REFORMING ACQUISITION REGULATIONS: REVISING DOLLAR THRESHOLDS (PART 2)

Report AL714R3

September 1988

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Prepared pursuant to Department of Defense Contract MDA903-85-C-0139.

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UNCLASSIFIED
SECURITY CLASSIFICATION OF THIS PAGE

ADA207433

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-AL714R3	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, DC 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 (Part 2)

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 _____	September 1988	342

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 is a companion volume to Reforming Acquisition Regulations: Revising Dollar Thresholds, Logistics Management Institute Report AL714R2, February 1988. That report presented our recommendations on 88 requirements contained in six major parts of the Federal Acquisition Regulation (FAR) and the DoD FAR Supplement (DFARS). This report follows the format of the February report and considers the remaining 366 additional requirements contained in the 36 parts of the FAR and DFARS not previously reviewed. The findings and conclusions from this report are that:

- Eighty-nine of the thresholds are based on statute. Thirty-seven thresholds should be increased and one be eliminated. We also recommend that 3 of the requirements tied to dollar thresholds be eliminated entirely, 1 studied further, and 47 remain unchanged.

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. ABSTRACTS (continued)

Seventy-four of the thresholds are imposed by the DFARS. Of these thresholds, 7 should be raised, 5 should be eliminated, 12 of the requirements tied to thresholds should be eliminated in their entirety, 4 should be studied further before a decision is made on disposition, and 46 should remain unchanged.

- One hundred fifty are nonstatutory thresholds imposed by the FAR. We recommend that 21 be raised, 25 thresholds be eliminated, 14 of the requirements tied to dollar thresholds be eliminated in their entirety, 3 should be studied further, and 88 not be changed.
- The remaining 52 threshold requirements are nonstatutory but established by executive agencies or by Executive orders, and require the concurrence of those agencies to make the changes. Of those thresholds, we recommend that 14 be raised, 1 threshold be eliminated, 17 of the requirements tied to dollar thresholds be eliminated in their entirety, and 20 should remain unchanged.

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 (PART 2)

DoD acquisition personnel are faced with applying nearly 500 different regulatory requirements that are tied to dollar thresholds. Some of those threshold values are outdated – one, for example, is 56 years old – and should be increased. Further, some of the regulations themselves have been overtaken by time or are redundant and should be eliminated or consolidated. Such action will reduce the burden imposed on DoD acquisition personnel and contractors alike.

We reviewed all the Federal Acquisition Regulation (FAR) and DoD FAR Supplement (DFARS) requirements with thresholds – 88 in a February 1988 report of the same title and 366 in this evaluation.

Requirements with thresholds are either imposed by statute or administratively. Those based on statutes must be amended by legislation. Of the 366 requirements, 89 are based on statute. We recommend that threshold values in 37 be increased and in 1 be eliminated because it is redundant; we also recommend that 3 of the requirements be eliminated entirely, 1 studied further, and 47 remain unchanged.

An example of a statutorily imposed threshold that can be increased is the requirement for the submission of subcontracting plans in connection with bids and proposals for nonconstruction contracts exceeding $500,000. The threshold should be increased to $1 million to reflect inflation over the 10 years since passage of the statute. The increase would move the threshold to the same level imposed for construction contracts.

Of the 277 administratively imposed requirements, we recommend that threshold values in 42 be increased and in 31 be eliminated; we also recommend that 43 of the requirements be eliminated entirely, 7 be studied further, and 154 remain unchanged.

An example of an administratively imposed threshold that can be eliminated is the requirement found in FAR 6.304(a) that, for a proposed contract with a value between $25,000 and $100,000, a justification for other than full and open competition shall be approved at a level above the contracting officer. Since approvals for justifications above $100,000 are statutory requirements, we believe that the administratively imposed requirement is an unnecessary review of a conclusion made by the contracting officer and should be eliminated.

Our recommendations are aimed at a balance between prudent control and efficient operation. Implementing our recommendations can streamline the contracting process and reduce the workload and cost for both the Government and contractors. Successful implementation will also serve as an impetus for further regulatory reform.

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CHAPTER 1

INTRODUCTION

The Federal Acquisition Regulation (FAR) and the DoD FAR Supplement (DFARS) contain 454 requirements tied to various dollar levels (referred to here as "thresholds"). Each threshold requirement specifies some action that the contractor or DoD must take. As the threshold's value increases, the number of contract actions involved decrease. Therefore, by eliminating or consolidating some requirements and raising the thresholds on others, we can streamline the regulations and thereby reduce the compliance burden. In all cases, effective Government control must be maintained.

In Part 1 of this task, we reviewed 88 threshold requirements found in six parts of the FAR and DFARS; those 88 represent about 19 percent of the total.[1] We recommended that about 40 percent of those requirements and/or thresholds be changed or eliminated. In Part 2 of this task, we reviewed the remaining FAR and DFARS requirements associated with thresholds, using the same methodology and approach followed in Part 1. In Part 2, we identify and review the 366 dollar threshold requirements contained in 36 parts of the FAR and the DFARS. Table 1-1 lists the 36 parts of the FAR and the DFARS included in our Part 2 review.

We present our findings and recommendations for Part 2 in Chapter 2, and in Appendix A we give an overall summary of our recommendations for Parts 1 and 2 combined. In Appendix B, we present a detailed analysis of each of the 366 threshold requirements reviewed in Part 2.

We offer five general types of recommendations similar to the types made in Part 1. Since we provided examples and an explanation for each type of recommendation in Part 1, we have not done so here. However, the recommendation, "eliminate the threshold only," is explained further in a postscript to Chapter 2. We make one of the following recommendations for each threshold requirement:

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[1]LMI Report AL714R2. *Reforming Acquisition Regulations: Revising Dollar Thresholds.* Kestenbaum, Martin I. and W. Wayne Wilson. Feb 1988.

TABLE 1-1

FAR/DFARS PARTS REVIEWED

Part no.	Title
2	Definitions of Words and Terms
3	Improper Business Practices and Personal Conflicts of Interest
4	Administrative Matters
5	Publicizing Contract Actions
6	Competition Requirements
7	Acquisition Planning
10	Specifications, Standards, and Other Purchase Descriptions
12	Contract Delivery or Performance
14	Sealed Bidding
17	Special Contracting Methods
19	Small Business and Small Disadvantaged Business Concerns
20	Labor Surplus Area Concerns
22	Application of Labor Laws to Government Acquisitions
23	Environment, Conservation, and Occupational Safety
25	Foreign Acquisition
27	Patents, Data, and Copyrights
28	Bonds and Insurance
29	Taxes
30	Cost Accounting Standards
31	Contract Cost Principles and Procedures
32	Contract Financing
33	Protests, Disputes, and Appeals
34	Major System Acquisition
35	Research and Development Contracting
37	Service Contracting
38	Federal Supply Service Contracting
42	Contract Administration
43	Contract Modifications
44	Subcontracting Policies and Procedures
45	Government Property
46	Quality Assurance
47	Transportation
48	Value Engineering
49	Termination of Contracts
50	Extraordinary Contractual Actions
70	Acquisition of Computer Resources

- Make no change to the threshold. (In 17 cases we recommend this as an interim decision pending further DoD study.)
- Eliminate the threshold and the requirement that generates it.
- Eliminate the threshold only. (*Note:* Where we make this recommendation, we propose the substitution of contracting officer discretion or guidelines for the threshold. We also make this recommendation where the same threshold is imposed in a duplicative regulation.)
- Raise the threshold. (In 5 cases we recommend that threshold increases be interim pending further DoD study.)
- Defer any decision pending further study.

Many of the recommended threshold changes, by themselves, may not appear to be significant in their contribution to simplifying and streamlining the acquisition process. However, taken collectively, by eliminating 13 percent of the requirements entirely, eliminating 9 percent of the thresholds while retaining the requirement, and raising the thresholds for 22 percent of the requirements, we foresee four types of benefits:

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

CHAPTER 2

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

FINDINGS

Large numbers of thresholds in the FAR and DFARS tend to add confusion to the acquisition system, greatly increase acquisition workload, and extend the PALT. Thus, DoD's acquisition regulations can be streamlined by eliminating the requirement or raising the threshold. We reviewed 366 threshold requirements found in 36 parts of the FAR and/or DFARS in this follow-on study. Those threshold requirements are based on statute or are administratively imposed. The distinction is important because it is the basis for determining the activity that must make the proposed changes.

Changes to statutory requirements or thresholds must be enacted by Congress. Administrative threshold requirements, on the other hand, can be changed by the originating activity. The seven sources of administrative threshold requirements and the authorities that can change them are as follows:

- *FAR* – The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory (DAR) Council jointly
- *DFARS* – DAR Council
- *Executive order (EO)* – President
- *Office of Management and Budget (OMB)* – Director, OMB
- *Department of Labor (DOL)* – Secretary of Labor
- *Cost Accounting Standards (CAS)* – CAS Board (CASB) successor organization (currently the DAR Council)
- *Federal Information Resources Management Regulation (FIRMR)* – General Services Administration (GSA).

Table 2-1 shows the 36 FAR and DFARS parts we evaluated and identifies the sources of the thresholds. Almost half the threshold requirements are concentrated in the following subparts:

- Part 22, dealing with labor laws, has 38 threshold requirements. Of those, almost half are based on statutes and would require congressional legislation for change.
- Part 70, dealing with computer resource acquisition, has 31 threshold requirements.
- Part 19, dealing with small businesses, has 22 threshold requirements.
- Part 28, dealing with bonds and insurance, has 22 threshold requirements.
- Part 45, dealing with Government property, has 21 threshold requirements.
- Part 32, dealing with contract financing, has 18 threshold requirements.

Insofar as the sources are concerned, 314 threshold requirements are based on the FAR, DFARS, or statute. About 25 percent of the 366 threshold requirements are imposed by statute, and congressional action is needed to modify or eliminate them. The remaining 75 percent – the administratively imposed threshold requirements – is subdivided into those established by the FAR (41 percent), those established by the DFARS (20 percent), and those established by executive agencies or by EOs (14 percent). The 52 threshold requirements established by executive agencies or EOs are divided as follows:

- Seventeen DOL-based threshold requirements are found in Part 22, which deals with the application of labor laws to Government acquisition.
- Seven CAS-based threshold requirements are found in Parts 30 and 31, which deal with cost accounting standards and contract cost principles and procedures.
- Twenty-five FIRMR-based threshold requirements are found in Part 70, which deals with the acquisition of computer resources, a GSA concern.
- Three EO/OMB-based thresholds in Parts 7, 20, and 37 deal with acquisition planning, labor surplus areas, and service contracting, respectively.

RECOMMENDATIONS

Table 2-2 shows the recommended dispositions of the thresholds by their sources. The largest number of recommended changes involve raising the

TABLE 2-1

SOURCES OF THRESHOLD REQUIREMENTS

FAR/ DFARS Part[a]	FAR	DFARS	Statutory	EO/ OMB	DOL	CASB	FIRMR	Total
2	2							2
3	1	2	3					6
4	1	10						11
5	3	2	8					13
6	1		4					5
7		3		1				4
10	1							1
12	2	2						4
14	9		3					12
17		1	2					3
19	9	6	7					22
20		2		1				3
22	3		18		17			38
23			3					3
25	6	13	6					25
27	13							13
28	15	2	5					22
29	7							7
30	2		1			6		9
31	1		6					7
32	7	4	6			1		18
33	1		7					8
34		2						2
35		4	3					7
37		3		1				4
38	5							5
42	8	1						9
43	2							2
44	8		2					10
45	13	8						21
46	11		2					13
47	1							1
48	5	1						6
49	12	1						13
50	2	1	3					6
70		6					25	31
Total	151	74	89	3	17	7	25	366

[a] FAR and DFARS part numbers correspond.

thresholds, and almost half of those recommendations involve changes in statutes. About 80 percent of our recommendations for "eliminating the threshold only" involve regulations based on the FAR.

TABLE 2-2

RECOMMENDATIONS BY THRESHOLD SOURCE

Threshold requirement source	No change	Eliminate threshold and requirement	Eliminate threshold only	Raise threshold	For further study	Total
FAR	88(12)	14	25	21(5)	3	151
DFARS	46(3)	12	5	7	4	74
Statutory	47(2)	3	1	37	1	89
EO/OMB	1	0	0	2	0	3
DOL	7	1	0	9	0	17
CASB	7	0	0	0	0	7
FIRMR	5	16	1	3	0	25
Total	201	46	32	79	8	366
Percent of total	54%	13%	9%	22%	2%	100%

Note: Numbers in parentheses represent interim threshold recommendations pending further study to validate their appropriateness.

Table 2-3 is an overall summary of each type of our recommendations identified by FAR/DFARS part. We recommend that 46 of the 366 threshold requirements be eliminated entirely, 32 requirements be retained but their associated threshold eliminated, 79 requirements be retained but with increased thresholds, 8 threshold requirements be studied further, and 201 remain unchanged.

As may be seen in Table 2-3, we recommend the elimination of 18 thresholds and their requirements in Part 70. Most of those threshold requirements are based on the FIRMR and deal with computer resource acquisition. Interaction with GSA is required to implement those changes. We recommend that the thresholds be raised on 24 requirements in Part 22. Since that part predominantly covers labor laws, most of those thresholds will have to be acted upon by DOL or the Congress (for statutory thresholds).

TABLE 2-3

RECOMMENDATIONS BY FAR/DFARS PART

Part	No change	Eliminate threshold and requirement	Eliminate threshold only	Raise threshold	For further study	Total
2	1		1			2
3	6					6
4	8			3		11
5	7	4	1	1		13
6	4			1		5
7				1	3	4
10	1					1
12		2	2			4
14	5	1	5		1	12
17	2		1			3
19	10	5	2	4	1	22
20	1	1		1		3
22	11	2	1	24		38
23	2			1		3
25	12	3	1	9		25
27	8	1	2	1	1	13
28	21				1	22
29		1	2	4		7
30	9					9
31	7					7
32	10	2		6		18
33	3			5		8
34	2					2
35	7					7
37	1	2		1		4
38	5					5
42	4	2	2		1	9
43	1		1			2
44	7			3		10
45	12	2	2	5		21
46	13					13
47	1					1
48	1		4	1		6
49	6		2	5		13
50	5		1			6
70	8	18	2	3		31
Total	201	46	32	79	8	366

Overall, almost half (47 percent) of our recommended changes are in four parts of the FAR/DFARS: Part 22, dealing with labor laws, has 27 recommended changes; Part 70, dealing with computer resource acquisition, has 23 recommended changes; Part 25, dealing with foreign acquisition, has 13 recommended changes; and Part 19, dealing with small and small disadvantaged businesses, has 11 recommended changes.

Appendix A shows our combined recommendations for both parts of the study. Appendix B includes a detailed analysis of each of the thresholds contained in the 36 FAR and DFARS parts reviewed in this phase of the study. At the beginning of each part, we include, for each threshold requirement, a summary of the current and recommended threshold levels, the source of the requirements, and other actions to be taken. Before proceeding to the appendices, we offer a postscript that explains our recommendations to "eliminate the threshold only."

POSTSCRIPT

In the detailed recommendation presented in Appendix B, we recommend the elimination of 32 thresholds while retaining the basic requirements with which the thresholds are associated. The effects of eliminating these thresholds vary.

- In some instances, we recommend the thresholds be eliminated because they are redundant. We found, for example, the same threshold in two different places in the FAR; first, it is applied to all acquisitions, and second, redundantly to acquisitions of architect-engineering services. The second threshold should be eliminated even though its elimination has no effect on workload or PALT.

- In some instances, elimination of a threshold level will provide the contracting officer with greater discretionary authority to establish a level in a given acquisition that is appropriate to the circumstances even though workload is not necessarily affected. For example, a clause at FAR 52.242-2 permits the contracting officer to withhold payments of $10,000 or 5 percent of the amount of the contract (whichever is less), when delivery of a Production Progress Report is delayed. We believe that level may be too low, and we recommend that the threshold be eliminated and that the contracting officer be permitted to establish the withholding level that appears to be necessary under the circumstances of the specific acquisition.

- In some instances, elimination of a threshold level will reduce workload, even though the basic requirement is retained. As an example, we recommend the elimination of a threshold below which the Office of Small and Disadvantaged Business Utilization reviews a limited class of

acquisitions, while retaining the right of the Office of Small and Disadvantaged Business Utilization to review any (or all) of those acquisitions considered appropriate. As another example, we recommend the elimination of the $50,000 threshold below which a termination contracting officer (TCO) may authorize a prime contractor to settle subcontracts without approval or ratification. Without the threshold, a TCO could make such an authorization at whatever level considered appropriate, with a substantial decrease in workload for large, terminated contracts with large subcontracts.

- In some instances, we recommend that instead of specified threshold levels, the regulations should provide guidance as to the appropriate level for a given requirement. As an example, the regulations covering automated data processing acquisitions virtually prohibit requiring mandatory preaward benchmarks for acquisitions estimated to cost less than $300,000. We recommend eliminating the $300,000 threshold and replacing it with guidelines, cautioning that the cost of performing preaward benchmarks must be consistent with the potential value of the award, lest potential competitors decide that the price to compete is too high.

- In several instances, elimination of a threshold will result in a requirement to insert certain clauses in smaller solicitations and contracts. While we believe that the results will enhance the solicitations and contracts, a modest increase in workload will result.

APPENDIX A

COMBINED RECOMMENDATIONS FOR PARTS 1 AND 2

This appendix summarizes and combines our recommendations for Part 1 and Part 2 of this study. In Part 1, we reviewed 88 threshold requirements contained in six parts of the Federal Acquisition Regulation (FAR) and DoD FAR Supplement (DFARS). In Part 2, we reviewed 366 threshold requirements contained in 36 parts of the FAR and/or DFARS. Combined, we reviewed 454 threshold requirements. Of the 454, we recommend that 56 percent of the thresholds and the requirements that generate them remain unchanged and that 44 percent of the threshold requirements be changed, eliminated, or studied further. A summary of our recommendations is shown in Table A-1.

TABLE A-1

COMBINED RECOMMENDATIONS FOR PARTS 1 AND 2

Action required	Part 1		Part 2		Parts 1 and 2 combined	
	Number of threshold require-ments	Percent of total	Number of threshold require-ments	Percent of total	Number of threshold require-ments	Percent of total
Raise dollar threshold	11		79		90	
Eliminate threshold and requirement	15		46		61	
Eliminate threshold only	9		32		41	
For further study	0		8		8	
Total – change or study	35	40%	165	45%	200	44%
Total – do not change	53	60%	201	55%	254	56%
Total thresholds	88	100%	366	100%	454	100%

APPENDIX B

DETAILED ANALYSIS OF THRESHOLDS

This appendix presents summary information on each of the 366 threshold requirements (expressed in dollar limits) we reviewed in 36 parts of the Federal Acquisition Regulation (FAR) and/or the DoD FAR Supplement (DFARS).

For each threshold requirement, we present the following information:

- 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 reference to the FAR or DFARS section in which the threshold appears.
- 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:
  - Raise the threshold.
  - Eliminate the threshold and the requirement that generates it.
  - Eliminate the threshold only.
  - Defer any decision pending further study.
  - Make no change to the threshold.

PART 2 – DEFINITIONS OF WORDS AND TERMS

PART 2 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
2-1	FAR	$ 2,500		Eliminate threshold
2-2	FAR	25,000	25,000	
Summary of recommendations:			2 Thresholds 1 unchanged 1 threshold eliminated	
Recommended threshold groupings			$ 25,000 – 1	

THRESHOLD REQUIREMENTS 2-1 AND 2-2

2-1. The contracting officer shall insert the clause at 52.202-1, *Definitions*, in solicitations and contracts except when a fixed-price research and development contract that is expected to be $2,500 or less is contemplated.

2-2. The contracting officer shall insert the clause at 52.202-1, *Definitions*, in solicitations and contracts except when a purchase order is contemplated.

Reference: FAR 2.201

Analysis: The *Definitions* clause defines the terms "head of the agency," "contracting officer," and "subcontracts." Excluding the clause from purchase orders is consistent with simplified purchasing. Including the clause in contracts valued within the small purchase limitation seems unnecessary. We believe that the clause should not be mandatory in any contract or purchase order of $25,000 or less.

Recommend: 2-1. Eliminate the $2,500 threshold for fixed-price research and development.

2-2. Modify the remaining language to read "except for contract actions valued within the small purchase limitation," to require the use of the clause only above the small purchase threshold.

PART 3 – IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

We have not included some dollar thresholds in DFARS 3.170-1 defining certain prohibitions on private-sector employment of some DoD officials. A typical definition is "Acted as a primary representative of the United States in the negotiation of a defense contract in an amount in excess of $10,000,000."

PART 3 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
3-1	FAR	$ 25,000	$ 25,000	
3-2	Statute	25,000	25,000	
3-3	Statute	100,000	100,000	
3-4	Statute	25,000	25,000	
3-5	DFARS	500,000	500,000	
3-6	DFARS	500,000	500,000	

Summary of recommendations: 6 Thresholds
6 unchanged

Recommended threshold groupings ..... $ 25,000 – 3
100,000 – 1
500,000 – 2

THRESHOLD REQUIREMENT 3-1

The contracting officer shall insert the provision at FAR 52.203-2, *Certificate of Independent Price Determination*, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated unless the acquisition is to be made under the small purchase procedures in Part 13.

Reference: FAR 3.103-1

Analysis: FAR 52.203-2 provides for three other exemptions from the use of this provision (in addition to the exemption for acquisitions under small purchase procedures). They are (1) work to be performed by foreign suppliers outside the United States, (2) solicitation of technical proposals under two-step bidding procedures, and (3) solicitation of certain utility services.

The title of the solicitation provision describes its purpose. It is appropriate that it not be included in small purchases although we would prefer to exempt all contract actions (whether or not small purchase procedures were used) below the small purchase threshold. At this level it conforms to other provisions and clauses that are required to be included above the $25,000 level.

Recommend: Make no change to the threshold, but change the wording of the exemption in FAR 3.103-1 to read "except for contract actions where the cost is estimated to be within the small purchase limitation."

THRESHOLD REQUIREMENT 3-2

The contracting officer shall insert the provision at FAR 52.203-4, *Contingent Fee Representation and Agreement*, in solicitations except when (1) contracting by sealed bidding, and the contract amount is expected to be $25,000 or less; (2) the contract amount is not expected to exceed the small purchase limitation in Part 13; (3) the solicitation is for perishable subsistence supplies, and the contract amount is expected to be $25,000 or less; (4) the solicitation is for personal services to be paid for on a time basis; (5) the solicitation is for utility services, at rates regulated by regulatory bodies, from a public utility company that is the sole source; (6) the award under the solicitation is to be made in a foreign country; or (7) any other DoD contracts, individually or by class, have been designated by the Secretary for exception.

Reference: FAR 3.404(b)
10 U.S.C. 2306(b)

Analysis: This is a statutory requirement. The first three exemptions from the use of the solicitation provision are for contractual actions of $25,000 or less, an appropriate threshold.

Recommend: Request no change to the threshold.

THRESHOLD REQUIREMENT 3-3

Contracting officers shall include the clause at DFARS 252.203-7002, *Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DoD Employees*, in all contracts expected to exceed $100,000.

Reference: DFARS 3.170-5
10 U.S.C. 2397(b) and (c)

Analysis: The clause recites the statutory compensation prohibitions relating to certain former DoD employees, establishes a reporting requirement, and contains penalties for failure to comply with the statute.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 3-4

The contracting officer shall insert the clause at DFARS 52.203-7001, *Special Prohibition on Employment*, in all solicitations and contracts other than those entered into using the small purchase procedures of FAR Part 13.

Reference: DFARS 3.571-5
10 U.S.C. 2408

Analysis: The clause required by the threshold requirement implements 10 U.S.C. 2408, which prohibits defense contractors from employing in a managerial or supervisory capacity on any defense contract, persons convicted of fraud or any other felony arising out of a contract with the Department of Defense, or allowing those persons to serve on the contractor's board of directors. The clause provides that in addition to the criminal penalties contained in the statute, violation of the terms of the clause may result in suspension or debarment or termination of the contract.

Exempting this contract clause from small purchases is appropriate but it would be preferable if the exemption were to read "other than those contract actions whose value is within the small purchase limitation," so as to exempt all contract actions of $25,000 or less.

Recommend: Make no change to the threshold level, but change the wording in DFARS 3.571-5 to read, "except for contract actions where the cost is estimated to be within the small purchase limitation."

THRESHOLD REQUIREMENTS 3-5 AND 3-6

3-5. Contractors who are awarded a DoD contract of $5 million or more and who have not established an internal reporting mechanism and program, such as a hotline by which employees may report suspected instances of improper conduct and instructions that encourage employees to make such reports, shall be required to display prominently in common work areas within business segments performing work under DoD contracts, DoD Hotline posters prepared by the Office of the Inspector General, DoD.

3-6. The contracting officer shall insert the clause at DFARS 52.203-7003, *Display of DoD Hotline Poster*, in solicitations and contracts expected to exceed $5 million.

Reference: DFARS 3.7001
DFARS 3.7002

Analysis: The extent and purpose of the threshold requirements are self-explanatory. The clause contains the exemption contained in Threshold Requirement 3-5. These thresholds could be set at almost any level. The DoD Inspector General has apparently chosen the $5 million threshold as appropriate.

Recommend: Make no change to the thresholds.

PART 4 – ADMINISTRATIVE MATTERS

PART 4 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
4-1	FAR	$ 25,000	$ 25,000	
4-2	DFARS	25,000	25,000	
4-3	DFARS	500,000	500,000[a]	
4-4	DFARS	25,000	25,000[a]	
4-5	DFARS	100,000	100,000[a]	
4-6	DFARS	25,000	25,000	
4-7	DFARS	25,000	25,000	
4-8	DFARS	500,000	500,000	
4-9	DFARS	10,000	25,000	
4-10	DFARS	10,000	25,000	
4-11	DFARS	10,000	25,000	

Summary of recommendations: 11 Thresholds
8 unchanged
3 increased

Recommended threshold groupings ..... $ 25,000 – 8
100,000 – 1
500,000 – 2

[a] Recommendations are interim pending further DoD study.

THRESHOLD REQUIREMENT 4-1

Each Executive agency shall establish and maintain for a period of 5 years a computer file, by fiscal year, containing unclassified records of all procurements exceeding $25,000.

Reference: FAR 4.601(a)

Analysis: The FAR instructions prescribe the Federal Procurement Data System and require that, with respect to each award exceeding $25,000, agencies shall be able to access from the computer file certain minimal information. Exempting contracts below the small purchase threshold from individual computer records is appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 4-2

Contracting officers shall insert in solicitations exceeding the small purchase limit the provision at DFARS 52.204-7004, *Data Universal Numbering System (DUNS) Number Reporting* to request the offeror to supply his DUNS Number.

Reference: DFARS 4.670-3

Analysis: The DUNS Number is required on the DD Form 350, *Individual Contracting Action Report*, for awards exceeding $25,000. That threshold level appears appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 4-3

The clause at DFARS 52.204-7005, *Overseas Distribution of Defense Subcontracts*, shall be inserted in any contract in excess of $500,000 or when any modification increases the amount of a contract to more than $500,000.

Reference: DFARS 4.670-4

Analysis: The clause imposed by this threshold requires the contractor to prepare a report of subcontracts exceeding $25,000 awarded to foreign subcontractors. The stated purpose of the reporting requirement is to assist DoD in monitoring arms cooperation agreements with friendly governments. The clause is not required in contracts with certain listed commodities such as ores or subsistence.

If the reports are useful, the threshold should be maintained. It is prudent to review the actual benefits derived from such a reporting system from time to time. Therefore, in addition to our recommendation to make no change to the threshold, we suggest that the reporting system be reviewed every 2 years.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 4-4 AND 4-5

4-4. Pursuant to the terms of clause at DFARS 52.204-7005, *Overseas Distribution of Defense Subcontracts*, the contractor agrees to prepare and submit the *Subcontract Report of Foreign Purchases* for each subcontract or modification thereof which exceeds $25,000, where the country of origin is outside the United States or its territories.

4-5. Pursuant to the terms of clause at DFARS 52.204-7005, *Overseas Distribution of Defense Subcontracts*, the contractor agrees to insert a provision substantially similar to the clause in all first-tier subcontracts over $100,000, with certain listed exceptions.

Reference: DFARS 52.204-7005

Analysis: If the required reports are useful, the thresholds should remain as stated. However, we suggest that DoD review the benefits derived from these reports every 2 years.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 4-6

DD Form 350, *Individual Contracting Action Report*, shall be prepared for each contracting action obligating or deobligating more than $25,000.

Reference: DFARS 4.671-3(b)

Analysis: This requirement satisfies the FAR requirements for the Federal Procurement Data System (FPDS). DD Form 350 is the equivalent of the FAR-prescribed Standard Form 279. The threshold level of awards exceeding $25,000 is consistent with the FPDS requirements and is therefore appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 4-7

A DD Form 1057, *Monthly Procurement Summary*, shall be prepared by each contracting office of the Department of Defense to which a reporting office code has been assigned. The DD Form 1057 shall cover all contracting actions of $25,000 or less.

Reference: DFARS 4.672-2(a)

Analysis: This report (DD Form 1057) satisfies the FAR requirements for the FPDS and is the equivalent of the FAR-prescribed Standard Form 281. While the FAR still shows the equivalent threshold at $10,000, we understand that it is in fact being applied at and below the current small purchase threshold of $25,000. The threshold level of awards at and below $25,000 is consistent with the FPDS requirements and is therefore appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 4-8

For specified field contracting officers, a copy of the completed DD Form 1547, *Report of Individual Contract Profit*, shall be forwarded to the office designated for all contract actions valued at $500,000 or more where the contracting office employed either the Weighted Guidelines Method, an alternative structured approach, or the Modified Weighted Guidelines Method.

Reference: DFARS 4.673-3

Analysis: This report (DD Form 1547) is the principal source document for maintaining a DoD-wide management information system on profit and fee statistics, as required by DoD Instruction 7730.27, *Reporting of Planned and Negotiated Contract Profit Rates*. The management information system is intended to serve a wide variety of purposes ranging from evaluating profit and fee policies to responding to information requests received from other executive agencies, the Congress, and the public. DoD management must make a judgment as to whether the benefits from the system are worth its cost, and at what threshold level.

Recommend: If the present threshold level permits DoD to fulfill its analysis needs and reporting obligations efficiently, it should be retained.

THRESHOLD REQUIREMENTS 4-9 AND 4-10

4-9. When all required purchase actions and contract administration of a contract exceeding $10,000 have been completed, the purchasing office shall prepare DD Form 1594, *Contract Administration Completion Record* or Military Standard Contract Administration (MILSCAP) Format Identifier PK9, *Contract Completion Statement.*

4-10. For all contracts not in excess of $10,000, the contracting officer shall, when appropriate, include in the contract file a statement that all contract actions have been completed.

Reference: DFARS 4.804-5(a)(70)

Analysis: The threshold requirements constitute routine instructions for documenting completed contracts. The threshold levels would more appropriately be established at the small purchase threshold.

Recommend: Increase the threshold levels to the level of the small purchase threshold.

THRESHOLD REQUIREMENT 4-11

In reviewing contract files for retirement after contract completion, the official contract case file folder shall be removed from the active file series and each folder shall be marked and placed in completed (inactive) contract file series; separate series should be established for contracts of $10,000 or less and for contracts of more than $10,000 to facilitate later disposal.

Reference: DFARS 4.804-70(a)(2)

Analysis: This threshold requirement contains routine instructions for contract file retirement activities after a contract has been completed. The thresholds would be more appropriate if established at the small purchase threshold level.

Recommend: Increase the thresholds to the level of the small purchase threshold.

PART 5 – PUBLICIZING CONTRACT ACTIONS

PART 5 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
5-1	Statute	$ 25,000	$ 25,000	
5-2	Statute	10,000		Eliminate threshold and requirement
5-3	Statute	5,000		Eliminate threshold and requirement
5-4	DFARS	10,000		Eliminate threshold and requirement
5-5	Statute	25,000	25,000	
5-6	Statute	10,000		Eliminate threshold and requirement
5-7	Statute	5,000		Eliminate threshold
5-8	FAR	500,000	500,000	
5-9	Statute	25,000	25,000	
5-10	FAR	3,000,000	3,000,000	
5-11	DFARS	3,000,000	3,000,000	
5-12	FAR	10,000	25,000	
5-13	Statute	500,000	500,000	

Summary of recommendations: 13 Thresholds
- 7 unchanged
- 1 increased
- 1 threshold eliminated
- 4 thresholds and requirements eliminated

Recommended threshold groupings ..... $ 25,000 – 4
500,000 – 2
3,000,000 – 2

THRESHOLD REQUIREMENTS 5-1 AND 5-2

5-1. Contracting officers shall synopsize in the *Commerce Business Daily* (CBD) proposed contract actions (solicitations) expected to exceed $25,000.

5-2. Contracting officers shall synopsize in the CBD proposed contract actions (solicitations) expected to exceed $10,000 if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors.

Reference: FAR 5.101(a)(1)
15 U.S.C. 637(e)

Analysis: These thresholds are required by statute. The $25,000 threshold is consistent with the small purchase threshold. The purpose of the $10,000 threshold is to enhance competition at small purchase levels if it is not otherwise available. We believe that the responses to the CBD synopses less than $25,000 will be minimal and that as a consequence, the benefits to be derived from publicizing acquisitions of this size in the CBD do not outweigh the costs of lengthening of administrative leadtime and the increase in workload that this entails.

Recommend: 5-1. Make no change to this threshold.

5-2. Request legislation to eliminate this threshold and the requirement.

THRESHOLD REQUIREMENT 5-3

A copy of each solicitation for an unclassified contract action (acquisition) in excess of $5,000 which provides at least 10 calendar days for submission of offers shall be displayed at the contracting office and, if appropriate, at some additional public place from the date issued until 7 days after bids or proposals have been opened.

Reference: DFARS 5.101(a)(2)
15 U.S.C. 637(e)

Analysis: This requirement is found in three places in the acquisition regulations, each imposing a slightly different requirement.

FAR 5.101(a)(2) distinguishes the $5,000 threshold level that applies to DoD from the $10,000 threshold that applies to the civilian agencies. DoD can comply with this FAR requirement by posting either a notice of the solicitation or a copy of it. FAR contains a list of circumstances under which no posting is required, including those occasions when oral solicitations are used.

DFARS 13.106(b) encourages display of a notice in a public place for request for quotations (RFQs) valued in excess of $5,000. That requirement is consistent with FAR and although all of the FAR circumstances are not listed, the DFARS requirement is in the nature of a suggestion.

DFARS 5.101(a)(2) (Threshold Requirement 5-3) requires that a notice be displayed until 7 days after bids or proposals have been opened but does not specify the FAR 5.101 and DFARS 13.106(b) exemption for oral solicitations nor any other FAR exemptions.

The FAR coverage (with the lower threshold for DoD) carries all of the instructions that are needed. We see no objection to the lower, statutorily prescribed DoD threshold level within the context of the FAR procedures. Neither do we object to the repetition in Part 13. In prescribing the basic requirement, we believe that FAR should govern.

Recommend: Eliminate DFARS 5.101(a)(2) in favor of the FAR provision of the same number.

THRESHOLD REQUIREMENT 5-4

When recommended by contracting personnel or the small business specialist and approved by the contracting officer, proposed contract actions of $10,000 or less may be publicized in the CBD.

Reference: DFARS 5.201(70)

Analysis: This DFARS coverage seems to presume a prohibition in the regulations against publicizing contract actions of $10,000 or less in the CBD since it provides relief from such a prohibition. No such prohibition is found in either FAR or DFARS. The coverage also seems to assume that contracting offices are unnecessarily publicizing contract actions less than $10,000. We doubt it. The threshold and the requirement appear to be unnecessary.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENTS 5-5 AND 5-6

5-5. Unless exempted by one of the exceptions of FAR 5.202, contracting officers shall publish notices of intent to contract for architect-engineering services for which the total fee (price) is expected to exceed $25,000.

5-6. Unless exempted by one of the exceptions of FAR 5.202, contracting officers shall publish a notice of intent to contract for architect-engineering services for which the total fee (price) is expected to exceed $10,000 if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors.

Reference: FAR 5.205(c)
15 U.S.C. 637(e)

Analysis: Both of these thresholds are required by statute. The purpose of the $10,000 threshold is to enhance competition at small purchase levels if it is not otherwise available. This threshold requirement is identical to the same requirement for other types of acquisitions, as specified in FAR 5.101(a)(1), but acquisitions of architect-engineering services are considerably different from the acquisitions of other services and of supplies.

Architect-engineering firms are selected for negotiation on the basis of a competitive review and ranking of qualifications. That review and ranking at the small purchase threshold can effectively be accomplished with the qualifications statements on file in the contract office. Establishing this $10,000 threshold is unnecessary and unproductive, needlessly extending procurement administrative leadtime (PALT) and increasing workload.

Recommend: 5-5. Make no change to this threshold.

5-6. Request legislation to eliminate this threshold and the requirement.

THRESHOLD REQUIREMENT 5-7

Contracting officers shall comply with the requirements of FAR 5.101(a)(2) when the total fee (price) of an architect-engineering services contract is expected to exceed $10,000 ($5,000 for Defense activities), but not exceed $25,000.

Reference: FAR 5.205(c)(2)
15 U.S.C. 637(e)

Analysis: FAR 5.101(a)(2) is the instruction to display in a public place a notice of the solicitation or a copy of the solicitation of proposed contract actions valued between $5,000 and $25,000. (Discussed in the analysis of Threshold Requirement 5-3 of this compendium.)

This threshold presents a redundant requirement. Nothing in FAR 5.101(a)(2) exempts proposed acquisitions of architect-engineering services and thus, repetition of the requirement for this one class of solicitation is unnecessary.

Recommend: Eliminate the threshold.

THRESHOLD REQUIREMENT 5-8

Contracting officers shall, if it is in the Government's interest and if significant subcontracting opportunities exist, indicate in the CBD synopsis for negotiated acquisitions over $500,000 the names and addresses of the firms to which solicitations will be issued (if no more than five firms will be solicited) to enable small business concerns and others interested in subcontracting to contact prospective prime contractors early in the acquisition process.

Reference: FAR 5.206(a)(1)

Analysis: This threshold requirement is entirely permissive and is in the nature of a suggestion rather than a requirement. The $500,000 threshold level appears to be reasonable. It should enhance small business subcontracting opportunities.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 5-9

Contracting officers shall synopsize in the CBD awards exceeding $25,000 that are likely to result in the award of any subcontracts. (Exceptions to this requirement are listed.)

Reference: FAR 5.301(a)
15 U.S.C. 637(e)

Analysis: This threshold permits the contracting officer to decide whether to announce contract awards in the CBD on the basis of whether any subcontracts are likely. It is based in statute and does not affect PALT nor create a significant added workload.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 5-10 AND 5-11

5-10. Contracting officers shall make information available on awards over $3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 4:00 p.m. Washington, D.C., time on the day of award. Agencies shall not release information on awards before the public release time of 4:00 p.m. Washington, D.C., time. Information on proposed DoD contractual actions over $3 million shall be submitted in writing to the Office of the Assistant Secretary of Defense (Public Affairs) by the close of business the day before the contract award is proposed.

5-11. In accordance with Departmental procedures, DoD shall notify the appropriate Members of Congress of contract awards of over $3 million concurrent with the public announcement.

Reference: FAR 5.303
DFARS 5.303(a)
DFARS 5.303(70)

Analysis: These are public affairs/congressional relations requirements that do not adversely affect the contracting process.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 5-12

Agencies may release information on contract awards to the local press or other media. When local announcements are made for contract awards of $10,000 or more, they shall include certain specified information.

Reference: FAR 5.303(b)

Analysis: This is a permissive, public affairs threshold that has no affect on workload or PALT. However, the threshold would be more appropriate if it were increased to the current small purchase threshold.

Recommend: Increase the threshold to the small purchase threshold.

THRESHOLD REQUIREMENT 5-13

The contracting officer shall insert the clause at DFARS 252.205-7000, *Release of Information to Cooperative Agreement Holders*, in solicitations and contracts when the contract amount is expected to exceed $500,000. By accepting this clause, the contractor agrees, upon request, to provide Cooperative Agreement Holders with a list of those appropriate employees responsible for entering into subcontracts under prime Defense contracts.

Reference: DFARS 5.470(b) and (c)
10 U.S.C. 2413 and 2416

Analysis: This is a statutory requirement that places a modest requirement on Defense contractors.

Recommend: Make no change to the threshold.

PART 6 – COMPETITION REQUIREMENTS

PART 6 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
6-1	Statute	$ 25,000	$ 25,000	
6-2	FAR	25,000	100,000	
6-3	Statute	1,000,000	1,000,000	
6-4	Statute	10,000,000	10,000,000	
6-5	Statute	over 10,000,000	over 10,000,000	

Summary of recommendations: 5 Thresholds
4 unchanged
1 increased

Recommended threshold groupings .....
$ 25,000 – 1
100,000 – 1
1,000,000 – 1
10,000,000 – 2

THRESHOLD REQUIREMENT 6-1

The policies and procedures of Part 6 do not apply to contracts awarded using the small purchase procedures of Part 13.

Reference: FAR 6.001(a)
10 U.S.C. 2304(g)(2)

Analysis: This threshold requirement exempts small purchases from the Part 6 regulations. The statute upon which the threshold requirement is based, however, does more than that. It provides that "for the purposes of this chapter, a small purchase is a purchase *or contract* for an amount that does not exceed $25,000." That exemption is more inclusive than the one in Part 6 because it exempts formal, bilateral contracts of $25,000 or less, while the FAR language does not contain that statutory exemption.

Recommend: Request no change to the statutory threshold, but revise the wording of Part 6 to be consistent with the statute.

THRESHOLD REQUIREMENTS 6-2, 6-3, 6-4, AND 6-5

6-2. For a proposed contract over $25,000 (but not exceeding $100,000) a justification for other than full and open competition shall be approved in writing at a level above the contracting officer.

6-3. For a proposed contract over $100,000 but not exceeding $1 million, the justification for other than full and open competition shall be approved in writing by the competition advocate for the procuring activity.

6-4. For a proposed contract over $1 million but not exceeding $10 million, the justification for other than full and open competition shall be approved in writing by the head of the procuring activity or a designee.

6-5. For a proposed contract over $10 million, the justification for other than full and open competition shall be approved in writing by the senior procurement executive of the agency.

Reference: FAR 6.304(a)
10 U.S.C. 2304(f)

Analysis: The levels of approval for justifications for other than full and open competition exceeding $100,000 are statutory requirements established in 1985. Nothing has occurred in the interim to justify requesting a change to those levels.

The requirement for approval at a level above the contracting officer for noncompetitive acquisitions between $25,000 and $100,000 (Threshold Requirement 6-2) is not a statutory requirement. We believe that it is an unnecessary review of a conclusion made by a properly selected (FAR 1.603-2) contracting officer.

Recommend: 6-2. Eliminate the threshold and in its place authorize contracting officer approval of all justifications for other-than-full-and-open competition not exceeding $100,000.

6-3, 6-4, and 6-5. Request no change to the thresholds.

PART 7 – ACQUISITION PLANNING

PART 7 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
7-1	DFARS	$ 2,000,000		Further DoD study
7-2	DFARS	15,000,000		Further DoD study
7-3	DFARS	5,000,000		Further DoD study
7-4	OMB/FAR[a]	100,000	$ 1,000,000	
Summary of recommendations:			4 Thresholds 1 increased 3 further study	
Recommended threshold groupings			$ 1,000,000 – 1	

[a] Office of Management and Budget (OMB)/FAR applies to a threshold requirement which was established by the Office of Management and Budget and included in the Federal Acquisition Regulations.

THRESHOLD REQUIREMENTS 7-1, 7-2, AND 7-3

Written acquisition plans shall be prepared for:

7-1. Development acquisitions whose total contractual costs are estimated at $2 million or more.

7-2. Production and service acquisitions whose contractual costs are estimated at $15 million for all years.

7-3. Production and service acquisitions whose contractual costs are estimated at $5 million for any fiscal year.

Reference: DFARS 7.103(c)(2)(i) and (ii)

Analysis: FAR 7.103(c) assigns the agency head the responsibility for establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, specifying those cases in which a written plan shall be prepared. These threshold requirements are the DoD implementation of FAR 7.103(c). The threshold levels have remained unchanged since they were first incorporated into the Armed Services Procurement Regulation (ASPR) (Part 1-2100), on 17 November 1975 (DPC #75-5).

Initially, it seems that if the thresholds were at the correct level in 1975 and have not been adjusted for inflation during the ensuing 13 years, they would be too low in 1988. However, disciplined, comprehensive, formal planning on a DoD-wide basis was a relatively new concept when it was adopted in ASPR in 1975, and the levels may have been too high then.

It is obviously advantageous for an acquisition team to reduce to writing and to coordinate with concerned offices an acquisition strategy for larger acquisitions. It is also a time-consuming exercise and one that can readily degenerate to a triumph of style over substance – particularly if the levels are set too low and no benefit is perceived from the exercise.

We believe that the subject of acquisition planning is important because of the positive benefits that can be derived if it is properly accomplished; however, it is critical that the substantial time required in the planning process be justified by the benefits. For that reason, we believe that, prior to attempting to set new

threshold levels, DoD must conduct a study of the historical cost versus benefits of advanced acquisition planning.

Recommend: That DoD conduct a cost/benefit study.

THRESHOLD REQUIREMENT 7-4

OMB Circular No. A-76, *Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government*, and the *Cost Comparison Handbook*, provide that, ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies to justify a Government commercial or industrial activity whose annual operating costs are estimated to be less than $100,000. Activities below that threshold should be performed by contract unless in-house performance is justified.

Reference: FAR 7.302(d)
OMB Circular No. A-76
OMB Cost Comparison Handbook, Supplement No. 1

Analysis: We believe that the $100,000 threshold, which was last set in March 1979, is too low a level in 1988. The procedures of OMB Circular No. A-76 require a substantial amount of effort if they are followed correctly – effort to review and organize the Government activity as efficiently as possible, to prepare a statement of work for competition, to complete the solicitation and contracting process, and to properly estimate the costs of continued Government performance of the activity. The $100,000 threshold could involve the cost of a single person or a very few people at most for a services contract. We believe that this threshold, below which a cost comparison study is not required, should be increased substantially.[1]

Recommend: Request OMB to increase the threshold to $1 million.

[1]OMB Circular No. A-76 has been revised, subsequent to the preparation of the analysis, to eliminate the $100,000 threshold and substitute instead a "threshold" of "10 or fewer full-time equivalents." We believe that the level should be higher, but it represents a substantial increase above the $100,000 threshold.

PART 10 – SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

PART 10 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
10-1	FAR	$ 25,000	$ 25,000	

Summary of recommendations: 1 Threshold
1 unchanged

Recommended threshold groupings ..... $ 25,000 – 1

THRESHOLD REQUIREMENT 10-1

Specifications and standards listed in the *Index of Federal Specifications and Standards* are not required to be used for items purchased under the appropriate small purchase limitation in Part 13.

Reference: FAR 10.006(a)(ii)

Analysis: This requirement is an exception to the mandatory use of certain specifications and standards in solicitations and contracts, and it exempts small purchases. Exemption of small purchases is reasonable, but the threshold should be rewritten to more clearly exempt the requirement for both purchases and contracts that do not exceed the small purchase threshold.

Recommend: Make no change to the threshold level, but restate it to include all contract actions that do not exceed the small purchase threshold.

PART 12 – CONTRACT DELIVERY OR PERFORMANCE

PART 12 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
12-1	DFARS	$ 25,000		Eliminate threshold and requirement
12-2	DFARS	25,000		Eliminate threshold and requirement
12-3	FAR	100		Eliminate threshold
12-4	FAR	100		Eliminate threshold

Summary of recommendations	4 Thresholds
	2 thresholds eliminated
	2 thresholds and requirements eliminated
Recommended threshold groupings	0

THRESHOLD REQUIREMENTS 12-1 AND 12-2

12-1. The contracting officer shall insert the clause at FAR 52.212-5, *Liquidated Damages - Construction*, in all construction contracts in excess of $25,000 except cost-plus-fixed-fee contracts or those on which the contractor cannot control the pace of the work.

12-2. Use of the clause at FAR 52.212-5, *Liquidated Damages - Construction*, is optional for construction contracts of $25,000 or less.

Reference: DFARS 12.204(b)

Analysis: These same thresholds are contained in DFARS 36.206. Logistics Management Institute (LMI) Report AL714R2, *Reforming Acquisition Regulations: Revising Dollar Thresholds*, concluded that "the automatic inclusion of liquidated damages provisions . . . may increase construction prices in some instances." LMI noted that "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." LMI recommended that "DFARS 36.206 should be deleted and FAR 12.204(b) should govern." Our position remains the same for these same thresholds found in Part 12.

Recommend: DFARS 12.204(b) should be deleted (thus eliminating Threshold Requirements 12-1 and 12-2) 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 situation.

THRESHOLD REQUIREMENTS 12-3 AND 12-4

FAR Clause 52.212-10, *Delivery of Excess Quantities of $100 or Less*, provides that if the contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the contractor. Pursuant to the terms of the clause:

12-3. The Government may retain such excess quantities up to $100 in value without compensating the contractor therefor.

12-4. Quantities in excess of $100 will, at the option of the Government, either be returned at the contractor's expense or retained and paid for by the Government at the contract unit price.

Reference: FAR 12.401(c)

Analysis: FAR Clause 52.212-10 may be included in contracts, but its use is not required. The $100 threshold within the clause can be adjusted by the contracting officer as a deviation from the FAR clause. We believe that, in preference to trying to pick the correct number for Government-wide regulations, FAR should retain the clause as a standard clause, but leave the amount blank. The contracting officer should insert the appropriate dollar level.

Recommend: Eliminate the threshold by modifying the clause.

PART 14 – SEALED BIDDING

PART 14 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
14-1	FAR	$ 10,000		Eliminate threshold
14-2	FAR	10,000		Eliminate threshold
14-3	FAR	10,000		Eliminate threshold
14-4	FAR	10,000		Eliminate threshold and requirement
14-5	FAR	10,000		Eliminate threshold
14-6	FAR	10,000		Eliminate threshold
14-7	FAR	100,000	100,000	
14-8	FAR	10,000	10,000	
14-9	Statute	100,000	100,000	
14-10	Statute	100,000	100,000	
14-11	Statute	100,000	100,000	
14-12	FAR	250		Further study

Summary of recommendations: 12 Thresholds
- 5 unchanged
- 5 thresholds eliminated
- 1 threshold and requirement eliminated
- 1 further study

Recommended threshold groupings ..... $ 10,000 – 1
100,000 – 4

THRESHOLD REQUIREMENTS 14-1, 14-2, AND 14-3

The contracting officer shall insert the following provisions in invitations for bids (IFBs) unless they are for construction that is not estimated to exceed $10,000 (use in IFBs is optional for construction estimated to be $10,000 or less):

14-1. FAR Provision 52.214-5, *Submission of Bids*.

14-2. FAR Provision 52.214-6, *Explanation to Prospective Bidders*.

14-3. FAR Provision 52.214-7, *Late Submissions, Modifications, and Withdrawals of Bids*.

Reference: FAR 14.201-6(c)

Analysis: The three FAR provisions are standard and are prescribed for use in all IFBs except those for construction estimated at $10,000 or less.

The *Submission of Bids* provision tells the bidder to submit its bid in a sealed envelope addressed to the specified office and showing some miscellaneous identifying information. It also stipulates that telegraphic bids will not be considered unless authorized by the solicitation and that bids may be modified or withdrawn before the time specified for receipt.

The *Explanation to Prospective Bidders* provision advises prospective bidders that they must request any explanations in writing, that oral explanations or instructions will not be binding, and that any information given to a prospective bidder may be furnished to all prospective bidders.

The *Late Submissions, Modifications, and Withdrawals of Bids* provision provides the rules on those subjects.

We do not understand why such basic bidding provisions would not be required in the narrow class of cases of construction acquisitions not expected to exceed $10,000. Similar provisions would certainly be needed for those IFBs. We suspect that these exceptions are carry-overs from times past when solicitations for construction services differed more substantially from other types of solicitations.

Recommend: Eliminate the thresholds.

THRESHOLD REQUIREMENT 14-4

The contracting officer shall insert in invitations for bids, unless they are for construction that is not estimated to exceed $10,000, the provision at FAR 52.214-8, *Parent Company and Identifying Data*.

Reference: FAR 14.201-6(d)

Analysis: This threshold requirement seems to have two drawbacks. First, routinely obtaining the *Parent Company and Identifying Data* under sealed bidding seems to serve no useful purpose. Second, if the requirement is a valid one for sealed bidding, it is equally valid under negotiated solicitations, but it is not specified as a requirement under those circumstances.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENTS 14-5 AND 14-6

14-5. The contracting officer shall insert the provisions at FAR 52.214-18, *Preparation of Bids – Construction*, in invitations for bids for construction work that is estimated to exceed $10,000. (Use in IFBs is optional for construction estimated to be $10,000 or less.)

14-6. The contracting officer shall insert the provision at FAR 52.214-19, *Contract Award – Sealed Bidding Construction*, in all invitations for bids for construction work that is estimated to exceed $10,000.

Reference: FAR 14.201-6(l)
FAR 14.201-6(m)

Analysis: FAR 52.214-18 provides basic bidding instructions. It advises bidders that bids must be submitted on the Government forms, that they must be manually signed, and that the person signing a bid must initial each erasure or change. It tells bidders that the bid forms may require submission of lump sum, alternative price, or unit price bidding. It tells bidders that if the solicitation requires all-or-none bidding, failure to bid in that manner will disqualify the bid, and it advises that alternative bids will not be considered unless the solicitation authorizes their submission.

FAR 52.214-19 informs the bidders that the Government will evaluate bids without discussions and will award to the responsive and responsible bidder whose bid is most advantageous to the Government. It contains two other routine bidding instructions.

The bidding instructions in FAR 52.214-18 and FAR 52.214-19 should apply to bids of less than $10,000 as well as to those of a greater amount. The solicitation provisions should be required in all invitations for bids for construction work.

Recommend: Eliminate the thresholds.

THRESHOLD REQUIREMENTS 14-7 AND 14-8

14-7. When contracting by sealed bidding and the contract amount is expected to exceed $100,000, the contracting officer shall insert in solicitations and contracts the clause at FAR 52.214-26, *Audit – Sealed Bidding*.

14-8. FAR Clause 52.214-26, *Audit – Sealed Bidding*, requires the contractor to insert a similar clause in all subcontracts over $10,000.

Reference: FAR 14.201-7(a)
FAR 52.214-26

Analysis: The purpose of the *Audit – Sealed Bidding* clause is similar to that of two clauses not used in sealed bidding. One of those is the *Examination of Records* clause, with a threshold level of $10,000, required to be included in negotiated contracts (see our analysis in Report AL714R2, *Reforming Acquisition Regulations: Revising Dollar Thresholds*, under Threshold Requirement 15-18). The other clause is the *Audit – Negotiation* clause, FAR 52.215-2, required for use in negotiated contacts and containing a $10,000 required flowdown to subcontractors. The requirement to insert the *Audit – Sealed Bidding* clause in contracts resulting from sealed bidding and subcontracts thereto provides the Government the same rights to access and examine cost data as it has in negotiated contracts in the event that pricing of modifications to the contract is supported by cost or pricing data.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENTS 14-9 AND 14-10

14-9. When contracting by sealed bidding and the contract amount is expected to exceed $100,000, the contracting officer shall insert in solicitations and contracts the clause at FAR 52.214-27, *Price Reduction for Defective Cost or Pricing Data – Modifications – Sealed Bidding.*

14-10. FAR Clause 52.214-27, *Price Reduction for Defective Cost or Pricing Data – Modifications – Sealed Bidding*, becomes operative only for any modification to the contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $100,000 except that the clause does not apply to any modification for which the price is:

1. **Based on adequate price competition;**
2. **Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or**
3. **Set by law or regulation.**

Reference: FAR 52.201-7(b)(1)
FAR 52.214-27
10 U.S.C. 2306(a)

Analysis: The threshold clause is required by the Truth in Negotiations Act. In sealed bidding, the provisions of the clause do not come into effect unless the contract is subsequently modified in an amount of $100,000 or more. The threshold levels were established only several years ago.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 14-11

When contracting by sealed bidding and the contract amount is expected to exceed $100,000, the contracting officer shall insert in solicitations and contracts, the clause at FAR 52.214-28, *Subcontractor Cost or Pricing Data – Modifications – Sealed Bidding.*

Reference: FAR 52.201-7(c)(1)
10 U.S.C 2306(a)

Analysis: The threshold clause is required by the Truth in Negotiations Act. In sealed bidding, the provisions of the clause do not come into effect unless the contract is subsequently modified in an amount of $100,000 or more.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 14-12

The contracting officer shall insert the provision at FAR 52.214-22, *Evaluation of Bids for Multiple Awards*, in invitations for bids if the contracting officer determines that multiple awards might be made. The provision states that it is assumed, for the purpose of evaluating bids, that $250 would be the administrative cost to the Government for issuing and administering each contract awarded under the solicitation.

Reference: FAR 14.201-8(c)

Analysis: The $250 threshold level seems too low an added cost factor to use in evaluating multiple awards. The issue is purely one of cost. We believe that inflation has increased the cost of $250 to award and administer a contract.

Recommend: DoD review the costs of awarding and administering multiple contracts and make any appropriate adjustments to the threshold level.

PART 17 – SPECIAL CONTRACTING METHODS

PART 17 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
17-1	Statute	$100,000,000	$ 100,000,000	
17-2	DFARS	1,000,000		Eliminate threshold
17-3	Statute	25,000	25,000	

Summary of recommendations: 3 Thresholds
2 unchanged
1 threshold eliminated

Recommended threshold groupings ..... $ 25,000 – 1
100,000,000 – 1

THRESHOLD REQUIREMENT 17-1

Before the award of any multiyear contract that contains a clause setting forth a cancellation ceiling in excess of $100 million, the Secretary shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committee on Armed Services and on Appropriations of the Senate and House of Representatives. Such a contract may not be awarded until the end of a period of 30 calendar days beginning on the date of such notification.

Reference: DFARS 17.103-70
10 U.S.C. 2306(h)(3)

Analysis: This is a statutory requirement with a threshold level that appears to be reasonable.

Recommend: Request no change to the threshold.

THRESHOLD REQUIREMENT 17-2

Component breakout will normally not be justified for a component whose cost is not expected to exceed $1 million for the current year's requirement.

Reference: DFARS 17.7202-4(b)

Analysis: While this threshold requirement is intended to offer guidance, it is, in reality, a virtual conclusion that is not particularly helpful. It can, in fact, be somewhat misleading for components whose cost is expected to exceed $1 million in a year. Better guidance is supplied in DFARS 17.7202-4(a) (the preceding DFARS paragraph), which states that each decision on whether to break out a component must embrace, among other things, a calculation of estimated net savings (i.e., estimated acquisition savings less any offsetting costs). That paragraph is enough. The requiring activities can work out the mathematics, and they do not need the threshold level, which implies that above $1 million, component breakout is justified. We suspect that, for most components whose annual cost is in the low seven figures, such component breakout is not justified.

Recommend: Eliminate the threshold.

THRESHOLD REQUIREMENT 17-3

The policies and procedures contained in DFARS Subpart 17.75, *Undefinitized Contract Actions*, implementing 10 U.S.C. 2326, do not apply to purchases less than $25,000.

Reference: DFARS 17.7502
10 U.S.C. 2326(g)

Analysis: Exempting small purchases from these requirements is reasonable and is based in statute.

Recommend: Request no change to the threshold.

PART 19 – SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS

PART 19 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
19-1	DFARS	$ 25,000	$ 25,000	
19-2	FAR	25,000	25,000	
19-3	FAR	25,000	25,000	
19-4	Statute	150,000,000		Further study
19-5	DFARS	5,000		Eliminate threshold
19-6	FAR	10,000	25,000	
19-7	FAR	1,000,000		Eliminate threshold and requirement
19-8	DFARS	2,000,000	2,000,000	
19-9	DFARS	1,000,000	1,000,000	
19-10	DFARS	5,000		Eliminate threshold
19-11	DFARS	25,000	25,000	
19-12	Statute	25,000	25,000	
19-13	FAR	25,000	25,000	
19-14	FAR	500,000		Eliminate threshold and requirement
19-15	FAR	500,000		Eliminate threshold and requirement
19-16	Statute	500,000	1,000,000	
19-17	Statute	1,000,000	1,000,000	
19-18	Statute	10,000	25,000	
19-19	FAR	25,000		Eliminate threshold and requirement
19-20	FAR	10,000		Eliminate threshold and requirement
19-21	Statute	500,000	1,000,000	
19-22	Statute	1,000,000	1,000,000	

Summary of recommendations: 22 Thresholds
- 10 unchanged
- 4 increased
- 2 thresholds eliminated
- 5 thresholds and requirements eliminated
- 1 further study

Recommended threshold groupings ....
- $ 25,000 – 8
- 1,000,000 – 5
- 2,000,000 – 1

THRESHOLD REQUIREMENT 19-1

The contracting officer shall complete a report for an initial award of $25,000 or greater, whenever such award is (1) the result of a Small Disadvantaged Business set aside, (2) based on the application of an evaluation preference for small disadvantaged businesses (SDBs) (DFARS Subpart 19.70), or (3) based on preferential consideration of SDBs [DFARS 19.502-3(70)]. This report shall be completed within 3 days of award and forwarded through channels to DIOR-WHS.

Reference: DFARS 19.202-5(b)

Analysis: This report identifies the contract by number and date of award, and requires the following information:

- Award price
- Total value of fair market price
- Difference
- Premium percent.

The SDB set-aside program provisions and preferential considerations apply to DoD acquisitions awarded during FY87, FY88, and FY89. The program is in the nature of a test and this special report will accumulate data on the results.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 19-2

The contracting officer shall insert the provision at FAR 52.219-2, *Small Disadvantaged Business Concern Representation*, in solicitations (other than those for small purchases of $25,000 or less), when the contract is to be performed in the United States.

Reference: FAR 19.304(b)

Analysis: This solicitation provision requires a representation to be made by the bidder or offeror in its bid or proposal that it is or is not a small disadvantaged business concern. The threshold requirement is innocuous and requires no measurable effort on the part of bidders or offerors. Its purpose is to provide information required by Standard Form 279, *Individual Contract Action Report.* The small purchase threshold is the correct level at which to apply it.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 19-3

The contracting officer shall insert the provision at FAR 52.219-3, *Women-Owned Small Business Representation*, in solicitations (other than those for small purchases of $25,000 or less), when the contract is to be performed within the United States.

Reference: FAR 19.304(c)

Analysis: This solicitation provision requires a representation to be made by the bidder or offeror in its bid or proposal that it is or is not a women-owned small business concern. This provision requires no measurable effort on the part of bidders or offerors. The information is used solely to provide information required by the Standard Form 279, *Individual Contract Action Report* [and for an appendix to the annual Report to Congress on Small Business and Competition, required by 15 U.S.C. 631(b)]. The small purchase threshold is the correct level at which to apply this requirement.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 19-4

The Small Business Administration (SBA) is required to assign a breakout procurement center representative to each major procurement center of the Department of Defense that awarded contracts for other than commercial items totaling at least $150 million in the preceding fiscal year.

Reference: FAR 19.403(a)
15 U.S.C. 644

Analysis: This provision is a requirement of the *Small Business and Federal Competition Enhancement Act of 1984*. The SBA breakout procurement center representative is an advocate for (1) the appropriate use of full and open competition and (2) the breakout of items, when appropriate, while maintaining the integrity of the system in which such items are used. (The SBA breakout procurement center representative is additional to the SBA procurement center representative, whose responsibilities include reviewing proposed acquisitions to recommend set asides, recommending small business concerns for inclusion on solicitation mailing lists, and in general ensuring that SBA policies and programs are carried out.)

When an SBA breakout procurement center representative is assigned, the SBA is required to assign at least two collocated small business technical representatives. FAR 19.403(c) contains a list of the responsibilities and authorities of the SBA breakout procurement center representative. The authorities are all advisory in nature.

This threshold requirement duplicates, to an extent, the Competition Advocate function required by the Competition in Contracting Act, and it can increase PALT. The $150 million threshold was established in the statute.

Recommend: Conduct a study of the effectiveness of this requirement to determine whether it is worth its cost in manpower (both SBA and DoD) and increased PALT.

THRESHOLD REQUIREMENT 19-5

The Small and Disadvantaged Business Utilization (SADBU) specialist shall review the acquisition and the contracting officer's justification and make a recommendation to the contracting officer before the issuance of a solicitation or contract modification (except those that exercise an option) either (1) for additional supplies or services in excess of $5,000 that have not been set aside for small business or (2) for a dissolved small business-small purchase set aside in excess of $5,000.

Reference: DFARS 19.501(c)

Note: This provision requires a review of a contracting officer's decision not to set aside for small business add-ons and small purchases whose cost is estimated to be in excess of $5,000.

Analysis: A $5,000 threshold is a very low level to routinely require a small business set-aside review. Whether this requirement results in a significant workload or causes unreasonable PALT delays will vary with the circumstances of individual purchasing offices.

This requirement for a review is apparently based on an assumption that a check is necessary to ensure that the set-aside requirements are followed. An equally plausible assumption would be that the set-aside requirements are being followed until there is evidence to the contrary, at which time detailed checks could be required. Such a procedure would be consistent with a similar requirement of FAR 19.501(d), which provides for reviews by the SBA procurement center representative *at the request of that representative* and would save manpower and decrease PALT.

Recommend: Eliminate this threshold and conduct reviews at the discretion of the Director, Office of Small and Disadvantaged Business Utilization.

THRESHOLD REQUIREMENT 19-6

At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of $10,000 that have not been unilaterally set aside for small business.

Reference: FAR 19.501(d)

Note: This requirement permits a detailed review of acquisitions over $10,000 if the SBA procurement center representative considers such a review to be necessary to ensure that the set-aside requirements of the Small Business Act are being followed.

Analysis: A review of proposed acquisitions by the SBA procurement center representative is a reasonable check on decisions not to set aside acquisitions. It would appear, however, that this threshold is pegged to the old small purchase threshold. Since most acquisitions of $25,000 or less are set aside for small business consistent with the requirements of 15 U.S.C. 644(j) and FAR 19.501(f), the small purchase threshold would be a more reasonable level.

Recommend: Increase the threshold to the small purchase threshold.

THRESHOLD REQUIREMENT 19-7

If a proposed small business set-aside is estimated to exceed $1 million in value and a bond is required, the contracting officer shall, to the extent practicable, divide requirements so as to allow more than one concern to perform the work.

Reference: FAR 19.501(h)

Analysis: This threshold applies almost exclusively to construction contracting since it is tied to bonding. It requires a contracting officer to attempt to divide every construction project if the acquisition is to be set aside for small business and is estimated to exceed $1 million. This attempted division of the work would be made even though a small business may have no difficulty in obtaining the required bond. It also ignores the inherent difficulty of splitting a construction project into separate pieces.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENTS 19-8, 19-9, AND 19-10

19-8. Every proposed acquisition for construction, including maintenance and repairs, in excess of $5,000 and under $2 million shall be considered individually as though the Small Disadvantaged Business Utilization Specialist had initiated a set-aside request. Each acquisition for construction of $2 million or more shall be considered for a set aside on an individual acquisition basis.

19-9. Every proposed acquisition for dredging in excess of $5,000 and under $1 million shall be considered individually as though the Small Disadvantaged Business Utilization Specialist had initiated a set-aside request. Each acquisition for dredging of $1 million or more shall be considered for a set aside on an individual acquisition basis.

19-10. Acquisitions for construction services or dredging of $5,000 or less are subject to small business-small purchase set asides if small purchase procedures are used [FAR 13.105(a)] or Small Disadvantaged Business set asides if small purchase procedures are not used (DFARS 19.502-72).

Reference: DFARS 19.501(g)(71)
DFARS 19.501(g)(72)
FAR 13.105(a)
DFARS 19.502-72

Analysis: The thresholds provide an automatic set aside for construction and dredging acquisitions within the specified cost estimates, without precluding set asides above the threshold levels. Acquisitions of $5,000 or less are automatically set aside for either Small or Small Disadvantaged Business participation, depending on whether small purchase or formal contracting procedures are used, creating an awkward and somewhat ambiguous requirement.

Recommend: Make no change to the upper thresholds, but eliminate the lower threshold (or if that is unacceptable, increase it to the small purchase threshold).

THRESHOLD REQUIREMENT 19-11

Use of a combined small business-labor surplus area (LSA) set-aside procedure shall be considered for acquisitions exceeding $25,000.

Reference: DFARS 19.502-70

Note: This set-aside procedure is to be used in preference to all others except SDB set-asides when the proposed acquisition meets listed criteria.

Analysis: This threshold addresses the small business set-aside program and the labor surplus area set-aside program at the same time under qualifying acquisitions. Since the alternative would be a partial or total small business set aside, this threshold requirement enhances the labor surplus area set-aside program.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 19-12

Except those acquisitions of $25,000 or less subject to small purchase procedures (and other exceptions), the entire amount of an individual acquisition shall be set aside for exclusive SDB participation, if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible SDB concerns, (2) award will be made at a price not exceeding the fair market price by more than 10 percent, and (3) scientific and/or technological talent needed will be obtained through use of a total SDB set-aside.

Reference: DFARS 19.502-72
Section 1207 of PL 99-661

Note: The statute limits this SDB set-aside program to fiscal years 1987, 1988, and 1989, in the nature of a test. Before an acquisition is set aside, however, the contracting officer must determine the extent of competition expected and the availability of the requisite scientific and/or technological talent.

Analysis: By statute, SDB set-asides must be applied to acquisitions expected to exceed the small purchase threshold of $25,000 and other exceptions. [Acquisitions of $25,000 or less under small purchase procedures are automatically set aside for small (distinct from small disadvantaged) business as required by 15 U.S.C. 644(j)].

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 19-13

Unless purchase on an unrestricted basis is appropriate, the contracting officer shall insert the provision at FAR 52.219-4, *Notice of Small Business-Small Purchase Set-Aside*, in each written solicitation of quotations or offers to provide supplies and/or services when (1) the contract is to be performed within the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia, (2) the contract amount is expected to be $25,000 or less, and (3) the acquisition is subject to small purchase procedures.

Reference: FAR 19.508(a)

Analysis: This provision, used below the small purchase threshold, is a notice to prospective offerors that quotations or offers are solicited only from small business concerns when the acquisition is set aside for small business. Since by definition it applies to small purchase-small business set asides, its application at the small purchase threshold is correct.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 19-14 AND 19-15

19-14. If a proposed contract is for $500,000 or less, the SBA Regional Administrator will issue (or deny) a certificate of competency stating that a firm, found by a contracting officer to lack certain elements of responsibility, is in fact sufficiently responsible to receive and perform the specific Government contract.

19-15. If the proposed contract is for more than $500,000, the SBA Regional Administrator will forward a recommendation to the SBA Central Office that a certificate of competency be issued.

Reference: FAR 19.602-2(b)(2) and (3)

Analysis: These thresholds establish authorities within the SBA for issuing certificates of competency. They have no effect on DoD workload and a negligible affect on PALT.

These thresholds are internal SBA controls and as such are inappropriate for the FAR. The contracting officer only needs to know that SBA will issue or deny a certificate of competency. He/she does not need to know the required approval level within the SBA. These two thresholds simply add to the threshold clutter of the FAR.

Recommend: Eliminate the thresholds and the requirements.

THRESHOLD REQUIREMENTS 19-16 AND 19-17

19-16. In acquisitions other than for construction, each solicitation of offers or invitation for bids to perform a contract or contract modification that individually is expected to exceed $500,000 and that has subcontracting possibilities shall require the apparently successful offeror or the bidder selected for award to submit a subcontracting plan.

19-17. In acquisitions for construction, each solicitation of offers or invitation for bids to perform a contract or contract modification that individually is expected to exceed $1 million and that has subcontracting possibilities shall require the apparently successful offeror or the bidder selected for award to submit a subcontracting plan.

Reference: FAR 19.702(a)(1) and (2)
FAR 19.708(b)
15 U.S.C. 637(d)(4)

Analysis: The requirement to submit small and small disadvantaged business subcontracting plans is statutory. While the statute does not require that work be subcontracted, it encourages subcontracting with small and small disadvantaged businesses when work is to be subcontracted.

The statute is now 10 years old, and consideration should be given to adjusting the thresholds for inflation. In addition, the concept of a higher threshold for construction should be reconsidered. Construction contracts present the same – and sometimes greater – opportunities for small and small disadvantaged business subcontracting as do other types of contracts. We believe that a single threshold for all types of contracts, at the $1 million level, would be appropriate and would reduce workload.

Recommend: 19-16. Request legislation to increase the threshold to $1 million.

19-17. Make no change to the threshold.

THRESHOLD REQUIREMENT 19-18

FAR clause 52.219-8, *Utilization of Small Business Concerns and Small Disadvantaged Business Concerns*, shall be inserted in solicitations and contracts when the contract amount is expected to be over $10,000, unless a personal services contract is contemplated or the contract is to be performed outside of the United States, the District of Columbia, and Puerto Rico.

Reference: FAR 19.702
FAR 19.708(a).
15 U.S.C. 637(d)(2)

Analysis: This requirement is statutory. In accepting this contract clause, a contractor agrees to carry out the policy of the Government in the awarding of subcontracts so that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate. The contractor also agrees to cooperate in any studies or surveys by the SBA or the awarding agency that may be necessary to determine the extent of the contractor's compliance with the clause.

When the $10,000 threshold was established, that dollar level was also the threshold for small purchases in the Department of Defense. The clause has little practical impact in contracts of any value and such impact as there may be diminishes at lower dollar levels. The likelihood of subcontracting under small purchases is remote.

Recommend: Request legislation to raise the threshold to $25,000, the small purchase threshold.

THRESHOLD REQUIREMENT 19-19

The contracting officer shall insert the clause at FAR 52.219-13, *Utilization of Women-Owned Small Businesses*, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation, except for contracts for personal services and contracts to be performed outside of the United States and its possessions.

Reference: FAR 19.902

Analysis: By accepting this clause, the contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

This clause is not required by statute or Executive order (EO). It is purely hortatory. It contains no requirement of substance nor does it provide any way to measure performance or to enforce its provisions. Therefore, it cannot be expected to have a significant effect on the subcontracting decisions of contractors.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENT 19-20

The clause at FAR 52.219-7, *Notice of Partial Small Business Set-Aside* (APR 1984), requires an agreement by the offeror that if awarded a contract in excess of $10,000, it will submit a report containing the following information to the contracting officer within 30 days after the date of award:

1. **The dollar amount of the contract.**
2. **Each labor surplus area in which the contract (and subcontract) performance is taking or will take place.**
3. **The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas.**
4. **The total dollar amount attributable to performance in labor surplus areas.**

Reference: FAR 52.219-7

Note: While the wording of the FAR clause does not clearly say so, the threshold requirement must be presumed to apply in those instances in which a contractor is awarded the set-aside portion as a small business-labor surplus area concern (the first priority for conducting set-aside negotiations).

Analysis: The $10,000 threshold was the small purchase threshold at the time the referenced clause was prescribed and that is most likely the origin of the threshold level.

The clause provides information to the Administrative Contracting Officer (ACO) to permit him/her to verify that a contractor who was awarded a contract on the basis of a promise to perform substantially in labor surplus areas does, in fact, do so. Because the representation that the small business was also in a labor surplus area played a major roll in the contract award, verification is absolutely essential to preserve the integrity of the process. Imposition of this clause, however, is not the most effective method to do that. Rather than include this requirement among the general "boilerplate" provisions of a

contract, the ACO should, when the information is needed, request it of the contractor as a contract administration action.

Recommend: Eliminate the threshold and the requirement by deleting Paragraph (c)(2) from the clause. If elimination of the threshold is unacceptable, increase the threshold level to the $25,000 small purchase threshold.

THRESHOLD REQUIREMENTS 19-21 AND 19-22

19-21. The clause at FAR 52.219-9, *Small Business and Small Disadvantaged Business Subcontracting Plan,* contains a flowdown provision by which the bidder or offeror for other than construction of a public facility agrees to require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 to adopt a Small Business and Small Disadvantaged Business Subcontracting Plan similar to the plan agreed to by the bidder or offeror.

19-22. The clause at FAR 52.219-9, *Small Business and Small Disadvantaged Business Subcontracting Plan,* contains a flowdown provision by which the bidder or offeror for construction of any public facility agrees to require all subcontractors (except small business concerns) that receive subcontracts in excess of $1 million to adopt a Small Business and Small Disadvantaged Business Subcontracting Plan similar to the plan agreed to by the bidder or offeror.

Reference: FAR 52.219-9
15 U.S.C. 637(d)(4)

Analysis: These requirements are statutory. When a subcontracting plan is required of prime contractors, a flow-down of this contract clause is reasonable. However, we elsewhere (Threshold Requirement 19-16) recommend that the $500,000 threshold be increased to $1 million. Accordingly, the same recommendation is appropriate here. A reduction in workload will result.

Recommend: 19-21. Request legislation to increase this threshold to $1 million.

19-22. Make no change to the threshold.

PART 20 – LABOR SURPLUS AREA CONCERNS

PART 20 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
20-1	EO[a]	$ 25,000	$ 25,000	
20-2	DFARS	25,000		Eliminate threshold and requirement
20-3	DFARS	500,000	1,000,000	
Summary of recommendations:			3 Thresholds 1 unchanged 1 increased 1 threshold and requirement eliminated	
Recommended threshold groupings			$ 25,000 – 1 1,000,000 – 1	

[a] EO applies to a threshold requirement which was established by an Executive order and included in the Defense Federal Acquisition Regulation Supplement.

THRESHOLD REQUIREMENT 20-1

The following shall be applied to contracts that are estimated to exceed $25,000:

1. **Negotiated contracts shall, where acquisition objectives permit, be awarded to LSA concerns, provided that in no case shall price differentials be paid for the purpose of carrying out this policy.**

2. **When appropriate, acquisitions shall be made from LSA concerns by partial set-aside procedures, and such set asides shall be given preference over any small business set aside.**

3. **Each Department shall assure that information identifying LSA is disseminated promptly to contracting personnel.**

4. **When less than a complete bidders list is used, at least a pro rata number of prospective LSA concerns shall be solicited.**

5. **Subcontracting with concerns in LSAs shall be encouraged.**

6. **Each Department, in soliciting bids and proposals for any contract estimated to exceed $25,000, shall request from any offeror or other source any information needed to determine whether the offeror is an LSA concern. Contract files shall be documented to indicate the extent to which LSA concerns were considered and the action taken with respect thereto.**

Reference: DFARS 20.7002(a)
EO 12073, 16 August 1978

Note: This threshold requirement is one of several techniques to implement a stated policy of the Department of Defense "to aid Labor Surplus Areas (LSAs) by placing contracts with LSA concerns, to the extent consistent with acquisition objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns." (While Paragraph 2 of the threshold requirement gives first priority to LSA set asides, it is now inconsistent with the recently issued DFARS 19.504, by

which Small Disadvantaged Business set asides are afforded first priority.)

Analysis: DoD is essentially exempt from FAR Part 20. Thus, the regulations in DFARS Part 20 are the basic rather than the supplementing regulations on LSA contracting.

While Defense Manpower Policy No. 4B, May 23, 1980, is often identified as the basic regulation for this requirement, it is a thin reed, stating only that "It is the policy of the Federal Government to award appropriate contracts to eligible labor surplus area concerns." EO 12073 specifically mentions labor surplus area set asides.

This threshold is set at the small purchase threshold, which is an appropriate level.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 20-2

The clause at FAR 52.220-3, *Utilization of Labor Surplus Area Concerns*, shall be inserted in all contracts that may exceed $25,000, except for contracts with foreign contractors performed outside of the United States, contracts for services that are personal in nature, contracts for construction, and contracts with the petroleum and petroleum products industry.

Reference: DFARS 20.7004(c)(1)

Analysis: In accepting this contract clause, a contractor undertakes the simple obligation of using its best efforts to place subcontracts with concerns that will perform such subcontracts substantially in LSAs in instances when it is possible to do so and at the same time maintain efficient performance of the contract at prices no higher than can be obtained elsewhere. The clause is merely hortatory. It establishes no measurable requirement and sets no penalty for failure to follow its provisions. We can reasonably assume that it has no effect on the subcontracting practices of contractors whose contracts contain the clause.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENT 20-3

The clause at FAR 52.220-4, *Labor Surplus Area (LSA) Subcontracting Program*, shall be included in all contracts that may exceed $500,000, contain the clause at 52.220-3, *Utilization of Labor Surplus Area Concerns*, and in the opinion of the purchasing activity, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000 but that in the opinion of the purchasing activity offer substantial subcontracting possibilities shall be urged to accept the clause.

Reference: DFARS 20.7004(c)(2)

Analysis: In accepting this clause, the contractor is responsible for undertaking a number of specific actions designed to ensure achievement of the LSA subcontracting objectives and for imposing responsibilities for similar actions on major subcontractors. The contractor is required to designate an LSA liaison officer, consider LSA concerns in all make-or-buy decisions, ensure that LSA concerns have an equitable opportunity to compete, include the LSA clause in appropriate contracts, and maintain records for Government review. The $500,000 threshold for nonconstruction contracts is the same as the FAR threshold for establishing similar activities to further the Small and Small Disadvantaged Business subcontracting program.

This threshold, at the $500,000 level, has been in the regulations since at least 1971 when it was reviewed by the Commission on Government Procurement. The clause is largely hortatory, but it requires the establishment of a system of records that adds to the contract costs. The threshold should be adjusted to account for the effects of inflation since 1971, and we believe that $1 million would be a reasonable level, consistent with our recommendation to increase the threshold for the Small and Small Disadvantaged Business Subcontracting Plan to $1 million (Threshold Requirement 19-21). We also suggest that DoD consider combining the LSA and Small and Small Disadvantaged Business subcontracting requirements into one clause.

Recommend: Increase the threshold level to $1 million.

PART 22

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

PART 22 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
22-1	FAR	$ 100,000		Eliminate threshold
22-2	Statute	2,000	$ 25,000	
22-3	DOL[a]	10	10	
22-4	DOL	500	500	
22-5	DOL	500	500	
22-6	Statute	2,000	25,000	
22-7	DOL	1,000	1,000	
22-8	DOL	1,000	1,000	
22-9	Statute	2,000	25,000	
22-10	Statute	2,000	25,000	
22-11	Statute	2,000	25,000	
22-12	Statute	2,000	25,000	
22-13	FAR	2,000		Eliminate threshold and requirement
22-14	Statute	2,000	2,000	
22-15	Statute	2,000	2,000	
22-16	Statute	2,000	2,000	
22-17	DOL	2,000	2,000	
22-18	Statute	2,000	2,000	
22-19	Statute	2,500	25,000	
22-20	Statute	2,500	25,000	
22-21	Statute	2,500	25,000	
22-22	DOL	50,000	50,000	
22-23	DOL	10,000	500,000	
22-24	DOL	1,000,000	5,000,000	
22-25	DOL	1,000,000	5,000,000	
22-26	DOL	1,000,000	5,000,000	
22-27	DOL	10,000		Eliminate threshold and requirement
22-28	DOL	10,000	100,000	
22-29	DOL	10,000	100,000	
22-30	DOL	10,000	100,000	
22-31	DOL	10,000	100,000	
22-32	DOL	10,000	100,000	
22-33	FAR	250,000	1,000,000	
22-34	Statute	10,000	25,000	
22-35	Statute	10,000	25,000	
22-36	Statute	10,000	25,000	
22-37	Statute	2,500	25,000	
22-38	Statute	2,500	25,000	

[a] DOL applies to threshold requirements which were established by the Department of Labor and included in the Federal Acquisition Regulation

Summary of recommendations	38 Thresholds	
	11	unchanged
	24	increased
	1	threshold eliminated
	2	thresholds and requirements eliminated
Recommended threshold groupings	**$**	10 – 1
		500 – 2
		1,000 – 2
		2,000 – 5
		25,000 – 14
		50,000 – 1
		100,000 – 5
		500,000 – 1
		1,000,000 – 1
		5,000,000 – 3

THRESHOLD REQUIREMENT 22-1

The contracting officer shall include the clause at FAR 52.222-2, *Payment for Overtime Premiums*, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to be over $100,000; unless (1) a cost-reimbursement contract for operation of vessels is contemplated or (2) a cost-plus-incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent is contemplated.

Reference: FAR 22.103-5(b)

Note: The clause contains a space for the contracting officer to insert the ceiling amount of authorized overtime premium cost agreed to during negotiations, including "zero" if that is appropriate. The clause also describes those situations in which overtime in addition to the specified ceiling is permitted and the information that the contractor must submit to support any request for an increase in the overtime premium cost ceiling.

Analysis: The clause required by this threshold is intended to limit the reimbursement for overtime premiums to no more than that amount specifically agreed to during negotiations. In addition to agreed-upon overtime, the clause permits payment of overtime premiums in four specific situations: (1) emergencies, (2) indirect-labor employees whose duties normally could be expected to include overtime, (3) tests and the like that are continuous in nature and cannot be reasonably interrupted, and (4) overtime work that will result in lower overall costs to the Government.

We believe that the clause should be rewritten as two clauses and that the $100,000 threshold should be eliminated. The portion that deals with an advance agreement of overtime premiums is used infrequently and should be prescribed separately when required. The portion of the clause that permits payment of overtime premiums in four different situations is applicable to cost-reimbursement contracts of any value and should be prescribed for routine inclusion in all such contracts.

Recommend: Eliminate the threshold and prescribe two clauses, one for negotiated overtime premium cost and one for "customary" overtime situations.

THRESHOLD REQUIREMENTS 22-2, 22-3, 22-4, AND 22-5

22-2. The contracting officer shall insert the clause at FAR 52.222-4, *Contract Work Hours and Safety Standards Act – Overtime Compensation*, in solicitations and contracts in excess of $2,000 for construction and in excess of $2,500 for other than construction, when the contract may require or involve the employment of laborers or mechanics. Exceptions are listed, including contracts subject in their entirety to the Walsh-Healey Public Contracts Act.

22-3. When an overtime computation discloses underpayments, the contractor and any subcontractor responsible therefore shall be liable to the affected employee for the employee's unpaid wages and shall, in addition, be liable to the Government for liquidated damages. Liquidated damages shall be computed for each such affected employee in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the Act.

If the head of an agency or a designee finds that the administratively determined liquidated damages due are incorrect, or that the contractor or subcontractor inadvertently violated the provisions of the Act notwithstanding the exercise of due care, the agency head or a designee may:

22-4. Make an adjustment in, or release the contractor or subcontractor from the liability for, liquidated damages of $500 or less; or

22-5. Make a recommendation to the Secretary of Labor for an adjustment in or release from the liability when the liquidated damages are over $500.

Reference:

FAR 22.305
FAR 22.302(a)
FAR 22.302(c)(1)
FAR 22.302(c)(2)

Note: In LMI Report AL714R2, *Reforming Acquisition Regulations: Revising Dollar Thresholds*, February 1988, we

recommended that DoD request the Department of Labor to increase the threshold for the application of the *Contract Work Hours and Safety Standards Act – Overtime Compensation*, and consequently the inclusion of the clause, to $25,000. Threshold Requirement 22-2 and the recommendation applying to it are noted here because they are primarily based in FAR Part 22.

Analysis: The analysis contained in LMI Report AL714R2 for Threshold Requirement 13-9 applies equally to this Threshold Requirement 22-2. The basic point made in the earlier analysis is that the $2,000/$2,500 threshold has not been increased since 1962. Because of the effects of inflation, the threshold is now too low and is below the current small-purchase threshold.

Threshold Requirement 22-3 sets the amount of liquidated damages due the Government as a penalty for noncompliance with the Act in paying overtime compensation. That amount is set by the Department of Labor and we are not prepared to question it.

Threshold Requirements 22-4 and 22-5 provide the amount – $500 – at or below which contractors or subcontractors may be released from liquidated damage liability by the agency head or a designee and above which the determination to release from liability must be made by the Secretary of Labor. We believe that this threshold amount is at an acceptable level.

Recommend: 22-2. Request that the Department of Labor increase threshold to $25,000.

22-3, 22-4, and 22-5. Make no change to the thresholds.

THRESHOLD REQUIREMENT 22-6

Contracts in excess of $2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States shall contain a clause providing that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

Reference: FAR 22.403-1
FAR 52.222-6
40 U.S.C. 276(a)
(Davis-Bacon Act)

Analysis: The Davis-Bacon Act receives critical attention from time to time when its repeal or an increase in its threshold level is proposed. The threshold level of $2,000 has not been changed since the enactment of the statute in 1931. It is clearly too low by any standard. We will echo the recommendations of many others by stating that at the very least, the threshold for the Davis-Bacon Act should be increased to the small purchase threshold of $25,000. A decrease in workload and shortening of PALT will result.

Recommend: Request that the Department of Labor to seek a legislative increase in this threshold to at least the small purchase threshold.

THRESHOLD REQUIREMENTS 22-7 AND 22-8

22-7. Based upon an investigation by the contracting agency, the contracting officer shall prepare and forward a report of Davis-Bacon wage rate violations to the agency head or designee. The agency head or designee shall submit a detailed enforcement report to the Administrator, Wage and Hour Division, Department of Labor, within 60 days after completion of the investigation if underpayments by a contractor or subcontractor total $1,000 or more.

22-8. In investigations conducted by the Department of Labor which disclose underpayments totaling $1,000 or more, the Department of Labor will furnish the concerned contracting agency an enforcement report detailing violations found and any action taken by the contractor to correct such violations, including any payment or back wages.

Reference: FAR 22.406-8(d)(2)(i)(A)
FAR 22.406-8(e)

Analysis: The threshold requirements are self-explanatory. While the $1,000 thresholds appear low, the only requirements are to send reports to or from the Department of Labor. The consequent workload burden on DoD is minimal. We recommend deferring to the Department of Labor on the appropriate level for these thresholds.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENTS 22-9, 22-10, 22-11, and 22-12

The contracting officer shall insert in solicitations and contracts in excess of $2,000 for construction within the United States, the following clauses:

22-9. FAR Clause 52.222-7, *Withholding of Funds.*

22-10. FAR Clause 52.222-8, *Payrolls and Basic Records.*

22-11. FAR Clause 52.222-9, *Apprentices and Trainees.*

22-12. FAR Clause 52.222-14, *Compliance with Davis-Bacon and Related Act Regulations.*

Reference: FAR 22.407(a)

Analysis: All of the threshold clauses are required to fully implement the Davis-Bacon Act requirements. In Threshold Requirement 22-6, we recommend that the Department of Labor be requested to seek a legislative increase of the Davis-Bacon threshold to at least the small purchase threshold. That same recommendation applies to these thresholds.

Recommend: When the threshold level of the Davis-Bacon Act is increased to at least the small purchase threshold, increase these thresholds to the same level.

THRESHOLD REQUIREMENT 22-13

The contracting officer shall insert FAR clause 52.222-16, *Approval of Wage Rates*, in solicitations and contracts in excess of $2,000 for cost-reimbursement construction to be performed within the United States, except for contracts with a State or political subdivision thereof.

Reference: FAR 22.407(b)

Analysis: The clause requires the contractor to submit for the approval of the contracting officer, any straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under the contract, if those rates exceed the Davis-Bacon minimum wage rates. If the contractor does not receive approval of the rates from the contracting officer, but pays them anyway, the amounts in excess of the Davis-Bacon minimum wage rates are not reimbursable. Thus, the Davis-Bacon minimum wage rates can become, under cost-reimbursable contracts, maximum wage rates as well.

This requirement is unusual in the midst of labor standards clauses designed to protect the safety and income of workers on construction contracts. The threshold requirement clause is required in cost-reimbursement construction contracts that contain Davis-Bacon Act minimum wage determinations.

No similar provision is imposed on other types of wages reimbursed under the contract. We can find no reason that reimbursement of wages for this class of labor should be treated in this manner.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENT 22-14

The contracting officer shall insert the FAR Clause 52.222-10, *Compliance with Copeland Act Requirements*, in solicitations and contracts in excess of $2,000 for construction within the United States.

Reference: FAR 22.407(a)(5)
18 U.S.C. 874
40 U.S.C. 276c

Analysis: This is a statutory requirement. The Copeland (Anti-Kickback) Act makes it unlawful to induce by force, intimidation, threat of procuring dismissal from employment, or otherwise any person employed in the construction or repair of public buildings or public works financed in whole or in part by the United States to give up any part of the compensation to which that person is entitled under a contract of employment. This restriction is a reasonable one.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 22-15

The contracting officer shall insert the FAR Clause 52.211-11, *Subcontracts (Labor Standards)*, in solicitations and contracts in excess of $2,000 for construction within the United States.

Reference: FAR 22.407(a)(6)

Analysis: The *Subcontracts (Labor Standards)* clause is intended to be a flowdown to subcontractors at all tiers of labor standards provisions. The threshold level of $2,000 is consistent with the application of the Davis-Bacon Act provisions and other labor standards clauses. In Threshold Requirement 22-6 we recommend that the Department of Labor be requested to seek a legislative increase of the Davis-Bacon threshold to at least the small purchase threshold. In Threshold Requirements 22-9 through 22-13, we make the same recommendations for other clauses required by the Davis-Bacon Act. In Threshold Requirement 22-2, we make the same recommendation for the *Contract Work Hours and Safety Standards Act – Overtime Compensation*. Elsewhere we recommend that the threshold levels for the Copeland Act Requirements (Threshold Requirement 22-14) and the Certification of Eligibility (Threshold Requirement 22-18) be retained at the $2,000 threshold level.

The *Subcontracts (Labor Standards)* clause must be inserted in all subcontracts, not merely in subcontracts for construction services. Since the term "subcontracts" is not defined, the clause is arguably required to flow down to supply contracts to which labor standards should not apply.

Recommend: When the threshold levels of the various labor standards acts are increased, they should be eliminated from the flow-down clause at the $2,000 level.

THRESHOLD REQUIREMENT 22-16

The contracting officer shall insert the FAR Clause 52.222-12, *Contract Termination-Debarment*, in solicitations and contracts in excess of $2,000 for construction within the United States.

Reference: FAR 22.407(a)(7)
29 CFR 5.12

Analysis: This clause appears to be informative only, advising the contractor that a breach of listed labor standards provisions may be grounds for termination of the contract and for debarment as a contractor or subcontractor as provided in the statute.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 22-17

The contracting officer shall insert FAR Clause 52.222-14, *Disputes Concerning Labor Standards*, in solicitations and contracts in excess of $2,000 for construction within the United States.

Reference: FAR 22.407(a)(9)

Analysis: This contract clause is informative only, advising the contractor that the procedures for resolving disputes concerning labor standards requirements are contained in 29 CFR Parts 5, 6, and 7.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 22-18

The contracting officer shall insert FAR Clause 52.222-15, *Certification of Eligibility*, in solicitations and contracts in excess of $2,000 for construction within the United States.

Reference: Section 3(a) of the Davis-Bacon Act
29 CFR 5.12(a)(1)
FAR 22.407(a)(10)

Analysis: This clause is a certification by the contractor that neither any person nor any firm who has an interest in the contractor's firm is ineligible to be awarded Government contracts by virtue of the Davis-Bacon Act or 29 CFR 5.12(a)(1). The clause contains a requirement that no part of the contract will be subcontracted to any such ineligible person or firm.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 22-19, 22-20, AND 22-21

22-19. The contracting officer shall insert the provision at FAR 52.222-19, *Walsh-Healey Public Contracts Act Representation*, in solicitations that will result in contracts exceeding $10,000 and that will otherwise be covered by the Act.

22-20. The contracting officer shall insert the clause at FAR 52.222-20, *Walsh-Healey Public Contracts Act*, in solicitations and contracts exceeding $10,000 and otherwise covered by the Act.

22-21. Service contractors performing on contracts in excess of $2,500, to which no predecessor contractor's collective bargaining agreement applies, shall pay their employees at least the wages and fringe benefits found by DOL to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act. Successor contractors performing on contracts in excess of $2,500 must pay wages and fringe benefits at least equal to those agreed upon for substantially the same services performed in the same locality in any bona fide collective bargaining agreement entered into by the predecessor contractor.

Reference: 22-19 and 22-20. FAR 22.610(a) & (b) and 41 U.S.C. 35-45
22-21. 41 U.S.C. 351, et. seq.

Note: In LMI Report AL714R2, *Reforming Acquisition Regulations: Revising Dollar Thresholds*, February 1988, in Threshold Requirements No. 13-7, 13-8, and 13-9, we recommended that the Department of Labor be requested to seek legislation or take the necessary action to raise these thresholds, which appeared in Part 13 of FAR, to at least the small purchase threshold. The thresholds and these recommendations are noted here because they are primarily based in Part 22.

Analysis: The analyses in LMI Report AL714R2 for 13-7, 13-8, and 13-9 apply equally here. The basic point made in those analyses is that the thresholds in the three acts have not been increased since their enactment in 1936, 1962, and 1965. Because of the effects of inflation, those thresholds are now too low, and all are below the current small-purchase threshold. Increasing the threshold levels to be at least consistent with simplified purchasing at $25,000 will result in reductions of Government

and contractor workload. Where the Service Contract Act is applicable, PALT will also be shortened.

Recommend: Request the Department of Labor to increase or, where necessary, seek legislation to increase the thresholds to at least $25,000 to conform with the small-purchase threshold.

THRESHOLD REQUIREMENT 22-22

Each nonconstruction prime contractor and each subcontractor with 50 or more employees and (1) a contract or subcontract of $50,000 or more or (2) Government bills of lading that in any 12-month period, total (or can reasonably be expected to total) $50,000 or more, is required to develop a written affirmative action program for each of its establishments within 120 days from the commencement of its first such Government contract, subcontract, or Government bill of lading.

Reference: FAR 22.804-1
EO 11246, Part II, 9/24/65
41 CFR 60-1.40

Note: FAR 22.807 lists some exemptions.

Analysis: The requirement for the preparation of affirmative action programs is contained in the regulations of the Secretary of Labor. Affirmative action plans by most DoD contractors (except first-time contractors) will have been prepared, and this requirement will not affect them.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 22-23

Any contracting officer contemplating a construction project in excess of $10,000 within a geographic area not known to be covered by specific affirmative action goals shall request instructions on the most current information from the Office of Federal Contract Compliance Programs (OFCCP) regional office, or as otherwise specified in agency regulations, before issuing the solicitation.

Reference: FAR 22.804-2(b)

Analysis: In 41 CFR 60-4, the Department of Labor requires that affirmative action goals and timetables for minority and female participation are included in each solicitation, contract, and subcontract for construction services exceeding $10,000. The goals and timetables are applicable for both Federal and non-Federal work performed by the contractor. The threshold requirement permits compliance with the Department of Labor regulations.

The $10,000 threshold seems much too low. At the least, it should be raised to the current small-purchase threshold level of $25,000, but we recommend that a higher level be considered in order to ease the administrative costs imposed on smaller construction contractors. A decrease in DoD workload and a shortening of PALT should also result.

Recommend: Request the Department of Labor to raise the threshold to $500,000.

THRESHOLD REQUIREMENTS 22-24, 22-25, AND 22-26

22-24. If the estimated amount of a contract, subcontract, or basic ordering agreement (excluding construction) is expected to aggregate $1 million or more or to increase the aggregate value of an existing contract to $1 million or more, the contracting officer shall request the appropriate OFCCP regional office to determine whether the prospective contractor is in compliance with the Equal Opportunity clause and the regulations of the Department of Labor concerning Equal Employment Opportunity, before (1) award of any contract, including any indefinite delivery contract or letter contract, (2) modification of an existing contract for new effort that would constitute a contract award, or (3) the issuance of any basic ordering agreement.

22-25. The contracting officer shall insert the provisions at FAR 52.222-24, *Preaward On-Site Equal Opportunity Compliance Review*, in solicitations, other than those for construction, when a contract is contemplated that will include the clause at FAR 52.222-26, *Equal Opportunity*, and the amount of the contract is expected to be for $1 million or more.

22-26. The contracting officer shall insert the clause at FAR 52.222-28, *Equal Opportunity Preaward Clearance of Subcontracts*, in solicitations and contracts, except construction, when the contract is expected to cost $1 million or more and to include a clause requiring contracting officer consent of subcontracts under a fixed price, cost-reimbursable, letter or time-and-materials or labor-hour contract.

Reference: FAR 22.805(a)
FAR 22.810(c)
FAR 22.810(g)

Note: If urgency is associated with an acquisition, procedures permit an expedited process.

Analysis: FAR states that the contracting officer shall allow as much time as feasible before award for OFCCP to conduct the necessary reviews assuring, if possible, that the preaward review request is submitted to OFCCP at least 30 calendar days before the proposed award date. If the Director, OFCCP, has not made a final preaward clearance determination within 30 calendar days

from submission of the clearance request, the contracting officer shall withhold award of the contract for as long as an additional 15 days. Thus, while the workload for these requirements is borne by the Department of Labor's OFCCP, they have the potential to extend PALT.

These three thresholds are based on EO 11246, 24 September 1965, although they are not contained in the Executive Order itself. Because of the age of the thresholds and the effects of past inflation, the thresholds appear to be unreasonably low. Increasing them would decrease workload and shorten PALT.

Recommend: Request the Department of Labor to increase the thresholds to $5 million.

THRESHOLD REQUIREMENT 22-27

The contracting officer shall insert the provision at FAR 52.222-21, *Certification of Nonsegregated Facilities*, when a contract is contemplated that will include the clause at FAR 52.222-26, *Equal Opportunity*, and is expected to exceed $10,000.

Reference: FAR 22.810(a)(1)

Analysis: This clause requires the offeror to certify that it does not and will not maintain or provide any segregated facilities for its employees. At one time this clause served a necessary purpose, but it is no longer needed and should be eliminated as excess contractual baggage. Civil rights problems targeted by this clause no longer exist, and retention of this clause serves to dilute the effectiveness of those that are necessary. Elimination of the clause will streamline contracting and serve to stress those equal opportunity clauses that remain.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENTS 22-28 AND 22-29

22-28. The contracting officer shall insert the clause at FAR 52.222-26, *Equal Opportunity*, in solicitations and contracts unless all the terms of the clause are exempt from the requirements of EO 11246. The clause becomes operative at such time as the contractor has been or is awarded Federal contracts or subcontracts aggregating more than $10,000.

22-29. The *Equal Opportunity* clause applies to indefinite quantity contracts and subcontracts unless the contracting officer has reason to believe that the amount to be ordered in any year under the contract will not exceed $10,000, but the *Equal Opportunity* clause shall be applied to the contract whenever the amount of a single order exceeds $10,000.

Reference: FAR 22.810(e)
FAR 22.807(b)(6)
EO 11246

Note: The *Equal Opportunity* clause is required in each nonexempt (the Secretary of Labor may issue exemptions) contract. It will remain dormant until the contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000.

Analysis: The clause requires a number of actions by the contractor, ranging from a pledge not to discriminate against any employee or applicant for employment, to affirmative action, record keeping, and sanctions. The $10,000 aggregate annual award threshold has been a requirement since the Executive order was issued in 1965. It is far too low for 1988.

The threshold requirement of 22-29, applying to indefinite quantity contracts and subcontracts, appears to be both unnecessary and inconsistent with FAR 22.802(a). We believe it is unnecessary because there is no apparent need to treat the Equal Employment Opportunity requirements of an indefinite delivery contract differently than the Equal Employment Opportunity requirements of any other contract. We believe it to be inconsistent with FAR 22.802(a) because that paragraph requires the *Equal Opportunity* clause to be included in *all*

nonexempt Government contracts and subcontracts, regardless of value.

Recommend: 22-28. Increase the threshold within the *Equal Opportunity* clause to $100,000 (aggregate of awards during a 12-month period).

22-29. Eliminate the threshold relating to indefinite quantity contracts and subcontracts.

THRESHOLD REQUIREMENTS 22-30, 22-31, AND 22-32

22-30. The contracting officer shall insert the provision at FAR 52.222-23, *Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity*, in solicitations for construction when a contract is contemplated that will include the clause at FAR 52.222-26, *Equal Opportunity*, and the amount of the contract is expected to be in excess of $10,000.

22-31. The contracting officer shall insert the clause at FAR 52.222-27, *Affirmative Action Compliance Requirements for Construction*, in solicitations and contracts for construction that will include the clause at FAR 52.222-26, *Equal Opportunity*, and the amount of the contract is expected to be in excess of $10,000.

22-32. The contracting officer shall insert the provision at FAR 52.222-25, *Affirmative Action Compliance*, in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, *Equal Opportunity*.

Reference: FAR 22.810(b)
FAR 22.810(f)
FAR 22.810(d)

Note: The requirement for the 22-30 solicitation provision is tied to the requirement for the *Equal Opportunity* clause. The *Equal Opportunity* clause is required in every nonexempt (the Secretary of Labor may issue exemptions) contract and purchase order and its terms become effective whenever the contractor, during any 12-month period (including the 12 months preceding the award of a contract containing the clause), has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000.

Analysis: The clause required by 22-30 is a combination of a solicitation provision, calling the offeror's attention to the *Equal Opportunity* clause and the *Affirmative Action Compliance Requirements for Construction* clause and a contract clause. It provides for the insertion by the contracting officer of goals for minority and female participation; it describes actions that the contractor must take to comply with EO 11246; and it contains a postaward requirement to provide written notification to the Director,

Office of Federal Contract Compliance Programs, after award of any construction subcontract in excess of $10,000 at any tier.

The clause required by 22-31 requires significant activity by the contractor to establish and maintain an affirmative action program.

The solicitation provision required by 22-32 requires that the offeror represent that it has or has not developed (and retained on file) affirmative action programs or that it has not previously had contracts that required written affirmative action programs. The $10,000 aggregate annual award threshold has been in existence since the EO was issued in 1965. It is far too low for 1988.

Recommend: Request the Department of Labor to increase all three thresholds to $100,000.

THRESHOLD REQUIREMENT 22-33

The contracting officer shall insert provisions at FAR 52.222-45, *Notice of Compensation for Professional Employees*, and FAR 52.222-46, *Evaluation of Compensation for Professional Employees*, in solicitations for negotiated service contracts when the contract amount is expected to exceed $250,000 and the service to be provided will require meaningful numbers of professional employees.

Reference: FAR 22.1103
OFPP Policy Letter No. 78-2, dated 29 March 1978, *Preventing "Wage Busting" for Professionals*

Analysis: These provisions require that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on a contract. Plans indicating unrealistically low professional employees' compensation may be assessed adversely as one of the factors considered in awarding the contract. The threshold level has been in place for 10 years and should be increased. The effects of inflation suggest an appropriate level would be between $500,000 and $1 million.

Recommend: Increase the threshold level to $1 million.

THRESHOLD REQUIREMENTS 22-34, 22-35, AND 22-36

22-34. The contracting officer shall insert the clause at FAR 52.222-35, *Affirmative Action for Special Disabled and Vietnam Era Veterans*, in solicitations and contracts when the contract is for $10,000 or more or is expected to amount to $10,000 or more, except when the work is performed outside the United States by employees recruited outside the United States, or when the agency head has waived all of the terms of the clause.

22-35. FAR Clause 52.222-35, *Affirmative Action for Special Disabled and Vietnam Era Veterans*, requires the contractor to include the terms of the clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

22-36. FAR Clause 52.222-37, *Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era* (January 1988). This clause must be included in any contract in which the FAR Clause 52.222-35 (22-34 above) is included. The contractor must include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

Reference: FAR 22.1308(a) and (b)
Regulations of the Secretary of Labor (41 CFR Part 60-250)
EO 11701, 24 January 1973
Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 2012)

Analysis: FAR 52.222-35 requires Government contractors and subcontractors to list all suitable employment openings with the appropriate local employment service office and take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam Era without discrimination based on their disability or veterans' status and, of course, to create and maintain records. These thresholds, which are set by statute, are more than 15 years old, and their level has not been adjusted for inflation nor, we suspect, has the need for the requirement been revalidated. The reporting requirements of FAR 52.222-37 were recently added. The

thresholds should be increased at least to the small purchase threshold.

Recommend: Request the Department of Labor to seek legislation to increase the thresholds to apply to contract actions above $25,000, the small purchase threshold.

THRESHOLD REQUIREMENTS 22-37 AND 22-38

22-37. The contracting officer shall insert the clause at FAR 52.222-36, *Affirmative Action for Handicapped Workers*, in solicitations and contracts that exceed $2,500 or are expected to exceed $2,500, except when the work is performed outside the United States by employees recruited outside the United States or when the agency head has waived all the terms of the clause.

22-38. FAR Clause 52.222-36, *Affirmative Action for Handicapped Workers* requires the contractor to include the terms of the clause in every subcontract or purchase order in excess of $2,500 unless exempted by rules, regulations, or orders of the Secretary of Labor.

Reference: FAR 22.1408
Regulations of the Secretary of Labor (41 CFR Part 60-741)
EO 11758, 15 January 1974
Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793)

Analysis: FAR 52.222-36 clause requires Government contractors to take affirmative action to employ, and advance in employment, qualified handicapped individuals without discrimination based on their physical or mental handicap. The thresholds, which are set by statute, have not been adjusted in more than 14 years, and they should be revised for inflation.

Recommend: Request the Department of Labor to seek legislation to increase the thresholds to the small purchase threshold.

PART 23 – ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

PART 23 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
23-1	Statute	$ 100,000	$ 100,000	
23-2	Statute	100,000	100,000	
23-3	Statute	10,000	25,000	
Summary of recommendations			3 Thresholds 2 unchanged 1 increased	
Recommended threshold groupings			$ 25,000 – 1 100,000 – 2	

THRESHOLD REQUIREMENT 23-1

Contracts and subcontracts $100,000 or under are exempt from the requirements of FAR Subpart 23.1 and accordingly from the requirement that Executive agencies shall not enter into, renew, or extend contracts with firms proposing to use facilities listed by EPA as violating facilities under the Clean Air Act or the Clean Water Act.

Reference: FAR 23.104
EO 11738, 10 September 1973
Clean Air Act (42 U.S.C. 7401 et seq.)
Clean Water Act (33 U.S.C. 1251 et seq.)

Analysis: This threshold level appears well founded. No evidence is available to support a request to increase it or eliminate it.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 23-2

The contracting officer shall insert the clause at FAR 52.223-1, *Clean Air and Water*, in solicitations and contracts if the contract is expected to exceed $100,000.

Reference: FAR 23.105(b)(1) and (2).
EO 11738 dated 10 September 1973
Clean Air Act (42 U.S.C. 7401 et seq.)
Clean Water Act (33 U.S.C. 1251 et seq.)

Analysis: This threshold is an implementation of the requirements of the Clean Air and Clean Water Acts. The threshold level appears well founded. No evidence is available to support a request to increase it or eliminate it.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 23-3

The procedures of FAR Subpart 23.4, *Use of Recovered Materials*, apply to all acquisitions that require minimum percentages of recovered materials, when the price of the item exceeds $10,000 or when the aggregate amount paid for items or for functionally equivalent items in the preceding fiscal year was $10,000 or more.

Reference: FAR 23.404(a)
42 U.S.C. 6962

Analysis: This is a statutory requirement whose threshold level should be raised to the level of the small purchase threshold.

Recommend: Request legislation to increase the threshold level to the level of the small purchase limitation.

PART 25 – FOREIGN ACQUISITION

PART 25 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
25-1	FAR	$ 1,000,000	$ 1,000,000	
25-2	FAR	250,000		Eliminate threshold and requirement
25-3	FAR	100,000		Eliminate threshold and requirement
25-4	DFARS	25,000	100,000	
25-5	DFARS	10,000	25,000	
25-6	DFARS	500,000/ 2,000,000	500,000/ 2,000,000	
25-7	DFARS	500,000/ 2,000,000	500,000/ 2,000,000	
25-8	DFARS	500,000/ 2,000,000	500,000/ 2,000,000	
25-9	DFARS	100,000/ 2,000,000	100,000/ 2,000,000	
25-10	DFARS	100,000/ 2,000,000	100,000/ 2,000,000	
25-11	DFARS	50,000	50,000	
25-12	DFARS	25,000	25,000	
25-13	FAR	100,000	100,000	
25-14	DFARS	100,000	100,000	
25-15	FAR	10,000	25,000	
25-16	FAR	25,000	25,000	
25-17	Statute	10,000	25,000	
25-18	Statute	10,000	25,000	
25-19	Statute	10,000	25,000	
25-20	Statute	10,000	25,000	
25-21	Statute	10,000	25,000	
25-22	Statute	10,000	25,000	
25-23	DFARS	10,000		Eliminate threshold and requirement
25-24	DFARS	50,000		Eliminate threshold
25-25	DFARS	5,000,000	5,000,000	

Summary of recommendations: 25 Thresholds
- 12 unchanged
- 9 increased
- 1 threshold eliminated
- 3 thresholds and requirements eliminated

Recommended threshold groupings .....

$ 25,000	– 10
50,000	– 1
100,000	– 3
1,000,000	– 1
500,000 / 2,000,000	– 3
100,000 / 2,000,000	– 2
5,000,000	– 1

THRESHOLD REQUIREMENT 25-1

The Buy American Act requires that only domestic end products be acquired for public use except articles, materials, and supplies that are determined not to be mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of satisfactory quality. For contracts estimated to exceed $1 million, the agency head or a designee at a level no lower than the head of a contracting activity must approve that determination.

Reference: FAR 25.102(b)

Analysis: The threshold requirement imposes a review and approval of a determination of domestic nonavailability at the $1 million level and above. This requirement is reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 25-2

For a contract exceeding $250,000, if a domestic concern would receive the award when its cost is between 6 and 12 percent higher than the lowest foreign business cost, the agency head must decide whether the award to the domestic concern would be at an unreasonable cost.

Reference: FAR 25.105(c)
41 U.S.C. 10(a), (c), and (d)
EO 10582, 17 December 1954 (as amended)

Analysis: The Buy American Act requires that only domestic end products be acquired for public use, with certain stated exceptions. One of the exceptions is an end product for which the cost would be unreasonable. The "unreasonable" cost is defined as one that exceeds the lowest acceptable foreign offer by more than 6 percent if the domestic offer is from a large business that is not a LSA concern or by more than 12 percent if the domestic offer is from a small business concern or any LSA concern.

This threshold requirement provides a trigger above a $250,000 contract amount for the agency head to review the cost if a 12 percent factor is being applied and to decide whether the cost of the domestic award would be unreasonable.

It is not logical to establish in one portion of the regulations that 12 percent is a reasonable price differential to pay if the domestic offer is from a small business or LSA concern, and then to require at the $250,000 level and above that a decision be made as to whether the differential is or is not reasonable. The only guidance that could reasonably be applied by the agency head is the 12 percent factor. If there is a concern that domestic prices become unreasonable using the 12 percent factor, as the price of the contract increases, then the regulations should clearly define where that point is and the acceptable differential above it.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENT 25-3

If one or more agencies have determined that a specific construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, foreign construction materials can be used. However, if the cost of the materials is estimated to exceed $100,000, the agency head or a designee no lower than the head of the contracting activity, must review the determination(s), and must consider the feasibility of forgoing the acquisition or of acquiring a domestic substitute.

Reference: FAR 25.202(b)
41 U.S.C. 10b
EO 10582, 17 December 1954 (as amended)

Analysis: The Buy American Act requires that only domestic construction materials be used in the construction, alteration, or repair of any public building or public work in the United States, with three stated exceptions. One of those exceptions is when one or more agencies have determined that the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. This threshold requirement is an attempt to require consideration of alternatives to foreign material when its cost exceeds $100,000. This same threshold level is found in a 1976 version of the ASPR.

As a practical matter, there is no prohibition to the use of foreign construction material if its use is sanctioned by one of the exceptions. Ultimately the agency must determine that use of a particular domestic construction material would unreasonably increase the cost or would be impractical. Doing this can be as easy or as difficult as the agency wishes to make it.

This threshold requirement is generally repetitive of that in 25-1, which requires a review of nonavailability determinations in contracts exceeding $1 million and also requires consideration of the feasibility of forgoing the acquisition or acquiring a domestic substitute. We believe that the $1 million threshold requirement is adequate and that it should not be altered here.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENT 25-4

Acquisitions that are estimated not to exceed $25,000 in foreign cost may be made by contracting officers located outside the United States without regard to whether the end products are United States or foreign.

Reference: DFARS 25.302(72)(1)(ii)

Analysis: Acquisitions in this category are not subject to the Department of Defense Balance of Payments Program. The small purchase level of $25,000 is the lowest reasonable level for this threshold, but with the recent effects of inflation in foreign countries and the decline in the value of the dollar, it appears low. Raising this threshold would facilitate the acquisition process, reducing workload and shortening PALT.

Recommend: Increase the threshold to $100,000.

THRESHOLD REQUIREMENT 25-5

Acquisition of ready-mixed asphalt and Portland cement concrete should be made without regard to whether the end product is United States or foreign, provided that the foreign cost is estimated not to exceed $10,000.

Reference: DFARS 25.302(72)(1)(vii)(J)

Analysis: This threshold requirement is an exception to the Department of Defense Balance of Payments Program. The threshold seems low and should be increased to at least the small-purchase threshold.

Recommend: Increase this threshold to $25,000, the small-purchase threshold.

THRESHOLD REQUIREMENT 25-6

Acquisition of perishable subsistence items for use outside the United States should be made without regard to whether the end products are United States or foreign when it is determined that delivery from the United States would destroy or impair quality at the point of consumption. The determination must be made at escalating levels for acquisitions of $500,000 or less, acquisitions exceeding $500,000 but not exceeding $2 million, and acquisitions exceeding $2 million.

Reference: DFARS 25.302(72)(1)(iii)
DFARS 25.302(72)(2)(i) and (ii)

Analysis: This threshold requirement is an exception to the Department of Defense Balance of Payments Program. A determination to permit the acquisition of foreign perishable subsistence is required at any dollar level (although acquisitions of $25,000 or less by contracting officers located outside the United States do not require the determination).

DFARS establishes an escalating approval level depending upon the value of the acquisition. For acquisitions estimated to exceed $2 million in foreign cost, the determination must be made by the Secretary of the Department concerned or the Assistant Secretary of Defense (Production and Logistics). DFARS lists those individuals and their immediate deputies who can make the determination for acquisitions exceeding $500,000 but not exceeding $2 million. These designations are at the Command level. For acquisitions of $500,000 or less, the authority may be redelegated. The threshold levels appear to be reasonable.

Recommend: Make no changes to the thresholds.

THRESHOLD REQUIREMENT 25-7

Acquisitions can be made without regard to whether the end products are United States or foreign when it is determined in advance that (1) the requirements can only be filled by foreign end products because U.S. end products are not available per se or are not available within the time required to meet urgent military requirements directly related to maintaining combat capability and the health and safety of DoD personnel or to protect property and (2) that it is not feasible to forgo filling the requirements or to provide a U.S. substitute for them. The determination must be made at escalating levels for acquisitions of $500,000 or less, acquisitions exceeding $500,000 but not exceeding $2 million, and acquisitions exceeding $2 million.

Reference: DFARS 25.302(72)(1)(x)
DFARS 25.302(72)(2)(i) and (ii)

Analysis: This threshold requirement is an exception to the Department of Defense Balance of Payments Program. The determination to permit the acquisition of these items is required at any dollar level (although acquisitions of $25,000 or less by contracting officers located outside the United States would not require the determination).

DFARS establishes an escalating approval level depending upon the value of the acquisition. For acquisitions estimated to exceed $2 million in foreign cost, the determination must be made by the Secretary of the Department concerned or the Assistant Secretary of Defense (Production and Logistics). DFARS lists those individuals and their immediate deputies who can make the determination for acquisitions exceeding $500,000 but not exceeding $2 million. These designations are at the Command level. For acquisitions of $500,000 or less, the authority may be redelegated. The threshold levels appear to be reasonable.

Recommend: Make no changes to the thresholds.

THRESHOLD REQUIREMENT 25-8

Acquisitions (other than for listed categories) for which United States end products or services are available and the domestic cost exceeds 150 percent of the foreign cost can be made without regard as to whether the end product is United States or foreign if so determined in advance. The determination must be made at escalating levels for acquisitions of $500,000 or less, acquisitions exceeding $500,000 but not exceeding $2 million, and acquisitions exceeding $2 million.

Reference: DFARS 25.302(72)(1)(xi)
DFARS 25.302(72)(2)(i) and (ii)

Analysis: This threshold requirement is an exception to the Department of Defense Balance of Payments Program. The determination to permit the acquisition of foreign end products under this circumstance is required at any dollar level (although acquisitions of $25,000 or less by contracting officers located outside the United States would not require the determination).

DFARS establishes an escalating approval level depending upon the value of the acquisition. For acquisitions estimated to exceed $2 million in foreign cost, the determination must be made by the Secretary of the Department concerned or the Assistant Secretary of Defense (Production and Logistics). DFARS lists those individuals and their immediate deputies who can make the determination for acquisitions exceeding $500,000 but not exceeding $2 million. These designations are at the Command level. For acquisitions of $500,000 or less, the authority may be redelegated. The threshold levels appear to be reasonable.

Recommend: Make no changes to the thresholds.

THRESHOLD REQUIREMENT 25-9

Acquisition of scientific and technical knowledge resulting in expenditures outside the United States and Canada may be made when it is determined in advance that the requirement can only be filled by foreign end products or services and that it is not feasible to forgo filling the requirement or to provide a U.S. substitute for it. The determination must be made at escalating levels for acquisitions of $100,000 or less, acquisitions exceeding $100,000 but not exceeding $2 million, and acquisitions exceeding $2 million.

Reference: DFARS 25.302(72)(3)(ii)
DFARS 25.302(72)(4)(i) and (ii)

Analysis: This threshold requirement is an exception to the Department of Defense Balance of Payments Program. The determination to permit the acquisition of scientific and technical knowledge by foreign end products or services is required at any dollar level (although acquisitions of $25,000 or less by contracting officers located outside the United States would not require the determination).

DFARS establishes an escalating approval level depending upon the value of the acquisition. For acquisitions estimated to exceed $2 million in foreign cost, the determination must be made by the Secretary of the Department concerned or the Assistant Secretary of Defense (Production and Logistics). DFARS lists those individuals and their immediate deputies who can make the determination for acquisitions exceeding $100,000 but not exceeding $2 million. These designations are at the Command level. For acquisitions of $100,000 or less, the authority may be redelegated. The threshold levels appear to be reasonable.

Recommend: Make no changes to the thresholds.

THRESHOLD REQUIREMENT 25-10

Acquisition of scientific and technical knowledge resulting in expenditures outside the United States and Canada (other than those required by treaty or executive agreement, small purchases made outside the United States, perishable subsistence items where the required determination has been made and requirements which have been determined can only be filled by foreign end products or services) may be made when U.S. end products or services are available and the domestic cost exceeds 150 percent of the foreign cost. The determination must be made at escalating levels for acquisitions of $100,000 or less, acquisitions exceeding $100,000 but not exceeding $2 million, and acquisitions exceeding $2 million.

Reference: DFARS 25.302(72)(3)(iii)
DFARS 25.302(72)(4)(i) and (ii)

Analysis: This threshold requirement is an exception to the Department of Defense Balance of Payments Program. The determination to permit the acquisition of scientific and technical knowledge by foreign end products or services is required at any dollar level.

DFARS establishes an escalating approval level depending upon the value of the acquisition. For acquisitions estimated to exceed $2 million in foreign cost, the determination must be made by the Secretary of the Department concerned or the Assistant Secretary of Defense (Production and Logistics). DFARS lists those individuals and their immediate deputies who can make the determination for acquisitions exceeding $100,000 but not exceeding $2 million. These designations are at the Command level. For acquisitions of $100,000 or less, the authority may be redelegated. The threshold levels appear to be reasonable.

Recommend: Make no changes to the thresholds.

THRESHOLD REQUIREMENT 25-11

When a solicitation contains the provision in FAR 52.225-7020, *Option to Award and Pay in the United States Owned Foreign Currency*, the contracting officer shall have authority to award a contract to the offeror submitting the lowest responsive offer in whole or in part in excess foreign currency when that offer is not more than 150 percent of the lowest responsive offer in U.S. dollars and the lowest responsive offer in U.S. dollars does not exceed $50,000. The contracting officer shall refer the proposed acquisition to listed officials when the lowest responsive offer in excess foreign currency is more than 150 percent of the lowest responsive U.S. dollar offer regardless of the U.S. dollar cost of the contract and the lowest responsive U.S. dollar offer exceeds $50,000, or the lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

Reference: DFARS 25.7604(b) and (c)

Analysis: A similar requirement was previously listed in DFARS 25.304, *Excess and Near-Excess Foreign Currencies*. The previous threshold on this subject was:

> Excess and near-excess foreign currencies shall be used whenever feasible in payment of contracts over $1 million performed wholly or partly in any of the listed countries.

OMB Circular No. A-20 was cited as the authority.

Whether or not the threshold is reasonable must be a judgment of others, primarily the Department of the Treasury.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 25-12

The clause at DFARS 52.225-7004, *Identification of Expenditures in the United States*, shall be included in each contract in excess of $25,000 that (1) requires the contractor to furnish U.S. end products unless the contractor is a domestic concern and the Government will take title to the end products within the United States; or (2) in the case of a contract for construction, repair, or maintenance of real property or for services to be performed outside the United States either requires the contractor to acquire specified materials, equipment, or services from U.S. sources (whether or not the contractor is a domestic concern), or is with a contractor who is a domestic concern (whether or not specified items must be acquired from U.S. sources). In lieu of the clause, the statement provided in FAR 25.370(b) may be used and the statement shall be used in lieu of the clause on applicable contracts and purchase orders of $25,000 or less.

Reference: DFARS 25.370 (a), (b), and (c)

Analysis: This threshold requirement is to permit compliance with the DoD Balance of Payments Program reporting instructions that require the reporting of the amount of U.S. end products and services acquired under the regulations of the Balance of Payments Program. The provisions of the threshold requirement are designed to facilitate such reporting by cognizant accounting and disbursing officers. If the report information is needed, the threshold requirement is reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 25-13, 25-14, AND 25-15

25-13. The clause at FAR 52.225-10 shall be inserted in each negotiated contract in excess of $100,000 that provides for, or anticipates furnishing to the Government, supplies to be imported into the customs territory of the United States and may be used in contracts of lesser amounts.

25-14. To ensure that the DFARS 25.602 policy to issue duty-free entry certificates in appropriate solicitations is carried out for emergency purchases of war materials abroad, the clause at FAR 52.225-10 and DFARS 52.225-7014 shall be used in each negotiated contract in excess of $100,000. The solicitation provision at DFARS 52.225-7007 and the clause at DFARS 52.225-7014 shall be used when the contract is in excess of $100,000 and is required to contain the clause at FAR 52.225-10.

25-15. FAR clause 52.225-10 requires the contractor to notify the contracting officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $10,000 that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation into end items to be delivered under the contract.

Reference: FAR 25.605(a) and (b)
DFARS 25.605
FAR 52.225-10

Analysis: The clause at FAR 52.225-10 is entitled *Duty-Free Entry*. Ordinarily, duty is payable for the importation of non-Defense supplies obtained outside the United States. Two exceptions to this rule are available to the Department of Defense: "Emergency purchases of war materials abroad" by a Military Department and certain supplies for vessels or aircraft operated by the United States may be imported duty-free. DoD policy is to use duty-free entry certificates whenever it has *reasonable assurance* that advantages in the form of savings to military appropriations will outweigh the administrative and other costs of processing duty-free entry certificates and of maintaining

controls to verify that a full benefit of the certificate inures to the Government.

Threshold Requirement 25-13 states that the *Duty-Free Entry* clause is to be included in negotiated contracts in excess of $100,000 that provide for, or anticipate furnishing to the Government, supplies to be imported into the customs territory of the United States. It provides that except as otherwise approved by the contracting officer, no amount is, or will be, included in the contract price for duties on supplies *specifically identified* in the Schedule to be accorded duty-free entry.

Threshold Requirement 25-14 seems to be in part a DFARS duplicate of 25-13, stated a slightly different way. This DFARS threshold implies (but does not specifically state) that it is to be used in contracts for emergency purchases of war materials abroad. The FAR threshold requirement applicable to the FAR clause is broader and better written.

Threshold Requirement 25-15 is included in the *Duty-Free Entry* clause itself. For supplies not identified in the contract, the clause requires the contractor to notify the Government of any purchase of foreign supplies in excess of $10,000 that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation into end items under the contract. The clause gives the contracting officer a period of time to determine whether the supplies should be entered duty-free and the right to reduce the contract price by the amount of duty that would be payable if the supplies were not entered duty-free.

The $100,000 threshold was selected to balance the possible savings against increased administrative costs, but the clause may be used in contracts of any value at the election of the contracting officer.

The $10,000 threshold within the clause seems low. We recommend increasing this threshold to $25,000.

Recommend: 25-13 and 25-14. Make no change to the thresholds.

25-15. Increase the threshold to $25,000.

THRESHOLD REQUIREMENT 25-16

The Government does not acquire for use outside the United States, its possessions, or Puerto Rico any supplies and services originating from, located in, or transported from or through North Korea, Vietnam, Cambodia, or Cuba. Such supplies or services acquired for use outside the United States, its possessions, or Puerto Rico may be purchased or used as an exception to the general Government prohibition only in unusual situations; for example, in an emergency or when the items (or services) are not available from another source and a substitute is not acceptable. The contracting officer may approve such an exception for a small purchase. For other contracts, the agency head shall approve any exceptions.

Reference: FAR 25.703(b)

Analysis: The threshold at the small purchase level is probably reasonable since this situation is unlikely to be encountered often, if ever. The elevation of the approval level from the contracting officer at $25,000 to the agency head above $25,000 is unusual.

Recommend: Make no change to the threshold.

25-17. Several exceptions are provided to the restriction on the acquisition of supplies consisting in whole or in part of certain nondomestic end items (food, certain fabrics, specialty metals). One of these is a small purchase, defined to mean "an acquisition action, as distinguished from single line item, involving a total dollar amount not in excess of $10,000."

25-18. Restrictions do not apply to the acquisition of nondomestic end items incidentally incorporating cotton or wool, of which the estimated value is not more than 10 percent of the total price of the end item, *provided* the estimated value does not exceed $10,000 or 3 percent of the total price of the end item, whichever is greater.

25-19. The contracting officer shall insert the clause at DFARS 52.225-7009, *Preference for Certain Domestic Commodities*, in all solicitations expected to have, and all small purchases and contracts that do have, a value of $10,000 or more.

25-20. The contracting officer shall insert the clause at DFARS 52.225-7011, *Preference For Domestic Specialty Metals (Major Programs)*, in all solicitations and contracts over $10,000 that call for the delivery to the Government of an article containing specialty metals within the following six major classes of programs: aircraft, missile and space systems, ships, tank-automotive, weapons, and ammunition.

25-21. The contracting officer shall insert the clause at DFARS 52.225-7012, *Preference For Domestic Specialty Metals*, in all solicitations and contracts over $10,000 other than those covered by 25-20 calling for the delivery of an article that contains specialty metals.

25-22. The contracting officer shall insert the clause at DFARS 52-225-7013, *Preference for Domestic Hand or Measuring Tools*, in all small purchases of $10,000 or more and in all contracts calling for delivery of hand or measuring tools.

Reference: DFARS 25.7002(a)(6)
DFARS 25.7002(b)
DFARS 25.7002(d)(1) and (2)
DFARS 25.7003
Annual Appropriation Acts

Analysis: The $10,000 limit was set at the then-small purchase threshold, and that value is routinely perpetuated in the annual DoD Appropriation Act with language that states "except for small purchases in amounts not exceeding $10,000." The thresholds should be raised to the new, $25,000 small purchase threshold.

Recommend: Raise the thresholds to the small purchase threshold ($25,000), by requesting an appropriate change in wording in the next appropriation act, where the restrictions appear.

THRESHOLD REQUIREMENT 25-23

In connection with each Foreign Military Sale expected to involve a contract in excess of $10,000 that cannot be placed on the basis of price competition (as, for example, when the foreign customer has designated only one source as acceptable) before the Department of Defense furnishes prices for information purposes to potential foreign customers, prices, delivery, and other relevant information shall be requested from the prospective source, and such request shall state that it is for information for the purpose of a potential Foreign Military Sale and shall identify the customer.

Reference: DFARS 25.7303(b)(1)

Analysis: In most instances, pricing and delivery information on sole-source items would have to be obtained from the prospective domestic source. We believe that rather than stating a specific dollar threshold for a common sense requirement, i.e., to get the most accurate information for the potential foreign customer, the threshold should be eliminated. If it is considered necessary, the threshold could be replaced with guidelines advising of the necessity to obtain accurate information from the domestic source before providing the information to the foreign customer and instructions on how to do that.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENT 25-24

The allowable cost of sales commissions and contingent fees (as defined in FAR Subpart 3.4) anticipated to be included in Foreign Military Sales contracts is limited to $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Such fees or commissions shall be made known to the purchasing government prior to or in conjunction with the submission of the DoD Offer and Acceptance (DD Form 1513) to that government.

Reference: DFARS 25.7305(b) and (d)(1)

Analysis: LMI Report AR601R1, *Improving Army-Industry Cooperation in Defense Sales Abroad*, April 1987, recommended removing the $50,000 threshold on the allowable agent fee for a foreign sale and recommended making the fee a function of sale size, e.g., set the fee at 5 percent for sales up to $1 million and 0–5 percent for sales above $100 million, with fees in between growing linearly with sale size while the percentage decreases. This should enhance defense sales abroad.

Recommend: Eliminate the threshold and replace it with the sliding scale recommended by LMI.

THRESHOLD REQUIREMENT 25-25

It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products and/or a fair price for its contribution to the development of related technology when such products are sold and when technology relating to the manufacture of the products is sold or licensed to a foreign government, international organization, foreign commercial firm, or domestic organization. This policy applies to those products and technologies for which investment costs equal or exceed $5 million for nonrecurring research, development, test, and evaluation costs (RDT&E), nonrecurring production costs; and cost of special features under a foreign military sale.

Reference: DFARS 25.7306

Note: In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

Analysis: This threshold can affect workload, and it is basically a cost/benefit issue. The appropriateness of the threshold level must be a policy decision within DoD, which we are not prepared to question.

Recommend: Make no change to the threshold.

PART 27 – PATENTS, DATA, AND COPYRIGHTS

PART 27 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
27-1	FAR	$ 25,000	$ 25,000	
27-2	FAR	25,000	25,000	
27-3	FAR	25,000	25,000	
27-4	FAR	25,000	25,000	
27-5	FAR	25,000	25,000	
27-6	FAR	5,000		DoD further study
27-7	FAR	500,000	500,000	
27-8	FAR	25,000		Eliminate threshold
27-9	FAR	250	10,000[a]	
27-10	FAR	50,000		Eliminate threshold and requirement
27-11	FAR	250		Eliminate threshold
27-12	FAR	50,000	50,000	
27-13	FAR	50,000	50,000	

Summary of recommendations

13 Thresholds
- 8 unchanged
- 1 increased
- 2 thresholds eliminated
- 1 threshold and requirement eliminated
- 1 further study

Recommended threshold groupings .....

$ 10,000 – 1
25,000 – 5
50,000 – 2
500,000 – 1

[a] Recommendation is interim pending further DoD study.

THRESHOLD REQUIREMENTS 27-1 AND 27-2

27-1. The contracting officer shall insert the clause at FAR 52.227-1, *Authorization and Consent*, in solicitations and contracts except when small purchase procedures apply.

27-2. FAR Clause 52.227-1, *Authorization and Consent*, requires that the contractor include, and require inclusion of, the clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services expected to exceed $25,000.

Reference: FAR 27.201-2(a)
FAR 52.227-1

Analysis: Omission of the *Authorization and Consent* clause below the small purchase threshold is appropriate.

Recommend: Make no change to the thresholds, but change 27-1 to read "expected to exceed the small purchase threshold" so that both purchases and contracts of $25,000 and below are exempt.

THRESHOLD REQUIREMENTS 27-3 AND 27-4

27-3. The contracting officer shall insert the clause at FAR 52.227-2, *Notice and Assistance Regarding Patent and Copyright Infringement*, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) that anticipate a contract value above the dollar limit set forth at FAR 13.000.

27-4. FAR Clause 52.227-2, *Notice and Assistance Regarding Patent and Copyright Infringement*, requires the contractor to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services expected to exceed the dollar amount set forth in FAR 13.000, the small purchase threshold.

Reference: FAR 27.202-2
FAR 52.227-2

Analysis: Omission of the *Notice and Assistance Regarding Patent and Copyright Infringement* clause below the small purchase threshold is appropriate.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENTS 27-5 AND 27-6

27-5. With exceptions, the Government requires reimbursement for liability for patent infringement arising out of, or resulting from, performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. A patent indemnity clause shall not be used when the contract is awarded by small purchase procedures.

27-6. In solicitations and contracts for communication services and facilities where performance is by a common carrier and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, apply FAR 52.227-3, *Patent Indemnity*, and Alternate III. Alternate III provides that as to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over $5,000 issued under this contract.

Reference: FAR 27.203-1(b)(4)
FAR 27.203-2(c)
FAR 57.227-3 and Alternate III

Analysis: Omitting the *Patent Indemnity* clause from small purchases is appropriate, but we would prefer to see the threshold level state that it is set at the small purchase threshold, rather than "when the contract is awarded by small purchase procedures," so as to include any bilateral contracts below $25,000 that were not awarded pursuant to small purchase procedures.

Alternate III dates from April 1984 and thus should be relatively current. However, the basis for the $5,000 threshold level is not clear, and we recommend that DoD review the threshold to see whether it and its level are still appropriate. Without the results of such a review, we see no basis to question the requirement.

Recommend: 27-5. Make no change to the Threshold Requirement 27-5 level, but change the last sentence to read "A Patent Indemnity clause shall not be used in purchases or contracts in amounts below the small purchase threshold."

27-6. DoD should review the appropriateness of Threshold Requirement 27-6 and its level.

THRESHOLD REQUIREMENT 27-7

It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. However, in recognition of the fact that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at the time of contracting, the clause at FAR 52.227-16, *Additional Data Requirements*, may be used to enable the contracting officer to subsequently order additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. The clause shall not be used for basic or applied research to be performed under a contract solely by a university or college when the contract amount is $500,000 or less unless the contracting officer believes the contract effort will in the future exceed $500,000.

Reference: FAR 27.604(b)(1)

Analysis: Since we cannot determine the basis for the $500,000 threshold level, we have no basis for questioning it.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 27-8

The clause at DFARS 52.227-7031, *Data Requirements*, shall be included in all solicitations and contracts, except that it need not be included in any contract that in aggregate does not exceed $25,000.

Reference: DFARS 27.475-1(a)(1)

Analysis: The *Data Requirements* clause is intended to clearly limit the obligation of the contractor to deliver only that data specified for delivery. It would be just as appropriate for contracts of $25,000 or less as for contracts greater than $25,000. The clause simplifies contracts by making a more specific description of the contract requirements. The elimination of the threshold would result in a modest increase in workload but would provide more definitive contracts.

Recommend: Eliminate the threshold.

THRESHOLD REQUIREMENT 27-9

FAR 52.227-6, *Royalty Information*, requires that when the response to the solicitation contains costs or charges for royalties totaling more than $250, certain detailed information must be included in the proposal.

Reference: FAR 52.227-6

Analysis: Instructions for the use of the *Royalty Information* solicitation provision are contained in FAR 27.204, which says that "To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with any Government rights in particular inventions, patents, or patent applications, contracting officers shall require prospective contractors to furnish certain royalty information and shall require contractors to furnish certain royalty reports." The *Royalty Information* provision is to be included in any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data are obtained, and where work may be performed in the United States, its possessions, or Puerto Rico.

We believe that $250 is much too low a threshold for requiring that this information be furnished. Setting a proper threshold level is a cost/benefit decision, but we suggest a level of $10,000 as a point from which to commence the discussion, and we recommend a concurrent DoD cost-benefit study.

Recommend: Increase the threshold level to $10,000 and conduct a cost-benefit study to determine a permanent threshold level.

THRESHOLD REQUIREMENT 27-10

FAR 52.227-8, *Reporting of Royalties (Foreign)*, provides that if the contract is in an amount that exceeds US$50,000, the contractor, while performing the contract, shall report in writing to the contracting officer the amount of royalties paid or to be paid by the contractor directly to others in performing the contract. The contractor is required to insert a provision similar to this clause in any subcontract at any tier that involves an amount in excess of the equivalent of US$50,000.

Reference: FAR 52.227-8

Analysis: FAR 27.204-4 instructs that the clause at FAR 52.227-8 is to be included in solicitations contemplating negotiated contracts (and in such contracts) to be performed outside the United States, its possessions, and Puerto Rico, regardless of the place of delivery.

The reasons for this threshold requirement are unclear. The solicitation provision at FAR 52.227-6, *Royalty Information*, is designed to obtain prospective royalty costs in negotiated acquisitions to assist in contract pricing. While we believe that the $250 threshold level in that provision is too low, the purpose of requiring the information is a legitimate one and a separate solicitation provision should be unnecessary for foreign acquisitions.

The *Reporting of Royalties (Foreign)*, as a solicitation provision requests no information, and as a contract clause it appears to be flawed because (1) its threshold is based on the value of the contract (where royalties may or may not be paid) and not the cost of royalties and (2) it gives no indication of the purpose of the report, particularly in a fixed-price situation, nor can we discern the purpose. In short, the threshold requirement appears to be of no value to the acquisition process.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENT 27-11

FAR 52.227-9, *Refund of Royalties*, states that the contract price includes certain amounts for royalties payable by the contractor or subcontractors and limits the compensation of the contractor to those royalties. If some of the royalties that are included in the contract price are not paid, the contract price is to be reduced appropriately. The contractor is required to include the substance of the clause in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

Reference: FAR 52.227-9

Analysis: FAR 27.206-2 instructs the contracting officer to insert the *Refund of Royalties* clause in negotiated fixed-price contracts and solicitations contemplating such contracts when he or she determines that circumstances make it questionable whether substantial amounts of royalties will have to be paid by the contractor or a subcontractor at any tier.

The threshold level of $250 is inconsistent with the concept of "substantial amounts of royalties" and in our view is much too low a threshold. Since the clause is only inserted when the contracting officer believes a recapture provision is needed for this particular pricing contingency, the threshold level would more appropriately be left blank and the contracting officer instructed to insert whatever amount fits the circumstances.

Recommend: Eliminate the threshold and replace it with guidance to the contracting officer on the appropriate levels to consider.

THRESHOLD REQUIREMENTS 27-12 AND 27-13

27-12. FAR 52.227-12, *Patent Rights - Retention by the Contractor (Long Form)*, provides that at any time before final payment under the contract, the contracting officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside.

27-13. FAR 52.227-13, *Patent Rights - Acquisition by the Government*, provides that at any time before final payment under the contract, the contracting officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside.

Reference: FAR 52.227-12
FAR 52.227-13

Analysis: These are withholding provisions to be exercised at the judgment of the contracting officer. The threshold requirements are legitimate, and we have no basis to question the threshold levels.

Recommend: Make no change to the thresholds.

PART 28 – BONDS AND INSURANCE

PART 28 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
28-1	FAR	$ 3,000,000	$ 3,000,000	
28-2	Statute	25,000	25,000[a]	
28-3	Statute	25,000	25,000[a]	
28-4	Statute	1,000,000	1,000,000	
28-5	Statute	1,000,000	1,000,000	
28-6	Statute	2,500,000	2,500,000	
28-7	FAR	50,000	50,000	
28-8	DFARS	10,000	10,000	
28-9	DFARS	500		DoD further study
28-10	FAR	100,000	100,000[a]	
28-11	FAR	500,000	500,000[a]	
28-12	FAR	200,000	200,000[a]	
28-13	FAR	500,000	500,000[a]	
28-14	FAR	20,000	20,000[a]	
28-15	FAR	200,000	200,000[a]	
28-16	FAR	500,000	500,000[a]	
28-17	FAR	200,000	200,000[a]	
28-18	FAR	200,000	200,000[a]	
28-19	FAR	200,000	200,000	
28-20	FAR	200,000	200,000[a]	
28-21	FAR	500,000	500,000[a]	
28-22	FAR	20,000	20,000[a]	

Summary of recommendations: 22 Thresholds
21 unchanged
1 further study

Recommended threshold groupings .....

$	10,000 – 1
	20,000 – 2
	25,000 – 2
	50,000 – 1
	100,000 – 1
	200,000 – 6
	500,000 – 4
	1,000,000 – 2
	2,500,000 – 1
	3,000,000 – 1

[a] Recommendations are interim pending further DoD study

THRESHOLD REQUIREMENT 28-1

A bid guarantee amount shall be at least 20 percent of the bid price but shall not exceed $3 million.

Reference: FAR 28.101-2

Note: The use of bid guarantees is required when a performance bond or a performance and payment bond is required, e.g., on most construction contracts, and is permitted under other circumstances. The contracting officer determines a bid guarantee amount, within the threshold limits, that is adequate to protect the Government from loss should the successful bidder fail to execute further contractual documents and bonds as required.

Analysis: Prior to the issuance of FAR, no limitation was placed on the amount of bid guarantees. FAR has placed a $3 million ceiling on the required bid guarantee amount. That threshold seems reasonable, and we assume that it was based on a considered analysis.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 28-2 AND 28-3

28-2. The Miller Act requires performance and payment bonds for any construction contract exceeding $25,000, except that this requirement may be waived under certain circumstances.

28-3. Contracting officers shall require the prime contractor on a cost-reimbursement type prime contract to obtain a payment bond from its subcontractor in favor of the prime contractor in an amount sufficient to assure payment of suppliers of labor and materials for any fixed-price construction subcontract exceeding $25,000.

Reference: FAR 28.102-1(a)
DFARS 28.102-1(a)
40 U.S.C. 270a (Miller Act)

Note: The Miller Act requirements may be waived (1) for that portion of the work to be performed in a foreign country if the contracting officer finds that it is impracticable for the contractor to furnish such bond, or (2) as otherwise authorized by the Miller Act or other law. In DoD, the requirements have been waived for all cost-reimbursement type construction contractors but not payment bonds for fixed-price construction subcontractors.

Analysis: These are statutory requirements. The $25,000 threshold in the Miller Act has existed since 1978 without any adjustment for inflation. A modest workload is involved in reviewing and accepting the bonds, and the bidders incur a cost that is presumably included in the bid price. We believe that a study would be beneficial to determine an appropriate threshold level. The study should determine the costs to the Government of requiring bonds, the downside risks if the threshold level were raised, and the possibility of increasing the threshold to, say, $100,000 on a trial basis.

Recommend: Make no change to the threshold, but conduct a detailed study.

THRESHOLD REQUIREMENTS 28-4, 28-5, AND 28-6

The penal amount of payment bonds shall equal:

28-4. Fifty percent of the contract price if the contract price is not more than $1 million;

28-5. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

28-6. $2.5 million if the contract price is more than $5 million.

Reference: FAR 28.102-2
40 U.S.C. 270a (Miller Act)

Analysis: These thresholds are contained in the statute. If the original contract price is $5 million or less, the Government may require additional protection consistent with these thresholds, if the contract price is increased.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 28-7

When any contract containing performance or payment bonds is modified, the contracting officer shall obtain the consent of surety if no additional bond is required and the modification does not change the contract scope but changes the contract price (upward or downward) by more than 25 percent or $50,000. Additional circumstances are listed.

Reference: FAR 28.106-5(a)(2)(ii)

Analysis: This threshold is necessary to assure the applicability of bonds on changed work. We have no basis to question the level.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 28-8

A defense project is eligible for application of the National Defense Projects Rating Plan when (1) eligible Government contracts represent, at inception of the plan, at least 90 percent of the payroll for total operations at the specific locations of the project; and (2) the annual premium for insurance is estimated to be at least $10,000.

Reference: DFARS 28.304(c)

Analysis: The National Defense Projects Rating Plan is a risk-pooling arrangement that provides a special rating formula for the purchase of required casualty insurance coverages. The plan is mandatory in contracts that meet the specified use and eligibility standards. We have no basis upon which to question the threshold requirement or its level.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 28-9

Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as further provided, include the clause at DFARS 52.228-7001, *Ground and Flight Risk*. The purpose of that clause is to have the Government assume risks that generally entail unusually high premiums and that are not covered by the contractor's insurance. The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause if the best estimate of premium costs that would be included in the contract price for insurance coverage is less than $500.

Reference: DFARS 28.306(a)(2)(ii)

Analysis: We cannot relate the concept of the Government assuming risks that "generally entail unusually high premiums" with the threshold level of $500. We have no other basis to question the threshold level, which does not increase acquisition workload or extend PALT (although it may increase contract administration workload when small losses are incurred greater than $500). We suggest that DoD review the threshold to determine whether it is still at an appropriate level.

Recommend: Review the threshold level to determine whether it is appropriate.

THRESHOLD REQUIREMENTS 28-10, 28-11, 28-12, 28-13, 28-14, 28-15, 28-16, 28-17, AND 28-18

Cost-reimbursement contracts (and subcontracts if the terms of the prime contract are extended to the subcontract) ordinarily require the following types of insurance with the minimum amounts of liability indicated:

28-10. Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of its insurance policy, with a liability coverage of at least $100,000, except in States that do not permit workers' compensation to be written by private carriers.

28-11. General bodily injury liability insurance coverage of at lcast $500,000 per occurrence.

Automobile liability insurance of:

28-12. At least $200,000 per person for bodily injury.

28-13. At least $500,000 per occurrence for bodily injury.

28-14. At least $20,000 per occurrence for property damage.

When aircraft are used in the performance of the contract, public and passenger liability insurance coverage of:

28-15. At least $200,000 per person for bodily injury, other than passenger liability.

28-16. At least $500,000 per occurrence for bodily injury, other than passenger liability.

28-17. At least $200,000 per occurrence for property damage.

28-18. At least $200,000 multiplied by the number of seats or passengers, whichever is greater, for passenger liability bodily injury.

Reference: FAR 28.307-2

Analysis: While we have no basis for evaluating or questioning the threshold levels, we believe that it would be appropriate for DoD to conduct a comprehensive review of the overall policy of requiring insurance, the effectiveness of the requirements (i.e., Is compliance of contractors, particularly with small contracts, monitored?), and the specific threshold levels.

Recommend: Make no change to the thresholds, but conduct a comprehensive review of these threshold requirements to determine their suitability and the levels at which they should be set.

THRESHOLD REQUIREMENT 28-19

When 50 percent or more of the self-insurance costs to be incurred at a segment of a contractor's business are expected to be allocable to negotiated Government contracts and the self-insurance costs at that segment for the contractor's fiscal year are expected to be $200,000 or more, the contractor shall submit, in writing, information on its proposed self-insurance program to the administrative contracting officer for approval.

Reference: FAR 28.308

Analysis: When a contractor's self-insurance plan depends heavily on reimbursement by the Government, it is reasonable for the Government to review the plan that it is, literally, buying into. The threshold appears reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 28-20, 28-21, AND 28-22

FAR 52.228-8, *Liability and Insurance – Leased Motor Vehicles*, requires the contractor to provide and maintain insurance covering its liabilities in amounts of:

28-20. At least $200,000 per person for death or bodily injury.

28-21. At least $500,000 per occurrence for death or bodily injury.

28-22. At least $20,000 per occurrence for property damage or loss.

Reference: FAR 52.228-8

Analysis: The *Liability and Insurance – Leased Motor Vehicles* clause is required to be included in solicitations and contracts for the leasing of motor vehicles. The purpose of the thresholds is obvious. We believe that these thresholds should be included in the comprehensive review we have recommended for Threshold Requirements 28-10 through 28-18.

Recommend: Make no change to the thresholds, but conduct a comprehensive review of these threshold requirements to determine their suitability and the levels at which they should be set.

PART 29 – TAXES

PART 29 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
29-1	FAR	$ 100		Eliminate threshold
29-2	FAR	100		Eliminate threshold
29-3	FAR	100		Eliminate threshold and requirement
29-4	FAR	100	$ 1,000[a]	
29-5	FAR	100	1,000[a]	
29-6	FAR	100	1,000[a]	
29-7	FAR	100	1,000[a]	

Summary of recommendations: 7 Thresholds
- 4 increased
- 2 thresholds eliminated
- 1 threshold and requirement eliminated

Recommended threshold groupings ..... $ 1,000 – 4

[a] Recommendations are interim pending DoD further study.

THRESHOLD REQUIREMENTS 29-1, 29-2, AND 29-3

29-1. Federal excise taxes are levied on the sale or use of particular supplies or services. Sometimes the law exempts the Federal Government from these taxes. Contracting officers should solicit prices on a tax-exclusive basis when they know that the Government is exempt from these taxes and the exemption is at least $100, and on a tax-inclusive basis when they know that no exemption exists or when the exemption is less than $100.

29-2. Executive agencies shall take maximum advantage of available Federal excise tax exemptions, especially when the exemption is $100 or more.

29-3. Refunds of exempted Federal excise taxes amounting to $100 or more shall be claimed.

Reference: FAR 29.201(b)
FAR 29.201(c)

Analysis: The obvious purpose of these thresholds is to avoid the payment of excise taxes when the law for the excise tax on a specific product exempts the Federal Government. Payment of such taxes would at best transfer the funds from the agency appropriation to the Treasury and at worst would provide a greater profit to a supplier, who might base the price upon the addition of the excise tax and then claim the exemption.

Threshold Requirement 29-1 instructs contracting officers to solicit prices on a tax-exclusive basis when they know that the Government is exempt from the taxes and the exemption is at least $100. Since no additional effort is involved in soliciting prices on a tax-free basis, we recommend eliminating the threshold. If the Government is exempt from the tax and it costs nothing to avoid the tax, the Government should avoid it.

Threshold Requirement 29-2 similarly contains a $100 threshold that can be eliminated. It is enough, albeit somewhat redundant, to state that "Executive agencies shall take maximum advantage of available Federal excise tax exemptions."

The matter of refunds is covered within required contract clauses, and the general statement in Threshold Requirement 29-3 accomplishes nothing.

Recommend: 29-1 and 29-2. Eliminate the thresholds.

29-3. Eliminate the threshold and the requirement, relying instead on the terms of the required tax clauses.

THRESHOLD REQUIREMENTS 29-4, 29-5, 29-6, AND 29-7

29-4. FAR 52.229-3, *Federal, State, and Local Taxes*, contains the provision that no adjustment shall be made in the contract price under the clause unless the amount of the adjustment exceeds $100. Exempted from the clause are sealed bids for construction in an amount expected to be less than the small purchase limitation in Part 14 and negotiated contracts at or below the small purchase limitation.

29-5. FAR 52.229-4, *Federal, State, and Local Taxes (Noncompetitive Contract)*, contains the provision that no adjustment shall be made in the contract price under the clause unless the amount of the adjustment exceeds $100. Exempted from the clause are contracts in an amount at or below the small purchase limitation.

29-6. FAR 52.229-6, *Taxes – Foreign Fixed-Price Contracts*, contains the provision that no adjustment shall be made in the contract price under the clause unless the amount of the adjustment exceeds $100.

29-7. FAR 52.229-7, *Taxes – Fixed-Price Contracts with Foreign Governments*, contains the provision that no adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $100.

Reference:

FAR 52.229-3
FAR 52.229-4
FAR 52.229-6
FAR 52.229-7

Analysis:

The contract clauses in the threshold requirements provide for increasing the contract price for any "after-imposed Federal tax," decreasing the contract price for any "after-relieved Federal tax," and decreasing the contract price if the contracting officer had instructed the contractor to obtain tax refunds and the contractor negligently failed to follow the instructions.

The $100 limitation would be a cost/benefit figure – the amount below which it would cost more to adjust the price than the value of the adjustment. We believe that the figure is too low and should be adjusted for inflation. We recommend $1,000, but that

level could be adjusted if reasonably good estimates of the cost of processing such a contract price adjustment are available.

The exemption of Threshold Requirement 29-5 from contracts less than the small purchase limit (currently $25,000) is reasonable. The partial exemption of Threshold Requirement 29-4 from contracts less than the small purchase limitation should be a complete exemption. Threshold Requirements 29-6 and 29-7 should be similarly exempted from contracts less than the small purchase threshold.

Recommend: Increase the thresholds to $1,000 and conduct a cost-benefit study to determine permanent thresholds. Exempt all four clauses from contracts at or below the small purchase threshold.

PART 30 – COST ACCOUNTING STANDARDS

PART 30 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
30-1	Statute	$ 100,000	$ 100,000	
30-2	CASB/FAR[a]	500,000	500,000	
30-3	CASB/FAR	10,000,000	10,000,000	
30-4	CASB/FAR	10,000,000	10,000,000	
30-5	FAR	100,000 to 10,000,000	100,000 to 10,000,000	
30-6	CASB/FAR	10,000,000	10,000,000	
30-7	CASB/FAR	10,000,000	10,000,000	
30-8	CASB/FAR	100,000	100,000	
30-9	FAR	10,000	10,000	

Summary of recommendations: 9 Thresholds
9 unchanged

Recommended threshold groupings .....
$ 10,000 – 1
100,000 – 2
500,000 – 1
100,000 to 10,000,000 – 1
10,000,000 – 4

[a] CASB/FAR applies to threshold requirements which were established by the Cost Accounting Standards Board and included in the Federal Acquisition Regulations

THRESHOLD REQUIREMENTS 30-1 AND 30-2

30-1. Negotiated contracts and subcontracts not in excess of $100,000 are exempt from all Cost Accounting Standards (CAS) requirements.

30-2. Contracts and subcontracts of $500,000 or less are exempt from all CAS requirements if the business unit is not currently performing any national defense CAS-covered contracts.

Reference: 30-1. FAR 30.201-1(b)(2)
P.L. 91-379 (50 U.S.C. App. 2168)

30-2. 4 CFR 331.30(b)(7)

Analysis: The $100,000 threshold is contained in the statute establishing the CAS Program. The $500,000 threshold was established by the CASB and codified in the Code of Federal Regulations (CFR). The contracting officer must insert the clause at FAR 52.230-3, *Cost Accounting Standards*, in negotiated contracts, unless the contract value is at or below the Threshold Requirement 30-1 or 30-2 level or is otherwise exempt.

We believe that any initiative to increase the threshold limits and thereby exempt more contracts from CAS must originate in and be pursued by the private sector since that sector is primarily affected by the rules and regulations issued by the CASB.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 30-3

Full CAS coverage applies to contractor business units that:

1. **Receive a single national defense CAS-covered contract award of $10 million or more**
2. **Received $10 million or more in national defense CAS-covered contract awards during its preceding cost accounting period**
3. **Received less than $10 million in national defense CAS-covered contract awards during its preceding cost accounting period but such awards were 10 percent or more of total sales.**

Reference: FAR 30.201-2
4 CFR 331
4 CFR 332.30(a)

Analysis: *The $10 million threshold was established by the CASB and codified in the CFR. Full coverage requires that the business unit comply with all of the CAS in effect on the date of the contract award and with any CAS that becomes applicable because of later award of a national defense CAS-covered contract. We believe that any initiative to increase the threshold limit and thereby exempt more contracts from full coverage must originate from the private sector, which is primarily affected by the rules and regulations issued by the CASB.*

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 30-4

Modified CAS coverage may be applied to a covered contract of less than $10 million awarded to a business unit that received less than $10 million in national defense CAS-covered contracts in the immediately preceding cost accounting period if the sum of such awards was less than 10 percent of the business unit's total sales during that period.

Reference: FAR 30.201-2(b)
41 CFR 332.30(a)

Analysis: Modified CAS coverage requires only that the contractor comply with Standard 401, *Consistency in Estimating, Accumulating, and Reporting Costs*, and Standard 402, *Consistency in Allocating Costs Incurred for the Same Purpose.* If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: If the business unit receives a single national defense contract award of $10 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage. A change in this threshold would not be appropriate without a change in Threshold Requirement 30-3 for contracts of $10 million or more. We have recommended that no change be made to the $10 million level in Threshold Requirement 30-3.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 30-5

The contracting officer shall insert the clause at FAR 52.230-5, *Disclosure and Consistency of Cost Accounting Practices*, in negotiated contracts when the contract amount is over $100,000 but less than $10 million and the offeror certifies it is eligible for, and elects to use, modified CAS coverage.

Reference: FAR 30.201-4(c)

Analysis: The clause required by this threshold merely enforces the modified CAS application in appropriate contracts.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 30-6, 30-7, AND 30-8

30-6. A completed Disclosure Statement is required before award from any business unit that is selected to receive a CAS-covered negotiated national defense contract or subcontract of $10 million or more.

30-7. Any company that, together with its segments, received net awards of negotiated national defense prime contracts and subcontracts subject to CAS totaling more than $10 million in its most recent cost accounting period must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period or within 90 days, whichever is later.

30-8. When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed $100,000, unless exempted.

Reference: FAR 30.202-1(b) and (c)
50 U.S.C. 2168(1)
4 CFR 351.40

Analysis: A Disclosure Statement, as a condition of being awarded a Federal contract, is a statutory requirement. The threshold levels have been established by the CASB and codified in the CFR. Consistent with our position on other CAS thresholds, we believe that any initiative to increase the thresholds must come from the private sector, which is primarily affected by the rules and regulations issued by the CASB.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 30-9

The cognizant ACO shall promptly analyze the cost impact proposed accounting change which is required to comply with a new or modified CAS and shall invite contracting offices to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by $10,000 or more.

Reference: FAR 30.602-1(e)

Analysis: The threshold requirement is, as much as anything, a courtesy to those contracting offices whose contracts may be affected by negotiations to be conducted by the ACO. Since the CASB is no longer in existence, new or modified standards are not being issued and this threshold requirement is dormant.

Recommend: Make no change to the threshold.

PART 31 – CONTRACT COST PRINCIPLES AND PROCEDURES

PART 31 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
31-1	FAR	$ 500,000	$ 500,000	
31-2	Statute	4,400,000	4,400,000	
31-3	Statute	4,400,000	4,400,000	
31-4	Statute	550,000	550,000	
31-5	Statute	10,000	10,000	
31-6	Statute	100,000	100,000	
31-7	Statute	100,000	100,000	

Summary of recommendations: 7 Thresholds
7 unchanged

Recommended threshold groupings .....

$ 10,000 – 1
100,000 – 2
500,000 – 1
550,000 – 1
4,400,000 – 2

THRESHOLD REQUIREMENT 31-1

The costs of leasing automated data processing equipment (ADPE) are allowable only to the extent that the contractor can annually demonstrate that, among other criteria, the contracting officer's approval was obtained for the leasing arrangement when the total cost of leasing ADPE in a single plant, division, or cost center exceeded $500,000 a year and 50 percent or more of the total leasing cost is to be allocated to one or more Government contracts that require negotiating or determining costs.

Reference: FAR 31.205-2(b)(2)(iii)(B)
FAR 31.205-2(d)(3)
DFARS 70.600(d)

Analysis: This FAR threshold requirement is repeated in DFARS 70.600(d), and is analyzed in our Threshold Requirement 70-20. DFARS 70.603 provides detailed procedures for the ACO review and concurrence or nonconcurrence. We have no basis to question the threshold, which has an affect upon workload but not upon PALT. It and its level appear reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 31-2, 31-3, AND 31-4

31-2. With some exceptions, independent research and development (IR&D) and bid and proposal (B&P) costs are allowable, but any company that received payments from Government agencies for IR&D and B&P costs in a fiscal year, either as a prime contractor or subcontractor, exceeding $4.4 million, is required to negotiate an advance agreement with the Government, establishing a ceiling for allowability of IR&D and B&P costs for the following fiscal year.

31-3. The requirements of Section 203 of Public Law 91-441 necessitate that the Department of Defense be the lead negotiating agency when the contractor has received more than $4.4 million in payments for IR&D and B&P from DoD.

31-4. When a company meets the criterion requiring an advance agreement, it (or they) may be negotiated at the corporate level and/or with those profit centers that contract directly with the Government and that in the preceding year allocated recoverable IR&D and B&P costs exceeding $550,000.

Reference: FAR 31.205-18(c)(1)(i) and (v)
FAR 31.205-18(c)(1)(ii)
Public Law 91-441 Sections 203 and 204 (as amended by Section 208 of the Department of Defense Authorization Act, 1981)

Analysis: Sections 203 and 204 of Public Law 91-441 (as amended by Section 208 of the Department of Defense Authorization Act, 1981) provide:

> SEC. 203.(a): Funds authorized for appropriation to the Department of Defense under the provisions of this or any other Act shall not be available after December 31, 1970, for payment of independent research and development or bid and proposal costs unless the work for which payment is made has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation and unless the following conditions are met:
>
> > (1) the Secretary of Defense, prior to or during each fiscal year, negotiates advance agreements establishing a dollar ceiling on such costs with all companies which during their last preceding fiscal year received more than $4,000,000 of independent research and development or

bid and proposal payments from the Department of Defense, the advance agreements thus negotiated (a) to cover the first fiscal year of each such contractor beginning on or after the beginning of each fiscal year of the Federal Government, and (b) to be concluded either directly with each such company or with those product divisions of each such company which contract directly with the Department of Defense and themselves received more than $500,000 of such payments during their company's last preceding fiscal year;

SEC. 203.(f): On October 1, 1983, and once every three years thereafter, the Secretary of Defense may, based upon economic indices that the Secretary has selected, adjust the amounts in subsection (a)(1) of this section in accordance with economic changes reflected in those indices.

The 10 percent increase (to $4.4 million) in the threshold level was the result of the application of a Section 203(f) adjustment.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 31-5, 31-6, AND 31-7

31-5. Statutory penalties when contractors submit unallowable costs in proposals for settlement of indirect costs under certain DoD contracts provide that if the cost is unallowable based on clear and convincing evidence, the penalty is equal to the amount of the disallowed cost plus interest. If the cost was determined to be unallowable before proposal submission, the penalty is tripled. If any penalty is assessed, an additional penalty of not more than $10,000 per proposal may be assessed.

31-6. The contracting officer shall insert the clause at DFARS 52.231-7001, *Penalties for Unallowable Costs*, in all solicitations and contracts exceeding $100,000 that contain the clause at FAR 52.216-7, *Allowable Cost and Payment*, or at FAR 52.216-13, *Allowable Cost and Payment – Facilities.*

31-7. The contracting officer shall insert the clause at DFARS 52.231-7002, *Penalties for Unallowable Costs – Fixed-Price Incentive*, in all solicitations and contracts exceeding $100,000 that contain the clause at FAR 52.216-16, *Incentive Price Revision – Firm Target*, and FAR 52.216-17, *Incentive Price Revision – Successive Targets.*

Reference: DFARS 31.7001(a)(3)
DFARS 31.7001(d)(1) and (2)
10 U.S.C. 2324(a) through (d)

Analysis: Public Law 99-145 [10 U.S.C. 2324(a) through (d)] prescribes the assessment of penalties when contractors submit unallowable costs in proposals for settlement of indirect costs under certain DoD contracts. Covered contracts are contracts covered by the penalty provision of P.L. 99-145 and include all DoD contracts in an amount of more than $100,000 other than fixed-price contracts without cost incentives. The threshold clauses are designed to implement the requirements of the statute.

Recommend: Make no change to the thresholds.

PART 32 – CONTRACT FINANCING

PART 32 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
32-1	FAR	$ 10,000	$ 10,000	
32-2	DFARS	500	500	
32-3	FAR	120,000	120,000	
32-4	DFARS	25,000,000	25,000,000	
32-5	FAR	1,000,000	1,000,000	
32-6	FAR	100,000	100,000	
32-7	FAR	1,000,000	1,000,000	
32-8	CASB/FAR	5,000,000	5,000,000	
32-9	Statute	20,000	100,000	
32-10	DFARS	600		Eliminate threshold and requirement
32-11	DFARS	600		Eliminate threshold and requirement
32-12	Statute	1,000	25,000	
32-13	Statute	1,000	25,000	
32-14	Statute	1,000	25,000	
32-15	Statute	1,000	25,000	
32-16	Statute	1,000	25,000	
32-17	FAR	1,000	1,000	
32-18	FAR	50,000	50,000	

Summary of recommendations: 18 Thresholds
- 10 unchanged
- 6 increased
- 2 thresholds and requirements eliminated

Recommended threshold groupings .....
- $ 500 – 1
- 1,000 – 1
- 10,000 – 1
- 25,000 – 5
- 50,000 – 1
- 100,000 – 2
- 120,000 – 1
- 1,000,000 – 2
- 5,000,000 – 1
- 25,000,000 – 1

THRESHOLD REQUIREMENTS 32-1 AND 32-2

The policies and procedures of FAR Subpart 32.4, *Advance Payments*, do not apply to advance payments for the following types of transactions:

32-1. Advance payments authorized by law for purchases of supplies or services in foreign countries if the purchase price does not exceed $10,000 (or equivalent amount of the applicable foreign currency) and the advance payment is required by the laws or Government regulations of the foreign country concerned.

32-2. Advance payments for advertising for military recruitment in high school and college publications not to exceed $500 under any single contract.

Reference: FAR 32.404(7)
DFARS 32.404(a)(9)

Analysis: While the thrust of Subpart 32.4 is toward limiting advance payments on prime contracts and subcontracts, some types of advance payments authorized by law are listed, including the two cited in these threshold requirements. The others are rent, tuition, insurance premiums, expenses of investigations in foreign countries, extension or connection of public utilities for Government buildings or installations, subscriptions to publications, and enforcement of the customs or narcotics laws.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 32-3

The Department of the Treasury prescribes regulations and instructions covering the use of letters of credit for advance payments under contracts. If agencies provide advance payments to contractors, they should do so by letter of credit if the contracting agency expects to have a continuing relationship with the contractor for a year or more, with advances totaling at least $120,000 a year.

Reference: FAR 32.406

Analysis: This threshold was probably established with the advice of the Department of the Treasury. We have no basis to question the threshold level.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 32-4

Contracting officers shall not modify contracts to authorize unliquidated unusual progress payments in excess of $25 million without the prior written consent of the Office of the Assistant Secretary of Defense (Production and Logistics).

Reference: DFARS 32.501-2

Analysis: FAR 32.501 distinguishes between customary and unusual progress payments. Customary progress payments are those made under the general FAR guidance using the customary rate, cost base, and frequency of payment established in the *Progress Payments* clause. Other progress payments are considered unusual and may be used only in exceptional cases.

DFARS requires the consent of the Assistant Secretary of Defense (Production and Logistics) for unusual progress payments above $25 million. For those of $25 million or less, DFARS requires coordination by the departmental contract financing office with the Department of Defense Contract Finance Committee.

The $25 million threshold for Assistant Secretary of Defense (Production and Logistics) review and consent seems prudent and appropriate.

Recommend: Make no change to the threshold.

We suggest changing the DFARS language to strike the words "modify contracts to authorize" and to insert the word "provide" in their place, so that the first sentence of the regulation would read "Contracting officers shall not provide unliquidated unusual progress payments in excess of $25 million without the prior written consent of the Assistant Secretary of Defense (Production and Logistics)." That language is more consistent with the language of FAR 32.501-2, and it includes new contracts in the prohibition as well as contracts that must be modified.

THRESHOLD REQUIREMENTS 32-5, 32-6, AND 32-7

32-5. To reduce undue administrative effort and expense, the contracting officer generally should not provide for progress payments on contracts of less than $1 million.

32-6. The contracting officer may provide progress payments on contracts of less than $1 million when the contractor is a small business concern and the contract will involve approximately $100,000 or more.

32-7. The contracting officer may provide progress payments on contracts of less than $1 million when the contractor will perform a group of small contracts at the same time and the total impact on working capital is equivalent to a single contract of $1 million or more.

Reference: FAR 32.502-1(b)
FAR 32.502-1(b)(1) and (2)

Analysis: These threshold requirements are among the criteria and guidance provided in FAR on the subject of when customary progress payments should generally be granted. The threshold levels could be changed. Increasing them would decrease contract administration workload and lower the Government's risk of loss, but at the same time it would burden companies that do not have access to sufficient capital to finance larger contracts. There is no "right" level; these do not appear to be unreasonable.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 32-8

If a contractor established an inventory suspense account under Appendix A of CAS 410, *Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives (4 CFR Part 410)*, and the account is $5 million or more, certain limitations apply to progress payments.

Reference: FAR 32.503-7

Analysis: This threshold requirement is an accounting matter that is governed by the CAS.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 32-9

For contract debts under $20,000, excluding interest, if further collection is not practicable or would cost more than the amount of recovery, the agency may compromise the debt or terminate or suspend further collection action.

Reference: FAR 32.616
Federal Claims Collection Act of 1966
(31 U.S.C. 3711)

Analysis: This threshold requirement permits a relatively simple procedure for an agency to settle rather small (under $20,000) contract debts by compromise or write-off. The level has apparently been in place since 1966 without adjustment for inflation. We believe that an increase should be made to adjust the threshold level to 1988 dollars. At the same time, the level should be set where there is already a "cluster" of thresholds, in order to reduce the number of disparate FAR and DFARS threshold levels. Such change would decrease the overall contracting workload.

Recommend: Request legislation to increase the threshold to $100,000.

THRESHOLD REQUIREMENTS 32-10 AND 32-11

32-10. Debt cases will be transferred to the contract financing office upon the expiration of 45 days without full collection after the date of initial demand, except that transfers will not be made for amounts less than $600.

32-11. Information on a bankruptcy, insolvency, reorganization, or rearrangement will be provided as soon as possible by the office or origin of a debt to that office within a Department designated to receive such information. Proof of claim, with pertinent supporting data and documentation, will be furnished to the Department of Justice by the contract financing office. Information, reports, and proof of claim are not expected on debts of less than $600.

Reference: DFARS 32.670(b)
DFARS 32.671

Analysis: DoD has elected to assign to the contract financing office within each Military Department and the Defense Logistics Agency (DLA) the responsibility to ascertain and collect contract debts, charge interest on debts, defer collections and compromise, and terminate certain debts. DFARS Subpart 32.6 provides guidance on the collection of contract debts and related matters.

A debt case is required to be transferred to the contract financing office if it has not been collected after 45 days from the date of initial demand except in cases in which the debt amounts to less than $600; debts of $600 and less are presumably retained by the contracting officer. The regulations do not describe how the contracting officer is expected to ultimately dispose of such cases. The procedures and expertise reside in the contract financing offices. We recommend that *all* uncollected contract debts be resolved by the contract financing offices. That will reduce the workload of contracting officers while improving the efficiency of resolutions of contract debts less than $600.

Recommend: Eliminate the thresholds and the requirements.

THRESHOLD REQUIREMENTS 32-12, 32-13, 32-14, 32-15, AND 32-16

32-12. Under the Assignment of Claims Act, a contractor may assign moneys due or to become due under a contract if the contract specifies payments aggregating $1,000 or more.

32-13. Any assignment of claims that has been made under the Assignment of Claims Act to a bank, trust company, or other financing institution, including any Federal lending agency, may thereafter be further assigned and reassigned to any such institution. Under a requirements or indefinite-quantity type contract that authorizes ordering and payment by multiple Government activities, amounts due for individual orders for $1,000 or more may be assigned.

32-14. The contracting officer shall insert the clause at FAR 52.232-23, *Assignment of Claims*, in solicitations and contracts when the contract amount is expected to be $1,000 or more (unless the agency has determined that a prohibition of the assignment of claims under the contract is in the Government's interest).

32-15. The use of the clause at FAR 52.232-23, *Assignment of Claims*, is not required for purchase orders. (The clause may be used in purchase orders for $1,000 or more that are accepted in writing by the contractor.)

32-16. If a no-setoff commitment is to be included in the contact and the contract is expected to be for $1,000 or more, the contracting officer shall use the clause at FAR 52.232-23, *Assignment of Claims*, with its Alternate I.

Reference:
FAR 32.803(a)
FAR 32.803(c)
FAR 32.806(a)(1) and (2)
Assignment of Claims Act of 1940
(31 U.S.C. 3727)
(41 U.S.C. 15)

Analysis: The $1,000 threshold has been in place for nearly 50 years. If that was a correct level when the Act was enacted, it is clearly not the correct level in 1988. However, the procedures for processing an Assignment are not cumbersome and the cost is relatively minor. Because the clause is not required in one-

signature purchase orders, the assignment of claims below the $25,000 level should be rare. We believe that the Act should be modified to recognize this reality by increasing the level to $25,000.

Recommend: Seek legislation to increase the thresholds to $25,000.

THRESHOLD REQUIREMENT 32-17

The clause at FAR 52.232-1, *Payments*, provides that unless otherwise specified in the contract, payment shall be made (upon the submission of proper invoices or vouchers) on partial deliveries accepted by the Government if the contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

Reference: FAR 52.232-1

Analysis: The clause must be inserted in solicitations and contracts when a fixed-price contract, a fixed-price service contract, or a contract for nonregulated communications services is contemplated. The threshold level appears to be a reasonable one.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 32-18

The clause at FAR 52.232-7, *Payments under Time-and-Materials and Labor-Hour Contracts*, provides that unless otherwise prescribed in the Schedule, the contracting officer shall withhold 5 percent of the amount due for labor but the total amount withheld shall not exceed $50,000. The amount withheld shall be retained until the execution and delivery of a release by the contractor.

Reference: FAR 52.212-7

Analysis: This is a withholding provision that can be modified in the contract Schedule if the contracting officer so elects.

Recommend: Make no change to the threshold.

PART 33 – PROTESTS, DISPUTES, AND APPEALS

PART 33 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
33-1	FAR	$ 25,000	$ 25,000	
33-2	Statute	50,000	100,000	
33-3	Statute	100,000		Eliminate threshold and requirement
33-4	Statute	100,000		Eliminate threshold and requirement
33-5	Statute	10,000	25,000	
33-6	Statute	50,000	100,000	
33-7	Statute	50,000	100,000	
33-8	Statute	50,000	100,000	

Summary of recommendations: 8 Thresholds
3 unchanged
3 increased
2 thresholds and requirements eliminated

Recommended threshold groupings ..... $ 25,000 – 2
100,000 – 4

THRESHOLD REQUIREMENT 33-1

The contracting officer shall insert the solicitation provision at FAR 52.233-2, *Service of Protest*, in solicitations for other than small purchases.

Reference: FAR 33.106(a)

Analysis: This solicitation provision contains instructions that protests, as defined in Section 33.101 of the FAR, shall be served on the contracting officer by obtaining written and dated acknowledgment of receipt from a designated official or at a designated location. It is reasonable not to include this provision in solicitations that will result in small purchases although it would be a better threshold if the exception were to read "in solicitations for contract actions exceeding the small purchase threshold." (A companion clause at FAR 52.233-3, *Protest After Award*, does not specify a threshold level, but its prescribed use could also properly be limited to contract actions exceeding the small purchase threshold.)

Recommend: Make no change to the threshold level, but change its wording as suggested in the analysis above. In addition, consider establishing a threshold level above $25,000 for the FAR 33.106(b) requirement for the use of FAR Clause 52.233-3.

THRESHOLD REQUIREMENTS 33-2, 33-3, AND 33-4

33-2. A written demand or written assertion by a contractor seeking the payment of money exceeding $50,000 for a claim arising under a contract is not a claim under the Contract Disputes Act of 1978 until, as required by the Act and FAR 33.207, the contractor certifies that:

1. **The claim is made in good faith.**
2. **Supporting data are accurate and complete to the best of the contractor's knowledge and belief.**
3. **The amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.**

33-3. Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Public Law 95-485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Public Law 85-804, and similar requests exceeding $100,000. The contractor certifies that:

1. **The claim is made in good faith.**
2. **Supporting data are accurate and complete to the best of the certifier's knowledge and belief.**
3. **The amount requested accurately reflects the contractor adjustment for which the contractor believes the Government is liable.**

33-4. The clause contained at DFARS 52.233-7000, *Certification of Requests for Adjustment or Relief Exceeding $100,000*, shall be inserted in all contracts expected to exceed $100,000 in value.

Reference:

33-2. FAR 33.201
FAR 33.207
FAR 52.233-1, *Disputes*
41 U.S.C. 601–613
(Contract Disputes Act of 1978)

33-3. DFARS 33.7000(a)
Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Public Law 95-485

33-4. DFARS 33.7000(a)
DFARS 52.233-7000

Analysis:

The Contract Disputes Act of 1978 requires the contractor to certify, inter alia, that any asserted claim exceeding $50,000 is accurate. This certification must be submitted after a dispute has occurred and the contractor submits a written claim for a contracting officer's decision.

Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Public Law 95-485, requires the same certification, not only for claims but also for requests for equitable adjustment to contract terms, requests for relief under Public Law 85-804, and similar requests when the amount claimed or requested exceeds $100,000. This certification must be submitted when the claim or request for relief is first asserted to the Government.

If the contractor is an individual, the certification required by the Contract Disputes Act must be executed by that individual. If the contractor is not an individual, the certification must be executed by either a senior company official in charge at the contractor's plant or location involved, or by an individual or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs. Section 813 of Public Law 94-485 provides that the certification must be signed by a senior company official in charge at the plant or location involved.

The clause in Threshold Requirement 33-4 is intended to implement the provisions of Section 813 of Public Law 94-485.

The overlapping requirements of these two statutes, which were enacted in approximately the same time period, should be reconciled. One threshold should apply to the Department of Defense, and we believe that it should be $100,000. The requirements specifying when a certification is due and who is authorized to execute the certification should be the same.

Recommend: Request legislation to increase the threshold level in the Contract Disputes Act for certification of contract claims to those claims exceeding $100,000.

33-3. Request legislation to eliminate the threshold and the requirement and let the Contract Disputes Act and FAR implementation of the Act govern.

33-4. Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENTS 33-5 AND 33-6

33-5. A contracting officer's decision must advise the contractor that if the contractor appeals the decision to the Board of Contract Appeals, it may, solely at its election, proceed under the Board's small claims procedure for claims of $10,000 or less.

33-6. A contracting officer's decision must advise the contractor that if the contractor appeals the decision to the Board of Contract Appeals, it may, solely at its election, proceed under the Board's accelerated procedure for claims of $50,000 or less.

Reference: FAR 33.211(a)(4)(v)
41 U.S.C. 601–613

Analysis: These two thresholds date from 1978 and have not been adjusted for inflation. The threshold level for the optional small claims procedures would be more appropriate at $25,000, consistent with the small purchase threshold. (We recognize that there is no direct correlation between the small purchase threshold and the proper level for the small claims procedure, but establishing the same threshold level for both provides more rational threshold groupings.) A threshold level of $100,000 for the accelerated procedure permits the 1978 threshold to be adjusted for inflation.

Recommend: Request legislation to increase the threshold for optional use of the small claims procedure to $25,000 or less.

Request legislation to increase the threshold for optional use of the accelerated procedure to $100,000 or less.

THRESHOLD REQUIREMENTS 33-7 AND 33-8

33-7. For claims of $50,000 or less, the contracting officer shall issue a decision within 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.

33-8. For claims over $50,000, the contracting officer shall issue a decision within 60 days after receiving a certified claim; provided, however, that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

Reference: FAR 33.211(c)(1) and (2)
FAR 52.233-1, *Disputes*
41 U.S.C. 601–613

Analysis: These two thresholds date from 1978 and have not been adjusted for inflation. To make this adjustment, they should be more appropriately set at $100,000, where we are recommending a cluster of thresholds be set. Increasing these thresholds will permit contractors to obtain expeditious decisions on claims at roughly the same relative level envisioned when the Contract Claims Act was enacted 10 years ago.

Recommend: Request legislation to increase both thresholds to $100,000.

PART 34 – MAJOR SYSTEM ACQUISITION

PART 34 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
34-1	DFARS	$ 75,000,000	$ 75,000,000	
34-2	DFARS	300,000,000	300,000,000	

Summary of recommendations: 2 Thresholds
2 unchanged

Recommended threshold groupings ..... $ 75,000,000 – 1
300,000,000 – 1

THRESHOLD REQUIREMENTS 34-1 AND 34-2

A system shall be considered a major system in the Department of Defense if:

34-1. The total expenditures for RDT&E for the system are estimated to be more than $75 million (based on fiscal year 1980 constant dollars); or

34-2. The eventual total expenditure for the acquisition exceeds $300 million (based on fiscal year 1980 constant dollars).

Reference: FAR 34.001(a)

Analysis: The thresholds for defining a major system in DoD appear to be set at reasonable levels.

Recommend: Make no change to the thresholds.

PART 35 – RESEARCH AND DEVELOPMENT CONTRACTING

PART 35 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
35-1	DFARS	$ 25,000	$ 25,000	
35-2	Statute	5,000	5,000	
35-3	Statute	5,000	5,000	
35-4	Statute	1,000	1,000	
35-5	DFARS	10,000	10,000	
35-6	DFARS	5,000,000	5,000,000	
35-7	DFARS	1,000,000	1,000,000	

Summary of recommendations: 7 Thresholds
7 unchanged

Recommended threshold groupings .....

$	1,000 – 1
	5,000 – 2
	10,000 – 1
	25,000 – 1
	1,000,000 – 1
	5,000,000 – 1

THRESHOLD REQUIREMENT 35-1

In order to cooperate with the SBA in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel, and small business specialists shall, upon request, provide to authorized SBA representatives, as early as practicable, information on the Government's requirements for each proposed research and development acquisition exceeding $25,000.

Reference: DFARS 35.004(a)(2)

Analysis: SBA is normally to be given a minimum of 15 working days to provide information on qualified potential small business sources. Sources recommended by SBA for a specific acquisition shall be solicited. This procedure can extend PALT although it need not if it is done in parallel with other activities such as preparing the solicitation. Any workload increase is an SBA workload, which SBA can control by the simple expedient of not requesting the data.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 35-2, 35-3, AND 35-4

A contractor that is a nonprofit institution of higher education or a nonprofit organization whose primary purpose is to conduct scientific research:

35-2. Shall, if it obtains the contracting officer's advance approval, automatically acquire and retain title to any item of equipment costing less than $5,000 acquired on a reimbursable basis.

35-3. Shall, for purchased equipment costing $5,000 or more, and as the parties specifically agree in the contract, either (1) obtain title to the equipment upon acquisition without further obligation to the Government, (2) obtain title to the equipment subject to the Government's right to direct transfer of the title with 12 months after the contract's completion or termination, or (3) let the title vest in the Government if the contracting officer determines that vesting of title in the contractor would not further the objectives of the agency's research program.

35-4. May, with the approval of a Government agency, have title to equipment acquired with Government funds that costs $1,000 or more vested in it, notwithstanding the absence of an agreement covering title.

Reference: FAR 35.014(b) and (c)
31 U.S.C. 6306

Analysis: 31 U.S.C. 6306 permits the head of an Executive agency to vest title in Government-owned tangible personal property in a nonprofit institution of higher education or a nonprofit organization whose primary purpose is to conduct scientific research without regard to dollar value. These three threshold requirements implement that statute. Threshold Requirements 35-2 and 35-3 are in the nature of guidance. None of these thresholds affects workload or PALT to any significant degree.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 35-5

The clauses in DFARS 52.235-7005 are applicable to all Short Form Research Contract (SFRC) awards of $10,000 or more as of the date of the offeror's proposal unless such date is modified by mutual agreement. SFRC awards of less than $10,000 shall identify the clauses that are not applicable.

Reference: DFARS 35.7008

Analysis: The clause listing appears to be current, but it would be more helpful to the contracting officer if those clauses that are applicable only to contract actions exceeding $10,000 were identified as such. Such identifications are made in the list for higher contract action values.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 35-6 AND 35-7

35-6. It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs on commercial sales by contractors, of products, components, and related technology developed with DoD appropriations when investment costs equal or exceed $5 million.

35-7. To ensure the recovery of investment in nonrecurring costs and related technology, the clause in DFARS 52.235-7002, *Recovery on Nonrecurring Costs on Commercial Sales*, shall be included in all RDT&E and production contracts and subcontracts of $1 million or more.

Reference: DFARS 35.7102
DFARS 35.7103(a)

Analysis: We have no basis for questioning either the policy or the $5 million threshold, which does not affect workload or PALT. The contract clause requires the contractor and qualifying subcontractors to pay the Government the amounts established by the Government in the event of the contractor's commercial sale of products, or sale or license of related technology that meet the thresholds established in DFARS 35.7102. Use of the clause is consistent with the policy.

Recommend: Make no change to the thresholds.

PART 37 – SERVICE CONTRACTING

PART 37 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
37-1	OMB/DFARS	$ 50,000	$ 100,000	
37-2	DFARS	1,000,000	1,000,000	
37-3	DFARS	5,000		Eliminate threshold and requirement
37-4	DFARS	10,000		Eliminate threshold and requirement

Summary of recommendations: 4 Thresholds
1 unchanged
1 increased
2 thresholds and requirements eliminated

Recommended threshold groupings ..... $ 100,000 – 1
1,000,000 – 1

THRESHOLD REQUIREMENT 37-1

Military Departments shall ensure that the approval of the need for the use of (1) consulting services and (2) professional and management services is based on the policy and guidelines contained in FAR and DFARS, and that, for actions greater than $50,000, the approval authority is not below the Senior Executive Service (SES) manager or General or Flag level, except when 0-6 [Colonel (U.S. Army and U.S. Air Force) or Captain (U.S. Navy)] personnel are filling such command or management positions or have subordinate SES personnel.

Reference: DFARS 37.205-71(b)
OMB Circular A-120 dated 4/14/80, *Guidelines for the Use of Consulting Services*

OMB Memorandum dated 7/2/80, *Management Control of Consulting Service Contracts and Improvement of Agency Procurement Practices*

Analysis: The 2 July 1980 OMB Memorandum requires a management control system that documents and certifies the need for and award of consulting service arrangements. The memorandum also requires that the level of approval for a proposed consulting services procurement action of $50,000 or more be an official of Assistant Secretary or equivalent rank.

FAR 37.205(b) implements the OMB Memorandum by requiring that there must be specific levels of delegation of authority, at a level above the sponsor for consulting services, to approve the need for the use of the services. FAR requires that in the fourth quarter of the fiscal year, any requests submitted for approval be approved at the second level above the organization sponsoring the activity.

This DFARS threshold is an implementation of the FAR approval requirements.

We believe that the threshold established by OMB 8 years ago should be increased due to the effects of inflation.

Recommend: Request OMB to increase the threshold to $100,000.

THRESHOLD REQUIREMENT 37-2

The Commander, Field Command, Defense Nuclear Agency, has been delegated (with power of redelegation), the authority to enter into contracts not in excess of $1 million for communications services extending beyond the fiscal year.

Reference: DFARS 37.7406(b)(6)

Analysis: DFARS 37.74 covers the acquisition of communications services, a subject not separately covered in FAR. Subpart 37.7406 describes the delegations of authority to enter into contracts for communication services extending beyond the fiscal year. The basic delegation is from the Administrator, General Services Administration (GSA), to the Secretary of Defense and then to the Secretaries of the Military Departments and the Director, Defense Communications Agency, with the power of redelegation. Further redelegations are listed, including the delegation to the Defense Nuclear Agency with the $1 million threshold ceiling. This is the only one of the listed delegations that contain a threshold.

We have no basis upon which to question this limitation of delegated authority to the Defense Nuclear Agency.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 37-3 AND 37-4

Certified cost or pricing data for nontariffed communications services or services by a noncommon carrier shall be obtained whenever the contracting officer is unable to determine that the prices are reasonable on the basis of price analysis. However, certified cost or pricing data shall not be required to support:

37-3. Annual recurring costs below $5,000;

37-4. Nonrecurring costs or basic termination liabilities below $10,000.

Reference: DFARS 37.7407(b)

Analysis: This DFARS coverage appears to be an attempt to summarize the requirements of FAR 15.804 for cost and pricing data, as applied to the acquisition of nonregulated communications services, and the requirements of the Truth in Negotiations Act. As is often the case when regulations are summarized or paraphrased, accuracy has not been maintained.

We surmise that there has been a confusion in these DFARS threshold requirements between the need for cost or pricing data and the requirement that the data be certified. FAR 15.804-2(a)(2) prohibits the contracting officer from requiring certification of cost or pricing data at or below the $25,000 level, yet these DFARS threshold requirements would have cost or pricing data certified at the $5,000 and $10,000 levels. We assume that the word "certified" was not intended to be included in the threshold requirements.

We believe that it would be preferable to eliminate these threshold requirements, referring instead to the requirements of FAR Part 15, together with whatever specific guidance is needed because of unique aspects of communications services. FAR Part 15 does not contain dollar thresholds below which the submission of cost or pricing data is prohibited, and we believe that these thresholds are therefore not appropriate in this portion of DFARS. At lower dollar levels, such as $25,000 and less, contracting officers should refrain from making burdensome

demands for cost or pricing data, and the guidance could appropriately say that.

Recommend: Eliminate the thresholds and the requirements.

PART 38 – FEDERAL SUPPLY SERVICE CONTRACTING

PART 38 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
38-1	FAR	$ 20,000	$ 20,000	
38-2	FAR	200,000	200,000	
38-3	FAR	50,000	50,000	
38-4	FAR	10,000	10,000	
38-5	FAR	2,000	2,000	

Summary of recommendations: 5 Thresholds
5 unchanged

Recommended threshold groupings ..... $ 2,000 – 1
10,000 – 1
20,000 – 1
50,000 – 1
200,000 – 1

THRESHOLD REQUIREMENTS 38-1, 38-2, AND 38-3

To justify establishing or continuing a Federal Supply Schedule, the annual business volume expected from a single Federal Supply Schedule should normally:

38-1. Exceed $20,000 if regional in scope;

38-2. Exceed $200,000 for a multiple-award schedule, national in scope; or

38-3. Exceed $50,000 for a single-award schedule, national in scope.

Reference: FAR 38.202(a)

Analysis: FAR Part 38 covers the subject of awarding Federal Supply Schedules, as contrasted to making awards against Federal Supply Schedules, which is covered in Part 8. GSA awards most Federal Supply Schedule contracts although it may authorize other agencies to award and publish schedules. (FAR cites by example, that the Veterans Administration awards schedule contracts for certain medical and nonperishable subsistence items.) Thus, the coverage of FAR Part 38 is not significant to DoD.

These three threshold requirements are self-explanatory. They have virtually no impact upon DoD, and we have no basis to question them.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENTS 38-4 AND 38-5

38-4. A special item number (SIN) should not be retained in a future multiple-award Federal Supply Schedule contract when the anticipated purchases of the SIN will be less than $10,000 for the contract period.

38-5. An item should not be retained in a future Federal Supply Schedule contract when the anticipated purchases of the item will be less than $2,000 for the contract period, but it may be retained if the contracting officer determines retention to be economically advantageous.

Reference: FAR 38.202(c)
FAR 38.202(c)(5)

Analysis: Since most Federal Supply Schedule contracts are awarded by GSA, these threshold requirements have virtually no impact upon DoD, and we have no basis to question them.

Recommend: Make no change to the thresholds.

PART 42 – CONTRACT ADMINISTRATION

PART 42 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
42-1	FAR	$ 1,000,000		Eliminate threshold
42-2	FAR	100,000	$ 100,000	
42-3	FAR	100		DoD further study
42-4	FAR	25	25	
42-5	FAR	100	100	
42-6	FAR	100	100	
42-7	FAR	100		Eliminate threshold and requirement
42-8	FAR	10,000		Eliminate threshold
42-9	DFARS	50,000,000		Eliminate threshold and requirement

Summary of recommendations: 9 Thresholds
- 4 unchanged
- 2 thresholds eliminated
- 2 thresholds and requirements eliminated
- 1 further study

Recommended threshold groupings ..... $ 25 – 1
100 – 2
100,000 – 1

THRESHOLD REQUIREMENT 42-1

Predetermined final indirect cost rates on cost-reimbursement contracts with educational institutions shall not be used when the estimated reimbursable costs for any individual contract are expected to exceed $1 million annually unless approved at a level in the agency higher than the contracting officer.

Reference: FAR 42.705-3(b)(3)(ii)

Analysis: Final indirect cost rates under cost-reimbursement contracts with commercial concerns are established and agreed upon by the Government and the contractor, usually after the close of the contractor's fiscal year, based upon actual costs incurred. However, in the case of cost-reimbursement research and development contracts with educational institutions, FAR permits a predetermination (i.e., an advance agreement) of the rates based upon cost experience with similar contracts.

Some restrictions are imposed on predetermining final indirect cost rates with educational institutions. One of those restrictions is the threshold requirement, which requires approval at a level above the contracting officer before predetermined rates will be applied to contracts expected to exceed $1 million annually. This seems to be an unnecessary limitation on the authority of the contracting officer. We understand that as the size of contracts increase, so does the potential for overpayments or underpayments by the Government if the rate estimate is misjudged. The contracting officer also understands that, and his or her decision will be tempered by that understanding.

Recommend: Eliminate the threshold.

THRESHOLD REQUIREMENT 42-2

If a proposal from an educational institution for a predetermined final indirect cost rate is to be applied to a smaller contract (e.g., $100,000 or less), negotiations may be based on an audit of the institution's costs made earlier than the year immediately preceding the year in which the rates are being negotiated, with two provisions.

Reference: FAR 42.705-3(b)(4)(ii)

Analysis: FAR instructs that if a proposal from an educational institution for a predetermined final indirect cost rate is found to be generally acceptable, the agency shall negotiate the predetermined rates with the institution based on an audit of the institution's costs for the year immediately preceding the year in which the rates are being negotiated. However, this threshold requirement relaxes that FAR requirement for smaller contracts, permitting negotiations based upon audits of earlier years. The threshold level of $100,000 is of necessity somewhat arbitrary, but the concept is sensible and the level appears reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 42-3

Transportation personnel assigned to or supporting the contract administration office (CAO) are responsible for recommending, when appropriate, the use of commercial forms and procedures for small shipments of a recurring nature if transportation costs do not exceed $100.

Reference: FAR 42.1401(b)(11)
FAR 42.1403-1(c)(1)
41 CFR 101-41.304-2

Analysis: Usually when a contract specifies delivery of supplies f.o.b. origin with transportation costs to be paid by the Government, the contractor is required to make shipments on Government bills of ladings (GBLs) or on other shipping documents prescribed by the Military Traffic Management Command in the case of seavan containers. The limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature when transportation costs do not exceed $100 is prescribed in the Transportation Documentation and Audit Regulation, specifically 41 CFR 101-41.304-2.

While we have no basis to recommend a level different than $100, that level appears low. A cost/benefit study could reveal whether the savings realized by shipping on GBs at lower dollar values justifies the personnel costs of issuing and accounting for the GBs. If the threshold level is too low by a significant amount, substantial savings in workload could be realized by increasing it.

Recommend: DoD should undertake a cost/benefit study to determine whether the threshold is at the correct level.

THRESHOLD REQUIREMENTS 42-4, 42-5, 42-6, AND 42-7

A contractor's invoice for reimbursement by the Government of contractor-prepaid commercial bills of lading shall show the prepaid transportation charges or apportioned charges as agreed as a separate item for each individual shipment, except that:

42-4. A Government agency may determine that receipted freight bills or other evidence of receipt is not required for transportation charges of $25 or less.

42-5. A Government agency may pay an invoiced but unsupported transportation charge of $100 or less per transaction if the contractor cannot reasonably provide a receipted freight bill and the agency has determined that the charges are reasonable.

42-6. Receipted freight bills in support of invoiced transportation charges of $100 or less are not required for reimbursement by the Government if the underlying contract specifies retention by the contractor of all records for at least 3 years after final payment and the contractor certifies that payment of the transportation charges has been made and that evidence of payment will be furnished when requested by the Government.

42-7. Shipments and invoices shall not be split to reduce transportation charges to $100 or less per transaction as a means of avoiding the required documented support for charges.

Reference: FAR 42.1403-2(d)(1)
FAR 42.1403-2(d)(2)
FAR 42.1403-2(d)(3)
FAR 42.1403-2(e)

Analysis: A requirement that a contractor submit receipted bills for freight costs is reasonable, and while the levels of Threshold Requirements 42-4, 42-5, and 42-6 are somewhat low, they appear to be justifiable. Threshold Requirement 42-7 appears to us to be an unnecessary admonition that will not prevent cheating, and we believe it can be eliminated.

Recommend: 42-4, 42-5, and 42-6. Make no change to the thresholds.

42-7. Eliminate the threshold.

THRESHOLD REQUIREMENT 42-8

FAR clause 52.242-2, *Production Progress Reports*, provides that if delivery of a production progress report, specified in the contract Schedule to be submitted to the contracting officer, is delayed, the contracting officer may withhold from payment an amount not exceeding $10,000 or 5 percent of the amount of the contract, whichever is less.

Reference: FAR 52.242-2

Analysis: FAR 42.1107 provides that, when production progress reports are needed under a contract, the contracting officer shall insert the clause at FAR 52.242-2, *Production Progress Reports*, in solicitations and contracts, unless a facilities contract, construction contract, or Federal Supply Schedule contract is contemplated. The only purpose of the clause is to provide for the withholding of payment, at the discretion of the contracting officer, if the submission of the reports is delayed.

The amount of permitted withholding, $10,000 or 5 percent of the amount of the contract, whichever is less, seems too low to be effectively used as leverage on a contractor to submit the reports on time. Contracts in which production progress reports are required will typically be large ones, and a $10,000 delay in payment is not going to motivate a contractor who, for some reason does not want to submit a timely report. The proper level should depend upon the criticality of the report and the importance of on-time deliveries under the contract. We believe that the contracting officer should not be constrained by a ceiling set government-wide, but should be permitted to establish the maximum withholding level that appears to be necessary under the circumstances of the specific acquisition.

Recommend: Eliminate the threshold.

THRESHOLD REQUIREMENT 42-9

To ensure the most efficient and economical performance of DoD contracts, it is essential that contract costs be managed effectively. A formal program of Government monitoring of contractor policies, procedures, and practices to control costs should be conducted at all major contractor locations where sales to the Government are expected to exceed $50 million on other than fixed-price type contracts during the contractor's next fiscal year and where the Government's share of indirect costs for such sales is at least 50 percent of the total of such indirect costs and a contract administration office has been established at the location.

Reference: DFARS 42.7002(a)

Analysis: The requirement to monitor contractor cost controls duplicates either parts or all of eight other reviews of contractor financial systems or practices and estimated or incurred costs. The following reviews are duplicated:

- Review of contractor financial management policies
- Audit of estimated cost proposal
- Review of contractor plan for self-governance
- Forward pricing rate agreement
- Review of contractor business plan
- Review of contractor compliance with financial management contract clauses
- Audit of incurred cost
- Operations audit.

As a consequence, we believe that the review required by Threshold Requirement 42-9 should be eliminated.

Recommend: Eliminate the threshold and the requirement.

PART 43 – CONTRACT MODIFICATIONS

PART 43 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
43-1	FAR	$ 1,000,000		Eliminate threshold
43-2	FAR	100,000	$ 100,000	

Summary of recommendations: 2 Thresholds
1 unchanged
1 threshold eliminated

Recommended threshold groupings ..... $ 100,000 – 1

THRESHOLD REQUIREMENT 43-1

The contracting officer may insert a clause substantially the same as the clause at FAR 52.243-7, *Notification of Changes*, in solicitations and contracts. If the contract amount is expected to be less than $1 million, the clause shall not be used unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

Reference: FAR 43.106

Analysis: The clause itself states that "The primary purpose of this clause is to obtain prompt reporting of Government conduct that the contractor considers to constitute a change to this contract." This requirement is intended to give the contracting officer an opportunity to stop performance of a constructive change before costs for the changed performance have been incurred or to otherwise resolve the matter promptly. The instructions for the use of the clause state that it is intended for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems.

While the threshold is set at $1 million, that level is in the nature of guidance since the contracting officer can use the clause in contracts of lesser value if he or she elects to do so. We see advantages to the Government and to the contractor in using the clause in contracts valued at less than $1 million. Prompt notification of a potential constructive change is always beneficial to the Government and it should strengthen the position of the contractor if the allegation of change is correct. We believe that the clause is one that a contracting officer will want to use in appropriate situations and that the threshold level should be eliminated. The guidance on the use of the clause should be expanded and perhaps a clause with a simpler notification procedure could be devised for contracts of smaller value.

Recommend: Eliminate the threshold level and replace it with guidelines.

THRESHOLD REQUIREMENT 43-2

FAR 52.243-6, *Change Order Accounting*, provides that the contracting officer may require change order accounting whenever the estimated costs of a change or series of related changes exceed $100,000.

Reference: FAR 52.243-6

Analysis: The instructions for the use of the *Change Order Accounting* clause state that the clause is for use in solicitations and contracts that involve supply or R&D, those that are significantly complex technically, and those for which numerous changes are anticipated.

If change order accounting is required, the clause requires that the contractor maintain separate accounts for the changed portions of the work. The purpose of the requirement is to provide a means to audit the costs allegedly incurred because of changes to the contract. The threshold appears to be set at a reasonable level.

Recommend: Make no change to the threshold.

PART 44 – SUBCONTRACTING POLICIES AND PROCEDURES

PART 44 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
44-1	FAR	$ 500,000	$ 500,000	
44-2	FAR	25,000	100,000	
44-3	FAR	100,000	100,000	
44-4	FAR	100,000	100,000	
44-5	Statute	25,000	100,000	
44-6	FAR	10,000	10,000	
44-7	Statute	10,000	100,000	
44-8	FAR	100,000	100,000	
44-9	FAR	100,000	100,000	
44-10	FAR	10,000,000	10,000,000	

Summary of recommendations: 10 Thresholds
7 unchanged
3 increased

Recommended threshold groupings .....
$ 10,000 – 1
100,000 – 7
500,000 – 1
10,000,000 – 1

THRESHOLD REQUIREMENT 44-1

The contracting officer shall insert the clause at FAR 52.244-1, *Subcontracts (Fixed-Price Contracts)*, in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed $500,000. The clause may be used in fixed-price contracts of $500,000 or less if the contracting officer determines that its use will be in the Government's interest. The clause is not to be used in several specified types of contracts.

Reference: FAR 44.204(a)

Analysis: The provisions of the clause apply to subcontracts resulting from unpriced modifications to the contract. Because the contract is a fixed-price type, the provisions of the clause do not apply to other subcontracts issued under the contract. The provisions of the clause also do not apply if the contractor has an approved purchasing system.

For proposed subcontracts that meet or exceed the thresholds in the clause, and are not exempted by the terms of the clause, the contractor is required to submit details of each proposed subcontract and to obtain the contracting officer's consent before placing the subcontract. The purpose is to provide the Government an opportunity to review proposed subcontracts whose cost will be included in the definitized price of an unpriced modification.

The threshold appears to be reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 44-2, 44-3, AND 44-4

FAR clause 52.244-1, *Subcontracts (Fixed-Price Contracts)*, requires that the contractor notify the contracting officer reasonably in advance of entering into any subcontract if the contractor does not have an approved purchasing system and if the subcontract:

44-2. Is to be a cost-reimbursement, time-and-materials, or labor-hour contract estimated to exceed $25,000 including any fee;

44-3. Is proposed to exceed $100,000; or

44-4. Is one of a number of subcontracts with a single subcontractor under the contract for the same or related supplies or services that in the aggregate are expected to exceed $100,000.

Reference: FAR 44.201-1(d)(1), (2), and (3)
FAR 52.244-1

Analysis: The provisions of the clause do not apply to subcontracts placed under the fixed-price type contract itself but rather to subcontracts resulting from unpriced modifications to the contract.

If a subcontract is being placed to meet the requirements of an unpriced modification and if the contractor does not have an approved purchasing system, the contractor must submit details of any such proposed subcontract exceeding one of the thresholds of the clause. The contractor is required to withhold placing the subcontract until the contracting officer's written consent is received.

The purpose of the clause is to permit the Government to review details of subcontracts whose price will ultimately be included in the contract price when the unpriced modification is definitized. While the $100,000 thresholds appear to be reasonable, we believe that the $25,000 threshold for cost-reimbursement, time-and-materials, and labor-hour subcontracts is too low. This lower dollar value reflects a prejudice against cost-reimbursable contracts in particular that has largely disappeared. While fixed-price contracts are preferable in appropriate situations to

cost-reimbursable types of contracts, the contracting officer is generally unable to apply this judgment to proposed subcontracts of low dollar value submitted for consent. We believe that the $25,000 threshold should be increased to the level of the other thresholds.

Recommend: 44-2. Increase the threshold to $100,000.

44-3. Make no change to the threshold.

44-4. Make no change to the threshold.

THRESHOLD REQUIREMENTS 44-5, 44-6, 44-7, 44-8, AND 44-9

FAR 52.244-2, *Subcontracts Under Cost-Reimbursement and Letter Contracts* (with Alternate I), requires the contractor to notify, and in some instances to obtain the written consent of, the contracting officer prior to placing any subcontract if:

44-5. The proposed subcontract is fixed-price and exceeds the greater of (1) the small purchase limitation in Part 13 of the Federal Acquisition Regulation or (2) 5 percent of the total estimated cost of the contract.

44-6. The proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of $10,000 or of any items of facilities. (This requirement does not apply to subcontracts under a facilities contract.)

FAR clause 52.244-2 requires that the advance notification shall include specific information describing the details of the proposed subcontract when it:

44-7. Is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed $10,000, including any fee.

44-8. Is proposed to exceed $100,000.

44-9. Is one of a number of subcontracts with a single subcontractor, under the contract, for the same or related supplies or services that, in the aggregate, are expected to exceed $100,000.

Reference:
FAR 44.201-2
FAR 44.204(b)
FAR 52.244-2
10 U.S.C. 2306(e)

Analysis: Threshold Requirement 44-5 is a statutory requirement. Threshold Requirement 44-7 appears to be based on statute, where notice is required prior to the award of any cost-plus-fixed fee subcontract, but it expands on the requirements of the statute by including all cost-reimbursement, time-and-materials, and labor-hour subcontracts and establishes a $10,000 threshold.

FAR 52.244-2 is required to be included in solicitations and contracts when a cost-reimbursement or letter contract is contemplated. If the contractor has an approved purchasing system, consent is not required for the subcontracts but advance notification is still required by 10 U.S.C. 2306(e) except that if the contract is for the acquisition of major systems, subsystems, or their components, consent is required for Threshold Requirements 44-7, 44-8, and 44-9 even if the contractor has an approved purchasing system.

The purpose of the FAR clause is to permit the Government to review proposed subcontracts whose costs will be paid by the Government under the contract.

We believe that the $100,000 thresholds are reasonable (Threshold Requirements 44-8 and 44-9) but that thresholds of less than $100,000 for advance notification of subcontracts are too low for an effective Government review and should be increased to the $100,000 level. An exception is the Threshold Requirement 44-6 level of $10,000 for the acquisition of special test equipment or facilities. It appears to be based upon an attempt to permit the Government to screen for Government-owned facilities, as in FAR Part 45, as an alternative to contractor acquisition. We have no basis to question that threshold.

Recommend: 44-5 and 44-7. Request legislation to increase the threshold requirements to $100,000.

44-6, 44-8 and 44-9. Make no change to the threshold requirements.

THRESHOLD REQUIREMENT 44-10

A contractor purchasing system review (CPSR) shall be conducted for each contractor whose sales to the Government using other than sealed bid procedures are expected to exceed $10 million during the next 12 months. A CPSR shall be conducted by the cognizant contract administration agency at least every 3 years for contractors that continue to meet the $10 million per year standard.

Reference: FAR 44.302

Analysis: The CPSR is designed to provide the Government with confidence that a contractor's subcontracting procedures are efficient and effective in cases in which extensive subcontracting is likely and the Government will pay for those subcontracts. Without an approved purchasing system, the contractors must submit proposed subcontracts that meet or exceed established thresholds for review and consent.

The requirement for the review and approval of contractor purchasing systems, where substantial subcontracts will be awarded to be ultimately paid by the Government, is reasonable, and the threshold level is appropriate.

Recommend: Make no change to the threshold.

PART 45 – GOVERNMENT PROPERTY

PART 45 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
45-1	FAR	$ 50,000		Eliminate threshold
45-2	FAR	50,000	$ 100,000	
45-3	FAR	10,000		Eliminate threshold and requirement
45-4	FAR	10,000		Eliminate threshold and requirement
45-5	FAR	100,000	100,000	
45-6	FAR	1,000	5,000	
45-7	FAR	1,000	5,000	
45-8	FAR	1,000	5,000	
45-9	DFARS	5,000,000	5,000,000	
45-10	DFARS	3,000,000	3,000,000	
45-11	DFARS	25,000,000	25,000,000	
45-12	DFARS	10,000	10,000	
45-13	DFARS	25,000	25,000	
45-14	FAR	5,000	5,000	
45-15	FAR	5,000	5,000	
45-16	FAR	5,000		Eliminate threshold
45-17	FAR	5,000	5,000	
45-18	FAR	500	1,000	
45-19	DFARS	3,000,000	3,000,000	Possibly request review by DOJ
45-20	DFARS	3,000,000	3,000,000	Possibly request review by DOJ
45-21	DFARS	250,000	250,000	

Summary of recommendations: 21 Thresholds

- 12 unchanged
- 5 increased
- 2 thresholds eliminated
- 2 thresholds and requirements eliminated

Recommended threshold groupings .....

- $ 1,000 – 1
- 5,000 – 6
- 10,000 – 1
- 25,000 – 1
- 100,000 – 2
- 250,000 – 1
- 3,000,000 – 3
- 5,000,000 – 1
- 25,000,000 – 1

Note: DOJ = Department of Justice.

THRESHOLD REQUIREMENT 45-1

The contracting office may maintain the Government's official Government property records when it retains contract administration and the Government property has an acquisition cost of $50,000 or less.

Reference: FAR 45.105(b)(4)

Note: Other circumstances are listed where the contracting office may maintain the official Government property records. These are when Government property is furnished to a contractor (1) for repair or servicing and return to the shipping organization, (2) for use on a Government installation, (3) under a local support service contract, (4) under a contract with a short performance period, or (5) when otherwise determined by the contracting officer to be in the Government's interest.

Analysis: In most instances contractor records of Government property established and maintained under the terms of the contract are the Government's official Government property records. The Government does not maintain duplicate official records. This threshold provides an exception to that general rule.

The contracting office may, but is not required to, keep property records in those instances in which the acquisition cost of Government property is less than the $50,000 level. There is, however, no prohibition to maintaining property records above the $50,000 level, since the contracting office can maintain records "when otherwise determined by the contracting officer to be in the Government's interest." Of the circumstances listed (see *Note* above), the threshold requirement tied to the value of the property seems somewhat specious. The value of the property does not relate to the workload, which is presumably a consideration, and the contracting office is permitted to maintain property records when the contracting officer determines that it should do so.

Recommend: Eliminate the threshold.

THRESHOLD REQUIREMENT 45-2

FAR Clause 52.245-4, *Government-Furnished Property (Short Form)*, may be included in solicitations and contracts when a fixed-price-time-and-material or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is $50,000 or less.

Reference: FAR 45.106(d)

Analysis: The *Government-Furnished Property (Short Form)* clause was devised approximately 5 years ago to provide a simplified method of property control when relatively small amounts of Government-Furnished Property were involved. The short form permits the contractor to meet the standard of sound industrial practice in maintaining adequate property control records, rather than the more detailed Government standards of FAR Subpart 45.5, when the full clause applies. If the threshold were raised, substantial savings to contractors could result – savings that might be realized by the Government in the form of lower contract prices.

Establishing the proper level of the threshold is a judgment call. What is the worth of the extra control that the Government procedures provide? If experience with the use of the short form has proven that the controls are adequate, we believe that the threshold should be raised substantially.

Recommend: Increase the threshold to $100,000 initially. If, after a period of time sufficient to evaluate the adequacy of the controls, the experience is favorable, we recommend incremental increases targeted to reach the $1 million level.

THRESHOLD REQUIREMENT 45-3

Purchase orders for property repair need not include a Government property clause when the cost of the property furnished does not exceed $10,000.

Reference: FAR 45.106(e)

Analysis: This clause provides an exception from the use of the Government property clause in small purchases for property repair. The $10,000 level is based on the previous small purchase threshold and has not been adjusted to the current small purchase threshold of $25,000. Beyond that, however, is the issue of whether under the circumstance described in the threshold, a Government Property clause is needed at any dollar value. The point of such a contract is to receive Government property, repair it, and return it. This becomes a closed loop, with accountability verified by receipt of the repaired equipment.

NASA has a special contract clause for this situation, at NASA FAR Supplement 18-52.245-72, *Liability for Government Property*. That clause (1) provides that the Government retain the official property records, (2) establishes the responsibility of the contractor to account for the property, and (3) defines the limits of contractor liability for any loss or destruction of or damage to Government property furnished for repair or servicing. We believe that such a clause, which would establish less costly requirements for property control under property repair contracts, would also be appropriate for FAR.

Recommend: Eliminate the threshold and the requirement by utilizing the NASA clause in contracts for property repair.

THRESHOLD REQUIREMENT 45-4

Government facilities with a unit cost of less than $10,000 shall not (with certain stated exceptions) be provided to contractors.

Reference: FAR 45.302-1(d)

Note: The term "facilities" means property used for production, maintenance, research, development or testing, but it does not include material, special test equipment, special tooling or agency-peculiar property. This threshold is a specific affirmation at the $10,000 level and below of the general instruction that agencies should not furnish facilities to their contractors. The general instruction, however, specifies exceptions, and the $10,000 threshold clause also permits exceptions if:

1. The contractor is a nonprofit institution of higher education or other nonprofit organization whose primary purpose is the conduct of scientific research;
2. A contractor is operating a Government-owned plant on a cost-plus-fee basis;
3. A contractor is performing on a Government establishment or installation;
4. A contractor is performing under a contract specifying that it may acquire or fabricate special tooling, special test equipment, and components thereof subsequent to obtaining the approval of the contracting officer; or
5. The facilities are unavailable from other than Government sources.

Analysis: This appears to be an unnecessary threshold. The text of FAR 45.302, of which the threshold requirement is a part, clearly states that furnishing facilities to a contractor is the exception, and it repeats that prohibition in several different ways. It is unlikely that a contracting officer will agree to furnish facilities of such a low dollar value as $10,000 without a good reason for doing so.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENT 45-5

Facilities may be provided to a contractor under a contract other than a facilities contract when actual or cumulative acquisition cost of the facilities provided by the contracting activity to the contractor at one plant or general location does not exceed $100,000.

Reference: FAR 45.302-3(a)(1)

Analysis: The general instructions in FAR 45.302-2 are that facilities shall be provided to a contractor or subcontractor only under a facilities contract. We understand that the principal reasons for this are to have all assets in the possession of a contractor listed in one place and to ensure that fees are not paid in connection with the furnishing of facilities.

The threshold provides one of four exceptions to the general instruction. The threshold level appears reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 45-6

Pursuant to the provisions of FAR Clause 52.245-18, the contractor will notify the contracting officer in writing at least 30 days in advance of intention to acquire or fabricate special test equipment and give the contracting officer the aggregate estimated cost of all items and components with individual costs less than $1,000 and provide information on each item or component of equipment costing $1,000 or more.

Reference: FAR 52.245-18

Note: This appears to be a clause limited to facilities contracts, although the instructions at FAR 52.245-18 do not include that limitation. The application prescribed in 45.305 reads as follows:

> FAR 45.305 Additional clauses for facilities contracts.
>
> (b) The contracting officer shall insert the clause at 52.245-18, *Special Test Equipment*, in solicitations and contracts when contracting by negotiation and the contractor will acquire or fabricate special test equipment for the Government but the exact identification of the special test equipment to be acquired or fabricated is unknown.

Analysis: The purpose of this threshold is to require a contractor holding a facilities contract to identify each item of special test equipment estimated to cost $1,000 or more which the contractor proposes to fabricate. This provides the Government agency 30 days to screen its inventory to determine whether it already owns the item of special test equipment and can furnish it rather than pay for its fabrication. Items under $1,000 need not be separately identified.

The $1,000 threshold seems too low to justify this screening activity. Selecting a proper threshold is a judgment call based on cost/benefit considerations. A more reasonable level would be $5,000 and would reduce Government workload.

Recommend: Increase the threshold to $5,000.

THRESHOLD REQUIREMENT 45-7

If the Government will acquire identifiable special tooling under a contract, the solicitation shall identify each item or category of special tooling to be acquired as a contract line item, but may group items costing less than $1,000 by category as a line item.

Reference: FAR 45.306-3(a)(1) and (2)

Analysis: FAR Section 45.306 covers the subject of providing or acquiring special tooling. The general instruction is that contractors should ordinarily provide and retain title to special tooling required for contract performance when existing Government tooling is not available. However, in some circumstances, and particularly in noncompetitive acquisitions, it may be appropriate for the Government to acquire title to any special tooling. The threshold requirement directs that the Government shall, in the solicitation, make each item of special tooling over $1,000 a separate contract line item deliverable, but permits grouping items less than $1,000 in a contract line item identified by category.

We believe that, for consistency, thresholds of this general type in Part 45 should all be at the same level and that level should be $5,000.

Recommend: Increase the threshold to $5,000.

THRESHOLD REQUIREMENT 45-8

When the need for special test equipment or components is known, the solicitation (and the contract) shall separately identify each item to be furnished by the Government or acquired or fabricated by the contractor for the Government. Individual items of less than $1,000 may be grouped by category.

Reference: FAR 45.307-2(a)

Analysis: FAR Section 45.307 covers the subject of providing or acquiring special test equipment under contract. The purpose of the threshold requirement is to require the identification, when known, of each item of special test equipment costing $1,000 or more but to permit grouping by category (without identification of each item) of those items of special tooling costing less than $1,000.

We believe that for consistency, thresholds of this general type in Part 45 should all be at the same level and that level should be $5,000. An amount of $1,000 simply does not buy much special test equipment or components in today's market, and attempting to list smaller items in a solicitation or contract can be burdensome.

Recommend: Increase the threshold to $5,000.

THRESHOLD REQUIREMENTS 45-9, 45-10, AND 45-11

45-9. Military Department Secretaries or their designees and Directors of Defense Agencies may approve requests for Government-owned facilities projects funded from procurement appropriations on a location basis and not over $5 million for all property efforts during 1 fiscal year.

45-10. Military Department Secretaries and Directors of Defense Agencies may approve requests for Government-owned facilities projects if they are R&D-funded projects that will not exceed $3 million per fiscal year.

45-11. Military Department Secretaries and Directors of Defense Agencies may approve requests for Government-owned facilities projects if the total investment cost to support a specific major system or subsystem will not exceed $25 million during the projected acquisition or maintenance effort.

Reference: DFARS 45.302-70(1), (2), and (3)

Analysis: FAR Section 45.302, *Providing Facilities*, establishes the general policy that contractors are expected to furnish all facilities required for performing Government contracts but then sets forth exceptions to that policy. The threshold requirements represent DoD's control mechanism over the furnishing of large dollar value facilities. Facilities projects that exceed the $25 million threshold must be approved at the Under Secretary of Defense level.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 45-12

Prior to acquiring under a facilities contract, Industrial Plant Equipment (IPE) having an item cost of $10,000 or more, DD Form 1419 shall be submitted by the contractor to the Defense Industrial Plant Equipment Center to ascertain whether existing reallocable Government-owned facilities can be utilized. If not, a certificate of nonavailability will be issued.

Reference: DFARS 45.302-71(a)

Analysis: The purpose of this threshold requirement, which was in the Defense Acquisition Regulation (DAR) at least as far back as 1982, is clear from its wording. It permits DoD to screen inventories and to provide IPE as Government-furnished property if it is available rather than pay the cost of the contractor acquiring it. The threshold level appears reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 45-13

Non-Government use of IPE exceeding 25 percent requires prior approval at the Assistant Secretary level of the cognizant Military Department or the Director of DLA. Requests shall include itemized listing of active equipment having an acquisition cost of $25,000 or more.

Reference: DFARS 45.407(a)(2)

Analysis: FAR 45.407 requires the written approval of the contracting officer for any non-Government use of active plant equipment, i.e., equipment that has not been "mothballed." Before authorizing non-Government use exceeding 25 percent, the contracting officer shall obtain approval of the Assistant Secretary level of the cognizant Military Department that awarded the contract or the Director of DLA, as appropriate, and to which the property is accountable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 45-14

Summary stock records may be maintained for plant equipment costing less than $5,000 per unit. Above $5,000 per unit, the contractor must maintain individual item records.

Reference: FAR 45.505-5

Analysis: Summary stock records are maintained by individual items of equipment, but in less detail than the individual item records. This same $5,000 threshold was contained in DAR Appendix B at B-306 (1 September 1982). The threshold level appears to be reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 45-15

The contractor shall record, within the property control system, the transportation and installation costs borne directly by the Government for each item of Government-owned plant equipment with an acquisition cost of $5,000 or more.

Reference: FAR 45.505-11(a)(1)

Analysis: This is one of many property records that the contractor is required to keep. The $5,000 threshold is consistent with the FAR 45.505-5 requirement that the contractor maintain individual item records for plant equipment costing $5,000 or more per unit (Threshold Requirement 45-14 in our listing).

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 45-16

All Government material and plant equipment having an acquisition cost of less than $5,000 shall be identified as Government property (with stated exceptions).

Reference: FAR 45.506(b)

Note: The general requirement is that the contractor must identify, mark, and record all Government property promptly upon receipt. This threshold requirement has exceptions. Below the $5,000 level, property need not be identified as Government property when:

1. No material or plant equipment of the same type costing less than $5,000 at the same location is owned by the contractor, its employees, or other contracting agencies;
2. Adequate physical control is maintained over protective clothing, tool crib, guard force, and other items issued to individuals for use in their work;
3. Property is of bulk type, or its general nature of packing or handling precludes adequate marking; or
4. Property is commingled, as authorized by FAR 45.507.

Analysis: The intent of the specific threshold requirement is confusing as written and appears to be unnecessary. It is enough to say that the contractor must identify, mark, and record all Government property promptly upon receipt, and then list the four exceptions. The lead-in threshold requirement implies that above $5,000, the contractor must identify and mark, for instance, property which "is of bulk type, or its general nature of packing or handling precludes adequate marking." The regulations do not mean to require marking where marking is impossible.

Recommend: Eliminate the threshold by deleting the words "having an acquisition cost less than $5,000" from paragraph FAR 45.506(b).

THRESHOLD REQUIREMENT 45-17

The contractor shall mark all components of special test equipment that have an acquisition cost of $5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.

Reference: FAR 45.506(c)

Analysis: FAR 45.506(a) states that the contractor shall identify, mark, and record *all* Government property promptly upon receipt, unless exempted. Paragraph 45.506(c) provides special requirements for special test equipment components. The threshold level is consistent with the general FAR marking and recording requirements.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 45-18

Standard screening of contractor inventory applies to serviceable property that has a line item value in excess of $500 and that does not meet the criteria for another screening category.

Reference: FAR 45.608-2(a)

Analysis: Standard screening is one of four categories of screening serviceable or usable property included in a contractor's inventory schedules. The $500 threshold seems to be at too low a level to justify Government-wide screening by GSA. We believe that the threshold could be raised to $1,000 resulting in a reduction in workload. Screening within the agency below that amount will be adequate for prudent property disposal activities.

Recommend: Increase the threshold to $1,000.

THRESHOLD REQUIREMENTS 45-19 AND 45-20

45-19. When contractor inventory with an acquisition cost of $3 million or more is to be sold or otherwise disposed of to private interests, the Department concerned shall notify the Attorney General and the GSA Administrator.

45-20. When property with a total acquisition cost of $3 million or more is offered for sale, the solicitation shall contain a provision explaining the procedures necessary to obtain an antitrust clearance.

Reference: DFARS 45.610-1(a)(4)
DFARS 45.610-1(a)(4)(xi)

Analysis: The purposes of these threshold requirements are to (1) obtain an antitrust clearance prior to approving or effecting the proposed disposition and (2) to put prospective buyers on notice of this requirement. An analysis or recommendation on the continuing need for a $3 million antitrust clearance must be made by the Department of Justice.

Recommend: Make no change to the thresholds, but if they create a significant workload or result in unreasonable delays, refer the issue to the Department of Justice for a review and a determination as to whether the 45-19 threshold requirement is still necessary and if so, at what level.

THRESHOLD REQUIREMENT 45-21

Sale of surplus property – when acquisition cost of property to be sold at one time, at one place, is $250,000 or more – notice shall be sent to the *Commerce Business Daily*.

Reference: DFARS 45.610-1(a)

Analysis: The threshold requirement appears reasonable.

Recommend: Make no change to the threshold.

PART 46 – QUALITY ASSURANCE

PART 46 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
46-1	FAR	$ 25,000	$ 25,000	
46-2	FAR	25,000	25,000	
46-3	FAR	25,000	25,000	
46-4	FAR	25,000	25,000	
46-5	FAR	25,000	25,000	
46-6	FAR	25,000	25,000	
46-7	FAR	25,000	25,000	
46-8	FAR	100,000	100,000	
46-9	FAR	100,000	100,000	
46-10	FAR	25,000	25,000	
46-11	FAR	25,000	25,000	
46-12	Statute	100,000	100,000	
46-13	Statute	10,000,000	10,000,000	

Summary of recommendations: 13 Thresholds
13 unchanged

Recommended threshold groupings ..... $ 25,000 – 9
100,000 – 3
10,000,000 – 1

THRESHOLD REQUIREMENTS 46-1 AND 46-2

46-1. With certain specified exceptions, the Government shall rely upon the contractor to accomplish all inspection and testing needed to ensure that supplies or services acquired under small purchases conform to contract quality requirements before they are tendered to the Government.

46-2. The contracting officer shall insert the clause at FAR 52.246-1, *Contractor Inspection Requirements*, in solicitations and contracts for supplies or services when the contract amount is expected to be within the small purchase limitation and (1) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities or (2) inclusion of the clause is required under agency procedures. The clause will not be used if the contracting officer has determined that the Government has a need to test the supplies or services in advance of their tender for acceptance or to pass a judgment upon the adequacy of the contractor's internal work processes.

Reference: FAR 46.202-1
FAR 46.301

Analysis: The general policy of Government reliance upon contractor testing is appropriate. The required clause is a brief recitation of the responsibility of the contractor to have performed all necessary inspections and tests. The threshold at the small purchase level is appropriate.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 46-3

The contracting officer shall insert the clause at FAR 52.246-2, *Inspection of Supplies - Fixed-Price*, in solicitations and contracts for supplies or services that involve the furnishing of supplies when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and inclusion of the clause is in the Government's interest.

Reference: FAR 46.302

Analysis: The *Inspection of Supplies – Fixed-Price* clause describes in considerable detail the responsibilities of the contractor to inspect and test supplies to be delivered under the contract and to keep records. The clause also defines the rights and remedies of the Government. Placing the threshold at the small purchase level is appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 46-4

The contracting officer shall insert the clause at FAR 52.246-4, *Inspection of Services – Fixed-Price*, in solicitations and contracts for services or supplies that involve the furnishing of services when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and inclusion is in the Government's interest.

Reference: FAR 46.304

Analysis: The *Inspection of Services – Fixed-Price* clause describes the responsibilities of the contractor to provide and maintain an inspection system covering the services under the contract and to keep records. The clause also defines the rights and remedies of the Government. Placing the threshold at the small purchase level is appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 46-5

The contracting officer shall insert the clause at FAR 52.246-7, *Inspection of Research and Development – Fixed-Price*, in solicitations and contracts for certain fixed-price research and development when the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and its use is in the Government's interest.

Reference: FAR 46.307

Analysis: The *Inspection of Research and Development – Fixed-Price* clause describes the responsibilities of the contractor to provide and maintain an inspection system acceptable to the Government covering the work under the contract and to keep records. The clause also defines the rights and remedies of the Government. Placing the threshold at the small purchase level is appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 46-6

The contracting officer shall insert the clause at FAR 52.246-12, *Inspection of Construction*, in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and its use is in the Government's interest.

Reference: FAR 46.312

Analysis: The *Inspection of Construction* clause describes the responsibilities of the contractor to maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements and to keep records. The clause also defines the rights and remedies of the Government. Placing the threshold at the small purchase level is appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 46-7

The contracting officer shall insert the clause at FAR 52.246-16, *Responsibility for Supplies*, in solicitations and contracts for (1) supplies, (2) services involving the furnishing of supplies, or (3) research and development when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is not expected to exceed the small purchase limitation and inclusion of the clause is authorized under agency procedures.

Reference: FAR 46.316

Analysis: The *Responsibility for Supplies* clause defines when the contractor has responsibility for risk of loss or damage to supplies to be delivered under the contract and when that responsibility passes to the Government. Placing the threshold at the small purchase level is appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 46-8

The Government will not relieve the contractor of liability for loss of or damage to the contract end item, except for high-value items defined as contract end items that (1) have a high-unit cost (normally exceeding $100,000 per unit), such as aircraft, computer systems, missiles, or ships and (2) are designated by the contracting officer as high-value items. In contracts requiring delivery of high-value items, the Government will relieve the contractors of contractual liability for loss of or damage to those items, but exceptions to this policy are described.

Reference: FAR 46.802
FAR 46.803(b)

Analysis: The threshold is a portion of FAR Subpart 46.8, which delineates policies and procedures for limiting contractor liability for loss of, or damage to, property of the Government when that loss or damage occurs after acceptance and results from defects or deficiencies in the supplies delivered or services performed. The threshold requirement appears to be appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 46-9

FAR Clause 52.246-24, *Limitation of Liability – High-Value Items*, includes flow-down provisions for subcontracts for high-value (generally $100,000) items.

Reference: FAR 56.246-24

Analysis: A flowdown of a limitation of liability clause is appropriate and customary for Part 46 *Limitation of Liability* clauses. In this instance, the flowdown is at the high-value threshold of $100,000.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 46-10

The contracting officer shall insert the appropriate *Limitation of Liability* clause or combination of clauses in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation and the contract is subject to the requirements of FAR Subpart 46.8. The clauses are not required for contracts of $25,000 or less, but in response to a contractor's specific request, the contracting officer may insert the clauses in a contract below the small purchase limitation.

Reference: FAR 46.805(a) and (b)

Analysis: The threshold requirement for insertion of clauses that define the liability of the contractor for the risk of loss of, or damage to, property of the Government when that loss or damage occurs after Government acceptance of the supplies delivered under the contract and result from any defects or deficiencies in the supplies. Placing it at the small purchase level is appropriate.

Recommend: Make no change to the threshold level, but change the wording in FAR 46.805(a) and (b) to read, "except for contract actions where the cost is estimated to be within the small purchase limitation."

THRESHOLD REQUIREMENT 46-11

FAR Clause 52.246-25, *Limitation of Liability – Services*, contains a flow-down requirement for all subcontracts over $25,000.

Reference: FAR 52.246-25

Analysis: A flow-down requirement for Part 46 property liability clauses is customary. Restricting the flowdown to subcontracts exceeding $25,000 is consistent with the application of the clause in the prime contract, and is appropriate.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 46-12 AND 46-13

Unless waived under DFARS 46.770-9, Military Departments and Defense Agencies may not, unless the prime contractor provides the United States with written warranties, enter into a contract for the production of a weapon system when:

46-12. The unit weapon system cost is more than $100,000; or

46-13. The eventual total procurement cost will be in excess of $10 million.

Reference: DFARS 46.770-2
10 U.S.C. 2403(a)

Analysis: This is a recent (1984) statutory requirement. We have no basis to question the thresholds.

Recommend: Make no change to the thresholds.

PART 47 – TRANSPORTATION

PART 47 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
47-1	FAR	$25,000	$25,000	
Summary of recommendations:		1 Threshold 1 unchanged		
Recommended threshold groupings		$ 25,000 – 1		

This Part contains two additional thresholds that have been analyzed elsewhere. These are:

- 47.103(b)(1) states that regulations governing GBLs are prescribed in 41 CFR 101-41, and that there is limited authority for the use of commercial forms and procedures when transportation costs do not exceed $100. We analyzed this same threshold when it appeared in Part 42 (our Threshold Requirement 42-3).
- 47.202(a) discusses the $2,500 threshold in the Service Contract Act, as the Act may relate to transportation services. We analyzed this same threshold when it appeared in Part 13 and in Part 22.

THRESHOLD REQUIREMENT 47-1

The contracting officer shall insert the clause at FAR 52.247-1, *Commercial Bill of Lading Notations*, in solicitations and contracts when the contracts will be cost-reimbursement contracts or fixed-price f.o.b. origin contracts (other than small purchases under Part 13). The contracting officer may insert the clause in solicitations and contracts awarded under the small purchase procedures in Part 13 when it is contemplated that the delivery terms will be f.o.b. origin.

Reference: FAR 47.104-4

Analysis: Common carriers subject to the jurisdiction of the Interstate Commerce Commission may, under the provisions of 49 U.S.C. 10721, offer to transport persons or property for the account of the United States without charge or at reduced rates. Section 10721 rates are published in Government rate tenders. In addition, Government agencies may negotiate with carriers for additional or revised Section 10721 rates in appropriate situations.

The purpose of this *Commercial Bill of Lading Notations* clause is to assure the application of Section 10721 rates, which the Interstate Commerce Commission has ruled may be applied to shipments other than those made by the Government if the total benefit accrues to the Government. It provides the contractor with instructions for the procedures to assure the application of the Section 10721 rates. Its required use at the small purchase threshold is appropriate, as is its optional use below that amount; however, we believe the language should be modified to exempt the mandatory use of the clause in all contract actions in which the cost is estimated to be within the small purchase limitation.

Recommend: Make no change to the threshold, but change the language to make the threshold applicable to all contract actions within the small purchase limitation, rather than just to small purchases.

PART 48 – VALUE ENGINEERING

PART 48 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
48-1	FAR	$ 100,000	$ 100,000	
48-2	FAR	100,000		Eliminate the threshold
48-3	FAR	100,000		Eliminate the threshold
48-4	FAR	100,000		Eliminate the threshold
48-5	FAR	50,000		Eliminate the threshold
48-6	DFARS	25,000	100,000	

Summary of recommendations: 6 Thresholds
1 unchanged
1 increased
4 thresholds eliminated

Recommended threshold groupings ..... $ 100,000 – 2

THRESHOLD REQUIREMENT 48-1

The contractor's share of collateral value engineering savings is 20 percent of the estimated savings to be realized during an average year of use but shall not exceed (1) the contract's firm-fixed-price, target price, target cost, or estimated cost at the time the Value Engineering Change Proposal (VECP) is accepted, or (2) $100,000, whichever is greater.

Reference: FAR 48.103-2(b)

Analysis: In contrast to a reduction in the instant and future contract price of items to be delivered, a contractor's VECP may result in savings in "collateral costs," meaning costs of operation, maintenance logistic support, or Government-furnished property. This threshold specifies the extent of the contractor's share in collateral savings resulting from an accepted VECP. The contractor's share appears to be generous enough to motivate the submission of VECPs.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 48-2, 48-3, 48-4, AND 48-5

48-2. The contracting officer shall insert the appropriate value engineering clause in solicitations and contracts for supplies or services when the contract amount is expected to be $100,000 or more, except in specified types of contracts. A value engineering clause may be included in contracts of lesser value if the contracting officer sees a potential for significant savings.

48-3. The contracting officer shall insert the clause at FAR 52.248-3, *Value Engineering – Construction*, in construction solicitations and contracts when the contract amount is estimated to be $100,000 or more unless an incentive contract is contemplated. The contracting officer may include the clause in contracts of lesser value if the contracting officer sees a potential for significant savings.

48-4. FAR 52.248-1, *Value Engineering*, contains a flow-down provision that requires the contractor to include an appropriate value engineering clause in any subcontract of $100,000 or more.

48-5. FAR Clause 52.248-3, *Value Engineering – Construction*, contains a flow-down provision that requires the contractor to include an appropriate value engineering clause in any subcontract of $50,000 or more.

Reference: FAR 48.201(a)
FAR 48.202
FAR 52.248-1
FAR 52.248-3

Analysis: The concept of value engineering is as logical and compelling as the concept of an employee suggestion program. The reality is that, unless the specific contract work is susceptible to significant value engineering, unless the contract schedule permits the time to perform value engineering and submit VECPs, and unless the Government technical offices welcome VECPs and are staffed to act upon them promptly, the contractor will make few, if any, attempts to engage in value engineering.

We believe that the value engineering program within DoD would be strengthened if the contracts targeted for its

application were selected on the basis of their likelihood to achieve value engineering savings rather than including the clause in virtually every contract exceeding $100,000. We believe that the mandatory thresholds should be eliminated, and in their place, the contracting officer should be given guidance on the circumstances under which inclusion of a value engineering clause would be appropriate. The value engineering clause could then be a tool in the Government's arsenal to be used and promoted in appropriate situations. In too many instances now, it is routinely included among the boilerplate clauses and the contracting activity then passively awaits any VECP submissions.

Recommend: 48-2 and 48-3. Eliminate the levels in the threshold requirements and include guidance instead.

48-4 and 48-5. Eliminate the flow-down requirements in the clauses cited in the threshold requirements and instead substitute a provision permitting the contractor to include a value engineering clause in any subcontract in which the contractor believes there is value engineering potential.

THRESHOLD REQUIREMENT 48-6

Supply or service contracts for spare parts and repair kits of $25,000 or more for other than standard commercial parts shall contain a value engineering incentive clause.

Reference: DFARS 48.201(a)(1)

Analysis: DoD has apparently determined that contracts for spare parts and repair kits have a greater potential for value engineering since it has lowered the FAR threshold of $100,000 to $25,000.

In Threshold Requirement 48-2, we recommended the elimination of the FAR threshold for inclusion of a value engineering clause and its replacement with contracting officer guidance for an optional value engineering program. If the potential for successful value engineering in contracts for spare parts and repair kits is sufficiently great, a routine inclusion of a value engineering clause may be appropriate. However, we believe that the threshold level of $25,000 is far too low to promote VECPs at the lower dollar values. At the $25,000 level, a contractor could easily invest a sum equal to the entire contract price to submit a proposal that may never be accepted. It would be appropriate to review a sampling of those contracts to determine the percentage under which VECPs have been submitted.

Recommend: Increase the threshold to $100,000.

PART 49 – TERMINATION OF CONTRACTS

PART 49 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
49-1	FAR	$ 2,000	$ 25,000	
49-2	FAR	100,000		Eliminate threshold
49-3	FAR	1,000	1,000	
49-4	FAR	25,000	100,000	
49-5	FAR	25,000	100,000	
49-6	FAR	50,000	100,000	
49-7	FAR	25,000	100,000	
49-8	FAR	50,000		Eliminate threshold
49-9	FAR	10,000	10,000	
49-10	FAR	100,000	100,000	
49-11	FAR	100,000	100,000	
49-12	FAR	100,000	100,000	
49-13	DFARS	25,000,000/ 100,000,000	25,000,000/ 100,000,000	

Summary of recommendations: 13 Thresholds
6 unchanged
5 increased
2 thresholds eliminated

Recommended threshold groupings .....
$ 1,000 – 1
10,000 – 1
25,000 – 1
100,000 – 7
25,000,000/ 100,000,000 – 1

THRESHOLD REQUIREMENT 49-1

When the price of the undelivered balance of a contract is less than $2,000, the contract should not normally be terminated for convenience but should be permitted to run to completion.

Reference: FAR 49.101(b)

Analysis: This threshold requirement should be based upon cost versus benefits. If it will cost more to terminate a contract than to let it run to completion, it makes sense to let it run to completion. The cost to terminate a contract for convenience includes both the eventual amount to be paid to the contractor in the settlement and the costs to the Government to process and negotiate the settlement claim.

We believe that $2,000 is much too low a figure to balance the potential costs of a termination for convenience. It would be beneficial to conduct a cost/benefit study to arrive at an appropriate threshold level, but until such a study is conducted, the level should be raised.

Recommend: Increase the threshold to $25,000.

THRESHOLD REQUIREMENT 49-2

Auditors and termination contracting officers (TCOs) shall promptly schedule and complete audit reviews and negotiations of termination settlement proposals, giving particular attention to the need for timely action on settlements estimated at less than $100,000 involving small business concerns.

Reference: FAR 49.101(d)

Analysis: This threshold requirement is apparently an attempt to set a priority on the settlement of terminated small dollar value contracts with small business concerns. However, small business concerns are going to be affected more significantly by the termination of large dollar value contracts than small ones. We believe that to assist small businesses with outstanding termination settlement proposals, the threshold should be eliminated. In its place, auditors and TCOs should be instructed to give particular attention to the need for timely action on all settlements involving small business concerns.

Recommend: Eliminate the threshold.

THRESHOLD REQUIREMENT 49-3

The TCO shall estimate the funds required to settle a termination at the earliest practical date. Based on that estimate, the TCO shall recommend the release of excess funds to the contracting office within 30 days after receipt of the termination notice. However, unless requested by the contracting office, the TCO shall not recommend amounts under $1,000.

Reference: FAR 49.105-2

Analysis: While good management practices dictate the release for other purposes of excess funds under a terminated contract, there is a point below which the cost of releasing the funds is not worth the benefit of the action. The threshold is an attempt to strike that balance.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 49-4, 49-5, AND 49-6

49-4. The TCO shall refer each prime contractor settlement proposal of $25,000 or more to the appropriate audit agency for review and recommendations.

49-5. The TCO may submit settlement proposals of less than $25,000 to the audit agency. When a formal examination by the audit agency of settlement proposals under $25,000 is not warranted, the TCO will perform or have performed a desk review and include a written summary of the review in the termination case file.

49-6. The TCO shall refer subcontract settlements received for approval or ratification to the appropriate audit agency for review and recommendations when (1) the amount exceeds $50,000 or (2) the TCO wants a complete or partial accounting review.

Reference: FAR 49.107(a) and (b)

Analysis: The threshold level of $25,000 for a mandatory audit review appears to be much lower than necessary. By comparison, FAR 15.805-5 requires a request for field pricing support (which may include audit review) before negotiating any contract or modification resulting from a proposal in excess of $500,000 when cost or pricing data are required. Even that review is not required if information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price.

We recognize that in the case of termination settlement proposals, there will most often be incurred costs that can be reviewed by the auditor. However, substantial judgments must still be made about whether the incurred costs are allocable to items already delivered or to items terminated before delivery. We believe that the $25,000 level should be increased although not necessarily to the same level considered appropriate for a new acquisition.

Similarly, we do not believe that there should be a dollar distinction between a requirement for an audit review of

proposed subcontractor settlements and an audit review of prime contractor settlement proposals.

Recommend: Increase all three threshold levels to $100,000.

THRESHOLD REQUIREMENTS 49-7 AND 49-8

49-7. The TCO may, upon written request, give written authorization to the prime contractor to conclude settlements of subcontracts terminated in whole or in part, without approval or ratification, when the amount of settlement is $25,000 or less.

49-8. Upon written request of the contractor, the TCO may increase an authorization to the prime contractor to conclude settlements of subcontracts terminated in whole or in part under a particular prime contract, without approval or ratification, to those of $50,000 or less.

Reference: FAR 49.108-4(a)(1)
FAR 49.108-4(e)

Analysis: The authorization described in Threshold Requirement 49-7 applies to all terminated subcontracts of prime contracts of any Executive agency terminated or modified by change order. It is a blanket authority, subject to periodic review by the TCO. Threshold Requirement 49-8 is a much more restrictive authority, applying to a specific terminated prime contract and subject to the further restriction, if the TCO so elects, of the settlement of specific subcontracts or classes of subcontracts.

Since the authority is an optional one, subject to review and revocation, we believe that a higher threshold should be set.

Recommend: 49-7. Increase the threshold requirement to $100,000.

49-8. Eliminate the threshold level. Permit the TCO to grant such authority as he or she determines appropriate under the circumstances for a specific terminated prime contract.

THRESHOLD REQUIREMENT 49-9

The contractor may use the Settlement Proposal (Short Form), SF1438 when the total settlement proposal resulting from a fixed-price contract is less than $10,000 unless otherwise instructed by the TCO.

Reference: FAR 49.206-1(d)
FAR 49.602-1(d)

Analysis: The purpose of this threshold requirement is apparent on its face. We find no basis for questioning the threshold level, and we note that any change in it would require a costly reprinting of the standard forms.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 49-10, 49-11, AND 49-12

49-10. The contracting officer shall insert the clause at FAR 52.249-1, *Termination for Convenience of the Government (Fixed-Price) (Short Form)*, in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be $100,000 or less, subject to several listed exceptions.

49-11. The contracting officer shall insert the clause at FAR 52.249-2, *Termination for Convenience of the Government (Fixed-Price)*, in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be over $100,000, subject to listed exceptions.

49-12. The contracting officer shall insert the clause at FAR 52.249-3, *Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements)*, in solicitations and contracts for dismantling, demolition, or removal of improvements, when a fixed-price contract is contemplated and the contract amount is expected to be over $100,000.

Reference: FAR 49.502(a)
FAR 49.502(b)(1)
FAR 49.502(b)(2)

Analysis: Threshold Requirement 49-10 specifies the use of the short form *Termination for Convenience* clause rather than clauses required by Threshold Requirements 49-11 and 49-12 that could be characterized as "long form." The difference between them is dramatic. The primary short form clause consists of two sentences and it covers all of the rights, duties, and obligations specified in FAR Part 49 in the event the contract is terminated for convenience. The other (or long) form extends for approximately two complete FAR pages.

If the longer version of the termination for convenience clause is considered necessary, the threshold level of $100,000 is appropriate.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 49-13

The clause at DFARS 52.249-7000, *Special Termination Costs*, is authorized for use in an incrementally funded contract when, among other things, the contract is estimated to require total RDT&E financing in excess of $25 million or total production investment in excess of $100 million.

Reference: DFARS 49.7003

Analysis: The *Special Termination Costs* clause isolates from the customary constraints of the *Limitation of Cost/Limitation of Funds* clause, certain costs to which the contractor would be entitled in the event the contract is terminated for convenience. Among those costs are severance pay, reasonable costs continuing after termination, settlement of expenses, costs of return of field service personnel from sites, and similar costs for subcontractors. The clause also establishes a ceiling cost for these special termination costs.

The purpose of the clause is to avoid having to fund the contract for the remote contingency of a termination for convenience. If the contract were to be terminated for convenience and insufficient funds are available in the contract for the termination claim, the contracting officer would presumably not be charged with an antideficiency violation and the program office would scramble to reallocate appropriations or obtain additional ones.

The thresholds are at a sufficiently high level to make the use of the clause relatively infrequent.

Recommend: Make no change to the thresholds.

PART 50 – EXTRAORDINARY CONTRACTUAL ACTIONS

PART 50 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
50-1	Statute	$ 50,000	$ 50,000	
50-2	Statute	50,000	50,000	
50-3	DFARS	50,000	50,000	
50-4	Statute	25,000,000	25,000,000	
50-5	FAR	50,000	50,000	
50-6	FAR	1,000		Eliminate the threshold

Summary of recommendations: 6 Thresholds
5 unchanged
1 threshold eliminated

Recommended threshold groupings ..... $ 50,000 – 4
25,000,000 – 1

THRESHOLD REQUIREMENT 50-1

Public Law 85-804 and EO 10789 require that the Department of Defense submit to the Congress annually by 15 March a report of actions taken on requests for relief, including indemnity, under the authority of the Act. For each approved request that involves actual or potential cost to the Government in excess of $50,000, the report shall include the name of the contractor, the actual cost or estimated potential cost, a description of the property or services involved, and a statement of the circumstances justifying the action.

Reference: FAR 50.104(b)
Public Law 85-804
(50 U.S.C. 1431-1435, as amended)
EO 10789 of 14 January 1958, as amended

Analysis: This report is required by statute, and while the threshold has existed since the statute was enacted in 1958, it does not appear to be particularly burdensome. For that reason, we believe that the threshold level should be permitted to continue.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 50-2 AND 50-3

50-2. Authority under Public Law 85-804 to approve requests to obligate the Government in excess of $50,000 may not be delegated below the Secretarial level.

50-3. In DoD, authority to approve actions under FAR Subpart 50.4, *Residual Powers*, obligating $50,000 or less may not be delegated below the Head of the Contracting Activity.

Reference: FAR 50.201(b)
DFARS 50.201(b)
Public Law 85-804
(50 U.S.C. 1431-1435, as amended)
EO 10789 of 14 January 1958, as amended

Analysis: Public Law 85-804 directs that the authority to obligate the United States in an amount in excess of $50,000 shall not be utilized without approval by an official at or above the level of an Assistant Secretary or his Deputy, an assistant agency head or his deputy, or a contract adjustment board. EO 10789 has the same provisions. FAR has established this authority at the Secretarial level or in contract adjustment boards.

The Secretary of Defense has established a contract adjustment board within each Military Department. Accordingly, Threshold Requirement 50-2 has no effect on DoD since the authorities are vested in the contract adjustment boards. Threshold Requirement 50-3 is merely an implementation of the statute at the lower dollar levels.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 50-4

No contract, amendment, or modification shall be made under the authority of Public Law 85-804 that will obligate the Government for any amount over $25 million unless the Senate and House Committees on Armed Services are notified in writing of the proposed obligation, 60 days of continuous session have passed since the transmittal of such notification, and neither House of Congress has adopted a resolution disapproving the obligation.

Reference: FAR 50.203(b)(4)
Public Law 85-804
(50 U.S.C. 1431-1435, as amended)

Analysis: The threshold does not apply to indemnification agreements. Aside from that, this statutory limitation is self-explanatory. The control inherent in this threshold is reasonable.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 50-5

The exercise of authority by officials below the Secretarial level, pursuant to Public Law 85-804, is subject to the additional limitations that the actions shall not (1) release a contractor from performance of an obligation over $50,000 or (2) result in an increase in cost to the Government over $50,000, together with two other nonmonetary limitations.

Reference: FAR 50.203(e)(1)(i) and (ii)

Analysis: This is not a specific requirement of statute but appears to be an attempt to ensure consistency with the limitation in the statute on the delegation of authority to obligate funds in excess of $50,000. We have, in Threshold Requirement 50-2, recommended that no change be made to the thresholds, and the same recommendation applies here.

Recommend: Make no change to the thresholds.

THRESHOLD REQUIREMENT 50-6

Mistakes shall not be corrected by an action obligating the Government for over $1,000 unless the contracting officer receives notice of the mistake before final payment.

Reference: FAR 50.203(e)(2)

Analysis: This is not a requirement of statute and we see no point to it. We believe that it would be better to eliminate the threshold and simply not correct mistakes where notice of the mistake was not received by the contracting officer before final payment. At $1,000 and below, this rather basic requirement will not be much of a hardship on anyone.

Recommend: Eliminate the threshold.

DFARS PART 70 – ACQUISITION OF COMPUTER RESOURCES

PART 70 THRESHOLD LEVELS – CURRENT AND RECOMMENDED

Threshold requirement	Required by	Current level	Recommended level	Other action
70-1	FIRMR	$ 300,000		Eliminate threshold and requirement
70-2	FIRMR	2,500,000		Eliminate threshold and requirement
70-3	FIRMR	1,000,000		Eliminate threshold and requirement
70-4	FIRMR	250,000		Eliminate threshold and requirement
70-5	FIRMR	100,000		Eliminate threshold and requirement
70-6	FIRMR	1,000,000		Eliminate threshold and requirement
70-7	FIRMR	100,000		Eliminate threshold and requirement
70-8	FIRMR	1,000,000		Eliminate threshold and requirement
70-9	FIRMR	100,000		Eliminate threshold and requirement
70-10	DFARS	25,000	$ 25,000	
70-11	FIRMR	25,000	25,000	
70-12	FIRMR	100,000		Eliminate threshold and requirement
70-13	FIRMR	300,000		Eliminate threshold and requirement
70-14	FIRMR	300,000		Eliminate threshold and requirement
70-15	FIRMR	300,000		Eliminate threshold and requirement
70-16	DFARS	50,000	50,000	
70-17	FIRMR	2,500,000	2,500,000	
70-18	FIRMR	300,000	1,000,000	
70-19	DFARS	300,000		Eliminate threshold
70-20	DFARS	500,000	500,000	
70-21	DFARS	100,000		Eliminate threshold and requirement
70-22	DFARS	500,000		Eliminate threshold and requirement
70-23	FIRMR	100,000	100,000	
70-24	FIRMR	25,000		Eliminate threshold and requirement
70-25	FIRMR	75,000	100,000	
70-26	FIRMR	2,000,000		Eliminate threshold and requirement
70-27	FIRMR	200,000		Eliminate threshold and requirement
70-28	FIRMR	300,000	500,000	
70-29	FIRMR	10,000	25,000	
70-30	FIRMR	1,500	1,500	
70-31	FIRMR	250,000		Eliminate threshold

Summary of recommendations:

31 Thresholds
- 7 unchanged
- 4 increased
- 2 thresholds eliminated
- 18 thresholds and requirements eliminated

Recommended threshold groupings ....

$	
	1,500 – 1
	25,000 – 3
	50,000 – 1
	100,000 – 2
	500,000 – 2
	1,000,000 – 1
	2,500,000 – 1

Note: FIRMR applies to threshold requirements established by GSA in the Federal Information Resources Management Regulation (FIRMR) and included in DFARS.

THRESHOLD REQUIREMENTS 70-1, 70-2, 70-3, 70-4, 70-5, 70-6, 70-7, 70-8, AND 70-9

70-1. DoD may contract for ADPE without prior approval of the GSA if the contract will occur by placing a delivery order against a GSA Schedule contract and the total purchase price of the item(s) covered by the order does not exceed $300,000.

DoD may contract for ADPE without the prior approval of GSA if the value of the contract does not exceed:

70-2. For a competitive acquisition, $2.5 million purchase price, or

70-3. $1 million annual rental charge (including attendant maintenance costs).

70-4. For a noncompetitive acquisition, $250,000 purchase price, or

70-5. $100,000 annual rental charge (including attendant maintenance costs).

DoD may, after complying with the procedures of the Federal Software Exchange Program, contract for commercially available software, including software performance monitoring packages, for use with ADPE without the approval of GSA or the Federal Computer Performance Evaluation and Simulation Center (FEDSIM), provided that the procurement is to be made by normal solicitation procedures and the total value of the procurement, for the specific software package(s), does not exceed:

70-6. $1 million for competitive acquisitions; or

70-7. $100,000 for noncompetitive acquisitions.

DoD may contract for services to maintain ADPE without approval of GSA when the maintenance charges do not exceed:

70-8. $1 million annually for a competitive acquisition, or

70-9. $100,000 annually for a noncompetitive acquisition.

Reference:

70-1. DFARS 70.302-2(a)(2)
FIRMR 201-23.104-1(b)(2)

70-2 and 70-3. DFARS 70.302-2(a)(3)(i)
FIRMR 201-23.104-1(c)(1)

70-4 and 70-5. DFARS 70.302-2(a)(3)(ii)
FIRMR 201-23.104-1(c)(2)

70-6. DFARS 70.302-2(b)(i)
FIRMR 201-23.104-2(c)(1)

70-7. DFARS 70.302-2(b)(ii)
FIRMR 201-23.104-2(c)(2)

70-8 and 70-9. DFARS 70.302-2(c)(2)
FIRMR 201-23.104-3(b)(1) and (2)

Analysis:

The Brooks Act (40 U.S.C. 759) permits the Administrator, GSA, to delegate to other Federal agencies the authority to purchase or lease ADP systems. The thresholds have been established by GSA and are included in the FIRMR, which is applicable to all Federal agencies.

The threshold requirements comprise four exceptions to the requirement that an Agency Procurement Request (APR) for ADPE, software and maintenance services must be submitted to the GSA and a Delegation of Procurement Authority (DPA) must be received from GSA prior to the initiation of any contract action. However, in addition to those exceptions, the Warner Amendment (10 U.S.C. 2315, 1 December 1981, Defense Authorization Bill) also exempts from the thresholds all DoD weapon-system-related intelligence, cryptological, and mission-critical ADPE. Thus for DoD, only ADP administrative and business applications are subject to the thresholds, and DPAs are routinely provided by GSA.

While the approval of an APR submitted by DoD is not of itself time-consuming, the total exercise of preparing and staffing the APR is a tedious one that consumes time without offsetting benefits. Substantial savings in workload and shortening of PALT would result if GSA were to remove the thresholds for all remaining categories of DoD-acquired ADPE, software, and maintenance services. GSA can maintain its present oversight role by its detailed Information Resource Management (IRM) reviews. If an IRM for a Service were found to be defective, GSA

could impose thresholds on that Service until the defects were corrected.

Recommend: Request GSA to eliminate the thresholds and the requirements.

THRESHOLD REQUIREMENT 70-10

The provisions of DFARS Part 13 apply when the aggregate amount of any one requirement for ADPE, commercially available software, or maintenance services does not exceed $25,000 annually.

Reference: DFARS 70.304

Analysis: This DFARS provision merely clarifies that small purchase procedures can be used for ADPE, software, and maintenance services acquisitions below the small purchase threshold.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 70-11

The prices offered for the ADPE systems or items' life and conversion costs, shall be included in determining the lowest overall cost. Determination of system/item life is optional if the purchase price is $25,000 or less.

Reference: DFARS 70.309
FIRMR 201-24.21

Analysis: The costs of systems or items' life and of conversion are potential selection factors when acquiring ADPE. This threshold appropriately permits a more simplified price comparison below the small purchase level.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 70-12

The contracting officer shall insert the clause at DFARS 52.270-7002, *Contractor Representation*, in solicitations and contracts for ADP equipment items or systems when:

1. **The Government's requirement is set forth in whole or part by functional specifications; and**
2. **The contract amount is expected to exceed $100,000.**

Reference: DFARS 70.310(b)
FIRMR 201-32.205-2

Note: The *Contractor Representation* reads as follows:

> Unless the Contractor expressly states otherwise in its proposal, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the system/item proposed is capable of meeting those requirements. However, once the system/item is accepted by the Government, contractor responsibility under this clause ceases. In the event of any inconsistency between the detailed specification and the functional specification contained in the solicitation, the former will control.

Analysis: This is a FIRMR requirement, repeated in DFARS. Reliance on the representation required by this threshold offers no apparent benefit. The representation merely says what the contract will say, that the system or item must meet the specifications. The representation is simply an attempt to make the offeror say that the equipment offered will meet the specifications. The offeror has already done that once by signing the offer and will do so again by signing any resulting contract. Instead of using the representation, the Government should either benchmark the offered equipment before award or run a good functional acceptance test.

Recommend: Request GSA to eliminate the threshold and the requirement.

THRESHOLD REQUIREMENTS 70-13, 70-14, AND 70-15

70-13. In the initial acquisition of ADPE, whether for purchases, lease, or rental, orders for ADPE may be placed under ADP Schedule contracts, provided that the purchase price of the items covered (even though they are rented or leased) does not exceed $300,000.

70-14. For continued lease or rental of installed ADPE and software, a DPA must be obtained before issuing the annual renewal if the ADP Schedule price of the Central Processing Unit (CPU) exceeds $300,000 and the synopsis (if required) results indicate that it is available from a source other than the Schedule contract.

70-15. For conversion from lease to purchase of installed ADPE, a specific DPA must be obtained from GSA before issuing an order to purchase ADPE with a net purchase price of more than $300,000 when identical, i.e., specific make and model, or suitable substitute equipment is available from a source other than the Schedule contractor.

Reference: DFARS 70.314(b)(1)
DFARS 70.314(c)(2)
DFARS 70.314(d)
FIRMR 201-32.206(b), (c), and (d)

Analysis: These threshold requirements are contained in a DFARS subpart on GSA nonmandatory Schedule contracts. These requirements are consistent with the $300,000 threshold in DFARS 70.302-2(a)(2). In Threshold Requirement 70-1, we recommend that the $300,000 threshold in DFARS 70.302-2(a)(2) be eliminated. These threshold requirements should be consistent with that one. Additional savings in workload and shortening of PALT will result.

Recommend: Request GSA to eliminate the thresholds and the requirements.

THRESHOLD REQUIREMENT 70-16

Orders against GSA nonmandatory Schedule contracts must be synopsized in accordance with FAR Part 5, except that the threshold for requiring a *Commerce Business Daily* synopsis is $50,000 rather than $10,000.

Reference: DFARS 70.315(a)

Analysis: DFARS states:

> GSA has determined, after having consulted with OFPP and SBA, that standard dollar thresholds and waiting periods are neither reasonable nor appropriate for acquisition of ADP under GSA Schedules. Accordingly, a threshold of $50,000 rather than $10,000 is applicable, and a 15 calendar day waiting period rather than 30 calendar days shall be used.

This increase in the synopsizing threshold shortens PALT for those acquisitions of $10,000 and greater and less than $50,000.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENTS 70-17 AND 70-18

A software conversion study shall be made for each augmentation or replacement ADPE acquisition when either one of the two following conditions exists:

70-17. The estimated purchase price of the equipment system or the estimated system life cost is expected to exceed $2.5 million.

70-18. The cost of conversion is to be used as the primary justification for a noncompetitive requirement when the estimated value of the acquisition exceeds $300,000.

Reference: DFARS 70.318(b)
FIRMR 201-30.012-1

Note: The DFARS coverage has revised the governing language of the FIRMR. The FIRMR text, which is more precise, is as follows:

> A comprehensive software conversion study shall be made for each augmentation or replacement ADPE or ADP services acquisition when either of the following conditions exists –
>
> (i) The estimated purchase price of the equipment system or estimated system life cost of the ADP services is expected to exceed $2.5 million; or
>
> (ii) The cost of conversion is to be used as the primary justification for a compatibility-limited requirement when the estimated value of the acquisition exceeds $300,000.

Analysis: Software conversion studies are performed to ensure that the user's needs are met at the lowest overall cost, considering price and other factors and including the cost and other factors associated with conversion activities. This threshold establishes minimum acquisition costs below which the study is not required. [No study is required for (1) initial acquisition where no software currently exists, (2) acquisition of computer peripherals only, (3) exercise of a purchase option under a lease, or (4) acquisition of a compatibility-limited replacement system as the result of a comparative cost analysis made in connection with an obsolescence review.] The Threshold Requirement 70-17 appears reasonable. However, we believe that the $300,000 level in Threshold Requirement 70-18 is lower than necessary and

that the level should be set higher, at a point at which there is a threshold cluster.

Recommend: 70-17. Make no change to the threshold requirement.

70-18. Request GSA to increase the threshold requirement to $1 million.

THRESHOLD REQUIREMENT 70-19

Mandatory benchmarks shall not be used in solicitations for ADPE systems with a purchase value of less than $300,000 unless there is no other acceptable means of validation.

Reference: DFARS 70.319(a)

Analysis: This threshold requirement is presumably a reaction to the fact that the cost to bidders or offerors of mandatory preaward benchmarks can become disproportionate to the price of the system below the $300,000 level. As a substitute for benchmarks, DFARS offers two validating methods, either of which may be appropriate for ADPE systems with a purchase value of $300,000 or less. Those methods are validation of performance by the technical evaluation of proposed ADPE and software and evaluation of an operational ADPE installation processing a similar workload on comparable equipment.

Rather than use the threshold level of $300,000, we believe it would be preferable to use guidelines, instructing that alternatives to preaward benchmarks should be sought for lower dollar value ADPE acquisitions.

Recommend: Eliminate the threshold and, in its place, establish guidelines.

THRESHOLD REQUIREMENT 70-20

If the total cost of leasing computer equipment at a contractor's plant, division, or cost center is expected to exceed $500,000 in any 12-month period and more than 50 percent is to be allocated to Government contracts requiring the negotiation or determination of costs, the ACO shall, prior to approving the lease costs, conduct an initial review of the contractor's system and shall thereafter conduct an annual review for the purpose of evaluating:

1. **The reasonableness, from the technical standpoint, of the contractor's configuration,**
2. **The existing capability and need to continue leasing, and**
3. **The reasonableness of the resulting cost.**

The ACO shall either enter into an advance agreement to provide a basis for concurring in the proposed lease or, as an alternative, notify the contractor of the Government's nonconcurrence and of any consequent cost disallowance contemplated.

Reference: DFARS 70.600(d)
DFARS 70.603(a)
FAR 31.205-2

Analysis: This threshold requirement is, in fact, a cost principle found in FAR 31.205-2, at the same threshold level. DFARS 70.603 provides detailed procedures for the ACO review and concurrence or nonconcurrence.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 70-21

Arrangements shall be made for the contractor to submit to the ACO any proposed major change to an existing system so that the reasonableness of the resulting cost can be determined in advance. (A "major change" is defined as any addition or substitution of computer equipment that will result in an annual cost in excess of $100,000.)

Reference: DFARS 70.603(a)(2)

Analysis: The FAR cost principles require contracting officer approval and an advance agreement whenever (1) leased ADPE is to be allocated to one or more Government contracts that require negotiating or determining costs or (2) leased ADPE in a single plant, division, or cost center costs in excess of $500,000 annually, one-half or more of which will be allocated to cost-type contracts.

In addition, FAR requires the contractor to annually demonstrate that its leased ADPE costs are reasonable and necessary and that they do not give rise to a material equity in the facilities by the contractor.

This DFARS threshold requirement extends Government control by requiring approval and an advance agreement of all major additions to leased ADPE systems already approved. This requirement is over and above the requirement of the FAR cost principles.

We believe that the requirements of the FAR cost principles provide sufficient Government control over cost-type contractors' lease/purchase decisions and that this threshold requirement is consequently unnecessary.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENT 70-22

The prior written permission of the contracting officer is required for any non-Government use of computer equipment provided to the contractor when that equipment was acquired under one or more Government contracts negotiated on the basis of cost data. If the expected cost is in excess of $500,000 for any 12-month period, approval is required of the official prescribed in the procedures of the DoD Components.

Reference: DFARS 70.605

Note: DFARS states that this approval may be granted if FAR 45.407(b) is satisfied and no additional costs are incurred by the Government.

Analysis: This threshold requirement seems to be somewhat at odds with FAR 45.407, *Non-Government Use of Plant Equipment*, which requires the contracting officer's advance written approval for any non-Government use of active plant equipment and a higher approval for non-Government use exceeding 25 percent. FAR also provides guidelines as to when approvals may be granted.

This DFARS threshold requirement refers to "the expected cost" in excess of $500,000, rather than the FAR standard of 25 percent. The cost of what? We cannot discern what is meant. We also do not understand why this DFARS coverage is limited to contracts "negotiated on the basis of cost data." The determining factor should be whether the Government has title to the equipment. While the FAR is not clear, it is more specific than DFARS, and we believe that the procedures in FAR 45.407(b) should govern.

Recommend: Eliminate the threshold and the requirement.

THRESHOLD REQUIREMENTS 70-23 AND 70-24

70-23. Under the GSA Teleprocessing Service Program (TSP), there are Multiple Award Schedules (MASs) and Basic Agreements (BAs). Technical assistance/analyst services (TA/ASs) and use of premium software packages have dollar limitations that are reflected in both the MAS and BA. These types of services that exceed the established limitations should be acquired on a competitive basis. The dollar limitations for teleprocessing requirements for TA/AS are 10 percent of the total value of the teleprocessing requirement per fiscal year, not to exceed $100,000 per year. The DoD Component shall obtain authorization from the GSA TSP contracting officer before placing a purchase order under an MAS or awarding a contract under a BA that includes requirements that exceed the above limitations.

70-24. The dollar limitation for premium software packages is $25,000 per year per premium software package. The DoD Component shall obtain authorization from the GSA TSP contracting officer before placing a purchase order under an MAS or awarding a contract under a BA that includes requirements that exceed this limitation.

Reference: DFARS 70.801(e)
FIRMR 201-32.303-2

Analysis: The FIRMR imposes the $100,000 (or 10 percent) threshold requirement for the acquisition of TA/AS. This regulation provides that above that level, services should be obtained on a full-and-open competition basis. Thus, the threshold requirement provides an expedited manner below the threshold level to obtain services of a relatively small value.

The FIRMR does not impose the $25,000 per year threshold or any other threshold for premium software packages although dollar limitations may be included in individual MASs or BAs. FIRMR only provides the $100,000 (or 10 percent) threshold on "technical assistance on the use of vendor-provided software packages." We believe that the FIRMR requirements should govern and that the $25,000 threshold should be eliminated, resulting in a reduction in workload and a shortening of PALT.

Recommend: 70-23. Request no change to the $100,000 threshold.

70-24. Eliminate the $25,000 threshold and the requirement.

THRESHOLD REQUIREMENT 70-25

For conversion under the TSP, services associated with conversion of files and application programs may be included in an MAS purchase order or BA contract at the option of the DoD Component, provided that a determination is made, when the conversion requirement is estimated to exceed $75,000, that more extensive competition is not practical.

Reference: DFARS 70.801(f)(1)
FIRMR 201-32.303-2(e)(1)

Note: Other requirements must also be met prior to awarding an MAS purchase order or BA contract for conversion under TSP.

Analysis: The threshold requirement is imposed by FIRMR. Its underlying purpose – to obtain greater competition at the higher dollar levels – is in the interest of the Government. However, we believe that the threshold should be set at the more customary level of $100,000, where there is a grouping of thresholds.

Recommend: Request GSA to increase the threshold to $100,000.

THRESHOLD REQUIREMENTS 70-26 AND 70-27

DoD Components shall submit an APR to GSA to acquire GSA TSP services. DoD Components may contract for commercial ADP services without prior approval of GSA when the monthly charges (including evaluated optional features) do not exceed:

70-26. An annual rate of $2 million for a competitive acquisition; or

70-27. An annual rate of $200,000 for requirements available from only one responsible source or requirements using specific make and model specifications.

Reference: DFARS 70.803(a)
FIRMR 201-23.104-5(a)

Analysis: The Brooks Act (40 U.S.C. 759) permits the Administrator, GSA, to delegate to other Federal agencies the authority to purchase or lease ADP systems, including teleprocessing. This threshold requirement has been established by GSA and is included in the FIRMR, which is applicable to all Federal agencies.

We discuss other GSA-delegated ADP acquisition thresholds in our analysis of Threshold Requirements 70-1 through 70-9. This threshold requirement is no different. GSA would promote efficiency by removing the thresholds for all categories of DoD-acquired ADP, including teleprocessing. GSA can maintain its present oversight role by its detailed IRM reviews. If an IRM for a Service were found to be defective, GSA could impose a threshold on that Service until the defects were corrected.

Recommend: Request GSA to eliminate the thresholds and the requirements.

THRESHOLD REQUIREMENT 70-28

For teleprocessing service requirements over $300,000 annually, benchmark results shall be used to determine costs for all technically qualified firms. The use of benchmarks may be considered in selections under $300,000 annually.

Reference: DFARS 70.803(b)(3)
FIRMR 201-32.202-3(b)(3)

Analysis: The FIRMR coverage of benchmarks for teleprocessing requirements and the DFARS threshold requirement do not agree. FIRMR requires (with exceptions) benchmarks for TSP requirements exceeding $500,000 per year, while the DFARS requires them for TSP requirements exceeding $300,000. In addition, FIRMR discourages benchmarks for requirements costing less than $100,000 annually.

In our analysis of Threshold Requirement 70-19 concerning benchmarks for ADPE systems, we said:

> Rather than use the threshold level of $300,000, we believe it would be preferable to use guidelines, instructing that alternatives to preaward benchmarks should be sought for lower dollar value ADPE acquisitions.

We believe that the FIRMR requirements should govern and that they should be repeated verbatim, to the extent possible, in DFARS. That action would result in increasing the DFARS $300,000 threshold to $500,000, above which benchmarks would customarily be required, and the application of guidelines below $500,000.

Recommend: Increase the DFARS threshold to $500,000.

THRESHOLD REQUIREMENT 70-29

When the system-life estimated cost of teleprocessing services does not exceed $10,000 annually, the MAS method provides a simplified procedure for agencies use in selecting teleprocessing services.

Reference: DFARS 70.803(c)
FIRMR 201-32.303-3(c) and (d)

Analysis: In contrast to the DFARS $10,000 threshold, FIRMR provides a $25,000 threshold. The FIRMR threshold is preferable. FIRMR also provides for "abbreviated procedures" when the annual cost is not expected to exceed $50,000. It would be beneficial to contracting officers if this $50,000 threshold were also included in DFARS with the other FIRMR thresholds.

Recommend: Increase the DFARS threshold to $25,000.

THRESHOLD REQUIREMENT 70-30

Excess computers, software, and associated spare parts in the possession of contractors, whether leased or Government-owned, will be reported in accordance with Part 45 and DoD Manual 7950.1-M. Computers, software, and associated spare parts with an initial acquisition cost below $1,500 are subject to special procedures in DoD Manual 7950.1-M. (DFARS 70.607)

Excess auxiliary or accessorial computer equipment with an original acquisition cost (OAC) of $1,500 or less shall be made available for transfer to other Federal agencies [DFARS 70.1403(b)].

Reference: DFARS 70.607
DFARS 70.1403(b)
DoD Manual 7950.1-M
FIRMR 201-22.011
FPMR 101-43.4801

Analysis: This threshold requirement is contained in DFARS 70.607, covering ADPE in the possession of contractors and again in DFARS 70.1403(b), covering excess, Government-owned ADPE.

DoD Manual 7950.1-M contains the DoD regulations for reporting excess ADPE, but the manual specifically exempts from its coverage, excess auxiliary or accessorial computer equipment with an original acquisition cost of $1,500 or less. Thus, the "special procedures" referred to in the DFARS 70.607 instruction are really no procedures at all.

The DoD Manual exemption appears to be based upon the same exemption in the FIRMR, which instructs that equipment with an original acquisition cost of $1,500 or less shall be reported to the Federal Property Resources Service for regional office screening in accordance with the property disposal procedures of the Federal Property Management Regulations.

The threshold level is set by GSA, and we do not take issue with it. Repeating the $1,500 threshold in the DFARS is helpful since the property disposal procedures are different at that amount and below. It is probably even helpful to repeat it in both subparts since they cover different situations. However, the threshold requirement in both places should be rewritten either

to tell the reader precisely what to do or to refer the reader to the specific DoD or GSA regulations governing the disposal activity.

Recommend: Make no change to the threshold.

THRESHOLD REQUIREMENT 70-31

Government-owned excess ADPE systems or items with a GSA estimated fair market value of at least $250,000 will be screened by GSA for possible reutilization.

Reference: DFARS 70.1405(a)
FIRMR 201-33.009

Analysis: The DFARS threshold requirement is contained as part of Subpart 70.14, *Reuse of Equipment*, which sets forth policies and procedures regarding the reuse of computer equipment. As a part of that coverage, there is an explanation of GSA's ADP Fund. The FIRMR instructions of the ADP Fund, which are controlling, make no mention of the $250,000 level.

It appears that DFARS is incorrect in citing the $250,000 level, below which, presumably, GSA does not screen Government-owned excess ADPE systems. In addition, even if the figure were accurate, it is not helpful to the reader who needs to know that there is an ADP Fund and how it works.

Recommend: Eliminate the threshold.