52.213-4 [Amended]

■ 13. Amend section 52.213-4 by revising the date of the clause to read ''(JAN 2005)''; and by removing from paragraph (b)(2)(i) of the clause ''(July 1995)'' and adding ''(JAN 2005)'' in its place.

[FR Doc. 04–27634 Filed 12–17–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 13, and 15

[FAC 2001–26; FAR Case 2003–022; Item III]

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: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule published in the **Federal Register** at 69 FR 8312, February 23, 2004, to a final rule with changes. The rule amends the Federal Acquisition Regulation (FAR) to implement the special emergency procurement authorities of Section 1443 of the Services Acquisition Reform Act of 2003 (Pub. L. 108–136, Title XIV, codified at 41 U.S.C. 428a), and section 822 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

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 822 of the Fiscal Year 2005 Defense Authorization Act further increased the threshold amounts for any contract to be awarded and performed, or purchases to be made, outside the United States.

Also, under section 1443, 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:January 19, 2005.

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 2001–26, FAR case 2003–022.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Section 1443 of the Services Acquisition Reform Act of 2003 (SARA) (41 U.S.C. 428a) and section 822 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. 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. Section 822 authorized a higher micro-purchase and simplified acquisition threshold for any contract to be awarded and performed, or purchases to be made, outside the United States, for the same purposes as authorized under section 1443 of SARA.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 69 FR 8312, February 23, 2004. The 60–day comment period for the interim rule ended April 23, 2004. Three comments were received; they are addressed below. Section 822 of the Fiscal Year 2005 Defense Authorization Act was enacted after publication of the interim rule. As a result, this final rule incorporates the increased thresholds provided by section 822.

One commenter recommended that the Councils seek a Governmentwide waiver from the Secretary of Labor from application of FAR clauses 52.222–26, Equal Opportunity, and 52.222–36, Affirmative Action for Workers With Disabilities, so that the purchase card could be used without having to also issue a purchase order with these clauses. The final rule does not adopt this suggestion because the FAR already authorizes the agency head to waive the inclusion of these clauses when deemed to be in the interest of national security (FAR 22.807(a)(1) and 22.1403(b), respectively).

The same commenter suggested that the final rule address the fact that the Service Contract Act requires clauses in all service contracts above $2,500. The final rule does not adopt this suggestion because neither SARA nor the Fiscal Year 2005 Defense Authorization Act suggested that these acquisitions are exempt from statutory requirements.

Another commenter questioned why the interim rule did not include contingency operations in the increased limitation on use of simplified acquisition procedures, as authorized by Section 1443. The final rule has been amended to include the procurement of commercial supplies and services in support of contingency operations in the increased limitation on use of simplified acquisition procedures. However, services and supplies procured in support of a contingency operation must meet the definition of a commercial item in FAR 2.101 for the increased limitation to apply.

This is not a significant regulatory action and, therefore, is 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

This final 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.* However, the increased limitations are limited to procurements that are entered into in support of 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.

This final 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 is no significant alternative to the final rule that would accomplish the stated beneficial objective.

The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) as follows:

1. *Description of the reasons why action by the agency is being considered.* This final rule revises the Federal Acquisition Regulation (FAR) in order to implement

Section 1443 of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a) and section 822 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. 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. Section 822 increases the micro-purchase threshold and simplified acquisition threshold for any contract to be awarded and performed, or purchases to be made, outside the United States.

2. *Succinct statement of the objectives of, and legal basis for, the final rule.* This final rule implements Section 1443 of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a) and section 822 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

3. *Description of, and, where feasible, estimate of the number of small entities to which the final 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 final 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 (41 U.S.C. 428a). Section 822 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 is unlikely to affect small businesses in the United States as it applies outside the United States.

4. *Description of projected reporting, record keeping, and other compliance requirements of the final 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 final rule.

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

6. *Description of any significant alternatives to the final rule, which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the final rule on small entities.* There are no significant alternatives to the final 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 Final Regulatory Flexibility Analysis 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 2001–26, 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.*

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

Government procurement.

Dated: December 9, 2004.

Laura Auletta,

Director, Contract Policy Division.

Interim Rule Adopted as Final With Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 10, 12, 13, 15, 19, and 25 which was published in the **Federal Register** at 69 FR 8312, February 23, 2004, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 2, 12, 13, and 15 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)(2) by revising the definitions ''Micro-purchase threshold'' and ''Simplified acquisition threshold'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

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

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

(2) 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 (41 U.S.C. 428a)—

(i) $15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) $25,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

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 (41 U.S.C. 428a), 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) $1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 3. 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 million ($10 million for acquisitions as described in 13.500(e)), including options, contracting activities shall employ the simplified procedures authorized by Subpart 13.5 to the maximum extent practicable.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 4. 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 million ($10 million for acquisitions as described in 13.500(e)), including options. * * *

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

13.003 Policy.

* * * * *

(c)(1) * * *

(ii) $5 million ($10 million for acquisitions as described in 13.500(e)), including options, for acquisitions of commercial items using Subpart 13.5.

* * * * *

(g) * * *

(2) $5 million ($10 million for acquisitions as described in 13.500(e)),

for commercial items, use any appropriate combination of the procedures in Parts 12, 13, 14, and 15 (see paragraph (d) of this section).

* * * * *

■ 6. Amend section 13.201 by removing ''$15,000.'' from the end of paragraph (g)(1) and adding ''—'' in its place; and adding paragraphs (g)(1)(i) and (g)(1)(ii) to read as follows:

13.201 General.

* * * * *

(g)(1) * * *

(i) $15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) $25,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

■ 7. Amend section 13.303–5 by revising paragraph (b)(2) to read as follows:

13.303–5 Purchases under BPAs.

* * * * *

(b) * * *

(2) The limitation for individual purchases for commercial item acquisitions conducted under Subpart 13.5 is $5 million ($10 million for acquisitions as described in 13.500(e)).

* * * * *

■ 8. Amend section 13.500 by revising the first sentence of paragraph (a); and adding paragraph (e) to read 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 million ($10 million for acquisitions as described in 13.500(e)), 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. * * *

* * * * *

(e) Under 41 U.S.C. 428a, the simplified acquisition procedures authorized by this test program may be used for acquisitions that do not exceed $10 million when—

(1) The acquisition is for commercial items 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 recovery from nuclear, biological, chemical, or radiological attack; or

(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).

■ 9. Amend section 13.501 by revising paragraph (a)(1)(ii) to read as follows:

13.501 Special documentation requirements.

(a) * * *

(1) * * *

(ii) Prepare sole source justifications using the format at 6.303–2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

15.403–1 [Amended]

■ 10. Amend section 15.403–1 in paragraph (c)(3)(ii) by removing ''(Pub. L. 108–136, Sec. 1443)'' and adding ''(41 U.S.C. 428a)'' in its place.

[FR Doc. 04–27635 Filed 12–17–04; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2001–26; FAR Case 2004–010; Item IV]

RIN 9000–AK04

Federal Acquisition Regulation; Notification of Employee Rights Concerning Payment of Union Dues or Fees

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 Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees. The rule requires Government contractors and subcontractors to post notices, in all plants and offices, whether or not used in performing work that supports a Federal contract, informing their employees that under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs. The required notice also advises employees who are not union members that they can object to the use of their union dues for certain purposes.

DATES: *Effective Date*: December 20, 2004.

The Department of Labor's final rule implementing Executive Order 13201 was published on March 29, 2004, with an effective date of April 28, 2004. This rule amending the FAR is the formal notification to contracting officers to insert the Executive Order 13201 clause in covered solicitations issued on or after the effective date of this rule.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before February 18, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2001–26, FAR case 2004–010, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2004–010@gsa.gov*. Include FAC 2001–26, FAR case 2004–010 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2001–26, FAR case 2004–010, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

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. Craig Goral, Procurement Analyst, at (202) 501–3856. Please cite FAC 2001–26, FAR case 2004–010.

SUPPLEMENTARY INFORMATION:

A. Background

On April 13, 1992, President George H. W. Bush issued Executive Order (E.O.) 12800. E.O. 12800 required unionized Federal contractors to post a notice in the workplace that workers are