

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 10, 12, 13, 19, and 25****[FAC 2001–16; FAR Cases 2002–026 and 2002–003; Item IV]****RINS 9000–AJ54 and 9000–AJ40****Federal Acquisition Regulation;
Procurements for Defense Against or
Recovery From Terrorism or Nuclear,
Biological, Chemical or Radiological
Attack, and Temporary Emergency
Procurement Authority****AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).**ACTION:** Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement section 836 of the Fiscal Year 2002 National Defense Authorization Act and sections 852 through 856 and section 858 of the Homeland Security Act. Those sections increase the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to 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.

DATES: *Effective Date:* October 1, 2003.

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 Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–16, FAR cases 2002–026 and 2002–003.

SUPPLEMENTARY INFORMATION:**A. Background**

FAR Case 2002–026, Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack. An interim rule implementing sections 852 through 856 and section 858 of the Homeland Security Act (Public Law 107–296) was published in the **Federal Register** at 68 FR 4048, January 27,

2003. The interim rule provided Federal emergency procurement flexibilities by increasing the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements and provided expanded access to streamlined procedures for 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. The special increased thresholds and authorities under the Act apply to acquisitions resulting from solicitations issued before November 25, 2003.

A total of four comments from five commentors was received in response to the interim rule. Two commentors suggested that micropurchases should be subject to the small business reservation. This comment was not accepted.

Micropurchase authority is designed to enable agencies to make purchases in a highly simplified manner, generally without application of provisions and clauses and with minimal application of Government-unique requirements. While agencies should always actively consider the products and services of small businesses, irrespective of the size of the purchase, the Councils believe that imposition of a Government-unique regulatory buying mandate is generally inconsistent with the overall purpose of micropurchase authority. The Councils note that 41 U.S.C. 428(b) states that micro-purchases not be subject to the small business reservation: “(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).”

Two commentors suggested that orders against GSA Schedules be subject to small business set-aside. This comment was not accepted as it was outside the scope of this case.

One commentor suggested that FAR 10.001 be revised to include language from the statute requiring use of commercially available market research methods, including use of commercial databases. This comment was partially accepted and a change was made to FAR 10.002 to add querying commercial databases as a market research technique. The balance of the recommendation was not accepted because the regulation already provides for using various market research methods.

This final rule finalizes the interim rule with the one change addressed above.

FAR Case 2002–003, Temporary Emergency Procurement Authority. This final rule also finalizes the interim rule issued in the **Federal Register** at 67 FR 56116, August 30, 2002, to implement section 836 of the Fiscal Year 2002 National Defense Authorization Act. That interim rule increased the amount of the micropurchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for DoD during Fiscal Years 2002 and 2003, where those procurements are to facilitate the defense against terrorism or biological or chemical attack against the United States. Also, the rule provided that contracting officers acquiring biotechnology supplies or biotechnology services, for use to facilitate the defense against terrorism or biological or chemical attack against the United States, may treat the supplies or services as commercial items. No comments were received in response to that interim rule.

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 rule 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.*, because it affects the pool of acquisitions that are reserved for small businesses. We have prepared a Final Regulatory Flexibility Analysis. The analysis is summarized as follows:

This rule finalizes two interim rules that amend the Federal Acquisition Regulation (FAR) to implement Section 836 of the Fiscal Year 2002 National Defense Authorization Act and Sections 852 through 856 and Section 858 of the Homeland Security Act (Public Law 107–296). Those sections increase the amount of the micro-purchase threshold and the simplified acquisition threshold and provide expanded access to 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 rule affects the pool of acquisitions subject to the small business reservation by raising the threshold for application of the reservation for specified acquisitions to the increased micro-purchase threshold (from \$2,500 to \$7,500/\$15,000) and correspondingly increasing the limitation to the increased simplified acquisition threshold (from \$100,000 to