REFORMING ACQUISITION REGULATIONS: REVISING DOLLAR THRESHOLDS

Report AL714R2

February 1988

Martin I. Kestenbaum
W. Wayne Wilson

Prepared pursuant to Department of Defense Contract MDA903-85-C-0139. The views expressed here are those of the Logistics Management Institute at the time of issue but not necessarily those of the Department of Defense. Permission to quote or reproduce any part must – except for Government purposes – be obtained from the Logistics Management Institute.

LOGISTICS MANAGEMENT INSTITUTE
6400 Goldsboro Road
Bethesda, Maryland 20817-5886

UNCLASSIFIED

SECURITY CLASSIFICATION OF THIS PAGE

REPORT DOCUMENTATION PAGE

1a. REPORT SECURITY CLASSIFICATION Unclassified	1b RESTRICTIVE MARKINGS
2a. SECURITY CLASSIFICATION AUTHORITY	3. DISTRIBUTION / AVAILABILITY OF REPORT "A" Approved for public release; distribution unlimited.
2b DECLASSIFICATION / DOWNGRADING SCHEDULE	
4. PERFORMING ORGANIZATION REPORT NUMBER(S) LMI-AL714R2	5 MONITORING ORGANIZATION REPORT NUMBER(S)
6a. NAME OF PERFORMING ORGANIZATION Logistics Management Institute 6b. OFFICE SYMBOL *(If applicable)*	7a. NAME OF MONITORING ORGANIZATION
6c ADDRESS *(City, State, and ZIP Code)* 6400 Goldsboro Road Bethesda, Maryland 20817-5886	7b. ADDRESS *(City, State, and ZIP Code)*
8a. NAME OF FUNDING / SPONSORING ORGANIZATION ASD(P&L) 8b. OFFICE SYMBOL *(if applicable)*	9 PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER MDA903-85-C-0139
8c. ADDRESS *(City, State, and ZIP Code)* The Pentagon, Room 3E808 Washington, D.C. 20301-8000	10. SOURCE OF FUNDING NUMBERS PROGRAM ELEMENT NO. / PROJECT NO. / TASK NO / WORK UNIT ACCESSION NO

11. TITLE *(Include Security Classification)*
Reforming Acquisition Regulations: Revising Dollar Thresholds

12. PERSONAL AUTHOR(S)
Martin I. Kestenbaum, W. Wayne Wilson

13a TYPE OF REPORT	13b. TIME COVERED	14. DATE OF REPORT *(Year, Month, Day)*	15 PAGE COUNT
Final	FROM _____ TO _____	February 1988	135

16. SUPPLEMENTARY NOTATION

17. COSATI CODES			18. SUBJECT TERMS *(Continue on reverse if necessary and identify by block number)*
FIELD	GROUP	SUB-GROUP	Thresholds, dollar thresholds, threshold requirements, DFARS thresholds, FAR thresholds, FAR and DFARS thresholds, threshold value, regulatory thresholds, statutory thresholds, dollar limits, regulatory requirements with dollar thresholds

19 ABSTRACT *(Continue on reverse if necessary and identify by block number)*

The Final Report of the President's Blue Ribbon Commission on Defense Management (the Packard Commission) concluded that "the legal regime for defense acquisition is today impossibly cumbersome" and suggested that one cause of the complexity of the acquisition system is too many regulatory requirements pegged to dollar thresholds and at too many dollar levels.

Eliminating Federal Acquisition Regulation (FAR) and DoD FAR Supplement (DFARS) requirements and raising dollar thresholds is an important element of acquisition regulatory reform. This report analyzes the need for 88 dollar thresholds contained in Parts 8, 9, 13, 15, 16, and 36 of the FAR and DFARS. The findings and conclusions are that:

- Sixteen of the thresholds are based on statute. Two of these should be eliminated and three increased. The remainder require review for appropriate action by the Office of Federal Procurement Policy on a Government-wide basis.
- Thirty-five of the thresholds contained in the six DFARS parts are regulatory. Eleven of these could be eliminated and five increased without an unacceptable loss of control.

20 DISTRIBUTION / AVAILABILITY OF ABSTRACT	21 ABSTRACT SECURITY CLASSIFICATION	
☒ UNCLASSIFIED/UNLIMITED ☐ SAME AS RPT ☐ DTIC USERS		
22a. NAME OF RESPONSIBLE INDIVIDUAL	22b TELEPHONE *(Include Area Code)*	22c OFFICE SYMBOL

19. ABSTRACT *(Continued)*

- Thirty-seven of the thresholds contained in the six FAR parts are regulatory. Eleven of these could be eliminated and three increased without an unacceptable loss of control.
- Further study, including cost/benefit analyses, is needed on six thresholds, with the results to guide a recommendation.

The recommendations of the Report are to effect the eliminations and increases in each instance in which we concluded that such could prudently be done, in the furtherance of regulatory reform to reduce workload, shorten the procurement administrative leadtime and provide the contracting officer greater authority.

Executive Summary

REFORMING ACQUISITION REGULATIONS: REVISING DOLLAR THRESHOLDS

Regulatory reform aims at eliminating acquisition requirements that are unnecessary or cost more than they are worth, and simplifying ones that are overly complex. Such requirements can be imposed by statute, the Federal Acquisition Regulation (FAR), or the DoD FAR Supplement (DFARS).

The President's Blue Ribbon Commission on Defense Management (the Packard Commission) suggested in its final report that unnecessary complexity could be attacked by evaluating the 394 FAR and DFARS requirements pegged to 62 different dollar thresholds ranging from $15 up to $100 million. Each requirement specifies some action that the contractor or the Government must take. The higher the thresholds are, the fewer the number of required actions. By deleting some requirements and raising or consolidating some thresholds, it is possible to streamline regulations and reduce compliance burdens without significant loss of Government control.

We make recommendations on 88 requirements imposed in six major parts of the FAR and DFARS. The other 306 remain to be evaluated.

Seventy-two of the 88 are administratively imposed, without a statutory base. We recommend that, of those 72 requirements, 42 be retained unchanged, 15 be eliminated entirely and 8 be retained but with a higher threshold, and that, in 7 cases, the threshold be removed and replaced by guidelines in lieu of dollar values. DoD can make about half of those changes; the other half have a basis in the FAR and require joint action with the Civilian Agency Acquisition Council.

An example of a threshold that could be eliminated entirely can be found in DFARS 36.604, which requires a performance evaluation report for each architect-engineer contract exceeding $10,000. The FAR has the same requirement, but the threshold is set at $25,000. The FAR requirement and threshold should remain, and the DFARS threshold should be removed. An example of a threshold that should be raised is found in DFARS 15.704, which generally excludes items or work efforts

estimated to cost $500,000 or less from DoD review of make-or-buy decisions. The current threshold, which has been in place for at least 10 years, should be raised to at least $1 million to reflect past inflation.

Since 16 of the 88 requirements on which we make recommendations are based in statute, any change to them will require legislative action. We recommend eliminating 2 thresholds, increasing 3, and taking no action regarding the other 11. DoD should work with other concerned agencies and the Congress to make the changes. An example of a statutory threshold that should be raised is that of the Service Contract Act of 1965, which requires wage determinations for service contracts over $2,500. The requirement adds complexity to the acquisition process and can delay the award of a contract by 60 days or more. Such a low threshold is wholly incompatible with the use of simplified procedures to speed and facilitate acquisitions of $25,000 or less and should be raised to at least that level.

Our recommendations are aimed at a balance between prudent controls and efficient operation. Implementing the recommendations that we propose can accelerate the contracting process and reduce workload for both the Government and contractors. At the same time, the Government's risk will remain well within reasonable bounds. Successful implementation will serve as an impetus for further regulatory reform.

CONTENTS

CHAPTER 1

INTRODUCTION

BACKGROUND

Acquisition of material and services by the DoD is an enormous business, and the opportunities for mismanagement are widespread. The Congress and the Executive Branch are well aware of those opportunities and have taken many steps over the years to reduce or eliminate them.

Both the Federal Acquisition Regulation (FAR) and the DoD FAR Supplement (DFARS) are voluminous and embody the rules and regulations that govern each step in the DoD acquisition process. They also impose many dollar limits – we refer to them as thresholds – on actions that individuals can take in specific steps in the process.

Some of those thresholds were imposed by Congress and others by the Executive Branch. Many were carried over from the Federal Procurement Regulations (FPR), the predecessor of the FAR, and the Defense Acquisition Regulation (DAR), the predecessor of the DFARS. All, however, are subject to becoming outdated as time passes and technology changes.

In its June 1986 Final Report, the President's Blue Ribbon Commission on Defense Management (the Packard Commission) stated in part:

> . . . The legal regime for defense acquisition is today impossibly cumbersome. For example, we have identified 394 different regulatory requirements in the Federal Acquisition Regulation (FAR) and the DoD FAR supplement that are pegged to some 62 different dollar thresholds, ranging from as little as $15 to as much as $100 million or more. In our judgment, there can be far fewer of these requirements, and those that are retained can apply at far fewer dollar thresholds. . .

Of the nearly 400 regulatory requirements with dollar thresholds identified by the Packard Commission, approximately 30 percent are imposed by statute, and Congressional action would be needed to modify or eliminate them. The remaining dollar thresholds are nonstatutory and are about evenly split between the FAR and

the DFARS. The nonstatutory FAR thresholds can be modified or eliminated only with the joint approval of the civilian and DoD acquisition regulatory councils; the DFARS thresholds can be modified or eliminated unilaterally by the DAR Council. Changes to both FAR and DFARS are generally subject to formal rulemaking procedures.

Review and change to the thresholds imposed by the FAR and the DFARS are a major part of the DoD regulatory reform process. The current workload of DoD acquisition personnel is imposing and continues to grow, and that extensive workload lengthens the Procurement Administrative Leadtime (PALT) – the time it takes to process a purchase request through to contract award.

OBJECTIVES OF THE STUDY

As one step in a regulatory reform program, OSD has tasked the Logistics Management Institute (LMI) to follow up on the findings of the Packard Commission to determine which FAR and DFARS thresholds are necessary to the acquisition process and which could be changed or eliminated, and to recommend appropriate action:

- To reduce administrative regulatory burden (time and cost)
- To simplify the acquisition process.

Because of the magnitude of this total effort, we limited our initial review to the following six parts of the FAR/DFARS:[1]

- Part 8 – Required Sources of Supplies and Services
- Part 9 – Contractor Qualifications
- Part 13 – Small Purchase and Other Simplified Purchase Procedures
- Part 15 – Contracting by Negotiation
- Part 16 – Types of Contracts
- Part 36 – Construction and Architect-Engineer Contracts.

[1]The FAR parts and the DFARS parts generally coincide; e g , Part 8 of the FAR and Part 8 of the DFARS deal with the same subject.

Those parts were selected because they appeared to have a substantial impact on PALT and workload. The 88 thresholds they specify constitute about 23 percent of the FAR/DFARS total.

We present our findings, conclusions, and recommendations in Chapter 2 in summary form and provide detailed information in the appendices. Appendix A presents our recommended changes in matrix form and Appendix B presents a detailed analysis of all 88 threshold requirements considered.

While our study focuses primarily on dollar thresholds, we also evaluate the need for the requirement that generates the threshold. Thus, we make five general types of recommendations:

- Make no change to the threshold
- Defer a decision on the threshold pending further study
- Increase the threshold value
- Eliminate the threshold and replace it with guidelines
- Eliminate the threshold and the requirement that generates it.

The following examples are provided to clarify the latter two types of recommendations.

Examples of eliminating a threshold and replacing it with guidelines are:

- DFARS 8.7007-4 provides that each Military Interdepartmental Purchase Request (MIPR) shall indicate on its face whether the total MIPR estimate may be exceeded by the purchasing office, and if affirmative, by what amount. The regulation then imposes a constraint upon this procedure by limiting the additional amount to no more than $20,000 or 10 percent of the total estimated MIPR amount, whichever is less. LMI recommends that the dollar constraint (threshold) be eliminated, but the basic provision, the ability to exceed a MIPR estimate by a specified amount, be retained.
- DFARS 16.302-4(a) and (b) provide that the economic price adjustment clauses for standard or semistandard supplies normally be used only when the total contract price is over $5,000. For the same subject, the FAR describes the situations in which the use of an economic price adjustment clause might be appropriate but does not prescribe a threshold. LMI recommends that the DFARS threshold be eliminated, with the result that the FAR would govern. The ability to use the clauses in appropriate situations would be retained.

Examples of eliminating the threshold and also eliminating the requirement are:

- DFARS 36.272 and 36.402(70) prescribe the statutorily imposed requirement that cost-plus-fixed-fee (CPFF) construction and Architect-Engineer (A/E) contracts exceeding $25,000 require Assistant Secretary of Defense (ASD) approval. There are no similar restrictions imposed on cost-reimbursement contracting in other areas. The practical effect of the requirement is either (1) the use of an inappropriate contract type when cost-reimbursement should be used so as to avoid seeking an approval or (2) if approval is sought the extension of the PALT and an inappropriate use of high-level management resources. LMI recommends eliminating the dollar thresholds and any special approval for these classes of contracts.

- FAR 16.207-3(d) permits a fixed-price, level-of-effort term contract only when the contract price is $100,000 or less unless approved by the chief of the contracting office. A fixed-price, level-of-effort, term contract is one of the loosest forms of a "best-efforts" contract; it is similar to a labor-hour or time-and-materials contract but without the close Government surveillance that should typify those contract types. For this and the other reasons specified in the detailed analysis in Appendix B, LMI believes that a time-and-materials or labor-hour contract would be preferable and that there should be no provision for a fixed-price, level-of-effort term contract. Consequently, we recommend the elimination of the threshold and the subject matter by deletion of the entire subpart.

CHAPTER 2

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

OVERVIEW

Only 16 of the 88 threshold requirements in the six parts of the FAR and the DFARS we reviewed are mandated by statute. However, that low number does not adequately measure their impact. The few statutory thresholds have a pervasive effect on the complexity of the acquisition process; we judged that 11 of the 16 statutory thresholds have significant effects on workload or PALT.

While we found a number of the regulatory thresholds to have only a minor impact on the workload and PALT, we found many others that increase either or both. Often the dollar level of the threshold has not been adjusted for inflation over the years, and what was once considered adequate control has become an unnecessary overcontrol because of the relatively low dollar threshold level. Sometimes it appears that a threshold requirement was initiated to solve a one-time perceived problem. While many of the thresholds cause strains on the acquisition process, others are probably routinely ignored – inadvertently in many instances – when there is little perceived benefit to the system by slavishly following them.

Table 2-1 lists the FAR/DFARS parts reviewed and identifies the origin of the dollar thresholds for each part.

Taken collectively, the large number of FAR and DFARS thresholds that have various dollar values are a burden on the acquisition system. They tend to add confusion and greatly increase workload and extend PALT.

Thus, regulatory reform in DoD requires a reduction in the number of dollar thresholds. In changing or eliminating those thresholds, however, DoD must strike a balance between maintaining prudent controls on the acquisition process and eliminating unnecessary hindrances to its efficient operation.

TABLE 2-1

FAR/DFARS PARTS REVIEWED

Part	Description	Number of thresholds	Source of dollar threshold		
			FAR	DFARS	Statute
8	Required sources of supply	9	3	6	
9	Contractor qualifications	1	1		
13	Small purchases	20	9	7	4
15	Contracting by negotiation	22	10	6	6
16	Types of contracts	9	4	5	
36	Construction and A/E	27	10	11	6
Total		88	37	35	16

In recognition of this need, we recommend eliminating 24 thresholds, increasing the dollar value of 11 others, and deferring judgment on 6 until more information is obtained. Seventeen of the 24 recommended threshold eliminations involve the elimination of the requirement itself, while the remaining seven call for replacement of dollar thresholds by guidelines. In subsequent sections of this chapter we present specific recommendations for FAR, DFARS, and statutory threshold changes, and we describe those changes in more detail in Appendix A.

We foresee four types of benefits that can be realized by implementing the recommended changes:

- Acquisition processing workload can be reduced.
- PALT can be shortened.
- Contracting officers (COs) will have greater authority.
- Dollar thresholds will be more rational.

Table 2-2 shows the recommended disposition of the thresholds for the parts reviewed.

In Table 2-3 we provide a summary of the potential benefits that should result if our recommendations are implemented.

TABLE 2-2

RECOMMENDED DISPOSITION OF THRESHOLDS BASED ON PARTS REVIEWED

Source of threshold	Total number of thresholds	Number eliminated	Number increased	Number for further study	Number with no change
FAR	37	11	3	3	20
DFARS	35	11	5	3	16
Total regulatory	72	22	8	6	36
Statutory	16	2	3	0	11

TABLE 2-3

POTENTIAL BENEFITS SUMMARIZED BY PARTS REVIEWED
REGULATORY ONLY

Part	Reduced workload		Shortened PALT		Provide greater CO authority		Establish more rational threshold	
	FAR	DFARS	FAR	DFARS	FAR	DFARS	FAR	DFARS
8				✓				
9	✓		✓					
13	✓	✓	✓					✓
15	✓				✓	✓		✓
16					✓		✓	✓
36	✓	✓			✓	✓	✓	✓

Finally, in Table 2-4, we present our recommendations organized by FAR and DFARS part.

TABLE 2-4

RECOMMENDED DISPOSITION OF DOLLAR THRESHOLDS REVIEWED BY PART

Part	Eliminate			Increase dollar threshold			Further study			No change		
	FAR	DFARS	Statutory	FAR	DFARS	Statutory	FAR	DFARS	Statutory	FAR	DFARS	Statutory
8		1			1		1	2		2	2	
9				1								
13	2	1				3	2	1		5	5	1
15	1	2		2	1					7	3	6
16	3	2			2					1	1	
36	5	5	2		1					5	5	4
Total	11	11	2	3	5	3	3	3		20	16	11

DFARS THRESHOLDS

Of the 88 thresholds reviewed, 35 (40 percent) are imposed by the DFARS, under the sole control of DoD. Those 35 were generally carried over from the DAR. Some are at a lower level than the equivalent FAR threshold, while others control requirements unique to DoD.

Although in theory it should be easier to change or eliminate a DFARS threshold than a FAR threshold, in practice it may be as difficult and time-consuming, depending primarily upon whether the change is controversial or strongly opposed by a DoD element or by the public during the formal rulemaking process. For example, the contracting officer can only require certified cost or pricing data for contracts in excess of $25,000; we recommend that threshold be increased to $100,000. That change may generate opposition even though it is a relatively modest one that merely places the DFARS in agreement with the statutory threshold level.

We found that eliminating DFARS thresholds has less effect on decreasing workload or PALT than similar actions for FAR or statutory thresholds; however, the usefulness of many of the individual DFARS thresholds is questionable, and the cumulative effect of changing many DFARS thresholds would be to streamline the DoD acquisition system substantially.

Many DAR thresholds were incorporated in the DFARS unchanged and have not been adjusted for inflation. In those instances, a dollar threshold at the correct level 10 or 15 years ago is at the wrong level today and should be changed. In Part 36 alone, we found seven examples of such carry-overs. We also found that the following two DFARS thresholds have not been adjusted to reflect the new $25,000 small purchase threshold:

- The DFARS 8.070(g) requirement that planned producers be solicited in all procurements over $10,000 for items for which industrial preparedness agreements have been signed.
- The DFARS 16.501(d) requirement that, when authorizing fast pay procedures for indefinite delivery orders not over $10,000, the special data required by FAR Subpart 13.3 be included in the contract.

Based upon our review and analysis of 35 DFARS thresholds, we conclude that 16 thresholds can be either changed or eliminated without creating an unacceptable loss of DoD control. We recommend that:

- Eleven DFARS thresholds be eliminated:
  - One of these is the requirement that an imprest fund not exceed a $5,000 ceiling. The dollar ceiling of an imprest fund should depend on the activity of the fund and the frequency with which it must be replenished, not on an arbitrary dollar ceiling.
  - Two of these thresholds prescribe levels below which an economic price adjustment clause should not be included in a contract. The FAR coverage on the same subject provides general guidelines that accomplish the same purpose and are more appropriate.
  - Three can be eliminated by requiring that performance reports on *all* construction contracts be established at $500,000.
  - One can be eliminated by establishing the requirement for performance reports for A/E contracts at the FAR-prescribed $25,000 level rather than the DFARS $10,000 level. Optional reporting below this amount would be permitted.
  - *Four other miscellaneous thresholds are identified in* Appendix A.
- Five DFARS regulatory thresholds be increased.
- Three DFARS thresholds be given further study. This study would include canvassing user organizations for their views and performing a cost/ benefit analysis. Typical of these three thresholds is DFARS 13.505-3(b)(1), Standard Form 44 (SF-44), Purchase Order-Invoice-Voucher, which restricts the use of an SF-44 transaction for aviation fuel and oil purchases to $10,000.
- Sixteen thresholds remain unchanged.

FAR THRESHOLDS

Thirty-seven (42 percent) of the 88 threshold requirements reviewed were FAR regulatory thresholds. Changing or eliminating a FAR regulatory threshold can be a time-consuming task. Changes must be approved by both the DAR Council and the Civilian Agency Acquisition (CAA) Council, after consideration by the appropriate standing committees, solicitation and resolution of comments from both defense and civilian agencies, and the procedures of public rulemaking.

A November 1986 LMI report observed that "each FAR case is unique, and the time required to process a case can vary from several weeks to several years."[2] The report described the process as follows:

> Cases involving a change to the FAR must be reviewed and approved by both (DAR and CAA) Councils. Some of these cases require analysis by the DAR Subcouncil as well; most do not.
>
> Cases take a variety of different paths to completion. A simple case may go directly from one Council to the other and then to the FAR Secretariat for publication as a final rule. Another case may start at the DAR Council, proceed to one of several DAR Council committees for analysis, to the CAA Council for revision, and publication as a proposed rule. Public comment is then required. After receipt of comments, the process of reviewing the proposed change starts over.

A procedure is available to accelerate changes to the FAR. Individual agencies can seek a class deviation from a FAR requirement while awaiting completion of the formal process of implementing a permanent FAR change.

We found that the FAR thresholds, in a number of cases, are more current than their DFARS counterparts. Where the FAR had adopted a DAR threshold requirement, the dollar value of the threshold was often increased to make it current.

Our review and analysis of the 37 FAR thresholds in the six parts considered indicate that 14 thresholds can be changed or eliminated without loss of Federal Government control. Thus, we make the following recommendations:

- Eliminate 11 FAR thresholds; none of those thresholds seems critical to the system. Two perpetuate contract types, at low dollar values that should be replaced by time-and-materials or labor-hour contracts. Three others require the submission of performance reports on construction contracts below the FAR norm of $500,000. Three of the thresholds appear to be unnecessary. To illustrate, FAR 36.520 requires that a clause be included in cost-reimbursement construction contracts to require contractors to "reduce to writing" subcontracts greater than $2,000. We can find no reason for that requirement.

- Increase the dollar level of three FAR thresholds. Two of these are permissive thresholds, more instructional in nature than regulatory. As an example, the current FAR discourages, but does not prohibit, a preaward

---

[2]Paul A. Young and Charles W. Cruit. *Speeding Federal Acquisition Regulation Revisions*, November 1986. LMI Report No. AL606R1.

survey for a contract of $25,000 or less. This dollar value seems unreasonably low and could be increased to $100,000 without prohibiting a preaward survey if the contracting officer decides that the costs of the survey are justified by the circumstances.

- Give further study to three FAR thresholds before deciding whether to change or eliminate the threshold. An example is FAR 13.404(a), which restricts the use of imprest funds for small purchases to transactions that do not exceed $500. It seems prudent to examine the size of the universe of transactions above $500, to canvass user organizations for their views, and to attempt a cost/benefit analysis.

STATUTORY THRESHOLDS

Sixteen of the 88 thresholds reviewed are based on statutes, and most have a significant adverse impact on workload and PALT. Requirements contained in statutes are rarely trivial, and those few that do not have a substantial effect on the Government in the acquisition process often have a substantial effect on industry.

Five of the 16 statutory thresholds are required because of the Truth in Negotiations Act, and they involve the same subject matter – certified cost and pricing data. Three others are required by labor standards statutes. Another – the requirement that small purchases be set aside for small business – is found in the Small Business Act. One requires the incorporation of the clause providing for the examination of records by the Comptroller General. The remaining six statutory thresholds involve construction and A/E contracting contained in Part 36 of the FAR/DFARS. One of those six, concerning an insignificant aspect of the selection process for A/E services, reflects the requirement of the Brooks Act; two are restrictions on CPFF contracting; one requiring a notification to Congress prior to the award of large A/E contracts; and the remaining two establish the levels below which A/E acquisitions must be set aside for small business and above which they cannot be set aside.

All are difficult to change as is demonstrated by the number of failed attempts over the years to legislate higher levels. Every statutory threshold has a constituency. Therefore, if increasing a dollar level proves difficult, abolishing even one threshold is virtually impossible without the full support and concurrence of that constituency.

The Truth in Negotiations Act has a substantial effect on the acquisition process, and while the Act does not apply when prices are based on adequate price competition, there are instances where DoD contracting officers apply it to negotiated acquisitions exceeding $100,000 even though exempted. This, in turn, generates a need for field pricing reports, resulting in a substantial lengthening of the PALT. In recognition of this fact, the Deputy Assistant Secretary of Defense (Procurement) [DASD(P)] issued a memorandum dated 1 May 1987 reminding Defense contracting officers that they should not require the submission of contractor cost or pricing data when there is adequate price competition. Five thresholds in Part 15 of the FAR/DFARS are found in the Act and another six are directly related to it. The Act would not affect PALT and workload as much as it does if contracting officers were more exacting in following the intent of the DASD(P)'s memo.

Thresholds required by the various labor standards statutes appear to be unreasonably low. While most of these thresholds are found in Part 22 of the FAR/DFARS (not included in this study effort), we found the following three in Part 13, where the clauses required in Blanket Purchase Agreements are prescribed:

- The Service Contract Act, enacted in 1965, applicable at the $2,500 level
- The Contract Work Hours and Safety Standards Act, enacted in 1962, applicable at the $2,500 level
- The Walsh-Healey Public Contracts Act, enacted in 1936, applicable at the $10,000 level.

These thresholds have not been adjusted for inflation since their enactment. They are well below the current simplified small purchase threshold of $25,000. In particular, the requirements of the Service Contract Act cause substantially more work and extend the PALT in processing small purchases. Under the requirements of the Act and the implementing regulations, the Department of Labor must provide wage determinations if an acquisition exceeding $2,500 requires the employment of "service" employees – a broadly defined term. The contracting office must send a request for wage determinations to the Department of Labor; preparation of that request can be time-consuming, and the Department of Labor can take up to 60 days to reply. Activities this complex and consuming this amount of time are clearly

incompatible with the concept of "simplified purchase procedures" for acquisitions of $25,000 or less.

On the basis of our review and analysis of the statutory thresholds, we recommend that:

- Two thresholds that pertain only to DoD be eliminated; both are unique to construction contracts, and their practical effect is either to cause the use of inappropriate contract type to avoid a lengthy approval cycle or to lengthen PALT.
- Three other thresholds – those imposed by the labor standards statutes – be increased at least to the small purchase level of $25,000. These thresholds are under the purview of the Department of Labor, and it should be asked to seek legislative changes, where appropriate, to raise them.
- The Office of Federal Procurement Policy (OFPP) review the remaining 11 statutory thresholds (69 percent of the total), since their application is Government-wide and their proper threshold levels are not quite as apparent. OFPP was established to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies, and this arguably includes investigating the feasibility of requesting suitable changes to statutorily mandated threshold requirements.

APPENDIX A

SUMMARY OF RECOMMENDED CHANGES ORGANIZED BY REGULATION OR STATUTE

This appendix presents in matrix form our recommended changes to the Federal Acquisition Regulation (FAR), the DoD FAR Supplement (DFARS), and the statutory threshold requirements. The tables show the FAR or DFARS Part and Clause (or the Statute), the current requirement, the current threshold, the recommended action, and the reason for the recommendation. We have tabulated the recommended changes as follows:

- Table A-1: DFARS thresholds to be changed, eliminated, or given further study
- Table A-2: DFARS requirements to be eliminated
- Table A-3: FAR thresholds to be changed, eliminated, or given further study
- Table A-4: FAR requirements to be eliminated
- Table A-5: Statutory thresholds to be changed
- Table A-6: Statutory requirements to be eliminated.

Tables A-1, A-3, and A-5 deal with recommendations for threshold values, the companion Tables A-2, A-4, and A-6 deal with the requirements themselves.

TABLE A-1

DFARS THRESHOLDS TO BE CHANGED, ELIMINATED, OR GIVEN FURTHER STUDY

DFARS	Current requirement	Current threshold	Recommended action	Reason for recommended action
8 7100-1(b)	**8-3** In general, "coordinated procurement commodities" not in excess of $2,500 per line item shall be procured by the requiring department and not by the Military Department to which a commodity assignment has been made	$2,500	Defer decision	Not enough information is available to permit a judgment on this threshold The issue here is cost/benefit, not system control A cost/benefit analysis under the leadership of the Defense Logistics Agency (DLA) could guide a recommendation.
8 7007-4	**8-5** Each Military Interdepartmental Purchase Request (MIPR) shall indicate on its face whether or not the total MIPR estimate may be exceeded by the purchasing office, and if affirmative by what amount The additional amount shall not be more than $20,000, or 10 percent of the total estimated MIPR amount, whichever is less	$20,000	Eliminate the threshold	The ability to place a not-to-exceed range on a MIPR permits an award above the estimate without a time-consuming referral back to the issuing organization for more funds Since the issuing organization controls both the funds and the requirement, it should be permitted to establish the range on each MIPR based on local circumstances without the imposition of a regulatory ceiling
8 470-1	**8-6** Supplies do not have to be procured from General Services Administration (GSA) stock if the order amounts to $25 or less	$25	Defer decision	Not enough information is available to permit a judgment on this threshold although any $25 threshold appears low on its face The issue is a cost/benefit one and a cost/benefit analysis of some sort conducted under the leadership of DLA could guide a recommendation
8 070(g)	**8-8** In connection with industrial preparedness production planning, planned producers will be solicited in all procurements over $10,000 of items for which they have signed industrial preparedness agreements	$10,000	Increase threshold to $25,000	This threshold could reasonably be set at any level, but, balancing fairness to planned producers against efficiency of the acquisition process, raising the threshold level to the $25,000 small-purchase threshold would be appropriate

TABLE A-1

DFARS THRESHOLDS TO BE CHANGED, ELIMINATED, OR GIVEN FURTHER STUDY (Continued)

DFARS	Current requirement	Current threshold	Recommended action	Reason for recommended action
13 402(b)	**13-11** An imprest fund shall not exceed $5,000	$5,000 or less	Eliminate the threshold	This requirement comes from an administrative instruction on the establishment and management of Imprest Funds. The dollar ceiling of an Imprest Fund should depend more on the activity of the fund and the frequency with which it must be replenished rather than being set at an arbitrary ceiling. Appropriate guidelines and internal controls should be established to assure proper control over the operation of the fund. The threshold ceiling therefore is unnecessary.
13 505 3(b)(1)	**13-12** Aviation fuel and oil purchases on Standard Form 44 (SF-44) will not exceed $10,000	$10,000 or less	Defer decision	This is an exception from the FAR 13 505-3(b) limitation of $2,500 for an SF-44 transaction. Not enough information is available to permit a judgment on this threshold. A study under the leadership of DLA, with user input, would be appropriate, with the conclusions of the study used as guidance for the retention or change of this threshold.
15 704	**15-17** Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000	Under $500,000	Increase threshold to $1,000,000	The $500,000-or-less threshold for specific items or work efforts that would not be included in a make-or-buy program has been in the regulations for at least 10 years. It should be adjusted for inflation to $1,000,000 to bring it to a more reasonable level.

TABLE A-1

DFARS THRESHOLDS TO BE CHANGED, ELIMINATED, OR GIVEN FURTHER STUDY (Continued)

DFARS	Current requirement	Current threshold	Recommended action	Reason for recommended action
15 872	**15-19** A special capital investment incentive clause may be negotiated and included in contracts for research, development, and/or production of weapon systems or material. Capital assets that may be covered by such a clause include only severable industrial plant equipment and other types of severable plant equipment with unit values in excess of $10,000	$10,000	Eliminate the threshold	The DFARS provides that, in some instances, industrial modernization incentives may be negotiated and included in contracts. The purpose is to motivate the contractor to invest in facilities modernization and to undertake related productivity improvement efforts it would not have otherwise undertaken, or to invest earlier than it otherwise would have done. As a subset of this general topic, the DFARS provides for "Contractor Investment Protection," which would become operative if the contract or program is terminated or funds are not provided in subsequent fiscal years for the planned acquisition upon which the investment decision is based. This may permit the Government to acquire specific capital investments at no more than the undepreciated value, but only if they are severable industrial plant equipment and other types of severable plant equipments with unit values in excess of $10,000. Approval for use of this investment incentive must be obtained at high levels within the Military Departments. Because of the complexity of the subject matter, decisions on the value of severable plant equipment to be covered by an investment incentive should be made on a case-by-case basis. Accordingly, we recommend that the dollar threshold be eliminated

TABLE A-1

DFARS THRESHOLDS TO BE CHANGED, ELIMINATED, OR GIVEN FURTHER STUDY (Continued)

DFARS	Current requirement	Current threshold	Recommended action	Reason for recommended action
16 301-2	**16-2** While cost-reimbursement contracts are particularly useful for procurements involving substantial amounts, e g , estimated cost of $100,000 or more, the parties may agree in a given case to use this type of contract to cover transactions in which the estimated costs are less tha n $100,000	Less than $100,000	Increase threshold to $250,000	This is a permissive threshold, more in the nature of guidance as to when an acquisition can be considered too low in dollar value to be appropriate for a cost-reimbursement contract The proper threshold level is somewhat subjective, but it is clear that at some point in the dollar spectrum, a cost-reimbursement contract is relatively too cumbersome to administer economically The recommended level of $250,000 does not prohibit the award of cost-reimbursement contracts of lesser amounts but suggests for these smaller acquisitions, a labor-hour or time-and-materials contract may be the better vehicle
16 203-(4)(a) and (b)	**16-3** The economic price adjustment clauses for standard or semi-standard supplies, FAR 52 216-2, or FAR 52 216-3, should normally be used only when the total contract price is over $5,000	$5,000	Eliminate the thresholds	An economic price adjustment provision is generally considered as an extraordinary provision to protect the contracting parties (generally the contractor) from significant, unforeseeable cost fluctuations In practice they are used infrequently and reluctantly FAR requires that the provision not be used unless the contracting officer determines that it is necessary to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices This threshold requirement seems too low and if the FAR guidance is followed, is unnecessary Rather than establish any threshold, it is more appropriate to let the individual situation and the judgment of the contracting officer govern
16 203 4(c)(1)	**16-4** Use of an economic price adjustment clause with adjustments based on actual material and labor cost should be limited to contracts with prices that exceed $50 000	$50,000	Eliminate the threshold	Same comments as for **16-3**

TABLE A-1

DFARS THRESHOLDS TO BE CHANGED, ELIMINATED, OR GIVEN FURTHER STUDY (Continued)

DFARS	Current requirement	Current threshold	Recommended action	Reason for recommended action
16.501(d)	**16-7** When authorizing fast pay procedures for indefinite delivery orders not over $10,000, the special data required by FAR Subpart 13.3 shall be included in the contract	$10,000 or less	Increase threshold to $25,000	This threshold requirement is not a requirement at all but a somewhat gratuitous reminder that when fast pay procedures are authorized for indefinite-delivery orders, the FAR rules concerning contract requirements must be followed. Retention of the requirement is appropriate, but the threshold should be raised to $25,000 to be consistent with the FAR
36.201(c)(1)(iii)	**36-11** Copies of performance reports for construction contracts over $200,000 shall be sent to the Chief of Engineers	$200,000	Increase threshold to $500,000	This DFARS threshold simply sets a level for central submission and national distribution of performance reports on construction contracts. Increasing this level to $500,000 is consistent with the recommendation to standardize these reports at the $500,000 level

TABLE A-2

DFARS REQUIREMENTS TO BE ELIMINATED

DFARS	Current requirement	Current threshold	Recommended action	Reason for recommended action
15 871(d)	**15-21** In procurements of $100,000 or over the contracting officer, after agreeing on a price, will adjust estimated prices in block 26 of DD Form 1423 to equal the amount negotiated for the data items	$100,000	Eliminate the threshold and the requirement	This is a requirement for specific file documentation of the estimated cost of data The requirement appears to be unnecessary and can be made instructional rather than regulatory, with no loss of control and greater authority to the contracting officers
36 201(a)(1)(70)	**36-8** Contracting officer shall prepare a performance evaluation report for each construction contract exceeding $10,000 where any element of performance was either unsatisfactory or outstanding	$10,000	Eliminate the threshold and the requirement	This DFARS requirement lowers the FAR threshold from $100,000 to $10,000, where a report on the performance on a construction contract is required if any element of performance was either unsatisfactory or outstanding The recommendation, in parallel with a recommendation to eliminate a similar FAR threshold requirement, would eliminate the DFARS requirement and standardize the performance reporting level at $500,000
36 604	**36-13** A performance evaluation report shall be prepared for each Architect-Engineering (A/E) contract exceeding $10,000	$10,000	Eliminate the threshold in favor of FAR threshold of $25,000	This DFARS threshold lowers the FAR threshold for preparation of a performance report for each A/E contract from $25,000 to $10,000 This seems too low a figure The recommendation is to delete this threshold and let the FAR govern

TABLE A-2

DFARS REQUIREMENTS TO BE ELIMINATED (Continued)

DFARS	Current requirement	Current threshold	Recommended action	Reason for recommended action
36 206	**36-17** Clause 52 212-5, Liquidated Damages-Construction, is required in all construction contracts in excess of $25,000 except cost-plus-fixed-fee contracts or those where a contractor cannot control the pace of the work	$25,000	Eliminate the threshold, making use of the clause permissive	This threshold requirement mandates the use of a liquidated damages clause in all construction contracts expected to exceed $25,000 Liquidated damages are customary in Federal construction contracts, and this requirement reflects the custom While both Government and industry are conditioned to the automatic inclusion of liquidated damage provisions in these contracts, they may increase construction prices in some instances FAR provides the use of liquidated damages in construction contracts as permissive This seems more appropriate than making it mandatory The recommendation would eliminate the DFARS threshold and requirement in favor of the FAR coverage, thus providing the contracting officer with the authority to include the clause or omit it depending upon the particular situation
36 602-1(70)	**36-24** A/E evaluation criteria should be established in advance for contracts expected to exceed $2,500	$2,500	Eliminate the threshold and the requirement	No need for this threshold requirement is apparent Establishing evaluation criteria in advance of conducting an evaluation of qualifications seems axiomatic at any dollar level Couple this with the fact that there will be very few A/E contracts valued less than $2,500 and the threshold appears both inappropriate and meaningless
36 605(a)	**36-25** Independent Government estimate of A/E services shall be prepared if contract or modification is expected to exceed $10,000	$10,000	Eliminate the threshold in favor of FAR threshold of $25,000	This DFARS requirement lowers the FAR threshold for the same requirement from $25,000 to $10,000 As a practical matter, some sort of estimate will be made on any A/E requirement, if only to commit funds and process a purchase request If an issue exists, it would be the degree of detail in estimating work below the small-purchase threshold The FAR threshold of $25,000 seems reasonable, and no apparent benefit accrues from lowering it to $10,000 in the DFARS

TABLE A-3

FAR THRESHOLDS TO BE CHANGED, ELIMINATED, OR GIVEN FURTHER STUDY

FAR	Current requirement	Current threshold	Recommended action	Reason for recommended action
8 606(e)	**8-7** Supplies listed in the "Schedule of Products made in Federal Penal and Correctional Institutions" may be purchased elsewhere without clearance from Federal Prison Industries, Inc., if the total cost of the order is $25 or less and delivery is to be made within 10 days	$25	Defer decision	Not enough information is available to permit a judgment on this threshold, although any $25 threshold appears low on its face While cost versus benefit is the issue here, perhaps an arbitrary increase, agreeable to the Federal Prison Industries, Inc , would be a satisfactory means for correcting a low threshold
9 106-1(a)	**9-1** A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility However, if the contemplated contract (1) will be for $25,000 or less or (2) will have a fixed price of less than $100,000 and will involve commercial products only, the contracting officer should not request a preaward survey unless circumstances justify its cost.	$25,000/$100,000 or less	Increase threshold to $100,000	This threshold requires the contracting officer to consider the cost/benefit aspects of a preaward survey prior to low-dollar-value awards An increase of the $25,000 level to $100,000 will not prohibit a preaward survey below that amount but will require thoughtful consideration before one is requested
13 404(a)	**13-13** Imprest funds may be used for small purchases when the transaction does not exceed $500	$500 or less	Defer decision	This threshold may be changed by an agency head To do so, however, requires a substantial amount of additional information, most important of which would be a cost/benefit analysis The conclusions of the analysis should provide guidance as to whether the threshold should be changed and if so, to what dollar level
13 505-3(b)(1)	**13-14** The SF-44 is limited to purchases not over $2,500, except for purchases made under unusual or compelling urgency Agencies may set higher limits for specific activities or items	$2,500 or less	Defer decision	This threshold can be changed within DoD for specific activities or items, as it has been to permit SF-44 purchases up to $10,000 for aviation fuel and oil Significant additional research is needed before recommendations could be made This research should include user input and a cost/benefit analysis

TABLE A-3

FAR THRESHOLDS TO BE CHANGED, ELIMINATED, OR GIVEN FURTHER STUDY (Continued)

FAR	Current requirement	Current threshold	Recommended action	Reason for recommended action
15 804-2(a)(2)	**15-5** Certified cost or pricing data may be obtained on actions over $25,000 and not in excess of $100,000	$25,000 to $100,000	Eliminate the threshold	The Truth in Negotiations Act requires the contracting officer to obtain certified cost or pricing data under certain circumstances for pricing actions greater than $100,000. This is a related, permissive threshold requirement, allowing the contracting officer to obtain certified cost or pricing data below that level (but not below $25,000). In practice, the permission gains nothing for the Government. Certification of cost or pricing data is only of significance if there is an intention and an ability to subsequently determine that the cost or pricing data was or was not accurate. For acquisitions costing less than $100,000, it is unlikely that a field pricing report would be requested, and this is the primary tool in determining the accuracy of cost or pricing data. If the permissive threshold is not of benefit to the contracting officer, it should be eliminated, and this is the recommendation. The recommendation in **15-6** would prohibit requesting certification of cost or pricing data below the $100,000 level, so that certified cost or pricing data would always be required above that level (unless exempted) and never below it (unless a FAR deviation were obtained).
15 804-2(a)(2)	**15-6** The contracting officer shall not require certified cost or pricing data on contracts of $25,000 or less	$25,000 or less	Increase threshold to $100,000	This regulation prohibits requiring certified cost or pricing data below the small purchase threshold. Because of the reasons stated in **15-5**, the recommendation is to raise this threshold to $100,000. If in exceptional circumstances, certification of cost or pricing data below the $100,000 threshold were considered to be necessary, a FAR deviation could be processed.

TABLE A-3

FAR THRESHOLDS TO BE CHANGED, ELIMINATED, OR GIVEN FURTHER STUDY (Continued)

FAR	Current requirement	Current threshold	Recommended action	*Reason for recommended action*
15 703(a) & (b)	**15-16** Make-or-buy programs are required, with some exceptions, for negotiated acquisitions with an estimated value of $2 million or more (A make-or-buy program may also be required for acquisitions estimated to cost under $2,000,000)	$2,000,000	Increase threshold to $5,000,000	The $2 million level is too low to routinely require a make-or-buy program Without prohibiting a contracting officer from requiring this information below the threshold level, $5 million is a more reasonable level This increase could be made on a 1-year test basis to determine whether the $5 million level is appropriate During this test period the contracting officer could request a make-or-buy program below the threshold level if he or she needed to do that
16 601(b)(3)(i)	**16-5** A contractor may charge commercially sold material on a time-and-materials contract at other than cost if the total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price	$25,000	Eliminate the threshold	This threshold requirement affords an alternative method for pricing commercial materials on a time-and-materials contract This alternative method of pricing is a reasonable one that should not be limited to the threshold level Elimination of the threshold will provide greater pricing flexibility for this category of contracts and will result in greater fairness to industry

TABLE A-4

FAR REQUIREMENTS TO BE ELIMINATED

FAR	Current requirement	Current threshold	Recommended action	Reason for recommended action
13 106(b)(2)	**13-16** Written solicitations shall be used for construction contracts over $2,000	$2,000	Eliminate the threshold and the requirement	While construction projects are generally more complex in their description than commodities, there seems to be no reason why this class of solicitations should be singled out for this threshold requirement. The threshold is not particularly harmful to the acquisition process, but it is unnecessary and for that reason it should be eliminated
13 103(b)	**13-18** Small purchase procedures shall not be used in acquiring supplies and services initially estimated to exceed the small-purchase limitation even though resulting awards do not exceed that limit	$25,000 or less	Eliminate the threshold and the requirement	This situation occurs when a solicitation, either competitive or noncompetitive, is started under the belief that the resulting contract will exceed $25,000 and it is later found that the resulting contract will be less than that amount. There seems to be no reason why, at the point where it becomes known that the resulting contract will be $25,000 or less, the contracting officer should not then use small-purchase procedures if that is preferable under the circumstances. This threshold has outlasted any usefulness that it might once have had. Its elimination will provide the contracting officer greater authority and will reduce PALT in some instances

TABLE A-4

FAR REQUIREMENTS TO BE ELIMINATED (Continued)

FAR	Current requirement	Current threshold	Recommended action	*Reason for recommended action*
16 207-3(d)	**16-1** A fixed-price, level-of-effort term contract may be used only when the contract price is $100,000 or less, unless approved by the chief of the contracting office	$100,000 or less	Eliminate the threshold and the subject matter by deleting the section	This is one of four limitations on the award of this type of contract. Serious problems with a fixed-price, level-of-effort, term contract account for the severe restrictions on its use, including this one limiting the size of the contract to $100,000 without special approval. Labor-hour or time-and-materials contracts should be able to fill the same contractual need with better control. The recommendation is to delete the entire subject matter and eliminate the fixed-price, level-of-effort, term as an acceptable contract form
16 206-3(a)	**16-8** Fixed-ceiling-price contracts with retroactive price redetermination shall not be used unless the contract is for R&D and estimated cost is $100,000 or less	$100,000 or less	Eliminate the threshold and the entire FAR Section 16 206	This contract type provides for a review of actual costs after completion of performance and a potential redetermination of contract price downward if the costs were found to have been less than expected. This contract type was all but eliminated as an acceptable type in the mid-1960s, with only this limited application remaining. Other contract types, such as labor-hour, time-and-materials or even fixed-price, are preferable contract types at the $100,000 and below level. The recommendation is to eliminate a fixed-ceiling-price contract with retroactive price redetermination as an acceptable contract type

TABLE A-4

FAR REQUIREMENTS TO BE ELIMINATED (Continued)

FAR	Current requirement	Current threshold	Recommended action	Reason for recommended action
36 520 and 52 236-20	**36-1** Under cost-reimbursement construction contracts, contractor must reduce to writing its subcontracts over $2,000, and other requirements	$2,000	Eliminate the threshold and the requirement	This threshold requires the insertion of a clause in cost-reimbursement construction contracts. One of the provisions of the clause is that the contractor must reduce to writing its subcontracts over $2,000. The origin and need for this clause and the $2,000 threshold are not apparent. Other types of contracts have no equivalent requirement. If the provision is needed in construction contracts, it is needed in all construction contracts, but it is only prescribed for cost-reimbursement construction contracts. On the other hand, if it is needed in the contracts because they are cost-reimbursement, it is needed in cost-reimbursement contracts for other than construction, but it is not required for them. The provision appears to serve no useful purpose. For this and other reasons described in detail in the individual analysis contained in Appendix B, we recommend the entire requirement be deleted as unnecessary

TABLE A-4

FAR REQUIREMENTS TO BE ELIMINATED (Continued)

FAR	Current requirement	Current threshold	Recommended action	Reason for recommended action
36 201(a)(1)(ii)	**36-7** Contracting activity shall prepare a performance report for each construction contract exceeding $100,000 where any element of performance was either unsatisfactory or outstanding	$100,000	Eliminate the threshold and the requirement	The customary $500,000 threshold for preparing a report of performance on construction contracts is lowered in other FAR and DFARS threshold requirements for several special circumstances In this threshold, the FAR requirement is lowered to a $100,000 reporting level if any element of performance was either unsatisfactory or outstanding Presumably this requirement is intended to add to the information available for subsequent responsibility determinations of the contractor In practice, the responsibility determination is not going to be affected if the contractor satisfactorily completed a contract (albeit with an outstanding or unsatisfactory element of performance), is able to submit performance and payment bonds, and is the low bidder for another contract Thus, there appears to be inadequate benefit from requiring this lower reporting level The affect of this recommendation is to increase performance reporting for this class of cases to $500,000
36 201(a)(1)(iii)	**36-9** Contracting activity shall prepare a performance report for each construction contract over $10,000 terminated for default	$10,000	Eliminate the threshold and the requirement	This FAR threshold requires a report to be prepared of the performance on a construction contract at or above the $10,000 level if the contract was terminated for default The recommendation for this threshold requirement is to eliminate it A report at the $500,000 level would still be required by FAR 36 201(a)(1)(i) A contractor terminated for default is going to have a difficult time obtaining performance and payment bonds As a consequence, the company will not likely be a bidder on future construction projects and the question of responsibility will rarely arise

TABLE A-4

FAR REQUIREMENTS TO BE ELIMINATED (Continued)

FAR	Current requirement	*Current threshold*	*Recommended action*	Reason for recommended action
36 201(a)(1)(iv)	**36-10** Contracting activity shall prepare a report for each construction contract over $100,000 if the contract was terminated for convenience	$100,000	Eliminate the threshold and the requirement	This FAR threshold requires a report on the performance on a construction contract at the $100,000 level if the contract was terminated for the convenience of the Government The termination of a contract for the convenience of the Government does not reflect adversely on the performance by the contractor and there is no discernable reason why the reporting level in this class of cases should be lower than at the customary $500,000 threshold We recommend the threshold and the requirement be deleted The customary FAR $500,000 level would apply to this class of contracts
36 501	**36-16** Contracting Officer will insert FAR clause 52 236 1, "Performance of Work by the Contractor," if cost of construction is expected to exceed $1,000,000 The clause may be used in contracts of lesser amounts	$1,000,000	Eliminate the threshold and make use of the clause permissive	This threshold requirement mandates the inclusion of a clause in construction contracts estimated to exceed $1,000,000 The clause is designed to "assure adequate interest in and supervision of all work involved in large projects" by requiring the contractor to perform a significant part of the contract work with its own employees This mandated clause has been in the regulations for a number of years, and its benefits are questionable An adequate interest in the work should be assured by the success or failure of the company to which the contract is awarded and the performance bond it was required to submit The recommendation would make this an optional clause, to be used at the discretion of the contracting officer based upon the individual acquisition situation

TABLE A-5

STATUTORY THRESHOLDS TO BE CHANGED

Statute	Requirement	Current thresholds	Recommended threshold	Reason for recommended change
41 USC 351 [DFARS 13 203-2(a)(1)(ii)]	**13-7** If a Blanket Purchase Agreement is for the purchase of services covered by the Service Contract Act, FAR Clause 52 222-41 shall be substituted for clause 15 of the general provisions and the procedures in FAR 22 1005 complied with, unless the aggregate total value will be $2,500 or less.	$2,500	Request DOL to seek legislative increase to at least $25,000	The purpose of this threshold requirement is to insert into the general provisions of a Blanket Purchase Agreement, the proper Service Contract Act provisions at the $2,500 threshold required by the Act. This threshold level has not been changed since the enactment of the Act in 1965 despite the affects of inflation since that time. The Department of Labor (DOL) should be requested to seek an increase to at least the $25,000 small-purchase threshold
41 USC 35 [DFARS 13 203-2 (a) (1) (iii)]	**13-8** When a Blanket Purchase Agreement is intended for the purchase of supplies, FAR clause 52 222-20, Walsh-Healey Public Contracts Act, shall be added, unless the agreement limits the aggregate total dollars of orders thereunder to $10,000.	$10,000	Request DOL to seek legislative increase to at least $25,000	The purpose of this threshold requirement is to insert into the general provisions of a Blanket Purchase Agreement the Walsh-Healey Public Contracts Act provisions at the $10,000 level required by the Act. This threshold level has not been changed since the enactment of the Act in 1936 despite the affects of inflation since that time. DOL should be requested to seek an increase to at least the $25,000 small purchase threshold
40 USC 327-333 [DFARS 13 203-2 (a)(1)(i)]	**13-9** A Blanket Purchase Agreement will include the Contract Work Hours and Safety Standards Act - Overtime Compensation clause, FAR 52 222-4, unless the aggregate of orders will be $2,500 or less.	$2,500	Request DOL to increase the threshold to $25,000	The purpose of this threshold requirement is to insert into the general provisions of a Blanket Purchase Agreement, the provisions of the Contract Work Hours and Safety Standards Act at the $2,500 level required by the Act. This threshold level has not been changed since the enactment of the Act in 1963 despite the affects of inflation since that time. DOL should be requested to seek an increase to at least the $25,000 small-purchase threshold

TABLE A-6

STATUTORY REQUIREMENTS TO BE ELIMINATED

Statute	Requirement	Current thresholds	Recommended threshold	Reason for recommended change
Annual military const approp acts (DFARS 36 272)	**36-2** Cost-plus-fixed-fee construction contracts exceeding $25,000 to be performed in the United States require Assistant Secretary of Defense (ASD) approval	$25,000	Eliminate the threshold and the requirement	This threshold is required by statute. This required approval level for cost-reimbursement contracting is unique to construction and A/E contracts. The practical effect of the requirement is either to cause the use of an inappropriate contract type when cost-reimbursement should be used, in order to avoid seeking the approval, or an extension of the PALT if approval is sought, and an inappropriate use of high-level management resources. Efforts should be made to have the requirement eliminated from the annual appropriation act, where it now routinely appears each year.
Annual military const approp acts [DFARS 36 402(70)(3)]	**36-3** Cost-plus-fixed-fee A/E contracts exceeding $25,000 to be performed in the United States require ASD approval	$25,000	Eliminate the threshold and the requirement	Identical comments as for **36-2**.

APPENDIX B

DETAILED ANALYSIS OF THRESHOLDS ORGANIZED BY FAR AND DFARS PART

This appendix presents summary information on each of the 88 threshold requirements (expressed in dollar limits) we reviewed from the FAR and the DFARS Parts 8, 9, 13, 15, 16, and 36.

For each threshold requirement, we present the following information:

- A succinct statement of the dollar threshold.
- A reference to the FAR or DFARS section in which the threshold appears.
- The application or citation of the wording of the FAR or DFARS section that imposes the threshold. Where the FAR or DFARS wording is terse, that wording is used as the threshold statement.
- A brief analysis of the efficacy of the threshold level established by the FAR or the DFARS.
- Our recommendation for the specific threshold; we offer one of the following five recommendations:
  - Make no change
  - Eliminate the threshold
  - Eliminate the threshold and replace it with guidelines
  - Increase the threshold
  - Defer any decision pending further study.
- A short statement of the overall effect that implementation of our recommendation would have.

THRESHOLD REQUIREMENT 8-1

With specified exceptions, OSD concurrence in a plan to remove an item from a Federal Supply Schedule is not needed if reported sales amount to less than $1,000 per year.

Reference: DFARS 8.404-71(a)

Application: DFARS 8.404-71 Establishment or Revision of Federal Supply Schedules Mandatory Upon DoD.

> (a) Policy. The Administrator of General Services Administration has agreed that the concurrence of the Office of the Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense, or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense, or making any other changes in such Schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than $1,000 per year, except where –
>
> (1) the item is a part or accessory incidental to a basic item;
>
> (2) the item is a component of a unit assembly;
>
> (3) the item has a demonstrated need to fill out a range of colors, sizes or other characteristics; or
>
> (4) the item involves a contract for services.

Analysis: At the threshold of $1,000 or more, the General Services Administration (GSA) is required to obtain OSD concurrence before it removes a low-demand item from a Federal Supply Schedule. This threshold imposes no burden upon DoD. It does protect DoD supply sources by permitting OSD to concur in the removal of items of supply from a Schedule. Any initiative to raise this threshold would properly be made by GSA, which is the agency incurring the workload.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 8-2

The ordering office shall justify any orders over $500 per line item against a multiple-award Federal Supply Schedule placed at other than the lowest price.

Reference: FAR 8.405-1(a)

Application: FAR 8.405-1 Ordering from multiple-award schedules.

When ordering from multiple-award schedules, ordering offices shall use the procedures set forth below. When these procedures are followed, orders placed against schedules will result in the lowest overall cost alternative to meet the needs of the Government.

(a) Orders should be placed with the schedule contractor offering the lowest delivered price available. However, the ordering office shall fully justify in their contract file, any orders over $500 per line item placed at other than the lowest price. Justification for ordering a higher priced item may be based on such considerations as –

(1) Delivery time in terms of actual need that cannot be met by a contractor offering a lower price;

(2) Specific or unusual requirements such as differences in performance characteristics;

(3) Compatibility with existing equipment or systems;

(4) Trade-in considerations that favor a higher priced item and produce the lowest net cost; and

(5) Special features of one item not provided by comparable items that are required in effective program performance.

(b) When two or more items at the same delivered price will meet an ordering office's needs, the ordering office shall give preference to the items of small business and/or labor surplus area concerns by following the order of priority in 14.407-6 for equal low bids.

(c) When a schedule lists both foreign and domestic items that will meet the ordering office's needs, the ordering office shall apply the procedures of Part 25, Foreign Acquisition.

(d) If an item available from a multiple-award schedule is ordered from the schedule contractor at a price lower than the schedule price, the ordering office shall notify the schedule contracting office within 10 days.

Analysis: This threshold requirement can be placed at any reasonable level. The issue is the dollar level that will balance (1) the need to

purchase at the lowest obtainable prices wherever possible against (2) the efficiency of the process. The current $500 threshold is a reasonable level to accomplish this.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 8-3

In general, "coordinated procurement commodities" not in excess of $2,500 per line item shall be procured by the requiring department and not by the Military Department to which a commodity assignment has been made.

Reference: DFARS 8.7100-1(b)

Application: DFARS 8.7100-1 Exclusions – Military Department assignments [Except Defense Logisitcs Agency (DLA].

General exclusions to applicability of commodity assignments made to a Military Department (except Defense Logistics Agency) are:

(a) Emergency procurements, as determined by the Requiring Department;

(b) Procurements not in excess of $2,500 per line item;

(c) Procurements of items authorized for local purchase, pursuant to mutual agreement between the assignee and the other users;

(d) Items in a research and development stage; and

(e) Item subject to rapid design changes, or to continuous redesign or modification during the production or operational use phases which necessitate continual contact between industry and technical personnel of the requiring service to ensure that the item procured is exactly that which is required.

Analysis: We do not have enough information to judge the value of this threshold. The issue here is one of cost versus benefit, not system control. A cost/benefit analysis under the leadership of DLA could guide a recommendation.

Recommend: Defer a decision until a follow-on study is conducted.

THRESHOLD REQUIREMENT 8-4

Contracting offices may make acquisitions not in excess of $10,000 by oral orders from Federal Supply Schedule contractors.

Reference: DFARS 8.405-2(70)(1)

Application: DFARS 8.405-2 Order placement.

DD Form 1155 is authorized for use to place orders against Federal Supply Schedules.

(70) Oral orders not to exceed $10,000.

(1) General. Contracting offices are authorized to make acquisitions not in excess of $10,000 by oral orders from Federal Supply Schedule contractors. Ordering activities shall obtain an agreement from the contractor that for each shipment under an oral order the contractor will furnish a delivery ticket, in the number of copies required by each purchasing office, which shall contain the following information:

(i) Contract number;

(ii) Order number under the contract;

(iii) Date of order;

(iv) Name and title of the person placing order;

(v) Itemized listing of supplies or services furnished; and

(vi) Date of delivery or shipment.

(2) Payment. Optional methods of invoicing are permissible. An individual invoice accompanied by a receipted copy of the related delivery ticket may be submitted for payment. Alternatively, a summarized monthly invoice covering all oral orders made during the month, accompanied by a receipted copy of each delivery ticket or a statement by the contracting officer that the supplies have been received by the Government, may be submitted for payment.

Analysis: This threshold requirement authorizes the placement of oral orders – not in excess of $10,000 – against Federal Supply Schedules. DFARS does not direct that oral orders be confirmed in writing, and the regulation describes an invoicing and receiving report procedure that does not require a written order. The ability to issue oral orders provides contracting officers with a high degree of needed authority. It also results in shortened Procurement

Acquisition Leadtimes (PALTs) and decreased workload. The threshold is considered to be at the maximum acceptable level given the need to maintain control over the procurement process.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 8-5

Each Military Interdepartmental Purchase Request (MIPR) shall indicate on its face whether or not the total MIPR estimate may be exceeded by the purchasing office, and if affirmative by what amount. The additional amount shall not be more than $20,000, or 10 percent of the total estimated MIPR amount, whichever is less.

Reference: DFARS 8.7007-4.

Application: As stated in the threshold requirement.

Analysis: The ability to place a not-to-exceed range on a MIPR permits an award above the estimate without a time-consuming referral back to the issuing organization for more funds. Since the issuing organization controls both the funds and the requirement, it should be permitted to establish this range on each MIPR based on local circumstances, without the imposition of a regulatory ceiling.

Recommend: Eliminate the threshold by deleting the last sentence of DFARS 8.7007-4.

Overall Impact: Elimination of this threshold permits the requisitioning organizations to make judgments on how to control commitments and obligations on MIPRs, and how to preserve the ability to make decisions on the worth of supplies or services that are proposed at an unexpectedly high estimate without unnecessarily lengthening the PALT. Whether the estimated cost of a MIPR can be exceeded and the amount of any permitted excess, will vary with the needs of the issuing organization and the specific circumstances surrounding the item(s) being purchased. By eliminating the threshold, DoD will give the issuing organization the ability to shorten PALT on these MIPRs when that is consistent with proper program management.

THRESHOLD REQUIREMENT 8-6

Supplies do not have to be procured from GSA stock if the order amounts to $25 or less.

Reference: DFARS 8.470-1

Application: As stated in threshold requirement.

Analysis: We do not have enough information to make a judgment on the value of this threshold although a $25 threshold in any case appears low on its face. The issue is a cost/benefit one, and a cost/benefit analysis conducted under the leadership of DLA could guide a recommendation.

Recommend: Defer a decision until a follow-on study is conducted.

THRESHOLD REQUIREMENT 8-7

Supplies listed in the "Schedule of Products Made in Federal Penal and Correctional Institutions" may be purchased elsewhere without clearance from Federal Prison Industries, Inc., if the total cost of the order is $25 or less and delivery is to be made within 10 days.

Reference: FAR 8.606(e)

Application: As stated in threshold requirement.

Analysis: We do not have enough information to judge the value of this threshold although the effects of inflation make any $25 threshold appear low. The issue on the proper level of this FAR threshold is a cost/benefit one, but since the cost/benefit question affects all Federal agencies on the one hand and the Federal Prison Industries, Inc., on the other, a cost/benefit analysis would be particularly complicated and time-consuming. A study, led by DLA, is appropriate to determine whether this threshold causes a workload or PALT problem, but before too much effort is consumed in that study, it might be possible to reach an agreement with Federal Prison Industries, Inc., to raise the threshold to some arbitrary, acceptable level. This agreement could be negotiated solely between DoD and Federal Prison Industries, Inc., leading to a class deviation for DoD from this FAR threshold requirement.

Recommend: Defer a decision until a follow-on study is conducted or until an agreement is reached with Federal Prison Industries, Inc..

THRESHOLD REQUIREMENT 8-8

In connection with industrial preparedness production planning, planned producers will be solicited in all procurements over $10,000 of items for which they have signed industrial preparedness agreements.

Reference: DFARS 8.070(g)

Application: As stated in the threshold requirement.

Analysis: To balance fairness to planned producers against efficiency in the acquisition process, DoD should raise this threshold level to the $25,000 threshold level for small purchases.

Recommend: Increase the threshold to $25,000.

Overall Impact: Sets the threshold at a level consistent with the simplified small-purchase threshold. Should result in decreased workload and PALT.

THRESHOLD REQUIREMENT 8-9

FAR Clause 52.208-1, Required Sources for Jewel Bearings and Related Items, is not to be inserted in small purchases under Part 13.

Reference: FAR 8.203-(1)(a)(1)

Application: As stated in the threshold requirement.

Analysis: In general, Government contractors are required by FAR Clause 52.208-1 to purchase any needed jewel bearings from the Government-owned William Langer Plant or, if possible, from domestic manufacturers if the William Langer Plant declines the order. This threshold eliminates that jewel bearing purchase requirement for small purchases below the $25,000 level, and thus expedites the acquisition process.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 9-1

A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility of prospective contractors. However, if the contemplated contract (1) will be for $25,000 or less or (2) will have a fixed price of less than $100,000 and will involve commercial products only, the contracting officer should not request a preaward survey unless circumstances justify its cost.

Reference: FAR 9.106-1(a)

Application: As stated in the threshold requirement.

Analysis: It is crucial that contracts be denied to firms that, upon investigation, appear not able to provide the supplies or services as required. Awarding contracts to firms that are not responsible – that lack the capacity or the financial resources to perform – creates lengthy delays in obtaining the supplies or services contracted for and also creates the potential for costly litigation if the contract is ultimately terminated for cause.

A preaward survey is often the critical piece of information that a contracting officer needs to determine whether a low bidder or offeror is responsible. If a firm, not known to the contracting officer, submits a bid or proposal that is the most favorable to the Government, the contracting officer needs specific information about that firm: such information as the extent of its facilities, the skills of its key personnel, its history of contract performance, its financial resources, and its current backlog of work.

The current threshold requirement specifies when a preaward survey is required, but properly cautions that there is a cost/benefit issue as well. The FAR sets this cost/benefit threshold at $25,000 or $100,000 for commercial products. The $25,000 figure seems low. If $100,000 is a reasonable number for some products, it should be a reasonable number for all, particularly since the contracting officer is not prohibited from seeking a preaward survey below this number, but is only cautioned to be sure that it is necessary.

Recommend: Change $25,000 to $100,000.

Overall Impact: Raising the threshold to a more reasonable level will conserve both Government and contractor personnel resources, reduce PALT, and increase contracting officer authority. It will not prohibit a preaward survey below the threshold level, but will require thoughtful consideration before one is requested.

THRESHOLD REQUIREMENT 13-1

If a supplier's receipt for cash payment is not obtained for purchases of $15 or less, the imprest fund cashier shall complete the cash receipt document and have the person receiving the funds sign it.

Reference: DFARS 13.405(d)(1)

Application: As stated in the threshold requirement.

Analysis: This threshold permits payment by a self-certification procedure of amounts under $15 by an imprest fund cashier even though the person requesting payment did not obtain a receipt. The $15 threshold could reasonably be set anywhere under $50. However, requiring a Government employee to obtain a receipt for cash purchases should be basic and failure to require such receipts invites abuses of the process. This threshold has nothing to do with either workload or PALT and could remain unchanged with no detrimental effect on the procurement system.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 13-2

If a separate form is used to document the reasonableness of a price of a small purchase over $2,500, DD Form 1784 shall be used.

Reference: DFARS 13.106(c)
Assistant Secretary of Defense (Production and Logistics) [ASD(P&L)] Class Deviation dated 6/4/87

Application: As stated in the threshold requirement.

Analysis: This threshold standardizes pricing memoranda for small purchases on a one-page DD Form 1784. The DFARS previously required that Form 1784 be used above the $1,000 level, but that threshold was raised to $2,500 by the Class Deviation issued by ASD(P&L).

Standardization of the form on which to record an abbreviated price justification should assist the purchasing agent since the form leads the agent through the questions to be answered. It also facilitates reviews by supervisors and auditors since they can focus upon a common form filled out the same way by all purchasing agents. Completing the form does not increase workload nor extend PALT since a price justification is required whether or not the form is used to record it.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 13-3

Each contracting office shall maintain a small purchase source list for purchases over $2,500.

Reference: FAR 13.106(b)(4)
ASD(P&L) Class Deviation dated 6/4/87

Application: As stated in the threshold requirement.

Analysis: This and a number of related thresholds were raised from $1,000 to $2,500 by the 6/4/87 Class Deviation by ASD(P&L). The small-purchase source list, which includes information as to whether a source is small, small disadvantaged, and/or certified in a labor surplus area, is intended to ensure that small business concerns are given opportunities to submit quotations in response to small-purchase solicitations. Such a list should be developed and maintained by contracting offices whether or not it was required by regulation.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 13-4

FAR provides instructions for a determination of the reasonableness of a price of a small purchase over $2,500.

Reference: FAR 13.106(c)
ASD(P&L) Class Deviation dated 6/4/87

Application: The FAR instructions on a determination of reasonableness of price for a small purchase are comprehensive. FAR instructs that a determination that a proposed price is reasonable should be based on competitive quotations but that if there is not a competitive situation, a statement shall be included in the file giving the basis of the determination that the price is fair and reasonable. FAR describes the content of the determination.

Analysis: A requirement that reasonableness of price be justified is basic to the purchasing function. The FAR threshold for a determination of reasonableness was raised for DoD from $1,000 to $2,500 level by the 6/4/87 Class Deviation issued by ASD(P&L). This requirement is implemented in DoD by DFARS 13.106(c), which prescribes DD Form 1784 as the form upon which to document price reasonableness. A justification of price reasonableness causes the purchasing agent to take time to reduce the rationale to writing and perhaps also to do some research to prepare the justification. However, it is so basic to the purchasing function that any modest increase in PALT is justifiable.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 13-5

Encourage display in a public place of written Request for Quotations (RFQs) valued in excess of $5,000 and which provide at least 10 days for submission of quotes.

Reference: DFARS 13.106(b)

Application: This requirement is in the nature of a suggestion that even though a solicitation is not required to be posted in a public place, if a written RFQ is prepared for purchases in excess of $5,000, posting it would be beneficial.

Analysis: This is a permissive threshold, suggesting an action that helps the private sector learn of Government requirements. It does not require any additional work on the part of the purchasing agent, except the physical posting of an RFQ that had to be prepared anyway. The result can only enhance competition.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 13-6

Each acquisition of supplies or services that has an anticipated value of $25,000 or less shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased.

Reference: FAR 13.105(a)
15 U.S.C. 644(j)

Application: As stated in the threshold requirement, this is an automatic small business set-aside for all procurements below the small purchase threshold.

Analysis: This threshold is a requirement of statute – the Small Business Act. It is a reasonable requirement from the perspective of the small business program and it carries with it a relief from the set-aside if two or more competing proposals from small businesses are not obtained. This requirement can increase PALT in those instances where small business suppliers are not known and the purchasing agent must attempt to find small businesses willing to submit proposals, or to substantiate for the file that no small business proposals could be obtained.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 13-7

If a Blanket Purchase Agreement is for the purchase of services covered by the Service Contract Act, FAR Clause 52.222-41 shall be substituted for Clause 15 of the general provisions and the procedures in FAR 22.1005 complied with, unless the aggregate total value will be $2,500 or less.

Reference: DFARS 13.203-2(a)(1)(ii)
41 U.S.C. 351

Application: The general provisions referred to in the threshold requirement are a part of DD Form 1155r. The purpose of the threshold requirement is to insert into the general provisions the proper Service Contract Act provisions at the $2,500 threshold required by the Act.

Analysis: This is a statutory requirement dating from 1965. Because of the age of the statute and the effects of inflation, the threshold is, by almost any standard, unreasonably low. Under the requirements of the Act and the implementing regulations, the Department of Labor must provide wage determinations if an acquisition exceeding $2,500 will require the employment of "service" employees – a broadly defined term. The contracting office must send to the Department of Labor a request for wage determinations. Preparation of the request can be time-consuming and the Department of Labor can take up to 60 days to reply. Activities of this complexity and consuming this amount of time are clearly incompatible with the concept of "simplified purchase procedures" below the $25,000 level. It is likely that the Service Contract Act requirements are often inadvertently omitted from small purchases where they should be included. When the Service Contract Act procedures are followed, the PALT for the affected small purchases is increased inordinately. Although recent attempts to raise the threshold to a substantially higher level have not been successful, an attempt should be made to raise it to at least the small-purchase threshold.

Recommend: The Department of Labor should be requested to attempt to obtain legislative relief that would provide a more realistic threshold. The minimum acceptable threshold would be $25,000 to conform to the small-purchase threshold.

Overall Impact: This change will reduce contracting office workload and shorten PALT.

THRESHOLD REQUIREMENT 13-8

When a Blanket Purchase Agreement is intended for the purchase of supplies, FAR Clause 52.222-20, Walsh-Healey Public Contracts Act, shall be added, unless the agreement limits the aggregate total dollars of orders thereunder to $10,000.

Reference: DFARS 13.203-2(a)(1)(iii)
41 U.S.C. 35

Application: This requirement specifies the insertion of a clause to comply with the Walsh-Healey Act in the specified situation.

Analysis: This is a statutory requirement. Inflation has made the threshold, which has not been changed since 1936, unrealistically low.

Recommend: The Department of Labor should be requested to seek a threshold change to the Walsh-Healey Act at least to $25,000 to conform to the small-purchase threshold.

Overall Impact: Eliminating the Walsh-Healey requirements from small purchases would simplify many purchase orders and provide a more reasonable threshold.

THRESHOLD REQUIREMENT 13-9

A Blanket Purchase Agreement will include the Contract Work Hours and Safety Standards Act – Overtime Compensation clause, FAR 52.222-4, unless the aggregate of orders will be $2,500 or less.

Reference: DFARS 13.203-2(a)(1)(i)
40 U.S.C. 327-333

Application: This clause must be inserted in Blanket Purchase Agreements over $2,500 in compliance with the Contract Work Hours and Safety Standards Act and implementing regulations issued by the Secretary of Labor.

Analysis: The $2,500 threshold was established by the Secretary of Labor in implementing this 1962 statute.

Recommend: The Department of Labor should be requested to increase the threshold to $25,000, consistent with the small-purchase threshold.

Overall Impact: Eliminating Contract Work Hours and Safety Standards Act requirements from small purchases would simplify many purchase orders and provide a more reasonable threshold.

THRESHOLD REQUIREMENT 13-10

The clauses authorized in DFARS 13.505-2(73)(1) as mandatory for use in purchases over $10,000 shall be included in Blanket Purchase Agreements that permit individual calls of more than $10,000.

Reference: DFARS 13.203-2(a)(1)

Application: As stated in the threshold requirement.

Analysis: This requirement is intended merely as a cross-reference to the DFARS 13.203-2(a)(1) requirement to ensure that the specified clauses are included in this class of contracts (Blanket Purchase Agreements).

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 13-11

An imprest fund shall not exceed $5,000.

Reference: DFARS 13.402(b)

Application: This requirement emanates from an administrative instruction concerning the establishment and management of imprest funds.

Analysis: The dollar ceiling of an Imprest Fund should depend more on the activity of the fund and the frequency with which it must be replenished rather than being set at an arbitrary ceiling of $5,000. Appropriate guidelines and internal controls should be established to assure proper control over the operation of the fund. Instructions on the size of an imprest fund would seem to more properly be placed in Accounting Manuals than in Acquisition Regulations.

Recommend: This threshold should be eliminated, and in its place, guidelines should be set out, either in DFARS or in the appropriate Accounting Manual, for the proper size of an imprest fund.

Overall Impact: *Elimination of this threshold and its replacement with guidelines* would permit a more rational and responsive imprest fund system.

THRESHOLD REQUIREMENT 13-12

Aviation fuel and oil purchases on Standard Form (SF) 44 will not exceed $10,000.

Reference: DFARS 13.505-3(b)(1)

Application: As stated in the threshold requirement.

Analysis: This is an exception from the FAR 13-505-3(b) limitation of $2,500 for an SF-44 transaction. We do not have enough information to permit a judgment on this threshold. A study under the leadership of DLA, with user input, would be appropriate, with the conclusions of the study used as guidance for the retention of or change to this threshold.

Recommend: Defer a decision until a follow-on study is conducted.

THRESHOLD REQUIREMENT 13-13

Imprest funds may be used for small purchases when the transaction does not exceed $500.

Reference: FAR 13.404(a)

Application: As stated in the threshold requirement.

Analysis: This threshold may be changed by an agency head. To do so, however, requires a substantial amount of additional information, most important of which would be a cost/benefit analysis. The conclusions of the analysis should provide guidance as to whether the threshold should be changed and if so, to what dollar level.

Recommend: Defer a decision until a follow-on study is conducted.

THRESHOLD REQUIREMENT 13-14

The SF-44 is limited to purchases not over $2,500, except for purchases made under unusual and compelling urgency. Agencies may set higher limits for specific activities or items.

Reference: FAR 13.505-3(b)(1)

Application: As stated in the threshold requirement.

Analysis: This threshold can be changed within DoD for specific activities or items, as it has been to permit SF-44 purchases up to $10,000 for aviation fuel and oil. Significant additional research is needed before recommendations can be made. This research should include user input and a cost/benefit analysis.

Recommend: Defer a decision until a follow-on study is conducted.

THRESHOLD REQUIREMENT 13-15

A Blanket Purchase Agreement may not be used when a call exceeds $25,000, except the dollar value for Blanket Purchase Agreement calls for subsistence is unlimited, subject to requirements of Part 6 on competition.

Reference: DFARS 13.204(b)
ASD(P&L) Class Deviation dated 6/4/87

Application: As stated in the Threshold Requirement

Analysis: A Blanket Purchase Agreement is a simplified method under which small purchases are made. Orders in excess of $25,000, the small purchase limitation, are prohibited by the terms of the Agreement; such orders must be formal, bilateral contracts.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 13-16

Written solicitations shall be used for construction contracts over $2,000.

Reference: FAR 13.106(b)(2)

Application: FAR 13.106(b)(2) reads as follows:

> (b) Purchases over $1,000. (1) Contracting officers shall solicit quotations from a reasonable number of sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the Government, price and other factors considered, including the administrative cost of the purchase. Solicitations may only be limited to one source if the contracting officer determines that only one source is reasonably available.
>
> (2) Generally, quotations should be solicited orally except that written solicitations shall be used for construction contracts over $2,000. Written solicitations should be used when obtaining oral quotations is not considered economical or practical.

Analysis: While descriptions of construction projects are generally more complex than those of commodities, we can find no reason why this class of solicitations should be singled out for a threshold above which they must be in writing.

If this threshold were deleted, the admonition that "written solicitations should be used when obtaining oral quotations is not considered economical or practical" would remain as a guideline. The contracting officer would be responsible for doing whatever is sensible under the circumstances.

Recommend: Eliminate the threshold by deleting the phrase from FAR 13.106(b)(2) "except that written solicitations shall be used for construction contracts over $2,000."

Overall Impact: Elimination of this threshold would reduce contracting officer workload, increase contracting officer authority, and reduce PALT.

THRESHOLD REQUIREMENT 13-17

Fast pay procedures should be used when individual orders do not exceed $25,000 (but agencies may establish higher limitations for specified activities or commodities).

Reference: FAR 13.302(a)

Application: As stated in the threshold requirement.

Analysis: The $25,000 threshold is consistent with the small-purchase threshold, below which all purchases must be set aside for small businesses, the organizations most in need of fast pay procedures. Thus this threshold is logical and should be retained at that level.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 13-18

Small purchase procedures shall not be used in acquiring supplies or services initially estimated to exceed the small-purchase limitation even though resulting awards do not exceed that limit.

Reference: FAR 13.103(b)

Application: The situation described in the threshold requirement is one in which a solicitation, either competitive or noncompetitive, is commenced when it is believed that the resulting contract will exceed $25,000 and it is later found that the resulting contract will be less than that amount.

Analysis: We could not determine the historical basis for this requirement, which has been in the procurement regulations for a very long time. Contracts over $25,000 must be signed by both parties and must contain all clauses required for a contract above the small-purchase threshold. Contracts $25,000 or under will generally be signed only by the Government and will contain fewer clauses than for contracts over $25,000.

At the point at which the contracting officer realizes that the resulting contract will be $25,000 or less, the contracting officer should be given the option to use small purchase procedures if he/she prefers or to continue under formal contracting procedures.

Recommend: Eliminate the threshold and delete the requirement.

Overall Impact: This action will result in a decrease in the PALT in the limited number of cases in which the situation applies, a deletion of an unneeded threshold, and greater authority for the contracting officer.

THRESHOLD REQUIREMENTS 13-19 and 13-20

13-19 Purchases of $2,500 or less may be made without securing competitive quotations if the contracting officer considers the prices to be reasonable.

13-20 For purchases over $2,500, quotations shall be solicited from at least three sources within the trade area.

Reference: FAR 13.106(a)
FAR 13.106(b)(1)(3) and (5)
ASD(P&L) Class Deviation of 6/4/87

Application: As stated in the threshold requirements.

Analysis: Until issuance of the 6/4/87 Class Deviation by ASD(P&L) these thresholds were set at $1,000. The Class Deviation for these two thresholds includes a 1-year test period. Data will be collected and reviewed and a decision made within the 1-year period as to whether the thresholds should be permanently raised.

Recommend: Make no change to these two thresholds pending the results of the 1-year test.

THRESHOLD REQUIREMENT 15-1

The contracting officer must require the contractor to submit cost or pricing data and certify to its accuracy, currency, and completeness on negotiated contracts expected to exceed $100,000. There are exceptions.

Reference: FAR 15.804-2(a)(1)(i)
10 U.S.C. 2306(f)

Application: Submission of certified cost or pricing data is required above the $100,000 threshold. Under some circumstances contractors and prospective contractors are exempt from this requirement; the two most significant circumstances are acquisitions with (1) prices based on adequate competition and (2) prices based on established catalog or market prices of commercial items.

Analysis: This statutory requirement is imposed by the Truth in Negotiations Act. While this threshold is too low and the acquisition process would benefit if it were increased, Congress is unlikely to entertain a request to raise the threshold of a requirement that seems to protect the Government from the effects of inaccurate cost or pricing data submitted by contractors or prospective contractors.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENTS 15-2, 15-3, AND 15-4

15-2 If the difference between the catalog or market price of an item and the total contract price of a substantially similar item exceeds $100,000, the contracting officer shall require submission of cost or pricing data unless exemption or waiver is granted.

15-3 Exemption from submission of cost or pricing data, when the total exceeds $100,000 and more than one catalog item for which exemption is claimed exceeds $25,000, will be claimed on SF-1412, one for each item over $25,000.

15-4 Except when subcontracts are exempted, any contractor required to submit cost or pricing data also will obtain cost or pricing data and certification on any subcontract, purchase order, or modification expected to exceed $100,000.

Reference: FAR 15.804-3(c)(7)
FAR 15.804-3(e)
FAR 15.806(b)
10 U.S.C. 2306(a)

Analysis: Threshold Requirements 15-2 and 15-4 are statutory requirements imposed by the Truth in Negotiations Act, which requires the submission of certified cost or pricing data by prospective contractors, prospective subcontractors, contractors, and subcontractors under specified circumstances above the $100,000 threshold. Threshold Requirement 15-3 provides a procedure to claim an exemption from the submission requirement pursuant to one of the exemptions contained in the Act. It is unlikely that Congress would entertain a request to raise the threshold level of a requirement that seems to protect the Government from the effects of inaccurate cost or pricing data upon which the Government relied in negotiating contract prices.

Recommend: Make no changes in the thresholds.

THRESHOLD REQUIREMENTS 15-5 AND 15-6

15-5 Certified cost or pricing data may be obtained on actions over $25,000 and not in excess of $100,000.

15-6 The contracting officer shall not require certified cost or pricing data on contracts of $25,000 or less.

Reference: FAR 15.804-2(a)(2)

Application: As stated in the threshold requirements.

Analysis: The Truth in Negotiations Act requires the contracting officer to obtain certified cost or pricing data under certain circumstances for pricing actions greater than $100,000. These requirements are related to it – a permissive threshold, allowing the contracting officer to obtain certified cost or pricing data at or below the $100,000 level and a threshold prohibiting the contracting officer from requiring certified cost or pricing data at or below the $25,000 level.

The key is the word "certified." It is likely that contracting officers will need cost or pricing data for many acquisitions of $100,000 or less, but the certification of the data and the inclusion of clauses to provide a repricing remedy to the Government if any data are later found to have been inaccurate are inappropriate at the lower price levels. Certification of cost or pricing data is only significant if there is an intention and an ability to determine subsequently that the cost or pricing data were or were not accurate. For acquisitions costing less than $100,000, it is unlikely that a field pricing report would be requested, and that report is the primary tool in determining the accuracy of cost or pricing data.

FAR 15.804(a)(2) provides that:

> There should be relatively few instances where certified cost or pricing data and inclusion of defective pricing clauses would be justified in awards between $25,000 and $100,000.

That being the case, it would be more appropriate to prohibit the practice unless a FAR deviation is processed for an individual exception.

Recommend: Threshold Requirement 15-5, permitting the obtaining of certified cost or pricing data on actions over $25,000 but not in excess of $100,000, should be eliminated.

Threshold Requirement 15-6, prohibiting the requiring of certified cost or pricing data at the level of $25,000 or less, should be increased to $100,000.

Overall Impact: These changes result in the placement of the remaining threshold at the statutory $100,000 level – a more rational placement.

THRESHOLD REQUIREMENTS 15-7 AND 15-8

15-7 If certified cost or pricing data were required for a negotiation of $100,000 or less, the rationale for that requirement must be explained in the price negotiation memorandum.

15-8 If cost or pricing data were not required in the case of any price negotiation over $100,000, the price negotiation memorandum must contain the exemption or waiver used and the basis for claiming or granting it.

Reference: FAR 15.808(a)(6) and (7)

Application: As stated in the threshold requirements.

Analysis: Certified cost or pricing data are required under most negotiated acquisitions over $100,000. The two most significant exemptions from this requirement are acquisitions with prices based on (1) adequate competition and (2) established catalog or market prices of commercial items.

FAR discourages (but permits) requiring cost or pricing data at $100,000 or less but prohibits this below $25,000. Thus, requesting certified cost or pricing data for negotiated procurements of $100,000 or less or not obtaining cost or pricing data for negotiated procurements over $100,000 are unusual, price-sensitive situations. A requirement to explain the circumstances in these instances in the price negotiation memorandum is reasonable.

These thresholds require documentation of the contracting officer's decision on obtaining cost or pricing data in the price negotiation memorandum. This should cause no significant workload and no PALT extension.

Recommend:

15-7 If the recommendations in Threshold Requirements 15-5 and 15-6 are adopted, certified cost and pricing data cannot be required in acquisitions of $100,000 or less, and this threshold will no longer be necessary. If they are not adopted, this threshold should be retained as a reasonable requirement for file documentation.

15-8 Make no change in the threshold.

THRESHOLD REQUIREMENT 15-9

A contractor required to submit cost or pricing data shall be required to submit cost or pricing data from prospective subcontractors if the subcontract estimate is (1) $1 million or more or (2) both more than $100,000 and more than 10 percent of the prime contractor's proposed price, or (3) considered to be necessary for adequately pricing the prime contract.

Reference: FAR 15.804-6(g)(2)

Application: As stated in threshold requirement.

Analysis: Prospective prime contractors are required by the Truth in Negotiation Act to submit cost or pricing data to support proposals on negotiated acquisitions expected to exceed $100,000, unless exempted. Subcontractors are also required by the Act to similarly submit cost or pricing data above the $100,000 threshold. These data are submitted to the prospective prime (or next tier sub) contractor but are only required to be submitted to the Government in accordance with the threshold requirement. While the threshold of $1 million seems high when compared with the $100,000 threshold for prospective prime contractors, the contracting officer can require these data in any instance where he/she considers it necessary for adequately pricing the prime contract.

This requirement primarily affects the prospective contractors who must provide the data. However, there is also the possibility that the PALT would be extended if the contracting officer decides, upon reviewing the cost and pricing data of a subcontractor, that a field pricing report of the prospective subcontractor is required.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 15-10

Insert FAR Clause 52.214-27, Price Reduction for Defective Cost or Pricing Data – Modifications – Sealed Bidding, or FAR Clause 52.215-23, Price Reduction for Defective Cost or Pricing Data – Modifications in solicitations and contracts if the contract amount is expected to exceed $100,000 or it is contemplated that certified cost or pricing data will be required for the pricing of contract modifications.

Reference: FAR 14.201-7(b)(1)
FAR 15.804-8(b)
10 U.S.C. 2306(a)

Application: As stated in threshold requirement.

Analysis: This statutory requirement is imposed by the Truth in Negotiations Act. A price reduction is the Government's remedy if certified cost or pricing data, relied upon by the contracting officer, is later found to have been defective. The clauses required by the threshold give the Government the right to make such a price reduction if certified cost or pricing data related to modifications is found to have been defective.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 15-11

The substance of FAR Clauses 52.214-28, Subcontractor Cost or Pricing Data – Modifications – Sealed Bidding, 52.215-24, Subcontractor Cost or Pricing Data, and 52.215-25, Subcontractor Cost or Pricing Data – Modifications, as appropriate, shall be inserted by the contractor in each subcontract that exceeds $100,000 when entered into.

Reference: FAR 52.214-28
FAR 52.215-24
FAR 52.215-25
10 U.S.C. 2306(a)

Application: As stated in the threshold requirement. These thresholds are contained in the three cited contract clauses.

Analysis: These are "flow-down" statutory requirements based upon the requirements of the Truth in Negotiations Act. The effect of the clauses is to require a prime contractor to obtain the same rights to cost and pricing data from its subcontractors as the Government obtains from the prime contractor. Its application has no effect on Government workload, but does affect contractors and subcontractors when they are required to comply with the clauses.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 15-12

Authority to approve use of capital investment incentives up to $50 million may be delegated no lower than specific designated officials.

Reference: DFARS 15.872(g)(1)

Application: Approval for use of capital investment incentives, which involve Government contingent liabilities, must be obtained from the Secretary of the Military Department or the Director, DLA. This approval authority may, for contingent liabilities of $50 million or less, be delegated, but to a level no lower than the Commander, Air Force Systems Command; Air Force Logistics Command; Naval Materiel Command [now Office of the Secretary of Navy (Supply and Logistics)]; or U.S. Army Development and Readiness Command (now Army Material Command).

Analysis: The subject of capital investment incentives is a complex one and decisions as to their use would properly be made at management levels, not at the contracting officer level. The requirement for approval at upper management levels is appropriate. Maintaining the approval levels established in DFARS will continue to impact the time of those people who are in the coordination and recommendation chain, as well as those people designated as approval authorities.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 15-13 AND 15-14

15-13 When the evaluation period for a solicitation estimated to exceed $25,000 is expected to exceed 30 days or when a limited number of offerors are in the competitive range, the contracting officer, upon determining that a proposal is unacceptable, shall notify the offeror promptly.

15-14 Promptly after award of a contract exceeding $25,000, the contracting officer shall notify unsuccessful offerors in writing.

Reference: FAR 15.1001(b)(1) and (c)(1)

Application: As stated in the threshold requirements.

Analysis: These requirements are based upon a recognition that in some instances an offeror must hold together costly teams to be available to commence work if the offeror is selected for award. It is a deserved courtesy to advise offerors, when it becomes known, that they will not receive an award.

This requirement places a modest workload on the contract specialist or contracting officer. Notification to an offeror before award that its proposal is unacceptable also affords the unsuccessful offeror an opportunity to protest prior to award and thus can affect PALT.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 15-15

As a general rule, contracting officers must request and receive field pricing reports before negotiating any fixed-price-type contract or modification over $500,000 or any cost-type contract or modification over $1,000,000, where cost or pricing data were required.

Reference: DFARS 15.805-5(a)(1)
ASD(P&L) Class Deviation dated 6/4/87

Application: As stated in the threshold requirement.

Analysis: It is reasonable to require that the contracting officer request and obtain field pricing reports to assist in the negotiation of large contracts and modifications.

Field pricing support is not necessarily synonymous with auditing. The FAR states that

> Field pricing reports are intended to give the contracting officer a detailed analysis of the proposal, for use in contract negotiations. Field pricing support personnel include, but are not limited to, administrative contracting officers, contract auditors, price analysts, quality assurance personnel, engineers, and small business and legal specialists.

The contracting officer is expected to include in the request for field pricing support specifics on the extent of support needed.

The requirement to obtain a field pricing report can be waived if information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price.

Preparation of field pricing reports can impose a substantial workload, particularly if a detailed audit of costs is involved, and it can significantly extend the PALT. However, the contracting officer can in many instances control this by determining that there is enough information available to waive obtaining the report or, if a report is considered necessary, by prescribing the extent of support that is required.

Recommend: Make no change in the thresholds.

THRESHOLD REQUIREMENT 15-16

Make-or-buy programs are required, with some exceptions, for negotiated acquisitions with estimated value of $2 million or more. (A make-or-buy program may be required for acquisitions estimated to cost under $2 million.)

Reference: FAR 15.703(a) and (b)

Application: A make-or-buy program is a contractor's contractual plan that identifies (a) those major items to be produced or work efforts to be performed in the contractor's facilities and (b) those to be subcontracted.

Analysis: FAR sets out the general rules that:

> The prime contractor is responsible for managing contract performance, including planning, placing and administering subcontracts as necessary to ensure the lowest overall cost and technical risk to the Government. Although the Government does not expect to participate in every management decision, it may reserve the right to review and agree on the contractor's make-or-buy program when necessary to ensure (a) negotiation of reasonable contract prices, (b) satisfactory performance, or (c) implementation of socioeconomic policies.

While FAR sets a $2 million threshold, it also contains three exceptions when a make-or-buy submission is not required. These are: (1) R&D with no significant follow-on production expected, (2) prices based on adequate price competition or established catalog or market prices of commercial items, or (3) work that the contracting officer determines is not complex.

Acquisition personnel in general are not enthusiastic about the effectiveness of a review of a make-or-buy program. They tend to be skeptical of the ability of the Government to adequately analyze the program or to change it, particularly in a competitive environment.

While this threshold was included in the Armed Services Procurement Regulation (ASPR) 3-902.2 (8/9/78) at only a $1 million level, the current $2 million level seems too low to routinely require a make-or-buy program. Without prohibiting a contracting officer from requiring this information in an acquisition of any value, $5 million is a more reasonable level to routinely make the request. This increase could be made on a

1-year test basis to determine whether the $5 million level is appropriate. During this test period the contracting officer could require a make-or-buy program below the threshold level if he/she felt one was needed.

Recommend: Increase this threshold to $5 million but permit the contracting officer to ask for a make-or-buy program below this threshold amount when he/she considers it necessary to properly establish the contract price.

Overall Impact: Raising the threshold will result in a reduction in workload of both the offerors and the DoD personnel who review the make-or-buy programs.

THRESHOLD REQUIREMENT 15-17

Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

Reference: DFARS 15.704

Application: A make-or-buy program is a contractor's contractual plan for identifying (a) those major items to be produced or work efforts to be performed in the prime contractor's facilities and (b) those to be subcontracted. The threshold excludes those items costing less than $500,000 as too small to warrant the Government's review.

Analysis: The threshold number of $500,000 has been in the regulations for at least 10 years. If it was the correct level 10 years ago, the effects of inflation would mean that it is probably too low now.

Recommend: Increase the threshold to $1 million or conduct a study to analyze the requirement and set an appropriate threshold.

Overall Impact: Raising the threshold will result in a modest decrease in workload for the offerors who must submit the information and the DoD employees who must evaluate it.

THRESHOLD REQUIREMENT 15-18

FAR Clause 52.215-1, Examination of Records by the Comptroller General, applies if the contract exceeds $10,000 and was entered into by negotiation and is for other than small purchase, utility services, or with foreign contractors.

Reference: FAR 15.106-1
10 U.S.C. 2313 (b) and (c)

Application: The Examination of Records clause permits the Comptroller General to have access to, and the right to examine, the contractor's records relating to the contract for a period of 3 years after final payment.

Analysis: The Examination of Records provision is a statutory requirement that has been in the regulations for many years. It is basically a benign requirement, causing records retention by the contractors for the 3-year period. It is unlikely that the level would be changed unless requested by the Comptroller General and it is unlikely that anyone will perceive a need to make the request of either the Comptroller General or the Congress.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 15-19

A special capital incentive clause may be negotiated and included in contracts for research, development, and/or production of weapon systems or material. Capital assets which may be covered by such a clause include only severable industrial plant equipment and other types of severable plant equipment with a unit value in excess of $10,000.

Reference: DFARS 15.872

Application: DFARS 15.872 provides that in some instances, industrial modernization incentives may be negotiated and included in contracts to motivate the contractor to invest in facilities modernization and to undertake related productivity improvement efforts it would not have otherwise undertaken or to invest earlier than it otherwise would have done. As a subset of this general topic, the DFARS provides for "Contractor Investment Protection" that would become operative in the event the contract or program is terminated or funds are not provided in subsequent fiscal years for the planned acquisition upon which the investment decision is based. This may permit the Government to acquire specific capital investments at no more than the undepreciated value, but only if they are severable industrial plant equipment, and other types of severable plant equipment with a unit value in excess of $10,000.

Analysis: Use of this investment incentive must be approved at high levels within the Military Departments (see Threshold Requirement 15-12). Because of the complexity of the subject matter, decisions on the value of severable plant equipment to be covered by an investment incentive should be made on a case-by-case basis. The high-level approvals required assure that the results of the negotiation will be reviewed at several levels and any mistakes of judgment will be found and can be corrected.

Recommend: Eliminate the threshold.

Overall Impact: Since this DFARS regulation is rarely used, the impact of elimination would be negligible.

THRESHOLD REQUIREMENT 15-20

Limitations imposed by an applicable DoD Appropriation Act on contracts resulting from unsolicited proposals do not appiy to contracts in amounts of less than $25,000.

Reference: DFARS 15.507(b)(70)

Application: The limitation referred to is a requirement for a determination by the head of the contracting activity or designee, which permits a noncompetitive contract award on the basis of an unsolicited proposal. The DoD Appropriations Act, 1987, specifically exempts contracts in an amount of less than $25,000 – the determination is not required at these levels.

Analysis: This threshold level is a statutory relief below the small purchase threshold that permits noncompetitive contract awards on the basis of an unsolicited proposal to be made without a determination by the head of the contracting activity. The threshold facilitates the acquisition process below the $25,000 level.

Recommend: Make no change tin the threshold.

THRESHOLD REQUIREMENT 15-21

In procurements of $100,000 or over the contracting officer, after agreeing on a price, will adjust estimated prices in block 26 of DD Form 1423 to equal the amount negotiated for the data items.

Reference: DFARS 15.871(d)

Application: This is a portion of a larger requirement to obtain "estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product or engineering value." When data are required to be delivered under a contract, the solicitation must include DD Form 1423, Contract Data Requirements List, and the offeror must provide with its offer, information on the form related to each item of data, including an estimate of its price. These estimates do not constitute separate pricing of data but permit the Government to judge its worth. The list of data is made a part of the resulting contract, but the estimated prices are on a "tear-off" portion of DD 1423 that does not appear in the contract but that is maintained at the contracting activity.

The threshold of $100,000 requires the contracting officer, after a negotiated agreement has been reached, to make such adjustments in the estimates as may be necessary to reflect any changes to the prices of the data items that may have occurred or been noted during the negotiations.

Analysis: Virtually identical requirements, with the same $100,000 threshold, were prescribed in ASPR 3-814 (8/9/78). An earlier version of DD Form 1423 is dated 1 June 1969. The entire requirement of estimated data prices appears to have been a defensive action to avoid embarrassment if data of marginal or no worth were being inadvertently ordered at a substantial cost. It is doubtful that the requirement gets more than a cursory compliance, at best, by DoD contract specialists.

The $100,000 threshold has been in the regulations for at least 9 years without being revised.

Recommend: Eliminate the threshold. Instruct the contracting officer to adjust any prices of data items that are found to be substantially

inaccurate because of errors of estimating or because of changes achieved during negotiations.

Overall Impact: This change will eliminate workload of contracting officers.

THRESHOLD REQUIREMENT 15-22

Agencies making noncompetitive contract awards over $100,000 totaling $50 million or more a year shall use a structured approach for determining the profit or fee objective and may prescribe exemptions.

Reference: FAR 15.902(a)

Application: This is a one-time threshold for agencies that annually award a substantial dollar value of contracts. DoD always exceeds the threshold and the Weighted Guidelines Method is DoD's compliance with it.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 16-1

A fixed-price, level-of-effort term contract may be used only when the contract price is $100,000 or less, unless approved by the chief of the contracting office.

Reference: FAR 16.207-3(d)

Application: This is one of four restrictions on the award of this type of contract.

Analysis: A fixed-price, level-of-effort, term contract is the loosest form of a best-efforts contract. It requires a contractor to expend a specified quantity of labor over a given period of time to prosecute an item of work. It might be the form of contract selected for certain studies, as, for example, where the Government wished a contractor to conduct a limited examination of a subject such as visual acuity and to report on whatever it found when the specified quantity of labor was used up. It is equivalent to buying by the pound.

This form of contract is rarely used because there is no way to adequately protect the interests of the Government. The level of effort necessary to perform the work may be overestimated and result in wasted, nonproductive work, or alternatively, it may be underestimated and result in a worthless product. The Government takes a substantial risk that it will not receive what it thought it had contracted for, nor will it have the control over the direction of the work nor the influence over product quality that it would have under cost-reimbursement, labor-hour, or time-and-materials contracts.

A fixed-price, level-of-effort, term contract is similar to a labor-hour or time-and-materials contract, but because it is for a fixed price, it lacks the close Government supervision that the other contract types receive. For a study that can be conducted at various depths, a labor-hour or time-and-materials contract would serve better in assuring that the Government received what it paid for, while protecting the contractor against cost-overruns that it cannot control.

This threshold places a restriction on awards of this type of contract at values in excess of $100,000, but the restriction is modest. The approval level required is the "chief of the contracting office," a person who will presumably know and approve what is going on in his/her office anyway. The control appears to be largely illusory.

If this form of contract is considered to be generally inappropriate – and it is – and if other contract forms can better protect the interests of the Government, the contract form should be eliminated rather than perpetuated with the restriction contained in this threshold requirement.

Recommend: Both the threshold and the requirement (FAR Section 16.207) should be eliminated, thereby removing the fixed-price, level-of-effort contract as an acceptable type.

Overall Impact: While the elimination of this threshold has no effect on either workload or PALT, it does eliminate a threshold that is not necessary for effective contracting.

THRESHOLD REQUIREMENT 16-2

While cost-reimbursement contracts are particularly useful for procurements involving substantial amounts, e.g., estimated costs of $100,000 or more, the parties may agree in a given case to use this type of contract to cover transactions in which the estimated costs are less than $100,000.

Reference: DFARS 16.301-2

Application: As stated in the threshold requirement.

Analysis: This is a permissive threshold, more in the nature of a suggestion as to when a contract price may be too low for an effective cost-reimbursement contract.

Small dollar value contracts for imprecise work statements present the contracting officer with a dilemma. On the one hand, he/she must try to negotiate a contract type that will protect the interests of both parties, but at the lower dollar levels, the traditional contract form – the cost-reimbursement contract – becomes too cumbersome to economically administer. For these situations, alternative contract forms such as labor-hour or time-and-materials will usually provide the Government the same "get-what-you-pay-for" protection as a cost-reimbursement contract. They are less costly to administer and they can be closed out faster after contract completion.

This threshold recognizes the dilemma caused by this type of acquisition, permitting but discouraging its use. This is a reasonable provision that preserves this alternative to the contracting officer in selecting an appropriate contract type. It appears to have two failings, however. First, a contract of a "substantial amount" is generally considered well above $100,000. The threshold below which a cost-reimbursement contract is discouraged is probably too low. Second, DFARS should give better guidance by emphasizing the alternative contract types and the advantages that they offer.

Recommend: Raise the threshold to $250,000.

Overall Impact: The change will have no impact on either workload or PALT.

THRESHOLD REQUIREMENT 16-3 and 16-4

16-3 The economic price adjustment clauses for standard or semistandard supplies, FAR 52.216-2 or FAR 52.216-3, should normally be used only when the total contract price is over $5,000.

16-4 Use of an economic price adjustment clause with adjustments based on actual material and labor cost should be limited to contracts with prices that exceed $50,000.

Reference: DFARS 16.203(4)(a), (b), and (c)(1).

Application: As stated in the threshold requirement. Also pertinent, FAR 16.203-3 establishes the following limitations:

> A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

Analysis: The $5,000 and $50,000 thresholds seem far lower than the situations contemplated by the FAR. Economic Price Adjustment clauses are often complicated, they are susceptible to being based upon the wrong premise (a contractor may be concerned about labor increases and try to cover that eventuality only to find out during performance that the cost of petroleum unexpectedly rises dramatically) and the clauses are usually difficult to administer. When used, they are normally limited to substantial contracts (multimillion dollar in value), where performance will extend over a number of years. If the contractor needs protection at the lower dollar values, it may be available pursuant to the Contract Disputes Act of 1978, which permits contract recission or reformation under some circumstances or pursuant to Public Law 85-804 if the contractor qualifies.

Rather than establish any threshold, it would be more appropriate to let the individual fact situation and the judgment of the contracting officer govern.

Recommend: Both thresholds are unneeded and unreasonably low and should be eliminated.

Overall Impact: While the removal of these two "floor-type" thresholds has no impact on workload or PALT, a decision to include an economic price adjustment clause does require additional work and extends the PALT.

THRESHOLD REQUIREMENT 16-5

A contractor may charge commercially sold material on a time-and-materials contract at other than cost if the total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price.

Reference: FAR 16.601(b)(3)(i).

Application: This threshold requirement affords an alternative method for pricing commercial materials on a time-and-materials contract. The FAR description of this alternative method reads as follows:

> (3) Optional method of pricing material. When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than at cost if—
>
> (i) The total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price;
>
> (ii) The material to be so charged is identified in the contract;
>
> (iii) No element of profit on material so charged is included as profit in the fixed hourly labor rates; and
>
> (iv) The contract provides (A) that the price to be paid for such material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the Government, and (B) that in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

Analysis: The standard method prescribed by FAR for pricing materials under a time-and-materials contract is to price them at cost and add a materials handling cost if that is appropriate. No profit is permitted. The probable reason for this is that time-and-materials contracts are considered to be primarily contracts for labor, with materials an incidental portion. These contracts would normally be awarded to a company that will purchase any needed materials, and if the contractor is not permitted to apply profit to the cost of the material, the contractor will not be tempted to acquire and

utilize under the contract, unneeded materials. Any profit earned must be the profit agreed to for the labor rates.

The optional method of pricing commercially available materials is a reasonable one under a time-and-materials contract for a contractor that customarily sells items at published prices. The company should not be required to reprice its standard commercial items. Subparagraph (iv) provides that the price of commercial materials may be based on established catalog or list prices, less any Government discounts. If IBM can establish that it customarily lists personal computers at a given price, less a discount for sales to the Government, then that is the price that will be charged and accepted on a time-and-materials contract if the item is identified in the contract for this pricing treatment.

However, the FAR limits this pricing alternative to contracts estimated to cost $25,000 or less or where the commercial material will not exceed 20 percent of the estimated contract price. The optional method of pricing commercially available materials seems reasonable at any dollar value. The Government's pricing position is fully protected and no reasons for applying any threshold levels are apparent.

Recommend: This threshold should be eliminated.

Overall Impact: Elimination of this threshold will provide greater pricing flexibility for this category of contracts and greater fairness to industry.

THRESHOLD REQUIREMENT 16-6

FAR Clauses 52.216-11 and 52.216-12 permit the Contracting Officer to withhold payments on cost no fee and cost sharing contracts to a maximum amount of $100,000 (or $10,000 if the contractor is a nonprofit organization) or 1 percent of the cost (or Government's share) whichever is less.

Reference: FAR 16.307(e) and FAR 16.307(f)

Application: As stated in the threshold requirement.

Analysis: These permissive thresholds are designed to give the contracting officer an amount of leverage, to obtain for the Government those things to which the Government is entitled. They might be the delivery of the item paid for under the contract or assurance that the contractor has provided the information needed to finally close out the contract. If the contractor will not be fully paid until things such as these happen, then they are more likely to happen.

The thresholds are warranted. However, it would be helpful if the FAR included illustrative examples, such as those in the paragraph above, to give the contracting officer guidance as to when it may be appropriate to make withholdings and when it may not be. Contractors are participating in the costs-no-fee and cost-sharing contracts, and a withholding of payments under these circumstances should be rare. The FAR should, but does not, say this.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 16-7

When authorizing fast pay procedures for indefinite delivery orders not over $10,000, the special data required by FAR Subpart 13.3 shall be included in the contract.

Reference: DFARS 16.501(d)

Application: This requirement is a reminder that when fast pay procedures are authorized for indefinite delivery orders, the FAR rules concerning contract requirements must be followed.

Analysis: The threshold of $10,000 is not consistent with the $25,000 threshold in FAR 13.302(a) for the maximum value of individual orders.

Recommend: As a "housekeeping" item, the threshold in DFARS 16.501(d) should be increased to $25,000.

Overall Impact: This change will have no impact on workload or PALT.

THRESHOLD REQUIREMENT 16-8

Fixed-ceiling-price contracts with retroactive price redetermination shall not be used unless the contract is for R&D and the estimated cost is $100,000 or less.

Reference: FAR 16.206-3(a)

Application: As stated in the threshold requirement.

Analysis: Contracts providing for after-the-fact, downward-only price redeterminations were all but eliminated as acceptable contract forms in the 1960s. This contract form provides a crutch to a contracting officer who does not feel the need to be careful in negotiating a price because if it proves to be too high, the excess can be recovered in the redetermination after all costs have been incurred. It provides a temptation to both the contractor and the Government to price high and sort it out later.

While the Government can tolerate a price that is too high, the contractor does not have the ability to recoup amounts spent above the ceiling, and must be careful not to underestimate. This type of contract is unpopular with potential contractors because it can only be adjusted in favor of the Government.

This threshold requirement is intended as permission to award this type of contract in a very limited class of cases – R&D under $100,000 – but there are other contract forms that will work equally well: labor-hour, time-and-materials, or fixed-price contracts are acceptable alternatives. These can avoid the pricing problems described above, as well as the administrative burden of having to reopen pricing after contract completion. This last vestige of this type of contract should be eliminated.

Recommend: The threshold and FAR Section 16.206 should be eliminated.

Overall Impact: This change will have no impact on workload or PALT.

THRESHOLD REQUIREMENT 16-9

When fast pay is desired on Basic Ordering Agreement orders less than $25,000, the clause in FAR 52.213-1 shall be modified to refer to orders and to the Basic Ordering Agreement clause for preparation of invoices.

Reference: DFARS 16.703(c)

Application: This requirement instructs the contracting officer on how to prepare a Basic Ordering Agreement to accommodate fast pay procedures.

Analysis: This requirement is instructional in the narrow area of the proper modification of the clause permitting fast pay to reflect the facts of a Basic Ordering Agreement.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 36-1

Under cost-reimbursement construction contracts, contractor must reduce to writing its subcontracts over $2,000, and other requirements.

Reference: FAR 36.520 and 52.236-20

Application: A clause entitled *Special Requirements (April 1984)* must be included in solicitations and contracts when a cost-reimbursement construction contract is contemplated. The clause reads as follows:

> The contractor shall----
>
> (a) Be responsible for obtaining any necessary licenses and permits, and comply with any applicable Federal, State, and municipal laws, codes, and regulations in connection with prosecuting the work;
>
> (b) Reduce to writing every contract it awards exceeding $2,000 for work under this contract unless this requirement is waived in writing by the Contracting Officer, and ensure that (i) each contract contains a statement that the contract is assignable to the Government, (ii) each of these contracts is in the Contractor's own name, and (iii) none of these contracts binds or purports to bind the Government or the Contracting Officer;
>
> (c) Furnish sufficient technical supervisory, and administrative personnel to ensure the prosecution of the work in accordance with the progress schedule approved by the Contracting Officer; and
>
> (d) Cause all work under this contract to be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.
>
> (End of clause)
>
> (R 7-605.21 1965 JAN)

Analysis: The origin and need for this clause and the threshold in paragraph (b) are not apparent. A virtually identical clause *Special Requirements (January 1965)* was included in ASPR 7-605.21, and was required in cost-reimbursement construction contracts. The $2,000 threshold would suggest that it was once considered necessary to meet Davis-Bacon-Act requirements but there are direct Davis-Bacon flow-down requirements that always apply. In addition, this clause applies solely to cost-reimbursement

contracts, leaving the implication that the type of contract may have motivated the clause.

The entire clause could be deleted, because:

Paragraph (a) is a virtual duplication of FAR Subsection 52.236-7, Permits and Responsibilities, prescribed for use in fixed-price construction contracts. If Subsection 52.236-7 were expanded to include all types of construction contracts, paragraph (a) would not be needed here.

Paragraph (b) has no equivalent clause required for other types of contracts. If it is needed in construction contracts, it should be in all construction contracts whether or not they are cost-reimbursement, but it is only prescribed for cost-reimbursement construction contracts. On the other hand, if it is needed in contracts because they are cost-reimbursement, it is needed in cost reimbursement contracts for other than construction, but it is not required for them. There appears to be no useful purpose for paragraph (b).

Paragraph (c) simply directs the contractor to assign enough technical and administrative people to the work. This is a patently unnecessary provision. The contract describes what is to be done and when and the contractor is required to do whatever is necessary to meet the requirements of the contract.

Paragraph (d) is a virtual duplication of Subparagraph (c) of 52.236-5, Material and Workmanship, prescribed for use in fixed-price construction contracts. If 52.236-5 were expanded to include cost-reimbursement contracts, the provision would not be needed here.

Recommend: FAR 36.520 and 52.236-20 should be eliminated in their entireties, and FAR 52.236-5 and 52.236-7 should be expanded to include cost-reimbursement contracts.

Overall Impact: The primary impact is the elimination of an unneeded threshold and an unnecessary clause. Taken alone, there is no significant impact, but in concert with other threshold deletions, the procurement system becomes more rational and streamlined.

THRESHOLD REQUIREMENT 36-2

Cost-plus-fixed-fee (CPFF) construction contracts exceeding $25,000 to be performed in the United States require ASD approval.

Reference: DFARS 36.272.
Statutory (Annual Military Construction Appropriation Acts)

Application: DFARS 36.272 Cost-plus-fixed-fee contracts.

> Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee construction contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (A&L) [P&L], setting forth the reasons therefore, is obtained.

Analysis: This provision continues to be found in Annual Military Construction Appropriation Acts. The same text was contained in ASPR 18-115, (4/12/78) except the approving person was ASD(I&L). Cost-reimbursement construction contracts are rarely appropriate, and accordingly they are infrequently used; when they are appropriate, however, they should be available to the contracting officer without having to seek an approval at the ASD(P&L) level. No similar restrictions are imposed on cost-reimbursement contracting for other than construction [except for Architect-Engineer (A/E) contracts discussed in Threshold Requirement 36-3]. The practical effect of this requirement is either (1) to cause the use of an inappropriate contract type when a cost-reimbursement contract should be used, in order to avoid seeking the approval or (2) to extend the PALT if approval is sought. Such approval is an inappropriate use of high-level management resources.

Recommend: Seek to have the requirement deleted from future Military Construction Appropriation Acts.

Overall Impact: Cost-reimbursement construction contracting is likely to remain uncommon because specifications and drawings for a construction project are customarily of such detail as to permit bidding a fixed price. However, elimination of this barrier to cost-reimbursement contracting would encourage the correct type of contract to be applied if the situation warranted and would make the types of contracts available for this class of acquisitions consistent with

contracts available for all other classes of acquisitions. This threshold appears to be obsolete and for that reason alone, it should be eliminated. Use of the correct contract type should result in better and less costly contract performance.

THRESHOLD REQUIREMENT 36-3

CPFF A/E contracts exceeding $25,000 to be performed in the United States require ASD approval.

Reference: DFARS 36.407(70)(3)
Statutory (Annual Military Construction Appropriation Acts)

Application: DFARS 36.402 Price negotiation.

> (70) Profit or fee.
>
> (3) Cost-plus-fixed fee contracts. Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee architect-engineer contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (A&L)[P&L], setting forth the reasons therefore, is obtained.

Analysis: The provision continues to be found in Annual Military Construction Appropriation Acts. The same text was contained in ASPR 18-112, (4/12/78) except the approving person was ASD(I&L). Cost-reimbursement contracting for A/E services is usually not appropriate and accordingly this type of contract is infrequently used, but when it is appropriate, however, it should be available to the contracting officer without having to seek an approval at the ASD(P&L) level. No similar restrictions are imposed on cost-reimbursement contracting for other than A/E services (except for construction contracts, discussed in Threshold Requirement 36-2).

The practical effect of this requirement is either (1) to cause the use of an inappropriate contract type when cost-reimbursement should be used, in order to avoid seeking the approval or (2) to extend the PALT if approval is sought. Such approval process is an inappropriate use of high-level management resources.

Recommend: Seek to have the requirement deleted from future Military Construction Appropriation Acts.

Overall Impact: Cost-reimbursement contracting for A/E services is likely to remain uncommon because of the nature of A/E work, but it is not unknown. Elimination of this barrier to cost-reimbursement contracting would encourage the correct type of contract to be applied if the situation warranted and would make the types of

contracts available for this class of acquisitions consistent with those available for all other classes of acquisitions. This threshold appears to be obsolete and for that reason alone, it should be eliminated. Use of the correct contract type results in better and/or less costly contract performance.

THRESHOLD REQUIREMENTS 36-4 AND 36-5

36-4 Selection of A/E for contracts exceeding $500,000 by field activity must be approved by next higher level.

Reference: DFARS 36.602-4 (70) (1) and (2)

36-5 Designation of approval levels for A/E selections exceeding $500,000.

Reference: DFARS 36.602-4(70)(3)

Application: FAR 36.602-4 provides that the final A/E selection decision shall be made by the agency head or a designated selection authority. DFARS 36.602-4, implementing FAR, specifies that all A/E selection actions, including preselection, shall be under the cognizance of the construction activity responsible for the work, but establishes $500,000 as a threshold to elevate the selection decision above the construction activity. In addition to elevating the selection of estimated $500,000 A/E contracts, DFARS 36.602-4(70)(2) also requires that when a firm to which a field contracting office has previously awarded contracts totaling over $500,000 during the current calendar year has been selected for an additional award to be made by the same contracting officer, approval must be received from the next higher organizational level of the construction activity.

Analysis: Elevation to higher organizational levels of selections for large and sensitive A/E contracts is appropriate. Because A/E selections are made without the benefit of competitive prices, the reasons for the selection can slip into subjective ones. Selection by an authority above the construction activity serves to reinforce the objective selection factors. Whether or not $500,000 is a reasonable threshold to elevate the selection can be a matter for discussion, but a $500,000 A/E contract is a large one and the threshold appears to be appropriate.

Requiring a higher level approval of an A/E selection before price or technical negotiations can be commenced will extend the PALT beyond what it would have been with a lower level approval.

Recommend: Make no changes in the thresholds.

THRESHOLD REQUIREMENTS 36-6, 36-7, 36-8, 36-9, 36-10, AND 36-11

36-6 Contracting activity shall prepare a performance report for each construction contract over $500,000.

Reference: FAR 36.201(a)(1)(i)

36-7 Contracting activity shall prepare performance report for each construction contract exceeding $100,000 where any element of performance was either unsatisfactory or outstanding.

Reference: FAR 36.201(a)(1)(ii)

36-8 The contracting officer shall prepare a performance evaluation report for each construction contract exceeding $10,000 where an element of performance was outstanding or unsatisfactory.

Reference: DFARS 36.201(a)(1)(70)

36-9 Contracting activity shall prepare a performance report for each construction contract over $10,000 terminated for default.

Reference: FAR 36.201(a)(iii)

36-10 Contracting activity shall prepare a report for each construction contract over $100,000 if the contract was terminated for convenience.

Reference: FAR 36.201(a)(1)(iv)

36-11 Copies of performance reports for construction contracts over $200,000 shall be sent to the Chief of Engineers.

Reference: DFARS 36.201(c)(1)(iii)

Application: 36.201 Evaluation of contractor performance.

(a) Preparation of performance evaluation reports. (1) The contracting activity shall evaluate contractor performance and prepare a performance report using the SF 1420, Performance Evaluation (Construction), for each construction contract of –

(i) $500,000 or more;

(ii) $100,000 or more, if any element of performance was either unsatisfactory or outstanding;

[lowered by DFARS to:

(1)(70) The contracting officer shall also prepare a performance evaluation report for each construction contract of $10,000 or more when any element of performance was either unsatisfactory or outstanding.]

(iii) More than $10,000, if the contract was terminated for default; or

(iv) $100,000 or more, if the contract was terminated for the convenience of the Government.

(2) The report shall be prepared at the time of final acceptance of the work, at the time of contract termination, or at other times, as appropriate, in accordance with agency procedures. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance.

(3) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(4) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

(b) Review of performance reports. Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance and should normally be at an organizational level above that of the evaluating official.

(c) Distribution and use of performance reports. (1) Each performance report shall be distributed in accordance with agency procedures. One copy shall be included in the contract file. The contracting activity shall retain the report for at least 6 years after the date of the report.

DFARS distribution instructions

(c) Distribution and use of performance reports.

(1) The original of the performance evaluation report for every contract will be retained by the activity preparing the report for a minimum of 6 years after date of the report. In addition, the reviewing official will forward a copy of the following reports:

(i) Reports with an overall unsatisfactory evaluation,

(ii) Reports which cite outstanding performance, and

(iii) Reports for all contracts in excess of $200,000 to the:

Office of the Chief of Engineers
ATTN: DAEN-PR
Pulaski Building
Washington, DC 20314

This office is responsible for establishing procedures and practices which will assure appropriate distribution and utilization of performance evaluation data within the Departments

Analysis:

36-6 This threshold requirement establishes a routine report of performance on construction contracts that exceed $500,000. The report is available for subsequent review to assist in preaward responsibility determinations of the same company. The requirement and the threshold level are reasonable.

36-7 The customary $500,000 threshold for preparing a report of performance on construction contracts is lowered in other FAR and DFARS threshold requirements for several special circumstances. In this threshold, the FAR requirement is lowered to a $100,000 reporting level if any element of performance was either unsatisfactory or outstanding. Presumably this requirement is intended to add to the information available for subsequent responsibility determinations of the contractor. In practice, the responsibility determination is not going to be affected if the contractor satisfactorily completed a contract (albeit with an outstanding or unsatisfactory element of performance), is able to submit performance and payment bonds, and is the low bidder for another contract. Thus, the benefit of requiring this lower reporting level appears inadequate.

36-8 This DFARS requirement lowers the FAR threshold (36-7) even further, to $10,000, where a report on the performance on a construction contract is required if any element of performance was either unsatisfactory or outstanding.

36-9 This FAR threshold requires a report on the performance on a construction contract at the $10,000 level if the contract was terminated for default. A contractor terminated for default will have a difficult time obtaining performance and payment bonds. As a consequence, the company will not likely be a bidder of future construction projects and the question of responsibility will rarely arise.

36-10 This FAR threshold requires a report on the performance on a construction contract at the $100,000 level if the contract was terminated for the convenience of the Government. The termination of a contract for the convenience of the Government does not reflect adversely on the performance by the contractor and there is no discernable reason why the reporting level in this class of cases should be lower than at the customary $500,000 threshold.

36-11 This DFARS threshold simply sets a level for central submission and national distribution of performance reports on construction contracts.

Recommend: All performance reporting thresholds on construction contracts should be set at $500,000, and consistent with this, the threshold in DFARS 36.201(c)(1)(iii) should be raised from $200,000 to $500,000 for submission of the reports to the Chief of Engineers. Concurrently, the preparation of reports at lower dollar levels should be maintained as a local option. These actions will delete threshold requirements 36-7, 36-8, 36-9, and 36-10 and will increase Threshold Requirement 36-11.

Overall Impact: This change will considerably reduce the workload.

THRESHOLD REQUIREMENTS 36-12 AND 36-13

36-12 A performance evaluation report shall be prepared for each A/E contract exceeding $25,000. (Preparation of the report is permitted for contracts less than $25,000.)

Reference: FAR 36.604

Threshold lowered in DFARS to:

36-13 Performance evaluation reports shall be prepared for each A/E contract exceeding $10,000.

Reference: DFARS 36.604

FAR Application: 36.604 Performance evaluation.

(a) Preparation of performance reports. (1) For each contract of more than $25,000, a performance evaluation report shall be prepared by the cognizant contracting activity, using the SF 1421, Performance Evaluation (Architect-Engineer). Performance evaluation reports may also be prepared for contracts of $25,000 or less.

(2) The report shall be prepared after final acceptance of the work or after contract termination, as appropriate. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance.

(3) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(4) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

(b) Review of performance reports. Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance and should normally be at an organizational level above that of the evaluating official.

(c) Distribution and use of performance reports. Each performance report shall be distributed in accordance with agency procedures. The report shall be included in the contract file, and

copies shall be sent to offices or boards for filing with the firm's qualifications data (see 36.603(d)(4)). The contracting activity shall retain the report for at least 6 years after the date of the report.

DFARS Application: 36.604 Performance evaluation.

(a) Preparation of performance reports.

(1) For each contract over $10,000 awarded, a performance evaluation report shall be prepared by the cognizant construction activity. Such reports may also be prepared for contracts of lesser amounts. For contracts of over $10,000, the construction activity shall distribute the SF 1421 to all other offices within the region or geographical area as listed in the book, "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense," and to the Washington, DC Headquarters of their respective construction activities. The SF 1421 shall be filed and utilized in a manner similar to the qualifications data (Standard Form 254).

Analysis:

36-12 This FAR threshold requires the preparation of a performance evaluation report for each A/E contract exceeding $25,000. The primary purpose of these reports is to provide information to assist in future A/E selections – to reward good performers with more contracts and to avoid awarding additional contracts to poor performers. Since past performance is a critical factor in the selection of A/Es, this is a reasonable requirement.

36-13 This DFARS threshold lowers the FAR threshold from $25,000 to $10,000. The DFARS $10,000 threshold has been a DoD requirement since at least 8/24/83, when it was specified in DAR 18-403.4. As a practical matter, only limited professional services can be required at an acquisition cost of less than $25,000, and consequently, at these levels there is very little activity upon which to base a rating. If this threshold were raised to the FAR $25,000 level, an A/E firm would be rated on a substantial piece of work where a true determination could be made on the quality of performance.

Recommend: The DFARS threshold should be eliminated and the FAR thresholds should govern.

Overall Impact: Raising the threshold from $10,000 to $25,000 will (1) reduce the workload associated with preparing the reports; (2) reduce the workload in entering reports into the system; and (3) enhance the visibility and thus the value of the reports on

more complex contracts, which will, in turn, provide a higher quality of information for subsequent selections.

THRESHOLD REQUIREMENT 36-14

Presolicitation notices will be sent to prospective bidders of construction acquisitions expected to equal or exceed $100,000 and be published in the *Commerce Business Daily*. (They may be used for construction acquisitions less than $100,000.)

Reference: FAR 36.302(a) and 36.701(a)

Application: FAR 36.302 Presolicitation notices.

(a) Unless the requirement is waived by the head of the contracting activity or a designee, the contracting officer shall send presolicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed $100,000. Presolicitation notices may also be used when the proposed contract is expected to be less than $100,000. These notices shall be issued sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders.

(b) Presolicitation notices shall –

(1) Describe the proposed work in sufficient detail to disclose the nature and volume of work (in terms of physical characteristics and estimated price range) (see 36.204);

(2) State the location of the work;

(3) Include tentative dates for issuing invitations, opening bids, and completing contract performance;

(4) State where plans will be available for inspection without charge;

(5) Specify a date by which requests for the invitation for bids should be submitted;

(6) Notify recipients that if they do not submit a bid they should advise the issuing office as to whether they want to receive future presolicitation notices;

(7) State whether award is restricted to small businesses; and

(8) Specify any amount to be charged for solicitation documents.

(9) Be publicized in the Commerce Business Daily in accordance with 5.204.

Analysis: This requirement is designed to afford prospective bidders a longer period of time than they would otherwise have to consider

whether they wish to compete for the work. It promotes enhanced competition. The threshold could be set at any level, but $100,000 is reasonable.

Retention of the requirement for presolicitation notices at the $100,000 level will continue to enhance competition by affording bidders and offerors longer time to evaluate the requirement.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 36-15

Notification must be made to Congress in all instances 21 days in advance of award of a $300,000 or greater A/E contract.

Reference: DFARS 36.601(70)
10 U.S.C. 2807

Application: DFARS 36.601 Policy.

> (70) For contract actions with an estimated total fee of $300,000 or over and which require notification to Congress in accordance with 10 U.S.C. 2807, no funds shall be obligated until 21 days after Congress has been notified. During the notification waiting period, synopsis of the proposed contract action and administrative actions leading to the procurement of the architect-engineer services may be started.

Analysis: This statutory requirement is one of long standing. The 21-day waiting period required by statute does not represent a serious PALT extension.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 36-16

Contracting officer will insert FAR Clause 52.236-1, "Performance of Work by the Contractor" if cost of construction is expected to exceed $1 million. The clause may be used in contracts of lesser amounts.

Reference: FAR 36.501

Application: FAR 36.501 Performance of work by the contractor.

> (a) To assure adequate interest in and supervision of all work involved in larger projects, the contractor shall be required to perform a significant part of the contract work with its own forces. The contract shall express this requirement in terms of a percentage that reflects the minimum amount of work the contractor must perform with its own forces. This percentage is (1) as high as the contracting officer considers appropriate for the project, consistent with customary or necessary specialty subcontracting and the complexity and magnitude of the work, and (2) ordinarily not less than 12 percent unless a greater percentage is required by law or agency regulation. Specialties such as plumbing, heating, and electrical work are usually subcontracted, and should not normally be considered in establishing the amount of work required to be performed by the contractor.
>
> (b) The contracting officer shall insert the clause at 52.236-1, Performance of Work by the Contractor, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to exceed $1,000,000. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to be $1,000,000 or less.

DFARS 36.501 establishes the percentage of work to be performed by the prime contractor as not less than 15 percent on housing and not less than 20 percent on other work.

Analysis: This requirement was prescribed in ASPR 18-104 (3/9/77), at the same $1 million threshold level. The stated assumption for this requirement is that, before a contract is awarded, the Government must have some assurance that the contractor will be doing some of the work with its own employees and thereby maintain an "adequate interest in and supervision of all work." The percentage of the prime's involvement can range from the DFARS minimum of 15 percent to a high of 100 percent. However, an adequate interest in the work should be assured by the success or

failure of the company to which the contract is awarded, backed by the existence of a performance bond.

This is a clause that has been prescribed for at least 10 years, with no adjustment for inflation, suggesting that perhaps the $1,000,000 threshold should be raised. More fundamental, however, is the question of whether this clause should continue to be mandatory or whether it should be an optional clause, with the contracting officer the person to decide whether its use is required in any particular situation. The Government is attempting to obtain a construction project completed under contract in accordance with the drawings and specifications and terms and conditions. Whether a particular bidder or offeror can do that is a responsibility determination, not a function of a contract provision prescribing how the contract should be performed. In addition, there is no remedy for noncompliance, short of termination for default.

Recommend: This threshold should be eliminated as a mandatory requirement.

Overall Impact: This is another of many thresholds that can be eliminated, placing the decision on the use of solicitation provision and contract clauses at the local level. Its elimination provides the contracting officer greater authority.

THRESHOLD REQUIREMENT 36-17

FAR Clause 52.212-5, Liquidated Damages – Construction, is required in all construction contracts in excess of $25,000 except cost-plus-fixed-fee contracts or those where a contractor cannot control the pace of the work.

Reference: DFARS 36.206

Application: DFARS 36.206 Liquidated damages.

> A liquidated damages clause shall be included in all contracts in excess of $25,000 except cost-plus-fixed-fee contracts or those where the contractor cannot control the pace of the work. Use of a liquidated damages clause is optional for contracts of $25,000 or less. Where such a provision is used, the clause set forth in FAR 52.212-5 shall be included in the invitation for bids or request for proposals. Where different completion dates for separate parts or stages of the work are specified in the contract, this clause should be revised appropriately to provide for liquidated damages for delay of each separate part or stage of the work. The minimum amount of liquidated damages should be based on the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, such as the cost of substitute facilities, the rental of buildings, or the continued payment of quarters allowances, an amount for such items should also be included.

Analysis: This threshold requirement mandates the use of a liquidated damages clause in all construction contracts expected to exceed $25,000. Liquidated damages are customary in Federal construction contracts and this requirement reflects the custom. This requirement with the same $25,000 threshold was found in ASPR 18-113 (4/12/78). The use of liquidated damages in construction contracts is permissive in FAR 12.204(b).

A justification for the routine inclusion of liquidated damages requirements is the fact that the Government often incurs added costs if completion is delayed – costs for on-site surveillance, for example. While both Government and industry are conditioned to the automatic inclusion of liquidated damage provisions in these contracts, they may increase construction prices in some instances.

If continued mandatory inclusion of liquidated damages provisions in construction contracts is determined to be necessary, the

threshold should be evaluated. It has been unchanged for a number of years despite inflation.

FAR provides for the permissive use of liquidated damage provisions in construction contracts. The FAR approach to the problem, providing a liquidated damages clause but making its use optional, leaves the decision to the contracting officer. Circumstances in an individual case may make a liquidated damages provision unnecessary, and it should not require a deviation from the regulations to omit the clause.

Recommend: DFARS 36.206 should be deleted and FAR 12.204(b) should govern as the sole regulation on this subject, thus providing the contracting officer with the authority to include the clause or omit it depending upon the particular fact situation.

Overall Impact: This is another of many thresholds that can be eliminated, placing the decision on the appropriate solicitation provision and contract clause at the local level. Its elimination provides the contracting officer greater authority.

THRESHOLD REQUIREMENTS 36-18 AND 36-19

36-18 A/E acquisitions under $85,000 shall be set aside for small business.

36-19 A/E acquisitions of $85,000 and above shall not be set aside for small business.

Reference: DFARS 36.600
10 U.S.C. 2855

Application: DFARS 36.600 Scope of subpart.

> Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Those under $85,000 shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of FAR Subpart 19.505 shall apply.

Analysis: Application of an $85,000 threshold above which a small business set-aside cannot be made and below which it must be, was established by Public Law 98-212, the Defense Appropriation Act of 1983, and subsequently codified at 10 U.S.C. 2855. This requirement was reportedly a Congressional initiative. The derivation of the specific $85,000 threshold contained in the statute is unknown. Small A/E firms continue to receive a substantial number of awards for design work, competing successfully with large A/E firms for the projects valued at more than $85,000.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 36-20

Preparation of preselection lists for A/E contracts estimated to cost more than $25,000, shall be accomplished by formally constituted boards consisting of at least three members.

Reference: DFARS 36.602-2(a)

Application: The term "preselection" refers to the first culling of the qualifications of A/E contractors by a preselection board, in order to provide the A/E selection board with a reasonable list of the best qualified firms for the participation in oral interviews.

Analysis: Requiring this aspect of the A/E contractor selection process to be performed by formal boards at the $25,000 level is reasonable.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 36-21

Short selection procedures can be used for A/E contracts under $10,000.

Reference: FAR 36.602-5

Application: As stated in the threshold requirement.

Analysis: At such low dollar values, short selection procedures properly reduce the workload attendant with the full selection procedures.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 36-22

An evaluation board shall hold discussions with at least three A/E firms for contracts over $10,000.

Reference: FAR 36.602-3(c)
40 U.S.C. 541

Application: As stated in the threshold requirement.

Analysis: This is a requirement of the Brooks Act.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 36-23

Performance evaluations shall be used in making responsibility determinations for construction contract awards exceeding $1 million.

Reference: DFARS 36.201(c)(2)

Application: DFARS 36.201 Evaluation of contractor performance.

(c) Distribution and use of performance reports.

(2) Performance evaluations of construction contractors shall be used in making responsibility determinations. In the selection of fully qualified responsible contractors for future awards or negotiation of construction contracts above $1,000,000, the contracting officer shall also obtain from the central data bank the following:

(i) A record of the number of contracts and the total dollar amount for all satisfactory evaluations; and

(ii) Complete transcripts of all performance evaluations showing unsatisfactory performance either on individual elements or overall evaluation, or remarks on outstanding performance. These transcript(s) or statement(s) may be obtained for smaller awards.

Analysis: This is a reasonable requirement. For larger projects, a greater effort should be made prior to award to assure the responsibility of prospective contractors. FAR 36.201(a)(1)(i) requires that a performance report must be prepared for each construction contract over $500,000. The DFARS specifies actions that the contracting officer must take to use the performance evaluation information in the central data bank to determine contractor responsibility prior to awards in excess of $1 million. Retaining this threshold will result in continuing the current requirement to review past performance of firms otherwise eligible for award of large construction contracts. It should have no affect on PALT, because the actions can be performed concurrently with other preaward activities.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 36-24

A/E evaluation criteria should be established in advance for A/E contracts expected to exceed $2,500.

Reference: DFARS 36.602-1(70)

Application: DFARS 36.602 Selection of firms for architect-engineer contracts. DFARS 36.602-1 Selection criteria.

> (70) For contracts estimated to cost more than $2,500, criteria which will be used to evaluate the qualifications of the architect-engineer firms to be considered should be established in advance. In addition to the general considerations listed in FAR 36.601, the criteria should be specific as to desired qualifications, size and expertise of staff, required past experience, and, as appropriate, esthetic considerations, special conceptual or design elements, and related factors. The information contained in the DD Form 1391 for the construction project, if applicable, should be used in preparing the criteria. The criteria shall be set forth in the public announcement as required by FAR 5.205(c).

Analysis: This requirement, the origins of which are unknown, has been in the DFARS and DAR for a number of years. This same requirement, at the $2,500 threshold, was contained in ASPR 18-402.2b (11/18/81). It now implements FAR 36.602 which specifies general evaluation criteria.

There is no apparent need for the threshold. Establishing evaluation criteria in advance of conducting an evaluation of qualifications seems axiomatic at any dollar level.

Recommend: The first phrase of the DFARS provision reading "for contracts estimated to cost more than $2,500" should be deleted.

Overall Impact: This change will probably have no effect since, because of its level, it is unlikely to be encountered; however, its deletion will result in the elimination of one unneeded threshold.

THRESHOLD REQUIREMENT 36-25

Independent Government estimate of A/E service shall be prepared *if contract or modification* is expected to exceed $10,000.

Reference: DFARS 36.605(a)

Application: As stated in threshold requirement.

Analysis: This DFARS requirement lowers the FAR $25,000 threshold to $10,000. As a practical matter, some sort of estimate will be made on any A-E requirement if only to commit funds and process a purchase request.

If there is an issue, it would be the degree of detail in estimating work below the small purchase threshold. All things considered, the FAR threshold of $25,000 seems reasonable (if a threshold at any level is considered necessary) and there is no apparent benefit in the DFARS requirement lowering it to $10,000.

Recommend: DFARS Section 36.605(a) should be eliminated.

Overall Impact: The primary impact is the elimination of an unneeded threshold. Taken alone, there is no significant impact, but in concert with other threshold deletions, the procurement system becomes more rational and streamlined.

THRESHOLD REQUIREMENT 36-26

Independent estimates of cost shall be prepared for construction acquisitions exceeding $25,000. The contracting officer may require an independent cost estimate for construction acquisitions expected to cost less than $25,000.

Reference: FAR 36.203(a)

Application: As stated in the threshold requirement.

Analysis: This requirement is directly analogous to the requirement of FAR 36.605 that independent estimates of cost shall be prepared for A/E services expected to exceed $25,000.

For any construction acquisition, whether above or below $25,000, someone will have made an estimate of cost, if only to commit funds and process a purchase request. Whether or not that estimate is in sufficient detail to be evaluated and to compare against a proposal is another matter. The FAR standard for the level of detail is that "The estimate shall be prepared in as much detail as though the Government were competing for award." The meaning of those words is not clear, but they presumably intend to require the sort of estimate that would be included in a contractor's back-up cost estimates.

The threshold is not an important one, since it sets up some sort of routine requirement for more detail above the small purchase threshold than below, but permits the contracting officer to require the same level of detail at any level if he/she believes these to be necessary. The $25,000 level seems reasonable.

Continuation of the threshold results in the workload necessary to prepare detailed cost estimates for most construction projects. In a competitive environment, the preparation of cost estimates is not necessary for an efficient procurement process, but as a matter of internal control and integrity, independent cost estimates, prior to commencement of the procurement process, are important.

Recommend: Make no change in the threshold.

THRESHOLD REQUIREMENT 36-27

An independent estimate of cost of A/E services expected to exceed $25,000 shall be prepared.

Reference: FAR 36.605

Application: As stated in the threshold requirement.

Analysis: This requirement is directly analogous to the requirement of FAR 36.203(a) that independent estimates of cost shall be prepared for construction acquisitions exceeding $25,000.

Some sort of estimates of cost are going to be made at any dollar level, if only to commit funds and process a purchase request. The FAR requirements appear to be an attempt to distinguish between the level of detail needed for estimate back-ups above and below the small purchase threshold. The FAR standard for an estimate of A/E costs above $25,000 is an estimate "prepared on the basis of a detailed analysis of the required work as though the Government were submitting a proposal."

The distinction that FAR is apparently attempting to make concerning the level of detail of the estimate (and presumably not whether some sort of estimate shall be made at any level) at the small purchase threshold seems reasonable. Even above that, the extent of supporting detail will be different for large A/E acquisitions than for small ones.

Continuation of the threshold results in the workload necessary to prepare detailed cost estimates for most A/E acquisitions. However, since A/E acquisitions involve noncompetitive pricing, an independent, detailed Government estimate is crucial to the price negotiations.

Recommend: Make no change in the threshold.