



15013
113411

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

PROCUREMENT AND SYSTEMS
ACQUISITION DIVISION

B-200233

SEPTEMBER 26, 1980

Ms. Karen Hastie Williams
Administrator, Office of Federal Procurement Policy
Office of Management and Budget

Dear Ms. Williams:

Subject: [Should Small Purchases Be Exempt from
Complying with Social and Economic
Program Requirements?] (PSAD-80-77)

Since the Commission on Government Procurement completed its work in 1972, we have issued eight status reports to the Congress on the progress being made in implementing the Commission's recommendations. Our final status report on the Commission's recommendations (PSAD-79-80) was issued on May 31, 1979, and expressed our concern that action on many reforms is far from complete and the momentum is slowing. We are now undertaking a series of studies to focus on specific problem areas and establish the need for improvements. Our first such study was just completed and involved an evaluation of Procurement Commission recommendation 44, which advocated raising to \$10,000 the minimum level at which social and economic programs are applied to the procurement process.

Our objectives were to determine if the action recommended was still warranted and if the Office of Federal Procurement Policy (OFPP) was actively pursuing implementation. Based on our work, we concluded that social and economic program requirements should not be applied below some minimum threshold, such as the small purchases threshold (currently \$10,000), and that consideration be given to adding an escalator clause to alleviate the need for frequent legislative updates. Higher and more uniform threshold levels would help streamline administration, and the attention now devoted to lower dollar value contracts could be used to provide better enforcement on contracts above the small purchase threshold.



113411

012167

(950592)

WORK PERFORMED

We interviewed procurement officials at the headquarters offices of the General Services Administration; the Department of Defense; the Defense Logistics Agency; and the Departments of the Army, Navy, and Air Force. We also interviewed procurement officials at selected field sites, including the Navy Yard, Washington, D.C.; the Defense Personnel Support Center, Philadelphia, Pennsylvania; the U.S. Army Materiel Development and Readiness Command (DARCOM), Ft. Belvoir, Virginia; and the National Capital region of the General Services Administration, Washington, D.C. These latter officials were involved in the application of social and economic programs on a firsthand basis. They were able to illustrate to us the social and economic programs having the most impact on their operations and help us identify new programs that have developed since the Commission's report was issued.

Also, we visited both the Department of Labor (DOL) and OFPP to obtain their current views on the threshold issue and the status of the Commission's recommendation.

We also reviewed articles, studies, and reports discussing social and economic program thresholds, including the interagency task group studies, which were used to form executive agency positions on the Commission's recommendations.

PROCUREMENT COMMISSION JUSTIFICATION
FOR RECOMMENDATION 44

Dollar thresholds provide levels below which Government contracts are exempted from various social and economic requirements. Some thresholds were legislated as long as 40 years ago and were designed to lessen the administrative burden for smaller contracts. As the Commission noted, however, inflation over time has depreciated these dollar threshold levels to insignificance. As a result, fewer and fewer purchases are exempt from social and economic provisions, and the relative costs and paperwork requirements of small contracts are pushed higher with the increasing number of provisions to administer.

The Congress has enacted into law a Commission recommendation enabling the use of simplified small purchase procedures for procurements up to \$10,000, instead of \$2,500 as before. For Public Law 93-356 enacted in 1974, the Congress considered the fact that contracts under \$10,000 represented less than 11 percent of the total dollar value of the Department of Defense procurements but accounted for more

than 98 percent of the contract actions. Despite this action, these simplified procedures are difficult to use because of lower dollar threshold levels for invoking some social and economic requirements. As a result, the full benefit and cost savings potential of small purchase procedures have not been realized.

PROCUREMENT AGENCY OFFICIALS' POSITIONS

The consensus among those agency procurement officials interviewed was that small dollar value Government contracts should be exempt from social and economic requirements. Officials believe that, logically, the small purchase threshold should be selected as the minimum threshold for application of these requirements. Most procurement officials would also endorse efforts to raise the small purchase threshold to an even higher level in light of inflation experienced over the last decade and would favor an escalator clause to keep the thresholds current.

Advantages cited

According to procurement officials, inflation has rendered meaningless many present-day thresholds. Some social and economic programs were enacted during the Depression era and have never been updated.

Also, extra paperwork and processing time are needed to implement some programs which involve Federal oversight agencies in addition to the procuring agency. In many cases, however, implementation results in added clauses to the contract which are not policed or enforced by any Government officials. Raising the thresholds would eliminate many clauses which clutter present-day purchase orders at low dollar amounts, easing the burden on agency procurement officials and contractors.

Further, many believe small business would benefit from a simplified contracting instrument. The officials we talked to would prefer to see the Government use contracting procedures similar to those used by commercial firms.

Support for recommendation

Virtually all procurement officials we spoke to at the field sites, who were actively involved in purchasing/contracting, would endorse any effort to make simplified small purchase procedures truly simplified. These officials strongly endorse the Commission's recommendation.

Headquarters officials we spoke to also endorsed the Commission's recommendation. Department of Defense officials feel very strongly that inflation has "overrun the logic" of lower thresholds. In fact, given the inflation experienced over the last 4 or 5 years, Defense officials believe \$10,000 may not be a high enough threshold. Department of Defense officials question whether any socially desirable objective is achievable on contracts below the \$10,000 level.

General Services Administration officials have no objections to raising the thresholds to \$10,000 as recommended by the Commission on Government Procurement on such programs as the Buy American Act, Davis-Bacon Act, Miller Act, Service Contract Act, Rehabilitation Act, and others. Nor does the General Services Administration object to the use of small purchase procedures for transactions up to \$25,000. However, regarding Public Law 95-507, which reserves all Federal contracts under \$10,000 for small business, the General Services Administration does not feel that it could actively support raising set-aside thresholds above \$10,000.

Most officials we spoke to had concerns about social and economic programs above and beyond just the threshold issue. The ability to accomplish their agencies' missions, the proliferation of new programs, and the cost of implementation were principal concerns.

OFPP POSITION

Several years ago after researching this issue, OFPP concluded that thresholds for application of certain socioeconomic statutes should be set at \$10,000. OFPP believed such a move would be of great value to those doing business with the Government--particularly the small business-owner--and the change would not reduce the effectiveness of the social and economic programs involved. As evidence of the burden of implementing selected socioeconomic programs on the procurement process, it cited the following:

- For contracts as low as \$2,000, procurement agencies must apply the provisions of the Davis-Bacon Act, including (1) extracting the minimum wage determinations from the Federal Register and requesting a determination from DOL if the wage determination is not in the Federal Register, allowing 30 days for receipt, (2) determining the proper schedule if the wage determination contains more than one schedule of wage rates, (3) approving or disapproving,

after award, possible additional classifications and wage rates requested by the contractor, (4) assuring that contractors and subcontractors comply with minimum wage requirements (this includes reviewing payrolls, interviewing employees, ascertaining that employees are actually working at proper classification, and so forth), and (5) investigating violations.

--For contracts as low as \$2,500, the Service Contract Act requires the Government to pay covered employees the prevailing wage rates. Since \$2,500 represents only a fraction of the yearly salary of one full-time service worker, several service employees could perform the work on a contract over a short period of time. Assuming labor is 70 percent of the contract price, a small contract close to the \$2,500 threshold means that the procurement contract is used as a mechanism for giving coverage to workers performing only part time or sporadically on Government work. For example, on a \$10,000 service contract (of which labor costs would be \$7,000) six employees working at an average hourly wage of \$5 would be working on a Government contract for only 29 or 30 days. At the current \$2,500 threshold, they would work only 7 or 8 days. However, these are not the employees the Service Contract Act was designed to protect. It is the full-time service employee associated with competition for annual yearlong Government contracts who needs the protection.

--In fiscal year 1975 OFPP estimated that wage determinations under the Service Contract Act were contained in over 18,000 service contracts. Since it is estimated that one-half the contracts covered by the Service Contract Act are under \$10,000, the administrative burden on the Government would be eased considerably by a raise in the threshold. Similarly to the Davis-Bacon Act, a raise in the threshold will also enable the contracting officer to make full use of the \$10,000 ceiling on small purchases.

--With respect to the Buy American Act, OFPP noted that the percentage of the total Federal procurement dollar attributable to purchases from foreign sources has been estimated at well below 1 percent. Most of that 1 percent is in turn attributable to purchases having no domestic source available. Interest of foreign sources does not generally start until

the procurement totals \$50,000 or more. Establishing a Buy American Act threshold at \$10,000 would seem in order and a worthwhile step in helping to simplify procurement.

OFPP's latest status report on the Commission's recommendations dated February 15, 1980, states that recommendation 44 has been accepted and is pending implementation. At one time OFPP concluded that legislatively raising thresholds on the five programs that it considered had the broadest impact--Buy American Act, Davis-Bacon Act, Miller Act (threshold raised by P.L. 95-585, Nov. 3, 1978), Service Contract Act, and Rehabilitation Act--would go a long way toward accomplishing the Commission's objectives. OFPP prepared a draft report it intended to submit to the Congress recommending that thresholds be raised on these selected programs. The report included draft legislation for this purpose. However, according to OFPP officials we talked to, little congressional support was found for such legislation and it was later decided not to pursue a piecemeal approach to the problem. OFPP now plans to incorporate any changes in thresholds in its proposal for the Uniform Procurement System, to be submitted to the Congress by October 1, 1980, or in the legislative proposal supporting the Uniform Procurement System, to be submitted to the Congress by October 1, 1981.

DOL POSITION

DOL opposes raising the thresholds on any labor related programs. DOL officials stated that the Congress desires vigorous enforcement of all labor related laws, and the President does not currently favor any changes to these programs.

DOL officials expressed concern that a \$10,000 threshold would adversely affect the procurement basis of coverage by its Office of Federal Contract Compliance Programs. First, they believe it would diminish coverage of affirmative action for the handicapped under section 503 of the Rehabilitation Act of 1973 as amended (P.L. 93-112), which requires that contractors and subcontractors holding Government contracts or subcontracts of \$2,500 or more undertake affirmative action for the employment and advancement in employment of qualified handicapped individuals. According to DOL officials, the Congress, in considering the appropriate threshold for section 503, specifically rejected the \$10,000 minimum and adopted an amendment to pending legislation which set the coverage minimum at \$2,500. DOL believes that the Congress, in establishing such a low threshold, intended

that section 503 be widely and vigorously enforced in Government contracting.

The only expression of legislative intent we found was contained in Senate report 318, 93d Congress, 1st session, 1973, which stated that the \$2,500 threshold was selected "because of the administrative difficulties associated with contracts involving less than that amount." At that time, small purchase procedures were used for contracts less than \$2,500. As stated previously, Public Law 93-356 raised the small purchase threshold to \$10,000 the following year. However, many social and economic program thresholds, such as section 503 of the Rehabilitation Act, were never raised accordingly.

Second, DOL has concerns about the implementation of Executive Order 11246 if a \$10,000 threshold is established in law. Executive Order 11246 prohibits Federal contractors and subcontractors from employment discrimination based on race, color, sex, religion, or national origin. The order also requires that employers take affirmative action to hire and promote underrepresented groups. Existing regulations now permit the aggregation of contracts over a 12-month period to meet the present \$10,000 threshold established by Executive order. DOL officials are concerned that coverage may be diminished or lost for certain industries (such as agriculture and consumer products) should a \$10,000 threshold be established that does not permit aggregation. Enclosure I expresses DOL's full point of view on this matter.

Enclosure I also contains DOL's concerns that Government bills of lading and Government deposits of funds in financial institutions may escape coverage under Executive Order 11246. Although the threshold would be designed to apply to procurement contracts, DOL officials feel the effect of raising the threshold could affect those parts of the Office of Federal Contract Compliance Programs which are based upon contracts other than procurement.

DOL officials want to ensure that the protections afforded workers in law and by Executive order continue in effect. For purposes of determining coverage through the procurement process, they believe an appropriate threshold should encourage coverage of all but the insignificant.

Other arguments DOL officials presented in opposition to any changes in current thresholds concern the possibility

of splitting contracts in the event a higher threshold was implemented and a belief that DOL regulations are already designed to minimize the administrative burden placed on procurement agencies. They also opposed an escalator clause on the grounds that an appropriate basis for the adjustment would be difficult to determine.

While we share the concerns expressed by DOL, on balance the value of vigorous enforcement on contracts below \$10,000 or even some higher threshold can be seriously questioned. The impact of raising thresholds on selected DOL programs was assessed by an interagency task force established to develop an executive branch position with respect to the Commission's recommendation 44. Regarding the Davis-Bacon Act, for example, the task force determined, based on the results of a 6-month survey, that a \$10,000 threshold would free 24.8 percent of construction contracts from coverage and would eliminate protection for 8.4 percent of the employees covered. However, only 0.3 percent of the dollar volume spent on construction contracts would lose coverage. This survey data is now 6 years old and does not reflect the inflation experienced since that time. Nevertheless, the task force recommended raising the Davis-Bacon Act threshold to \$10,000 and providing, by separate statute, for the continued protection of labor standards between \$2,000 and \$10,000 without burdening the procurement process. 1/

According to OFPP, the sum of \$2,000 today buys only minor repair and alteration, not new construction. Nonetheless, every Federal contract over \$2,000 is subject to the statute and must contain a Davis-Bacon wage rate determination. Considering the impact of inflation, a raise in the Davis-Bacon threshold to \$10,000, for example, would still mean protection for the same groups of workers to whom the Congress afforded protection in 1935--workers on other than small, relatively insignificant contracts.

Any need for exceptions to permit aggregation in the specific cases mentioned would have to be demonstrated by DOL officials when legislation is considered. Regarding Government bills of lading and Government deposits of funds

1/Our report, "The Davis-Bacon Act Should Be Repealed," HRD-79-18, Apr. 27, 1979, questions the need for the program in light of circumstances existing today.

in financial institutions, DOL itself is unsure of how a uniform threshold would be applied and how it would be interpreted for contracting outside of the procurement process. We believe it premature to assume that workers in these industries would lose the protections now available to them under the Executive order, and such was not the intent behind our recommendation.

We do not share DOL's concern over the possibility of splitting contracts if the thresholds were raised. There is no reason to believe a \$10,000 threshold in 1980 is more susceptible to splitting than a \$2,000 contract was in 1935.

Based on our review and the findings of other independent surveys, we believe that programs such as Davis-Bacon, for example, do indeed impose administrative requirements that are particularly onerous and disproportionately great for contracts under \$10,000.

We do not feel that the very large number of small contracts should be encumbered by procedures and provisions designed to afford protection for workers on large dollar value contracts.

CONCLUSIONS FROM INDEPENDENT STUDIES

The President's Reorganization Project Report 1/ dated June 15, 1978, found that

"* * * the dollar levels for activating those requirements in Government contracts which promote various Federal social and economic policies lack uniformity and do not reflect changes in economic conditions."

Therefore, the task force recommended a uniform \$25,000 threshold for application of all such social and economic policies with a provision for future adjustments.

The Commission on Federal Paperwork, using data received from OFPP, determined that

1/"Supply and Support Services Task Force Findings and Alternatives," President's Reorganization Project on Administrative Services, pp. 4, 54, and 55.

"* * * conditions or provisions incorporated in Government contracts to further social and economic objectives add many complicating factors to the procurement process * * *. To permit the thresholds to remain unchanged is inconsistent with past practice and imposes a paperwork burden of considerable magnitude upon the Government and industry, particularly small business, which does not command the resources available to larger firms and often cannot afford to hire additional clerical help, let alone maintain a staff of legal, fiscal, and accounting experts to provide advice on statutory and contractual requirements."

They recommended that the Office of Management and Budget sponsor amendments to seven programs to establish or revise to \$10,000 the levels at which they become applicable to Government contracts.

RECOMMENDATIONS

We recommend that OFPP submit legislation to the Congress to establish the small purchase threshold, currently \$10,000, as the minimum threshold for all, not just selected, social and economic programs applied to the procurement process. The legislation should be submitted independent of the proposal for the Uniform Procurement System.

We also recommend that the legislation include provisions to raise the small purchase threshold to a level consistent with the inflationary trend that has occurred since it was established at \$10,000 in 1974. An escalator clause should be included to permit administrative adjustments to prevent the time lag that now occurs between reductions in the value of money and legislative adjustments in thresholds affecting contracts.

We further recommend that the legislation include a procedure for monitoring future legislation to assure that no conflicts exist with the small purchase threshold.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's

first request for appropriations made more than 60 days after the date of the report.

Copies of this report are being sent to the chairmen, House Committee on Government Operations and Senate Committee on Governmental Affairs; the Director, Office of Management and Budget; the Administrator, General Services Administration; and the Secretaries of Defense and Labor.

Sincerely yours,



W. H. Sheley, Jr.
Acting Director

Enclosure



DEPARTMENT OF LABOR COMMENTS

The \$10,000 threshold would adversely affect the procurement basis of coverage by the Office of Federal Contract Compliance Programs in two ways. First, it would diminish coverage of affirmative action for the handicapped under section 503 of the Rehabilitation Act of 1973 as amended (P.L. 93-1112), which requires that contractors and subcontractors holding Government contracts or subcontracts of \$2,500 or more undertake affirmative action for the employment and advancement in employment of qualified handicapped individuals. The Congress, in considering the appropriate threshold for section 503, specially rejected the \$10,000 minimum and adopted an amendment to pending legislation, setting the coverage minimum at \$2,500. It is clear that the Congress, in establishing such a low threshold, intended that section 503 be widely and vigorously enforced in Government contracting.

The second effect of establishing a \$10,000 threshold would fall upon procurement contractors and subcontractors under Executive Order 11246, as amended. The Office of Federal Contract Compliance Program's current regulations (41 CFR 60-1.5(a)(1)) provide that the Executive order cover contracts and subcontracts exceeding \$10,000 and

"* * * contracts or subcontracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding \$10,000 * * *."

Government bills of lading and Government deposits of funds in financial institutions are also exempt from the \$10,000 threshold.

Although the precise effect of a uniform \$10,000 threshold on the Executive order program depends on how the threshold is applied, there can be no question that the threshold would eliminate the aggregation of contracts as a means of establishing coverage of the Executive order. This could result in loss or diminishment of coverage over several key industries which supply goods or services to the Government in small but recurring contracts. While no single contract might exceed \$10,000, the total dollar volume of contracts with businesses in these industries over a 12-month period may often be substantial. Agriculture and consumer products are among the industries for which coverage might be lost or diminished if a uniform \$10,000 threshold were established.

Although the threshold would be designed to apply to procurement contracts, the effect of raising the threshold could affect those parts of the Office of Federal Contract Compliance Program's programs based upon contracts other than procurement. The impact could affect two industries in particular. If the threshold were to apply to Government bills of lading, it is almost certain that coverage of the transportation industry would be drastically reduced, even possibly eliminated, since Government bills of lading seldom exceed \$10,000. Even if Government bills of lading were not considered covered under the uniform threshold, it is quite likely that the transportation industry would attempt to utilize congressional expression of intent in establishing a uniform threshold as a lever for eliminating coverage of Government bills of lading of \$10,000 or less.

Also, a uniform \$10,000 threshold could allow almost every bank, savings and loan association, and Federal credit union to escape coverage. Coverage of financial institutions is grounded in the services that such institutions provide for the Government, not in the procurement process. A covered financial institution is one which serves as a depository of Government funds in any amount or which serves as an issuing or paying agent for U.S. savings bonds or savings notes in any amount. These are not procurement services, but are nonetheless services provided pursuant to a Government contract.

The Congress, by establishing a uniform threshold for coverage under the procurement system, could throw the basis for coverage of financial institutions, and other nonprocurement contracts as well, into doubt. To establish coverage of a financial institution, for example, it is possible that the Government would have to demonstrate that each financial institution received and held Government funds exceeding \$10,000 in such a manner as to make its receipt of Government money comparable to performance of a contract exceeding \$10,000. Thus, depending upon the application of the threshold and its interpretation for contracting outside of the procurement process, workers in the entire banking industry might lose the protections now available to them under the Executive order.



