

achievements. In response to those comments, the proposed § 125.3(g) authorizes contracting officials to use subcontracting plans as an evaluation factor in the award of task orders and delivery orders under Federal Supply Schedules, Government-wide acquisition contracts, and multi-agency contracts. Specifically, the section allows contracting officers to consider the proposed subcontracting goals for the specific requirement and the contractor's past performance in meeting its subcontracting goals in previous contracts.

C. Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act

OMB has determined that this rule is a significant regulatory action under Executive Order 12866. The proposed rule revises the SBA regulation governing small business subcontracting assistance to define good-faith effort. For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order. For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment. For purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA determines that this proposed rule imposes no new reporting or recordkeeping requirements.

SBA certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule does not impose any new substantive responsibilities, nor does it require any new reporting or recordkeeping requirements. Instead, this proposed rule clarifies the existing statutory responsibilities under the subcontracting assistance program, including the responsibilities of prime contractors to maximize small business subcontracting opportunities. It also provides guidance to government officials in monitoring and determining the achievements of subcontracting goals. Accordingly, the proposed rule is primarily procedural in nature and therefore would not have a significant economic impact on small entities. As a result, no initial regulatory flexibility analysis is required under 5 U.S.C. 605(b).

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, and Technical assistance.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 125 as follows:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

1. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701 and 9702.

2. Revise § 125.3 to read as follows:

§ 125.3 Subcontracting assistance.

(a) *General.* The purpose of the subcontracting assistance program is to provide the maximum practicable subcontracting opportunities for small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The subcontracting assistance program implements section 8(d) of the Small Business Act, which includes the requirement that other-than-small firms awarded contracts that offer subcontracting possibilities by the Federal Government in excess of \$500,000, or in excess of \$1,000,000 for construction of a public facility, must submit a subcontracting plan to the contracting agency. The Federal Acquisition Regulation sets forth the requirements for subcontracting plans in 48 CFR 19.7, and the clause at 48 CFR 52.219–9.

(b) *Responsibilities of prime contractors.* (1) Prime contractors (including small business prime contractors) selected to receive a Federal contract that exceeds the simplified acquisition threshold, that will not be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and that is not for services which are personal in nature, are responsible for ensuring that small business concerns have the maximum practicable opportunity to participate in the performance of the contract, including subcontracts for subsystems, assemblies, components, and related services for major systems,

consistent with the efficient performance of the contract;

(2) Efforts to provide the maximum practicable subcontracting opportunities for small business concerns include:

(i) Breaking out contract work items into economically feasible units, as appropriate, to facilitate small business participation;

(ii) Conducting market research to identify small business subcontractors and suppliers through all reasonable means, such as performing on-line searches on SBA's PRO-Net, posting Notices of Sources Sought and/or Requests for Proposal on SBA's SUB-Net, and attending pre-bid conferences;

(iii) Soliciting small business concerns as early in the acquisition process as practicable to allow them sufficient time to submit a timely offer for the subcontract;

(iv) Providing interested small businesses with adequate and timely information about the plans, specifications, and requirements for performance of the prime contract to assist them in submitting a timely offer for the subcontract;

(v) Negotiating in good faith with interested small businesses;

(vi) Directing small businesses that need additional assistance to SBA;

(vii) Assisting interested small businesses in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services; and

(viii) Utilizing the available services of small business associations; local, state, and Federal small business assistance offices; and other organizations.

(c) *Additional responsibilities of large prime contractors.* (1) In addition to the responsibilities provided in paragraph (b) of this section, a prime contractor 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, is responsible for:

(i) Submitting and negotiating before award an acceptable subcontracting plan that reflects maximum practicable utilization of small businesses in the performance of the contract as subcontractors or suppliers. A prime contractor may submit a commercial plan, described in paragraph (c)(2) of this section, instead of an individual subcontracting plan, when the product or service being furnished to the Government meets the definition of a commercial item under 48 CFR 2.101;

(ii) Making a good-faith effort to achieve the dollar and percentage goals and other elements in its subcontracting plan;