



Federal Register

**Monday,
February 23, 2004**

Part III

**Department of
Defense
General Services
Administration
National Aeronautics
and Space
Administration**

**48 CFR Parts 2, 10, et al.
Federal Acquisition Regulation; Special
Emergency Procurement Authority; Small
Entity Compliance Guide; Interim Rules**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 10, 12, 13, 15, 19, and
25**

[FAC 2001–20; FAR Case 2003–022]

RIN 9000–AJ88

**Federal Acquisition Regulation;
Special Emergency Procurement
Authority**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the special emergency procurement authorities of section 1443 of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136). The Councils will publish a final rule upon receipt and evaluation of comments received in response to this interim rule.

Section 1443 increases the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for an executive agency that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or the recovery from nuclear, biological, chemical, or radiological attack. Also, the head of the contracting activity carrying out a procurement of supplies or services to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack may treat such supplies or services as a commercial item.

DATES: *Effective Date:* February 23, 2004.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before April 23, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2003-022@gsa.gov. Please submit comments only and cite FAC 2001–20, FAR case 2003–022, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–20, FAR case 2003–022.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule implements Section 1443 of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136). Section 1443 increases the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for an executive agency that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or the recovery from nuclear, biological, chemical, or radiological attack. Section 1443 also authorizes the expanded use of Simplified Acquisition and Commercial Items procedures.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* However, the increased thresholds are limited to procurements that support a contingency operation or to facilitate the defense against or the recovery from nuclear, biological, chemical, or radiological attack. There are no data available on the number of procurements that will be eligible. We expect the increased thresholds to this limited class of procurements will apply to a very small number of small entities.

An Initial Regulatory Flexibility Act Analysis has been prepared and is as follows:

**Initial Regulatory Flexibility Act Analysis—
FAR Case 2003–022**

This Initial Regulatory Flexibility Analysis has been prepared in accordance with Section 603, Title 5, of the United States Code.

1. Description of the reasons why action by the agency is being considered. This interim

rule amends the Federal Acquisition Regulation (FAR) in order to implement Section 1443 of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136). Section 1443 increases the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements of supplies and services to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

2. Succinct statement of the objectives of, and legal basis for, the interim rule. This interim rule implements Section 1443 of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136).

3. Description of, and, where feasible, estimate of the number of small entities to which the interim rule will apply. The increased thresholds are limited to procurements that are to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. There are no data available on the number of procurements that will be eligible. However, we expect the number of small entities that will be impacted by the increased thresholds to this limited class of procurements to be very small. In addition, although not required by the statute, the interim rule raises the small business set-aside ceilings for purchases made under the authority of Section 1443 of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136).

4. Description of projected reporting, record keeping, and other compliance requirements of the interim rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. There are no reporting, record keeping, or other compliance requirements for this interim rule.

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the interim rule. This rule does not duplicate, overlap, or conflict with other relevant Federal rules.

6. Description of any significant alternatives to the interim rule, which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the interim rule on small entities. There are no significant alternatives to the interim rule that would accomplish the stated objectives yet further reduce impact on small entities. The rule includes only FAR text revisions required to implement the statute.

The FAR Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 2, 10, 12, 13, 15, 19, and 25 in accordance with 5 U.S.C. 610. Interested parties must submit such

comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–20, FAR case 2003–022), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the FAR coverage implements Section 1443 of the Services Acquisition Reform Act of 2003, signed on November 24, 2003, which provides urgently needed emergency authorities. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 10, 12, 13, 15, 19, and 25

Government procurement.

Dated: February 13, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–20 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–20 are effective February 23, 2004.

Dated: February 12, 2004.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: February 13, 2004.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: February 12, 2004.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 10, 12, 13, 15, 19, and 25 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 10, 12, 13, 15, 19, and 25 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by revising the definitions “Micro-purchase threshold” and “Simplified acquisition threshold” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Micro-purchase threshold means \$2,500, except it means—

(1) \$2,000 for construction subject to the Davis Bacon Act; and

(2) \$15,000 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 the Davis Bacon Act (Pub. L. 108–136, Title XIV, Sec. 1443).

* * * * *

Simplified acquisition threshold means \$100,000, except 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 (Pub. L. 108–136, Title XIV, Sec. 1443), the term means—

(1) \$250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(2) \$500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

PART 10—MARKET RESEARCH

■ 3. Amend section 10.001 by revising paragraph (a)(2)(v) to read as follows:

10.001 Policy.

(a) * * *

(2) * * *

(v) Agencies shall conduct market research on an ongoing basis, and take advantage to the maximum extent practicable of commercially available market research methods, to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting,

that are available in the marketplace for meeting the requirements of the agency in furtherance of a contingency operation or defense against or recovery from nuclear, biological, chemical, or radiological attack; and

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.102 by revising paragraph (f) to read as follows:

12.102 Applicability.

* * * * *

(f)(1) Contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items.

(2) A contract in an amount greater than \$15,000,000 that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (f)(1) of this section but does not meet the definition of a commercial item as defined at FAR 2.101 shall not be exempt from—

(i) Cost accounting standards (*see* Subpart 30.2); or

(ii) Cost or pricing data requirements (*see* 15.403).

■ 5. Amend section 12.203 by revising the last sentence to read as follows:

12.203 Procedures for solicitation, evaluation, and award.

* * * For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000 (\$10,000,000 for acquisitions entered into under the authority of 12.102(f)(1)), including options, contracting activities shall employ the simplified procedures authorized by Subpart 13.5 to the maximum extent practicable.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 6. Amend section 13.000 by revising the second sentence to read as follows:

13.000 Scope of part.

* * * Subpart 13.5 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000 (\$10,000,000 for acquisitions entered into under the authority of 12.102(f)(1)), including options. * * *

■ 7. Amend section 13.003 by revising paragraphs (b)(1), (c), and (g)(2) to read as follows:

13.003 Policy.

* * * * *

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 (\$15,000 for acquisitions as described in 13.201(g)(1)) and not exceeding \$100,000 (\$250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at 2.101) is reserved exclusively for small business concerns and shall be set aside (see 19.000 and Subpart 19.5). See 19.502-2 for exceptions.

* * * * *

(c)(1) The contracting officer shall not use simplified acquisition procedures to acquire supplies and services if the anticipated award will exceed—

- (i) The simplified acquisition threshold; or
- (ii) \$5,000,000 (\$10,000,000 for acquisitions entered into under the authority of 12.102(f)(1)), including options, for acquisitions of commercial items using Subpart 13.5.

(2) Do not break down requirements aggregating more than the simplified acquisition threshold (or for commercial items, the threshold in Subpart 13.5) or the micro-purchase threshold into several purchases that are less than the applicable threshold merely to—

- (i) Permit use of simplified acquisition procedures; or
- (ii) Avoid any requirement that applies to purchases exceeding the micro-purchase threshold.

* * * * *

(g) * * *

(2) \$5,000,000 (\$10,000,000 for acquisitions entered into under the authority of 12.102(f)(1)) for commercial items, use any appropriate combination of the procedures in Parts 12, 13, 14, and 15 (see paragraph (d) of this section).

* * * * *

13.105 [Amended]

- 8. Amend section 13.105 in the first sentence of paragraph (b) by removing “and (f)(2)”.
- 9. Amend section 13.201 by revising paragraph (g) to read as follows:

13.201 General.

* * * * *

(g)(1) 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, the micro-purchase threshold is \$15,000.

(2) Purchases using this authority must have a clear and direct

relationship to the support of a contingency operation or the defense against or recovery from nuclear, biological, chemical, or radiological attack.

- 10. Amend section 13.303-5 by revising paragraphs (b)(1) and (b)(2) to read as follows:

13.303-5 Purchases under BPAs.

* * * * *

(b) * * *

(1) The simplified acquisition threshold and the \$5,000,000 limitation for individual purchases (\$10,000,000 for purchases entered into under the authority of 12.102(f)(1)) do not apply to BPAs established in accordance with 13.303-2(c)(3).

(2) The limitation for individual purchases for commercial item acquisitions conducted under Subpart 13.5 is \$5,000,000 (\$10,000,000 for purchases entered into under the authority of 12.102(f)(1)).

* * * * *

- 11. Amend section 13.500 by revising the first sentence of paragraph (a); and removing paragraph (e). The revised text reads as follows:

13.500 General.

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000 (\$10,000,000 for acquisitions entered into under the authority of 12.102(f)(1)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. * * *

* * * * *

13.501 [Amended]

- 12. Amend section 13.501 by removing from paragraph (a)(1)(ii) “Homeland Security Act (Pub. L. 107-296, section 856)” and adding “Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108-136)” in its place.

PART 15—CONTRACTING BY NEGOTIATION

- 13. Amend section 15.403-1 in paragraph (c)(3) by adding the paragraph designation “(i)” before the first sentence, and adding paragraph (c)(3)(ii) to read as follows:

15.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(3) Commercial items. (i) * * *

(ii) Any acquisition for noncommercial supplies or services treated as commercial items at 12.102(f)(1), except sole source contracts greater than \$15,000,000, is exempt from the requirements for cost or pricing data (Pub. L. 108-136, Sec. 1443).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

- 14. Amend section 19.502-1 by revising paragraph (b) to read as follows:

19.502-1 Requirements for setting aside acquisitions.

* * * * *

(b) This requirement does not apply to purchases of \$2,500 or less (\$15,000 or less for acquisitions as described in 13.201(g)(1)), or purchases from required sources of supply under Part 8 (e.g., Federal Prison Industries, Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

- 15. Amend section 19.502-2 by revising the first sentence of paragraph (a) to read as follows:

19.502-2 Total small business set-asides.

(a) Except for those acquisitions set aside for very small business concerns (see Subpart 19.9), each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 (\$15,000 for acquisitions as described in 13.201(g)(1)), but not over \$100,000 (\$250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at 2.101), 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.

* * *

* * * * *

19.805-1 [Amended]

- 16. Amend section 19.805-1 by—
 - a. Adding “or” to the end of paragraph (b)(1);
 - b. Removing “; or” from the end of paragraph (b)(2) and adding a period in its place; and
 - c. Removing paragraph (b)(3).
- 17. Amend section 19.903 by adding the word “or” to the end of paragraph (b)(2); revising paragraph (b)(3); and removing paragraph (b)(4). The revised text reads as follows:

19.903 Applicability.

* * * * *

(b) * * *

(3) Acquisitions of \$15,000 or less 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).

19.1306 [Amended]

■ 18. Amend section 19.1306 by removing paragraph (c).

PART 25—FOREIGN ACQUISITION

■ 19. Amend section 25.1101 by revising the introductory text of paragraph (a)(1) to read as follows:

25.1101 Acquisition of supplies.

* * * * *

(a)(1) Insert the clause at 52.225-1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding \$2,500 (\$15,000 for acquisitions as described in 13.201(g)(1)) but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

* * * * *

■ 20. Amend section 25.1103 by revising paragraph (a) to read as follows:

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225-

13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding \$2,500, \$15,000 for acquisitions as described in 13.201(g)(1), unless an exception applies.

* * * * *

[FR Doc. 04-3690 Filed 2-20-04; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Regulation; Small
Entity Compliance Guide**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition

Circular (FAC) 2001-20 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001-20 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT:

Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact Mr. Gerald Zaffos at (202) 208-6091.

*** Special Emergency Procurement
Authority (FAR Case 2003-022)**

This interim rule amends the FAR to implement Section 1443 of the Services Acquisition Reform Act of 2003 (Pub. L. 108-136). This rule increases the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements of supplies and services to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. Also, the head of the contracting activity carrying out a procurement of supplies or services to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack may treat such supplies or services as a commercial item.

Dated: February 13, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

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