



CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance & Litigation

A Lawyer's View of FASA - Micropurchases

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Simple Acquisitions—Micropurchases

by Steven Carrara

In addition to the broad sweeping reforms for procurements less than or equal to \$100,000 Congress has invented a new mousetrap for "micropurchases" by eliminating burdensome competition requirements where the price is determined to be fair and reasonable. Micropurchases are defined as purchases valued at \$2,500 or less.

No Quotes

In the pre-FASA world small purchases were defined as those valued at \$25,000 or less and required Contracting Officers to solicit competitive quotes. In FASA, Congress has eliminated the need to solicit quotes which will hopefully achieve two results: reduce administrative costs and create more discretion for contracting officers and program personnel.



Soliciting quotes and preparing paperwork is not only time consuming but in many cases may be uneconomical because it does not provide much bang for the buck because the benefits of compliance with competition requirements may not necessarily offset the administrative burdens associated in conducting the competition. For instance, is it really necessary for a contracting officer to call three sources for a price on a widget, when the commercial market presumably has already established a fair and reasonable price? If Sears sells a hammer for \$5.00 and you believe the price is fair and reasonable, is it necessary to solicit quotes from other vendors? Would it be practical to drive 50 miles to save \$10. Of course not!

In these situations FASA cuts to the chase. By eliminating the requirement to solicit quotes, FASA reduces administrative costs and empowers Contracting Officers and program personnel with authorized bank cards to use their discretion and judgment in making micropurchasing decisions. Moreover, these simplified procedures should facilitate bank card use which can minimize procurement's involvement in micropurchases and free up valuable resources. In es-

sence, Congress has shifted the emphasis from reliance on competitive pressures (soliciting quotes) to relying on the discretion and judgment of contracting officers and bank card users. The effectiveness of FASA in this regard is dependent upon following sound business judgment.

Buy American Act and Small Businesses

Additionally, there are also several administrative changes in FASA. The Buy American Act and Small Business Set Aside requirements are not applicable to micropurchases. Previously, small purchases were required to be made from small business. Micropurchases may be made from any source regardless of size or origin of product. However, not all socio-economic considerations have been eliminated from micropurchases. FAR subparts 8.6 and 8.7 which address supplies and services from the Federal Prison Industries and The Blind And Other Severely Handicap remain in effect.


Not a Procurement Official?

Further, employees, including bank card users, will not be considered procurement officials if the contracting authority of the employee does not exceed \$2,500 and the head of the contracting agency determines that the employee will not be required to conduct more than a total of \$20,000 of micropurchases in any 12-month period. Finally, FASA requires that micropurchases shall be equitably distributed among qualified vendors.

Conforming Amendments

FASA also made changes to the Federal Property and Administrative Services Act, the Office of Federal Procurement Policy Act and the

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 **A Lawyer's View** is a periodic publication of the Contract Law Division designed to give practical advice to the Department's procurement officers. Comments, criticisms, and suggestions for future topics are welcome.—Call Jerry Walz at 202-482-1122, or via e-mail to Jerry Walz@FinLit@OGC or jwalz@doc.gov.



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Small Business Act as follows:

§ 4402 Changes to FPASA

- GSA is now charged with developing simplified procedures for the acquisition of leasehold interests in real property where the rental rates do not exceed the simplified acquisition threshold (\$100,000). The rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold. If these procedures are anything like those for products and services, both the Government and private sector can expect quicker and less burdensome lease procurements.

- Procurements under the simplified acquisition threshold are excluded from the detailed solicitation requirements found at 41 U.S.C. § 253a(b). While FASA requires more detailed solicitation information for competitive procurement in excess of the simplified threshold, the requirements for procurements between \$25,000 and \$100,000 have been reduced.

- Threshold for notification requirement of subcontract awards made pursuant to cost and cost-plus-a-fixed-fee contracts has been increased to subcontracts which exceed the simplified acquisition threshold or 5 % of the total estimated cost of the prime contract.

§ 4403 Changes to the Office of Federal Procurement Policy Act

- Increases the threshold of agencies record keeping requirements found at 41 U.S.C § 417 from the small purchase threshold (\$25,000) to the simplified acquisition threshold.

§ 4404 Small Business Act

- The definition of small purchases under the Small Business Act has been revised from "small purchase" threshold to the "simplified acquisition" threshold found in FASA. Now all federal purchases greater than the micropurchase threshold but not greater than the simplified acquisition threshold are reserved for small businesses unless the contracting officer is unable to obtain offers from two or more capable small firms.

- Contracts valued above the previous small purchase threshold were required to include the clause at 15 U.S.C § 637(d)(3) which encourages small business participation in federal procurements. Use of the clause is now required in contracts in excess of the simplified acquisition threshold.

Subtitle D--Micro-Purchase Procedures

SEC. 4301. PROCEDURES FOR PURCHASES BELOW MICRO-PURCHASE THRESHOLD.

(a) PROCEDURES.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding after section 31, as added by section 4201, the following new section:

"SEC. 32. PROCEDURES APPLICABLE TO PURCHASES BELOW MICRO-PURCHASE THRESHOLD.

"(a) REQUIREMENTS.—(1) The head of each executive agency shall ensure that procuring activities of that agency, in awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 8(a) of the Small Business Act (15 U.S.C. 637(a)), section 2323 of title 10, United States Code, and section 7102 of the Federal Acquisition Streamlining Act of 1994.

"(2) The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to any purchases with a price exceeding the micro-purchase threshold.

"(b) EXCLUSION FOR MICRO-PURCHASES.—A purchase by an executive agency with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and the Buy American Act (41 U.S.C. 10a-10c).

"(c) APPLICABILITY OF CERTAIN PROVISIONS.—For purposes of section 27, an officer or employee of an executive agency, or a member of the Armed Forces of the United States, shall not be considered a procurement official if—

"(1) the contracting authority of the officer, employee, or member does not exceed \$2,500; and

"(2) the head of the contracting activity concerned (or a designee of the head of the contracting activity concerned) determines that the duties of the position of that officer, employee, or member are such that it is unlikely that the officer, employee, or member will be required to conduct procurements in a total amount greater than \$20,000 in any 12-month period.

"(d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS.—A purchase not greater than \$2,500 may be

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made without obtaining competitive quotations if the contracting officer determines that the price for the purchase is reasonable.

"(e) **EQUITABLE DISTRIBUTION.**—Purchases not greater than \$2,500 shall be distributed equitably among qualified suppliers.

"(f) **IMPLEMENTATION THROUGH FAR.**—This section shall be implemented through the Federal Acquisition Regulation.

"(g) **MICRO-PURCHASE THRESHOLD DEFINED.**—For purposes of this section, the micro-purchase threshold is the amount of \$2,500."

(b) **EXCEPTION TO BUY AMERICAN ACT FOR MICRO-PURCHASES**—Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by adding at the end the following: "This section shall not apply to manufactured articles, materials, or supplies procured under any contract the award value of which is less than or equal to the micro-purchase threshold under section 32 of the Office of Federal Procurement Policy Act."

(c) **EFFECTIVE DATE.**—Notwithstanding any other provision of law--

(1) section 32 of the Office of Federal Procurement Policy Act, as added by subsection (a); and

(2) the amendment made by subsection (b); shall take effect on the date of the enactment of this Act and shall be implemented in the Federal Acquisition Regulation not later than 60 days after such date of enactment.

Subtitle E--Conforming Amendments

SEC. 4402. CIVILIAN AGENCY ACQUISITIONS.

(a) **SIMPLIFIED ACQUISITION PROCEDURES.**--Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)) is amended--

(1) in paragraph (1)—

(A) by striking out "small purchases of property and services" and inserting in lieu thereof "purchases of property and services for amounts not greater than the simplified acquisition threshold", and

(B) by striking out "regulations modified, in accordance with section 2752 of the Competition in Contracting Act of 1984," and inserting in lieu thereof "Federal Acquisition Regulation";

(2) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2)(A) The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

"(B) For purposes of subparagraph (A), the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed

the simplified acquisition threshold.";

(3) in paragraph (3)—

(A) by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold"; and

(B) by striking out "small purchase procedures" and inserting in lieu thereof "simplified procedures";

(4) in paragraph (4), by striking out "small purchase procedures" and inserting in lieu thereof "the simplified procedures"; and

(5) by striking out paragraph (5).

(b) **SOLICITATION CONTENT REQUIREMENT.**—Section 303A(b) of such Act (41 U.S.C. 253a(b)) is amended by striking out "small purchases" in the matter preceding paragraph (1) and inserting in lieu thereof "a purchase for an amount not greater than the simplified acquisition threshold)".

*3349 (c) **COST TYPE CONTRACTS.**—Section 304(b) of such Act (41 U.S.C. 254(b)) is amended in the sentence beginning with "All cost and cost-plus-a-fixed-fee" by striking out "either \$25,000" and inserting in lieu thereof "either the simplified acquisition threshold".

SEC. 4403. OFFICE OF FEDERAL PROCUREMENT POLICY ACT.

Section 19(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 417(a)) is amended by striking out "procurements, other than small purchases," and inserting in lieu thereof "procurements greater than the simplified acquisition threshold".

SEC. 4404. SMALL BUSINESS ACT.

(a) **DEFINITION.**—Section 3(m) of the Small Business Act (15 U.S.C. 632(m)) is amended by striking out " 'small purchase threshold' " and inserting in lieu thereof " 'simplified acquisition threshold' ".

(b) **USE OF SIMPLIFIED ACQUISITION THRESHOLD TERM.**—Section 8(d)(2)(A) of the Small Business Act (15 U.S.C. 637(d)(2)(A)) is amended by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold".

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