



Acquisition Thresholds Case Study

Adjustment of Acquisition Thresholds

Introduction

41 U.S.C. 1908 requires an adjustment every five years (on October 1 of each year evenly divisible by five) of statutory acquisition-related thresholds for inflation, using the Consumer Price Index (CPI) for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis- Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds (see FAR 1.109). This was a significant revision to the existing VAAR, requiring extensive time and effort. The last update to the FAR for this purpose occurred in 2010. What is the impact of the change to the covered thresholds in the FAR?

Analysis

From the five year period of 2010 to 2015, the CPI for Urban Consumers changed by 8.57 percent.¹ A proposed rule was published in the Federal Register on November 25, 2014, with the final rule being published on July 2, 2015.³ According to the final rule, “there were no changes between the proposed rule and the final rule as the result of public comments”. There were only two comments (discussed in Data).

However, several changes were made to comply with the requirements of the law. These are some of the more common ones. The micro-purchase base threshold (FAR 2.101) increased from \$3000 to \$3500. The threshold for use of simplified acquisition procedures for acquisition of commercial items (FAR 13.500) rose from \$6.5 million to \$7 million. The cost or pricing data threshold (FAR 15.403–4) and the statutorily equivalent Cost Accounting Standard threshold rose from \$700,000 to \$750,000. The prime contractor subcontracting plan (FAR 19.702) floor (except for construction) is raised from \$650,000 to \$700,000. The threshold for reporting first-tier subcontract information including executive compensation will increase from \$25,000 to \$30,000 (FAR subpart 4.14 and section 52.204–10).

The FedBizOpps preaward and post-award notices (FAR part 5) remained at \$25,000 because of trade agreements. The simplified acquisition threshold (FAR 2.101) of \$150,000 was unchanged. The prime contractor subcontracting plan (FAR 19.702) threshold of \$1,500,000 (FAR 19.702) for construction stayed the same.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) also made other changes between the proposed and final rules. Some thresholds were altered because the projected CPI of 245 for March 2015 was different than the actual CPI of 236.119 for March 2015. The CPI as of six months before the effective date of the rule, is used as the cutoff in order to allow time



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for approval and publication of the final rule. The Councils noted “thresholds of at least 10 million dollars are generally proportionally lower than the proposed thresholds. Thresholds of less than \$10 million are frequently unchanged, due to rounding.” In addition, the Small Business Administration (SBA) issued a final rule in the Federal Register at 78 FR 61114 on October 2, 2013, entitled “Acquisition process: Task and Delivery Order Contracts, Bundling, Consolidation”, which incorporated thresholds related to substantial bundling. The FAR Council believes that this places the establishing of the bundling thresholds outside the purview of the FAR Council.

Data

One comment believed “that when a dollar threshold is stated in the body of the clause, the threshold applies for the life of the contract, but if the clause instead refers to the threshold in the underlying FAR text, the threshold in the clause would automatically adjust when there was a change to the threshold in the FAR text.” The response indicated that “FAR 2.201, is to be included in all solicitations and contracts that exceed the simplified acquisition threshold. This clause specifies that when a solicitation provision or contract clause uses a word or term that is defined in the FAR, the word or term has the same meaning as that definition in FAR 2.101 in effect at the time the solicitation was issued.”

One commenter “noted an apparent disproportionate inflation adjustment between the lower and higher dollar thresholds, particularly in the under \$1 million range. The respondent suggested that Congress should use smaller dollar intervals to analyze the adjustment, or adjustments more frequent than every five years.” The Councils responded that “the Councils have adjusted the thresholds in accordance with the statutory requirement, and cannot use different dollar intervals or adjustment periods unless Congress amends the statute.”

Conclusion

How does the increase in thresholds affect the development of acquisition strategies for future procurements? Does the fact that some thresholds were increased and others were not make acquisition more or less difficult? What would be some situations where this would come into play? What is your evaluation of the FAR Council’s position on contract bundling? Does it make sense to change the non-statutory thresholds at the same time as the statutory thresholds? Does the fact the thresholds were changed by an amount different than the proposed rule make any difference?



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Notes

¹Department of Labor. CPI Detailed Report: Data for March 2016. (2016). Washington DC: Malik Crawford, Jonathan Church and Bradley Akin, eds.

²Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds; Proposed Rule, 79 Fed. Reg. No. 227 (November 25, 2014) (to be codified at 48 CFR Parts 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 19, 22, 25, 26, 28, 32, 42, 50, 52, and 53)

³Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds; Final Rule, 80 Fed. Reg. No. 127 (July 2, 2015) (to be codified at 48 CFR Parts 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 19, 22, 25, 26, 28, 32, 42, 50, 52, and 53)