



APR 26 2004

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER, DIRECTOR *Rodney P. Lantier*
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: FAR Case 2003-022, Special Emergency Procurement Authority

Attached are comments received on the subject FAR case published at 69 FR 8312 February 23, 2004. The comment closing date was April 23, 2004.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2003-022-1	02/25/04	02/25/04	Michael Miller
2003-022-2	04/09/04	04/09/04	DLA Nancy Heimbaugh

Attachments

2003-022-1



"Michael Miller"
<mmiller@bmra.com>

02/25/2004 01:31 PM

To: farcase.2003-022@gsa.gov
cc: "Mary Ackerman" <mackerman@bmra.com>, "Cathy Garman"
<cathy@csa-dc.org>
Subject: Comments

Dear all,

Even employing the "commercial item" designation does not relieve contracting officers of having to incorporate the clauses at 52.222-26 and 52.222-36 for any contracts (including "micropurchases") over \$10,000. Recommend that you seek a Governmentwide waiver from the Secretary of Labor from application of these clauses so that the purchase card can be used without having to also issue a purchase order with said clauses.

Also, somehow you ought to address the fact that the Service Contract Act requires clauses in all contracts (including "micropurchases" and commercial items) above \$2,500.

Sincerely

Michael Miller
Vice President
Business Management Research Associates, Inc.

2003-022-2



"Heimbaugh, Nancy
(HQ DLA)"
<Nancy.Heimbaugh@d
la.mil>

To: "Farcase.2003-022@gsa.gov" <Farcase.2003-022@gsa.gov>
cc:
Subject: FW: FAR CASE 2003-022

04/09/2004 01:07 PM

The Defense Logistics Agency (DLA) submits the attached comments in response to the publication of the FAR Interim Rule and FAR Case 2003-022. The DLA point of contact is Mr. Kevin Conneen, 703-767-1472.

Nancy Heimbaugh
Chief, Acquisition Policy Branch
DLA HQ J-3311
703-767-3755
nancy.heimbaugh@dla.mil



FAR Case 2003-022.do

203-022-2

FAR Case 2003-022

The Defense Logistics Agency submits the following comments in response to the publication of the interim rule and FAR Case 2003-022 in the Federal Register on February 23, 2004.

The interim rule states that the threshold for the test program at FAR 13.5 is raised to \$10,000,000 for purchases entered into under the authority of 12.102(f)(1). FAR 12.102(f)(1) states that 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.

Although this guidance, as written, provides a raise in the threshold for acquisitions that facilitate defense against or recovery from nuclear, biological, chemical or radiological attack, it does not provide for the increase for acquisitions in support of contingency operations. Section 1443 of the Defense Authorization Act of 2004 clearly states at Sec 32A(c) INCREASED LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES:

“For a procurement to which this section applies under subsection (a), the \$5,000,000 limitation in the following provision of law shall be deemed to be \$10,000,000:

- (1) Section 31(a)(2) of this Act
- (2) Section 2304(g)(1)(B) of title 10 United States Code
- (3) Section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)).

Subsection (a) is APPLICABILITY-The authorities provided in this section apply with respect to any procurement of property or services by or for an executive agency that, as determined by the head of such executive agency, are to be used—

- (1) In support of a contingency operation: or
- (2) To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.

It is recommended that the interim rule be amended to change FAR 13.5(a) to state the following:

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

203-022-2

(\$10,000,000 for acquisition, as determined by the head of the agency, is to be used in support of a contingency operation, or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.), including options, if the contracting officer reasonable expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items.

Any questions concerning these comments may be addressed to Kevin Conneen at Kevin.Conneen@dla.mil or (703)767-1472.