

components, and related services for major systems.

In implementing that existing statutory requirement, the proposed § 125.3(b)(1) expressly requires that all prime contractors, including small business prime contractors, that receive the covered Federal contracts ensure that small business concerns have the maximum practicable opportunity to participate in the performance of the contract as subcontractors and suppliers, consistent with the efficient performance of the contract. SBA believes that the responsibility to maximize subcontracting opportunities for small businesses applies equally to all prime contractors that receive contracts above the simplified acquisition threshold. This provision does not, however, extend the requirement for subcontracting plans to small business concerns. As indicated in the proposed § 125.3(c), discussed below, the requirement for subcontracting plans applies only to large businesses that receive a contract or contract modification exceeding \$500,000, or \$1,000,000 in the case of construction of a public facility.

The proposed § 125.3(b)(2) lists examples of actions prime contractors may take to increase small business subcontracting opportunities. Two comments submitted in response to SBA's proposed bundling rule published in the **Federal Register** on January 31, 2003 (67 FR 47244), requested strategies for maximizing small business subcontracting opportunities. In response to those comments, the proposed § 125.3(b)(2) provides specific guidance to prime contractors on providing the maximum practicable subcontracting opportunities to small businesses.

The proposed guidance in § 125.3(b)(2) is not intended to impose additional burdens or responsibilities on small businesses or to operate as a basis for denying a small business a contract award. Instead, SBA intends that the proposed guidance provide suggested measures for ensuring small business subcontracting opportunities in procurements. As discussed below in connection with the proposed § 125.3(d), documentation that a large business performed the actions and strategies outlined in the proposed § 125.3(b)(2), may serve as evidence that the large business prime contractor made a good-faith effort to comply with its subcontracting plan.

SBA proposes to amend § 125.3(c) to address the additional responsibilities of large prime contractors selected for award of a contract or contract modification that exceeds \$500,000, or

\$1,000,000 in the case of construction of a public facility. These responsibilities include the existing requirements for submitting subcontracting plans, providing timely subcontracting reports and for cooperating in compliance reviews. The proposed § 125.3(c)(1)(v), sets forth the pre-award written notification currently included in the existing § 125.3(a) of SBA's regulations. The current provision requires large prime contractors to provide pre-award written notification to unsuccessful small business offerors on all subcontracts over \$10,000 for which a small business concern received a preference. Unlike that provision, the proposed § 125.3(c)(1)(v) requires such pre-award notification on all subcontracts over \$100,000. This proposed increase in the dollar threshold from \$10,000 to \$100,000 conforms to the simplified acquisition threshold. It also is in keeping with the Administration's efforts to make Government regulations more practical and less burdensome on businesses.

The proposed § 125.3(c)(2) addresses commercial plans. This section makes clear that large prime contractors may use commercial plans for services as well as for products, as long as the product or service being procured meets the definition of a commercial item in 48 CFR 2.101.

SBA proposes to amend § 125.3(d) to address good-faith effort with respect to a large prime contractor's compliance with its subcontracting plan. Under section 8(d)(4)(f) of the Small Business Act (15 U.S.C. 637(d)(4)(f)), a contracting officer may assess liquidated damages against a large business that failed to make a good-faith effort to achieve the small business goals in its subcontracting plan. Several commenters on the SBA's January 31, 2003, proposed bundling rule requested guidance on evaluating a large prime contractor's good-faith efforts to achieve its small business goals. The proposed § 125.3(d) indicates that evidence of good-faith efforts includes supporting documentation that the contractor performed the actions described in the proposed § 125.3(b). The proposed § 125.3(d) further provides that evidence of good faith may also include supporting documentation that other contractors awarded contracts of similar scope, size or dollar value did not achieve or exceed the goals stated in their subcontracting plan, despite their good-faith efforts to do so.

SBA proposes to add a new § 125.3(e) to explain the role of SBA's CMRs, who perform a number of different activities to further the objectives of SBA's subcontracting assistance program. In

2002, the General Accounting Office conducted a study (GAO-03-54) on the role of the CMR. The Study, entitled "The Commercial Marketing Representatives Role Needs To Be Strategically Planned and Assessed" concluded that SBA should seek ways to strengthen the position of CMRs. One of the most important functions of CMRs is to assist prime contractors to understand and comply with the requirements of the subcontracting assistance program. Over time, SBA has found that it is preferable to familiarize a prime contractor with the requirements at the time it receives its first contract requiring a subcontracting plan, than to wait until the time of the compliance review. This avoids misunderstandings and other problems that may result in marginal and Unsatisfactory ratings.

SBA has developed the Subcontracting Orientation and Assistance Review (SOAR) to implement this concept. This proposal incorporates the SOAR into SBA's regulations. Section 125.3(e) describes the CMRs responsibilities in conducting SOARS to assist prime contractors in understanding and complying with the requirements under the subcontracting assistance program.

SBA also proposes to add a new § 125.3(f) to address SBA's approach to conducting compliance reviews of prime contractors with subcontracting plans. This section provides the procedures for conducting on-site compliance reviews and follow-up reviews and validation of the SF-295, Summary Subcontract Report, and SF-294, Subcontracting Report for Individual Contracts. The proposed § 125.3(f) further describes the existing rating process and the different procedures for conducting compliance reviews of prime contractors under a commercial plan. This section also indicates that SBA is authorized to enter into agreements with other Federal agencies and entities to conduct compliance reviews and otherwise further the objectives of the subcontracting program. SBA has entered into one such agreement with the Defense Contracts Management Agency under a Memorandum of Understanding dated May 9, 2003.

Finally, in response to comments to SBA's proposed bundling rule published on January 31, 2003 (68 FR 5134), SBA proposes to add a new § 125.3(g) to address the use of subcontracting plans as an evaluation factor. Several commenters urged that SBA explore incentives that would reward large prime contractors for their subcontracting opportunities and