

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 10, 12, 13, 19, and 25****[FAC 2001–12; FAR Case 2002–026]****RIN 9000–AJ54****Federal Acquisition Regulation;
Procurements for Defense Against or
Recovery From Terrorism or Nuclear,
Biological, Chemical or Radiological
Attack**

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 Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296). Those sections increase the amount of the micro-purchase threshold and, in certain situations, the simplified acquisition threshold and provide streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The Act text covers solicitations issued during the one-year period starting on the date of enactment (November 25, 2002), but the Act does not become effective until 60 days after enactment (January 24, 2003).

DATES: *Effective Date:* January 24, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before March 28, 2003, 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.2002-026@gsa.gov.

Please submit comments only and cite FAC 2001–12, FAR case 2002–026, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS

Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–12, FAR case 2002–026.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule implements Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296)). These provisions, which are set forth in Title VIII, Subtitle F of the Act, provide Federal emergency procurement flexibilities.

Section 852 specifies that the authorities granted in the subtitle apply to acquisitions of supplies or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued before November 25, 2003.

Section 853 increases the simplified acquisition threshold to \$200,000 (\$300,000 for contracts awarded and performed outside the United States) for acquisitions referred to in section 852 that are carried out in support of a humanitarian or peacekeeping operation or a contingency operation. The definition of simplified acquisition threshold in FAR 2.101 has been revised to reflect this change. As further required by section 853, FAR 19.502–2(a) has been amended to increase the small business reservation to mirror these increased thresholds.

Section 854 increases the micro-purchase threshold to \$7,500 for acquisitions referred to in section 852. To implement this change, the rule modifies (1) the definition of micro-purchase threshold at FAR 2.101, (2) guidance on the use of micro-purchase authority at FAR 13.201, and (3) coverage at FAR 19.502–1 addressing the applicability of set-aside requirements.

Section 855 allows agencies to treat acquisitions referred to in section 852 as commercial items and removes the \$5,000,000 limitation for the Test Program for Certain Commercial Items for these acquisitions. FAR 12.102(f), addressing the applicability of commercial item policies, and FAR Subpart 13.5 on the use of the commercial items test authority, have been revised accordingly.

Section 856 provides for the use of streamlined acquisition authorities and procedures authorized by law for a

procurement referred to in section 852 and waives the dollar limitations on sole source 8(a) acquisitions and HUBZone Sole Source awards for these acquisitions. Changes have been made at FAR 19.805–1 and 19.1306.

Section 858 calls for market research on an ongoing basis 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 executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. This requirement is reflected in FAR 10.001.

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.* The Councils prepared an Initial Regulatory Flexibility Analysis (IRFA), and it is summarized as follows:

The increased thresholds are limited to apply to acquisitions of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or 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.

This interim rule does not impose any data collection requirements on small business concerns. The rule does not duplicate, overlap, or conflict with other relevant Federal rules. There are no significant alternatives to the interim rule that would accomplish the stated beneficial objective.

The FAR Secretariat has submitted a copy of the 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 subparts 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 2001–12, FAR Case 2002–026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the