

individual agencies that would most likely involve contract bundling; and (2) to minimize the extent to which the bundling reviews would disrupt the procurement process of individual agencies.

SBA continues to believe that the proposed three-tier threshold will best achieve those objectives. SBA therefore declines to adopt the recommendations for a single government-wide threshold to trigger bundling reviews and the additional documentation requirements for substantial bundling (discussed below). SBA is instead adopting the proposed threshold of \$7 million for DOD, \$5 million for NASA, DOE and GSA, and \$2 million for all other agencies. These agency-specific levels will capture those procurements that would most likely involve contract bundling for individual agencies, will minimize the disruption to the procurement process, and will properly account for the limited resources and contracting personnel to conduct the bundling reviews.

3. Comments on Compliance With Subcontracting Plans

The redesignated § 125.2(b)(6)(iii)(C) under the proposed rule clarifies the language of the former § 125.2(b)(5)(iii)(C) to make clear that as part of the responsibilities of PCRs to ensure that small business participation is maximized through subcontracting opportunities, PCRs may review an agency's oversight of its subcontracting programs, including the agency's overall and individual assessment of contractor compliance. The proposed § 125.2(b)(6)(iii)(C) contemplates a systemic review of an agency's general assessment of subcontracting plan compliance to facilitate greater consistency in agency oversight in the future.

SBA received 11 comments on this proposed clarification. Although the comments applauded the intent of proposed § 125.2(b)(6)(iii)(C), the majority of the comments indicated that it is insufficient to monitor and ensure compliance with subcontracting plans. Three commenters recommended the imposition of penalties or sanctions on large prime contractors for noncompliance with their small business subcontracting plans. The Federal Acquisition Regulation (FAR) already provides for liquidated damages for noncompliance with subcontracting plans. Under FAR section 19.750-7, a prime contractor is liable for such damages for failing to make a "good faith effort" to comply with its subcontracting plans. Since governing regulations already provide monetary

consequences for noncompliance with subcontracting plans, SBA is not adopting this recommendation.

Continuing on the issue of compliance with subcontracting plans, one commenter suggested that SBA explore incentives that would reward large prime contractors that achieve their subcontracting goals. Along those lines, another commenter similarly recommended reinforcing prime contractor compliance with subcontracting plans by requiring the inclusion in all solicitations a past performance evaluation factor assessing subcontracting plan compliance. This commenter believed that such a mandatory source selection factor, in both bundled and non-bundled acquisitions alike, would encourage greater small business subcontracting awards. Additionally, because of the increase in task and delivery orders under multiple award contracts, the commenter also suggested that the regulations encourage the inclusion of a similar evaluation source selection criterion for task and delivery order awards.

Another commenter recommended that large businesses that are awarded task and delivery orders under GSA's Federal Supply Schedule (FSS) should be subject to the requirement for subcontracting plans under section 8(d) of the Small Business Act, 15 U.S.C. 637(d).

SBA agrees that a subcontracting plan compliance evaluation factor may serve as an effective incentive to encourage greater compliance with the plans. SBA is therefore adopting the proposed § 125.2(b)(6)(iii), with a new paragraph (D), recommending a separate evaluation factor of "significant weight" for achievements of subcontracting goals on previous contracts. SBA declines to make that evaluation factor mandatory or to extend it to task and delivery order awards at this time, since it has not yet determined the potential impact of such requirements.

Also, regarding the issue of SBA's review of subcontracting compliance, one commenter suggested that the regulations mandate that PCRs share their compliance assessments with SBA's breakout PCRs, who are assigned to major contracting centers. This commenter also recommended that SBA develop a system to enable PCRs and breakout PCRs to submit their assessments to the cognizant contracting officer.

Two commenters expressed the need for further guidance on evaluating compliance with subcontracting plans and a contractor's "good faith" efforts to achieve its small business goals. One of

these two commenters further indicated that government agencies should be required to "evaluate large businesses on the same basis and understanding of the small business subcontracting plan regulations." This commenter also complained that large businesses need additional guidance in completing commercial plans, which cover a commercial contractor's entire fiscal year and commercial production.

Two additional commenters recommended that in addition to goals, subcontracting plans should include other information, such as a description of the nature of the work to be subcontracted and the efforts the offeror will make to ensure that small businesses have an equitable opportunity to compete for subcontracts.

Likewise, another commenter suggested that prime contractor subcontracting plans should be reviewed not only for the extent of small business participation, but also for the extent to which they generate "reasonable profit margins" for small businesses. This commenter explained that review of the small business profit margins is necessary because prime contractors often give the low margin, high revenue producing products to small businesses, and thereby achieve their percentage of participation but leave the small business with little profit. This commenter also recommended the collection and dissemination of best practices and strategies for maximizing small business prime and subcontract opportunities.

SBA agrees that effective procedures to mitigate the effects of contract bundling on small businesses necessitates more stringent requirements for monitoring compliance with subcontracting plans to ensure that small businesses receive the maximum practical opportunity to participate as subcontractors in large Federal contracts. Many of the commenters recommended amendments that require further consideration to evaluate their likely effectiveness and impact on the procurement process. As a result, SBA is proposing a separate rule, published elsewhere in this issue of the **Federal Register**, to address many of these comments and suggestions, including the suggestion for more guidance in determining good faith compliance.

Although published separately, that proposed rule addressing the comments on § 125.2(b)(6)(iii)(C), remains part of the Administration's initiative to implement OMB's October 2002 report on contract bundling. However, because the rule proposes additional changes to SBA's regulations that were not