GSA

APR 4 2003

GSA Office of Governmentwide Policy

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER Rodney P. Lantier
DIRECTOR
REGULATORY SECRETARIAT

SUBJECT: FAR Case 2002-026, Procurements for Defense Against or Recovery from Terrorism or Nuclear, Biological, Chemical or Radiological Attack

Attached are comments received on the subject FAR case published at 68 FR 4048; January 27, 2003.

| Response Number | Date Received | Comment Date | Commenter |
|---|---|---|---|
| 2002-026-1 | 02/02/03 | 02/02/03 | Ashley Lehman |
| 2002-026-2 | 02/13/03 | 02/13/03 | Stephen E. Price |
| 2002-026-3 | 03/12/03 | 03/12/03 | Evelyn Morse |
| 2002-026-4 | 03/22/03 | 03/22/03 | Tony Matthews |
| 2002-026-5 | 03/27/03 | 03/27/03 | AEA |
| 2002-026-6 | 03/28/03 | 03/28/03 | Lockheed Martin |

Attachments

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

2002-026-1
2002-026-1

**"Ashley Lehman"**
**<Ashley.Lehman@gov-acq.com>**

To: farcase.2002-026@gsa.gov
cc: tonym@agminc.com
Subject: farcase.2002-026

02/02/2003 06:34 PM
Please respond to
Ashley.Lehman

While there is no doubt that raising the micropurchase threshold would be helpful to agencies in procuring goods and services more quickly, the implications to small business need to be considered. In the past, the micro-purchase threshold had also allowed agencies to buy up to the dollar limit from any source without considering small business goals (and without reporting these purchases when calculating the percentage of dollars being spent with small business).

Allowing agencies to purchase up to $7,500 under the micropurchase threshold would damage small business unless agencies are again required to purchase ALL items under the simplified acquisitions procedures from small business sources (including those that are from GSA Schedules). In the IT industry, there is no reason to exempt micropurchases or from small business requirements as there are multitudes of companies that can provide the same or better service and turnaround as our large business counterparts.

In addition, the simplified acquisition regulations purport that "all business under $100,000 is set-aside for small business". This is simply not true as items purchased from GSA Schedules are exempt from the small business requirement (regardless of whether there are small business suppliers that could provide the same equipment that also hold a GSA Schedule). Based on the popularity of the GSA Schedule vehicles, raising the threshold to $200,000 only exacerbates the current disregard of small business spending goals.

Please take into consideration how these regulation changes will impact the small businesses that support the US economy before making these changes permanent.

*Ashley J. Lehman*
Vice President, Sales
Government Acquisitions, Inc.
Phone: 513-721-8700, ext. 2102
Fax: 513-721-3999
Cell: 513-225-3904

**ACQUISITION COUNCILS OK NEW BUYING RULES FOR DOMESTIC DEFENSE WARES**

GCN, 1-27-03

The civilian and defense Federal Acquisition Regulation councils today issued

2002-026-1

an interim rule simplifying the way agencies can buy products or services for defense or recovery from terrorist attacks.

The Homeland Security Act of 2002 legislated the changes to the FAR. The new regulations, published in the Federal Register, took effect last week and will last until Nov. 24.

The rule raised the simplified-acquisition threshold, which outlines basic buying procedures for some contracts, to $200,000 from $100,000. The micropurchase threshold, which lets agencies make purchases via credit card directly from vendors, rose to $7,500 from $2,500.

The regulations also let agencies waive two other restrictions: the sole-source threshold of $3 million for contracts to non-manufacturing companies and $5 million for manufacturing companies in the 8(a) and Historically Underutilized Business Zone programs and the $5 million limit on commercial items being developed under test programs.

The General Services Administration will accept comments on the interim rule until March 28. Send them via e-mail to 2002-026@gsa.gov
<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

2002-026-2

**Stephen E. Price**

02/13/2003 07:51 PM

To: farcase.2002-026@gsa.gov
cc: Karen Kopf/TFM/CO/GSA/GOV
Subject: Proposed FAR Changes

I am trying to find details about the proposed interim rule described below. Specifcally, who can use the new rule and under what circumstances. Are there any resources which you can point me to ? - Thx !

Article from GCN:

The civilian and defense Federal Acquisition Regulation councils today issued an interim rule simplifying the way agencies can buy products or services for defense or recovery from terrorist attacks.

The Homeland Security Act of 2002 legislated the changes to the FAR. The new regulations, published in the Federal Register, took effect last week and will last until Nov. 24.

The rule raised the simplified-acquisition threshold, which outlines basic buying procedures for some contracts, to $200,000 from $100,000. The micropurchase threshold, which lets agencies make purchases via credit card directly from vendors, rose to $7,500 from $2,500.

The regulations also let agencies waive two other restrictions: the sole-source threshold of $3 million for contracts to non-manufacturing companies and $5 million for manufacturing companies in the 8(a) and Historically Underutilized Business Zone programs and the $5 million limit on commercial items being developed under test programs.

The General Services Administration will accept comments on the interim rule until March 28. Send them via e-mail to farcase.2002-026@gsa.gov

Regards,

Steve Price
Senior Project Manager, U.S. Army Programs
FEDSIM - The Leader in Large Scale Integration
(703) 306-7547 (V)
(703) 306-7713 (F)

FEDSIM is part of the
Office of IT Solutions within the
Federal Technology Service of the
General Services Administration

2002-026 3

**Laurie A. Duarte**

03/12/2003 11:51 AM

To: farcase.2002-026@gsa.gov
cc:
Subject: Comment forwarded to FAC 2001-12 mailbox

**"Evelyn Morse" <edmorse@bellsouth.net>**

03/12/2003 11:44 AM

To: laurie.duarte@gsa.gov
cc:
Subject: Fw: FAC 2001-12

Ms. Duarte, I am trying to forward a message I sent to the address I had for the FAR case, but it came back undeliverable. I'm taking a chance that your email address is similar to other GSA friends.

----- Original Message -----
**From:** Evelyn Morse
**To:** farcase.2002-02b@gsa.gov
**Sent:** Wednesday, March 12, 2003 10:36 AM
**Subject:** FAC 2001-12

ATTN: Laurie Duarte

Dear Ms. Duarte:

My name is Evelyn Morse and I am an instructor in Federal acquisitions. Since I am the curriculam manager for the Simplified Acquisition Procedures and Advanced Simplified Acquisition Procedures in the company I work for, I am responsible for keeping our manuals up to date. Subject FAC has significant changes that I will include in both courses, however, I am wondering if it would be cost-effective to change the manuals before the final rule is implemented. Also, since these seem to be effective only until November 25, 2003, what is your feeling about the possibility of them being extended? It seems somewhat inefficient to change the manuals for such a brief period although I would certainly pass the information to the students. Also, we include the most current FAR Parts 2, 8, 12 and 13 with each printing of the manuals.

In another matter, could you tell me who to contact about a possible contradiction in the FAR - specifically between FAR 22.1302(b) and 22.1302. The former seems to require submission of the VETS-100 report "except for commercial items or contracts that do no exceed the simplified acquisition threshold.." The latter says they are required if a contractor has received a contract for $25,000 or more.

Any information or assistance you can provide will be greatly appreciated.

Sincerely,

EVELYN MORSE
edmorse@bellsouth.net
864/675-9891

2002-026-4

General Services Administration
FAR Secretariat (MVA)
1800 F Street
NW., Room 4035, and Attn: Ms Laurie Duarte
Washington, DC 20405
3/22/03
FAR case 2002-026

There is no opposition to streamlining procedures for procurement 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.

CompTIA would like to comment on the raising of the Micro-purchase threshold to $7500 from $2500 as exacerbating an already abused acquisition rule. These purchases are typically made with a Federal Credit Card and there is recent evidence (see attached News Release) that small business utilization may actually be decreasing. These purchases are not reserved for small business and can be obtained without competitive quotations. This practice lends itself to abuse and most certainly favors large businesses with both outbound sales and inside telemarketing operations.

The growth of the GSA schedule has enabled small businesses to offer goods and services that are comparable and sometimes better then their large business counterparts. Teaming agreements with IT Distributors such as Comstor, and Promark have broadened the offerings of the small business IT goods and services helping to level the playing field with larger businesses. Government wide contract vehicles that small businesses have sub-contract agreements to offer a wide range of IT goods and services are another source for purchasers to consider. We would like to see FAR 19.502-1 apply to micro-purchases (including the GSA Schedule). Electronic sourcing capabilities today enable agencies to find most goods and services quickly and efficiently from multiple small business sources. It is our contention that GSA schedule offerings, IT teaming agreements and GWAC vehicles using the small business community would satisfy nearly all requested acquisitions.

Increasing the simplified acquisition threshold from $100,000 to $200,000 on the surface seems favorable to the small business community, however because the GSA schedule is exempt from consideration this change actually helps large business at the expense of their small business counterparts. FAR 19.502-2(a) requires that "each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500, but not over $100,000, is automatically reserved exclusively for small business concerns." Yet, FAR 8.404(a) specifically overrules the clear spirit and intent of Congress and the United States as expressed in 19.502-2(a): "Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules."
It is worth considering some statistics, for example, in FY 2000, only 42% (dollar value) of Schedule orders under $25,000 were awarded to small businesses. If 19.502-2(a) were in effect this could amount to as much as $663,000,000 (without consideration for orders under the micro-purchase threshold). If this is the case under $25,000, one can only imagine the dollar amount in the gap between $25,000 and $100,000! This is a clear breach of intent and policy, and has been extremely damaging to small business. This would be less acceptable if Agencies were required

2002-026-4

to publish notices of intent for Schedule buys, naming at least three contractors that the Agency has selected to compete for the order. The public could then "police" the Agency's intent for compliance with FAR 19.502-2(a).

The only exception in FAR 19.502-2(a) is the "rule of two", which provides that requirements valued between $2,500 and $100,000 need not be reserved exclusively for small business if "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." Considering the diversity, sophistication and capabilities of small businesses today, it is inconceivable that more than a few requirements under $100,000 could legitimately satisfy this standard. However, the language at FAR 8.404(b)(2) exists in conflict with 19.502-2(a): " ... ordering offices need not ... synopsize the requirement ... or consider small business programs."

We would like to propose that consideration be given to the following:

Reverse, at least in part, FAR 8.404(a)'s waiver of FAR Part 19, as discussed above, at a minimum requiring that FAR 19.502-2(a), reserving Simplified Acquisitions exclusively for small business, apply to Schedule orders.

Please feel free to call me at 301-948-6099 if you have any questions or would like to discuss the above. Thank you for your consideration and respect of CompTIA and its members.

Sincerely,

Tony Matthews
Manager CompTIA GSA Council

2002 026 5

Advancing the Business of Technology

William T. Archey
President & CEO

March 27, 2003

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

RE: FAC 2002-12, FAR Case 2002-026

Dear FAR Secretariat:

AeA, the nation's largest high-tech trade association, is pleased to submit the following comments in response to FAR Case 2002-12, addressing the requirements of the Homeland Security Act (P.L. 107-296). Our comments are limited to implementation of Section 858 of the Act, Identification of New Entrants Into The Federal Marketplace. Advancing the business of technology, AeA represents more than 3,000 companies with 1.8 million employees. AeA's members span the high-technology spectrum, from software, semiconductors, medical devices and computers to Internet technology, advanced electronics and telecommunications systems and services. AeA has 17 regional U.S. offices, and offices in Brussels and Beijing. AeA has been the accepted voice of the U.S. technology community since 1943.

AeA commends the Administration for supporting the insertion of a market research requirement in the Homeland Security Act. Identifying small businesses and new technology entrants that can meet the requirements of the federal government in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical or radiological attack, is essential for agencies to successfully achieve their mission. Innovative technology solutions are often developed by small commercial companies and new entrants, many of which may not currently be in the federal marketplace or have a presence in the Washington, DC area. P.L. 107-296 requires federal agencies to actively identify these firms to achieve their mission.

601 Pennsylvania Avenue NW, North Building, Suite 600, Washington, D.C. 20004 P 202.682.9110 F 202.682.9111
www.aeanet.org American Electronics Association

Rec'd 3/28/03

0216-5

To further reinforce the importance of this provision, AeA respectfully requests consideration of the following two recommendations.

1. Amend interim regulation in FAR Part 10.001, Policy, to make an explicit reference to the use of commercially available market research methods, including use of commercial databases, to carry out the research. While Part FAR 10.002 contains language related to methods for conducting market research, the specific terms used in P.L. 107-296 send a powerful message on the importance of researching the commercial marketplace for solutions. Our proposal is to add the sentence directly from the law: "The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research."

2. Amend FAR Part 10.002, Procedures, by adding a new paragraph at the end, which includes a reporting requirement by agency heads on the implementation of Sec. 858. These reports should be provided to the Office of Federal Procurement Policy and the Small Business Administration. A summary of these agency reports should be made available to the public upon request to assess the results of the market research requirement contained in the Homeland Security Act. This report would serve as a valuable management tool for the agencies and OMB to ensure proper implementation of the law and its intent. Further, this requirement would be consistent with the President's small business agenda which seeks to promote contract opportunities for small businesses.

The market research provision has the potential to advance the effectiveness of the federal government procurement process by requiring officials to actively seek innovative technology solutions to challenging, new problems faced by the Nation. AeA greatly appreciates the opportunity to provide comments on these regulations and fully supports the Administration's strong leadership on this very important matter.

These comments are submitted on behalf of all AeA members along with the following member companies that have specifically requested to have their firms listed on this letter.

Sincerely,

William T. Archey

026-5

2Contract, Inc.
Accudata Technologies
Acer America Corporation
Adea Solutions Inc.
Aeroflex
AeroVironment Inc.
Agilent Tecnologies, Inc.
Alvaka Networks
Ambient Control Systems, Inc.
Applied Innovative Sciences, Inc.
Applied Technical Services Corporation
ARACOR
BCD Electro, Inc.
BJS Group
BlueArc Corporation
Bravo Technical Resources, inc.
Brooktrout Technology
California Instruments Corp.
CMS PERIPHERALS
Coherent Technologies, Inc.
Comtech Telecommunications Corp.
Conductus, Inc., subsidiary of STI, Inc.
Crane Aerospace & Electronics
Dataskill, Inc.
Datawatch Corporation
Deep Nines, Inc.
Digital Fountain, Inc.
DPAC Technologies Corp.
d-tech Corporation
Dynamic Instruments, Inc.
eeParts, Inc.
EFJ, Inc.
Elpac Electronics, Inc.
EMS Technologies, Inc
Endwave Corporation
Franz Inc.
GeoStats
Grant Thornton, LLP
Harry Sello and Associates
Hirsch Electronics Corporation
i3solutions
ImageWare Systems,Inc.
Inciscent, Inc.
InFocus Corporation

0265

Infosim USA Inc.
Innovax Corporation
Instrumentation Technology Systems
Intelligent Systems Corporation
Interfuse Technology corporation
Intevac, Inc.
Intuit
Irvine Sensors Corporation
IS Squared, Inc.
ISD Corporation
Knightronix, Inc.
Label Vision Systems, Inc
Latitude Communications
MAPICS, Inc.
MAXRAD Inc.
Mobius Management Systems, Inc.
MSS Technologies, Inc.
National Semiconductor
Natoma Technologies, Inc.
nCircle Network Security
NeoMagic Corporation
NetScout Systems, Inc.
Network Guidance Company
Nicheware, Inc.
Nuera Communications
Pixxures, Inc.
POLARFAB
Primero Systems, Inc.
Pulizzi Engineering Inc.
Qsent, Inc.
Quality Contract Manufacturing, LLC
Quantum Magnetics, Inc.
Quicklogic
Rainbow Technologies, Inc.
Rogue Wave Software
Schwabe Williamson & Wyatt, PC
Scientific Technologies, Inc.
Semicoa
Sensors Unlimited, Inc.
Skywire Software
SoftwarePROSe, Inc.
Squaretree Software, Inc
Synergex International Corporation
Tarantella Inc
Target Corporation
TECH10 L.P.
TimeCube Inc

026-5

TimeVision
TLC Staffing
Tone Commander Systems, Inc.
Trillium Software, Inc.
Tripwire
Unify Corporation
Varian Medical Systems
Vari-L Corporation
Vektrex Electronic Systems, Inc.
VisualCalc, Inc.
WebLink Wireless
Xytrans, Inc.
Zebra Technologies Corporation

CC: The Honorable Angela Styles
Administrator
Office of Federal Procurement Policy

The Honorable Tom Sullivan
Chief Counsel for Advocacy
Small Business Administration

Lockheed Martin Corporation
6801 Rockledge Drive Bethesda, MD 20817
Telephone 301·897·6781 Facsimile 301·897·6492
E-mail: tony.dipasquale@lmco.com

2001-026-6

LOCKHEED MARTIN

**Anthony M. DiPasquale**
Vice President
Government Financial Management

March 28, 2003

General Services Administration
FAR Secretariat (MVA)
1800 F Street N.W., Room 4035
Washington, DC 20405

Attn: Laurie Duarte

Subject: FAR Case 2001-026

Dear Ms. Duarte:

Lockheed Martin Corporation (LMC) appreciates the opportunity to comment on the proposed revisions to the Depreciation Cost Principle. In addition, as the industry representative on the Cost Accounting Standards (CAS) Board, my comments reflect industry's perspective regarding CAS in FAR Cost Principles.

***General***

LMC supports Cost Principles streamlining efforts. The proposed changes to the Depreciation Cost Principles are good steps in the right direction. As further improvement, LMC has two classes of suggestions.

1. We should strive to either eliminate CAS in FAR, only use CAS clause references or direct CAS quotes.

2. Following is a specific list of recommended changes.

***Specific Recommendations***

- **31.205-11(a)** In the second sentence, change the word "shall" to "may". Not all contractors use the 10% residual value as a basis for determining its use. For those using something less, the cost principle should allow its use. An alternate suggestion to either reference CAS 409-50(h) or directly quote that clause.

- **31.205-11(a)** Delete last sentence starting with "Depreciation…" The sentence appears to be contradictory to the previous sentence and, in addition, this requirement is already covered in the definition of "depreciation".

- **31.205-11(d)** Delete the entire paragraph. Depreciation, by definition, requires a "cost". If there is no cost there is no depreciation. Comments on rental or use charges are already

covered in Part 45 and should be covered under *31.205.36* Rental Costs, if considered necessary, and not under the Depreciation Cost Principle.

- **31.205-11(f)** Delete the third sentence that begins with "In determining the charge…". The requirements of this sentence are overly prescriptive and instructional. *FAR 31.109* already provides guidance on how to arrive at advance agreements.

- **31.205.11(g)** Change the wording after *31.205.52* to read, "…which prescribe different rules for the allowability of depreciation under business combinations." *FAR 31.205-52* does not necessarily "limit" allowability as stated in the proposed words.

- **31.205-11(i)** Delete third sentence that begins with "Capital leases…". This sentence is redundant to the first and second sentences.

- **31.205-11(i)** Delete fourth sentence that begins with "Operating leases…" and sub-paragraph (1). The subject of this paragraph is Capital Leases. Operating leases and sale and lease back arrangements are covered under *FAR 31.205-36* and need not be repeated in the depreciation cost principle.

- **31.205-11(i)** Delete the fifth sentence that begins with "The standards…". Again, this sentence is repetitive of the first two sentences. Incorporate the "except as follows" at the end of this sentence to the end of the second sentence and include sub paragraph (2) only.

- **31.205-11(j)** Change the second sentence to read: 'However, assets purchased after the effective date of this cost principle shall be depreciated using methods prescribed in this cost principle." The sentence as proposed, requires contractors to change their depreciation methods if different. Existing government contracts are not required to change their practices. It appears that FAR is requiring non CAS covered contractors to follow CAS rules without considering equitable adjustments.

- **31.205-36(a)** Delete the second sentence. This sentence discusses depreciation issues already covered under the Depreciation Cost Principle and need not be repeated under Rental Costs.

LMC believes that the above comments further streamline the proposed Depreciation Cost Principle without modifying the intent and should be considered in the final rule. If there are any questions, please feel free to contract me at… 301-897-6781.

Sincerely,

Anthony M. DiPasquale