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Client Question: 41 U.S. Code (USC) 1903(b), amended based on Section 816 of the National Defense Authorization Act (NDAA) for FY 2017, lists special emergency procurement authority increased thresholds for micro-purchases to be \$15,000 for purchases made in the U.S. and \$25,000 for purchases made outside of the U.S. However, the Federal Acquisition Regulation (FAR) lists the emergency micro-purchase thresholds (MPTs) as \$20,000 and \$30,000, respectively, under FAR 2.101. My understanding is that the FAR has not been amended yet to include the changes. We want to issue a FAR deviation to include the changes under 41 USC 1903(b) but want to include the correct threshold amounts.

VAO's Answer: Our research discovered Section 816 of the FY2017 NDAA ([Public Law \(PL\) 114-328](#)) did not change the MPT dollar values, but instead amends [41 USC 1903\(a\)](#) to expand the permissible uses of special emergency procurement authorities and include support of international disaster assistance and support of a national emergency or natural disaster relief efforts in the U.S. as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act:

SEC. 816. AMENDMENTS TO SPECIAL EMERGENCY PROCUREMENT AUTHORITY.

Section 1903(a) of title 41, United States Code, is amended—

- (1) by striking “or” at the end of paragraph (1);
- (2) by striking the period at the end of paragraph (2) and inserting a semicolon; and
- (3) by adding after paragraph (2) the following new paragraphs: “(3) in support of a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate the provision of international disaster assistance pursuant to chapter 9 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2292 et seq.); or “(4) in support of an emergency or major disaster (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)).”.

The definition and thresholds currently found in FAR [FAR 2.101](#) are:

“Micro-purchase threshold” means \$3,500, except it means—

- (1) For acquisitions of construction subject to [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction), \$2,000;
- (2) For acquisitions of services subject to [41 U.S.C. chapter 67](#), Service Contract Labor Standards, \$2,500; and
- (3) 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 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) ([41 U.S.C. 1903](#))—
 - (i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and
 - (ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.



The statute at [41 USC 1903](#) contains the same language regarding permissible uses of special emergency procurement authorities, but reflects lower dollar thresholds:

§1903. Special emergency procurement authority

- (a) Applicability.—The authorities provided in subsections (b) and (c) apply with respect to a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—
 - (1) in support of a contingency operation (as defined in section 101(a) of title 10);
 - (2) to facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack against the United States;
 - (3) in support of a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate the provision of international disaster assistance pursuant to chapter 9 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2292 et seq.); or
 - (4) in support of an emergency or major disaster (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)).
- (b) Increased Thresholds and Limitation.—For a procurement to which this section applies under subsection (a)—
 - (1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—
 - (i) \$15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and
 - (ii) \$25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;
 - (2) the term "simplified acquisition threshold" means—
 - (i) \$750,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and
 - (ii) \$1,500,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States ...

The dollar threshold discrepancy between statute and regulation results from inflation adjustment of acquisition-related thresholds in the FAR. The [final rule](#) for FAR Case 2008-024 (effective October 1, 2010) made the following adjustment:

Amending the definition "Micro-purchase threshold" by removing from paragraph (3)(ii) "\$25,000" and adding "\$30,000" in its place ...

Effective October 1, 2015, the [final rule](#) for FAR Case 2014-022 made the following adjustment:

In the definition "Micro-purchase threshold" by removing from the introductory text "\$3,000" and adding "\$3,500" in its place; and removing from paragraph (3)(i) "\$15,000" and adding "\$20,000" in its place ...

The FY2018 NDAA ([P.L. 115-91](#)) signed by the President December 12, 2017 amends the U.S. Code to reflect the following threshold increases:

SEC. 805. INCREASED SIMPLIFIED ACQUISITION THRESHOLD.

Section 134 of title 41, United States Code, is amended by striking "\$100,000" and inserting "\$250,000".

SEC. 806. REQUIREMENTS RELATED TO THE MICRO-PURCHASE THRESHOLD.

- (a) Increase in Threshold.—Section 1902(a)(1) of title 41, United States Code, is amended by striking "\$3,000" and inserting "\$10,000".
- (b) Convenience Checks.—A convenience check may not be used for an amount in excess of one half of the micro-purchase threshold under section 1902(a) of title 41, United States Code, or a lower amount established by the head of the agency.

On February 16, 2018, the Civilian Agency Acquisition Council (CAAC) published [CAAC Letter 2018-02](#) authorizing civilian agencies to issue a class deviation from the FAR to increase the MPT from \$3,500 to \$10,000, and the simplified acquisition threshold from \$150,000 to \$250,000.



On August 31, 2018 the Department of Defense (DoD) issued [Class Deviation 2018-00018](#) (Micro-Purchase Threshold, Simplified Acquisition Threshold, and Special Emergency Procurement Authority), which rescinds and supersedes a prior class deviation.

Regulatory implementation status from [open FAR cases](#) as of September 10, 2018 are:

FAR Case 2018-004—Increased Micro-Purchase and Simplified Acquisition Thresholds

Implements sections 805, 806, and 1702(a) of the NDAA for FY 2018. Section 805 increases the MPT to \$10,000 and limits use of convenience checks to not more than 1/2 the MPT. Section 805 increases the SAT to \$250,000. Section 1702(a) amends section 15(j)(1) of the Small Business Act (15 U.S.C. 644(j)(1) to replace specific dollar thresholds with the terms "micro-purchase threshold" and "simplified acquisition threshold." Also addresses nonstatutory thresholds that are equal to the MPT or SAT as a matter of policy.

09/06/2018 Office of Information and Regulatory Affairs (OIRA) cleared proposed FAR rule. FAR staff processing.

FAR Case 2017-009—Special Emergency Procurement Authority

Implements section 816 and 1641 of the NDAA for FY 2017 (Pub. L. 114-328). Section 816 amends 41 U.S.C. 1903(a) to add special emergency procurement authority to support requests to facilitate the provision of international disaster assistance pursuant to the Foreign Assistance Act of 1961 (22 U.S.C. 2292 et seq.) and to support emergency or major disaster under the Stafford Act (42 U.S.C. 5122). Section 1641 amends 41 U.S.C. 1903(a)(2) to add special emergency procurement authority to facilitate defense against or recovery from a cyber attack.

08/28/2018 Public comment period ended. Awaiting public comments from FAR SEC.

Conclusion: The NDAA changes the U.S. Code, but does not change the FAR. There are two open cases processing FAR revisions to implement statute into regulation. The CAAC letter allows civilian agencies to authorize a class deviation to implement the changes and the DoD class deviation authorizes contracting officers to use the revised definitions and procedures associated with MPT, simplified acquisition threshold, and special emergency procurement authority.

We hope this information is helpful.

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VAO recommends always consulting the relevant sections of your agency's FAR supplement and your policy department for amplifying details and guidance.

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