] | \$7,358,000[\$6,932,000] |
| FTAs | | | |
| Australia FTA | 77,533[80,317] | 77,533[80,317] | 7,358,000[6,932,000] |
| Bahrain FTA | 191,000[180,000] | 191,000[180,000] | 10,079,365[10,441,216] |
| CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) | 77,533[80,317] | 77,533[80,317] | 7,358,000[6,932,000] |
| Chile FTA | 77,533[80,317] | 77,533[80,317] | 7,358,000[6,932,000] |
| Colombia FTA | 77,533[80,317] | 77,533[80,317] | 7,358,000[6,932,000] |
| Korea FTA | 100,000 | 100,000 | 7,358,000[6,932,000] |
| Morocco FTA | 191,000[180,000] | 191,000[180,000] | 7,358,000[6,932,000] |
| NAFTA | | | |
| —Canada | 25,000 | 77,533[80,317] | 10,079,365[10,441,216] |
| —Mexico | 77,533[80,317] | 77,533[80,317] | 10,079,365[10,441,216] |
| Oman FTA | 191,000[180,000] | 191,000[180,000] | 10,079,365[10,441,216] |
| Panama [FTA] | 191,000[180,000] | 191,000[180,000] | 7,358,000[6,932,000] |
| Peru FTA | 191,000[180,000] | 191,000[180,000] | 7,358,000[6,932,000] |
| Singapore FTA | 77,533[80,317] | 77,533[80,317] | 7,358,000[6,932,000] |
| Israeli Trade Act | 50,000 | — | — |

* * * * *

SUBPART 25.6--AMERICAN RECOVERY AND REINVESTMENT ACT--BUY AMERICAN--CONSTRUCTION MATERIALS

* * * * *

25.603 Exceptions.

(FAR Deviation 2018-001)

* * * * *

(c) Acquisitions under trade agreements.

(1) For construction contracts with an estimated acquisition value of ~~\$7,358,000~~ **[\$6,932,000]** or more, also see subpart [25.4](#). Offers proposing the use of construction material from a designated country shall receive equal consideration with offers proposing the use of domestic construction material.

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Subpart 25.11—Solicitation Provisions and Contract Clauses

(FAR Deviation 2018-001)

25.1101 Acquisition of supplies.

* * * * *

(b) (1) (i) Insert the clause at [52.225-3](#), Buy American—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is \$25,000 or more, but is less than ~~\$191,000~~ **[\$180,000]**;

* * * * *

(iii) If the acquisition value is \$50,000 or more but is less than ~~\$77,533~~ **[\$80,317]**, use the clause with its Alternate II.

(iv) If the acquisition value is ~~\$77,533~~ **[\$80,317]** or more but is less than \$100,000, use the clause with its Alternate III.

(2)(i) Insert the provision at [52.225-4](#), Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations containing the clause at [52.225-3](#).

* * * * *

(iii) If the acquisition value is \$50,000 or more but is less than ~~\$77,533~~ **[\$80,317]**, use the provision with its Alternate II.

(iv) If the acquisition value is ~~\$77,533~~ **[\$80,317]** or more, but is less than \$100,000], use the provision with its Alternate III.

(c)(1) Insert the clause at [52.225-5](#), Trade Agreements, in solicitations and contracts valued at ~~\$191,000~~ **[\$180,000]** or more, if the acquisition is covered by the WTO GPA (see subpart 25.4) and the agency has determined that the restrictions of the Buy American statute are not

applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.

(2) Insert the provision at [52.225-6](#), Trade Agreements Certificate, in solicitations containing the clause at [52.225-5](#).

(d) Insert the provision at [52.225-7](#), Waiver of Buy American Statute for Civil Aircraft and Related Articles, in solicitations for civil aircraft and related articles (see [25.407](#)), if the acquisition value is less than ~~\$191,000~~ [**\$180,000**].

* * * * *

25.1102 Acquisition of construction.

When using funds other than those appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), follow the prescriptions in paragraphs (a) through (d) of this section. Otherwise, follow the prescription in paragraph (e).

(a) Insert the clause at [52.225-9](#), Buy American—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than ~~\$7,358,000~~ [**\$6,932,000**].

* * * * *

(c) Insert the clause at [52.225-11](#), Buy American—Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at ~~\$7,358,000~~ [**\$6,932,000**] or more.

* * * * *

(3) For acquisitions valued at ~~\$7,358,000~~ [**\$6,932,000**] or more, but less than ~~\$10,079,365~~ [**\$10,441,216**], use the clause with its Alternate I. List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, unless the excepted foreign construction material is from a designated country other than Bahrain, Mexico, and Oman.

(d) * * *

(3) For acquisitions valued at ~~\$7,358,000~~ [**\$6,932,000**] or more, but less than ~~\$10,079,365~~ [**\$10,441,216**], use the clause with its Alternate II.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

52.204-8 Annual Representations and Certifications. (FAR Deviation 2018-001)

As prescribed in [4.1202](#), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (~~JAN-2017~~ **JAN 2018**)

(c)(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(xxi) [52.225-4](#), Buy American—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than ~~\$77,533~~ **[\$80,317]**, the provision with its Alternate II applies.

(D) If the acquisition value is ~~\$77,533~~ **[\$80,317]** or more but is less than \$100,000, the provision with its Alternate III applies.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

(FAR Deviation 2018-001)

As prescribed in [12.301](#)(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE
ORDERS—COMMERCIAL ITEMS (~~JAN-2017~~ **JAN 2018**)

b) ***

— (26) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (~~OCT-2016~~ **JAN 2018**) (E.O. 13126).

**52.213-4 Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items).
(FAR Deviation 2018-001)**

As prescribed in 13.302-5(d), insert the following clause:

TERMS AND CONDITIONS – SIMPLIFIED ACQUISITION (OTHER THAN COMMERCIAL
ITEMS) (~~JAN-2016~~ **JAN 2018**)

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

* * * * *

(ii) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (~~OCT 2016~~ **[JAN 2018]**) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

* * * * *

**52.222-19 Child Labor—Cooperation with Authorities and Remedies.
(FAR Deviation 2018-001)**

As prescribed in 22.1505(b), insert the following clause:

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (~~OCT 2016~~ **[JAN 2018]**)

(a) *Applicability*. This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—

- (1) Canada, and the anticipated value of the acquisition is \$25,000 or more;
- (2) Israel, and the anticipated value of the acquisition is \$50,000 or more;
- (3) Mexico, and the anticipated value of the acquisition is ~~\$77,533~~ **[\$80,317]** or more; or
- (4) Armenia, Aruba, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic,

Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is ~~\$191,000~~ **[\$180,000]** or more.

* * * * *