

assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of the information collection may be obtained from Timothy Murray at the address shown above.

### Regulatory Flexibility Act

On January 26, 1995, FSA published a final rule that established program requirements for the End-Use Certificate Program. A copy of this Regulatory Flexibility Analysis is available upon request from Timothy Murray, Warehouse and Inventory Division, FSA, STOP 0553, 1400 Independence Avenue, Washington, DC 20250-0553; telephone (202) 690-4321.

Because these changes will not have an adverse impact on a substantial number of small businesses, a Regulatory Flexibility Assessment is not required.

### Background

This proposal will amend the regulations at 7 CFR Part 782 with respect to the U.S. End-Use Certificate Program. Since February 27, 1995, the effective date for the implementation of the End-Use Certificate Program, several items have been identified that could improve the effectiveness and the efficiency of the End-Use Certificate Program. To further ensure that Canadian wheat does not benefit from U.S. export programs, End-Use Certificates will include distinguishing characteristics of grade, protein content, moisture content, dockage and date of sale in addition to the class and/or varietal information currently collected for each shipment. These additional data are deemed necessary because imported wheat may benefit from U.S. export programs even if the imported wheat itself is not directly eligible for use under such programs. Such benefit may accrue if wheat of the type or quality used under U.S. export programs (including humanitarian assistance programs) is imported into the United States in anticipation of, or as a result of use of a similar type or quality of U.S. wheat under the U.S. program. Indeed, the Department of Agriculture is frequently implored not to take action to facilitate sales of U.S. wheat out of a concern that such sales will only encourage off-setting imports of Canadian wheat. The proposed rule will provide necessary information to

monitor for such an occurrence and potentially allow appropriate actions to minimize such an occurrence. In addition, these additional data will help facilitate effective program audits while minimizing the burden on importers of Canadian wheat.

FSA also proposes to replace the current definition used for "Importer" found at 7 CFR 782.2 with the same definition used by the U.S. Customs Service and found at 19 U.S.C. 1484(a).

The U.S. Customs Service has informed the Department of Agriculture officials that it will be amending the provisions of their basic import bond to allow for the assessment of damages if there is a failure to provide the End-Use Certificate in the time period provided by FSA.

### List of Subjects in 7 CFR Part 782

Administrative practice and procedure, Barley, Reporting and recordkeeping requirements, Wheat.

Accordingly, it is proposed that 7 CFR part 782 be amended as follows:

### PART 782—END-USE CERTIFICATE PROGRAM

1. The authority citation for part 782 continues to read as follows:

**Authority:** 19 U.S.C. 3391(f).

2. Amend § 782.2 to revise the definition for "Importer" to read as follows:

#### § 782.2 Definitions.

\* \* \* \* \*

*Importer* means a party qualifying as an Importer of Record pursuant to 19 U.S.C. 1484(a).

\* \* \* \* \*

3. Amend § 782.12(a) as follows:

A. Revise the first sentence to read as follows:

"Each entity that imports wheat originating in Canada shall, for each entry into the U.S., obtain form FSA-750, End-Use Certificate for Wheat, from Kansas City Commodity Office, Warehouse Contract Division, P.O. Box 419205, Kansas City, MO 64141-6205, and submit the completed original form FSA-750 to KCCO within 10 workdays following the date of entry or release."

B. Redesignate paragraphs (a)(6) through (a)(9) as paragraphs (a)(8) through (a)(11), and add new paragraphs (a)(6) and (a)(7) to read as follows:

#### § 782.12 Filing FSA-750, End-Use Certificate for Wheat.

(a) \* \* \*

(6) Grade, protein content, moisture content, and dockage level of wheat being imported,

(7) Date of sale,

\* \* \* \* \*

Signed at Washington, DC, on January 8, 1999.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

[FR Doc. 99-798 Filed 1-11-99; 10:02 am]

BILLING CODE 3410-05-P

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Parts 121 and 125

### Government Contracting Programs

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) proposes to add regulatory language addressing contract bundling, due to changes set forth in sections 411-417 of the Small Business Reauthorization Act of 1997 (Public Law 105-135). In addition, this rule restates SBA's current authority to appeal to the head of a procuring agency, decisions made by the agency that SBA believes to adversely affect small businesses. The statutory amendments recognize that the consolidation of contract requirements may be necessary and justified, in some cases, but require that each Federal agency, to the maximum extent practicable, take steps to avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation as prime contractors as well as to eliminate obstacles to small business participation as prime contractors. Section 414 of Public Law 105-135 requires that the Federal Procurement Data System (FPDS) be modified to collect data regarding bundling of contracts when a contracting officer anticipates that the resulting contract price will exceed \$5 million, including options. The SBA will confer with the Federal Procurement Data Center and analyze the data reported in the FPDS on all bundled contracts expected to exceed \$5 million in order to determine the impact on small business resulting from contract bundling and generate a report on the extent to which individual agencies are engaging in the practice of contract bundling.

**DATES:** Submit comments on or before March 15, 1999.

**ADDRESSES:** Address comments concerning this proposed rule to Judith Roussel, Associate Administrator for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Mail Code 6250, Washington, DC, 20416.

**FOR FURTHER INFORMATION CONTACT:**

Anthony Robinson, Office of Government Contracting, (202) 205-6465.

**SUPPLEMENTARY INFORMATION:** Section 15(a) of the Small Business Act, 15 U.S.C. 644(a), authorizes SBA to appeal to the head of a procuring agency certain decisions made by the agency that SBA believes to adversely affect small businesses, including proposed procurements that include "goods or services currently being performed by a small business" and which are in a "quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely." Section 413(b)(1) of Pub. L. 105-135 added an appeal right to section 15(a) of the Small Business Act for "an unnecessary or unjustified bundling of contract requirements." It left intact, however, SBA's current appeal rights. In this regard, the Joint Explanatory Statement of the bundling provisions contained in Public Law 105-135 as set forth in the Congressional Record specifically provided that "[n]othing in [the bundling amendments] is intended to amend or change in any way the existing obligations imposed on a procuring activity or the authority granted to the Small Business Administration under section 15(a) of the Small Business Act." 143 Cong. Rec. S11522, S11526 (daily ed. Oct. 31, 1997).

Consistent with the statutory amendments, this rule defines "bundling," identifies the circumstances under which such "bundling" may be necessary and justified, and permits SBA to appeal bundling actions that it believes to be unnecessary and unjustified to the head of the procuring agency. It also authorizes two or more small businesses to form a contract team and for that team to be considered a small business for purposes of a bundled procurement requirement, provided that each small business partner to the teaming arrangement individually qualifies as a small business under the SIC code for the requirement. Finally, the rule restates SBA's current authority to appeal to the head of an agency other procurement decisions made by procuring activities that SBA believes will adversely affect small business.

The rule reorganizes and amends 13 CFR 125.2 to more clearly explain SBA's current rights under section 15(a) of the Small Business Act. The rule sets forth a procuring activity's current responsibilities to submit a proposed procurement to SBA for review

whenever the procurement includes in its statement of work, goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely. It also requires a procuring activity to submit a proposed procurement to SBA for review where a proposed procurement for construction seeks to package or consolidate discrete construction projects. In addition it authorizes SBA to appeal disagreements over the suitability of a particular acquisition for a small business set-aside first to the head of the contracting activity, and then to the head of the agency. This authority is currently granted to SBA by section 15(a) of the Small Business Act and was not affected by the addition of new rights regarding "bundling." This rule does not apply to contracts to be *awarded and performed* entirely outside the United States.

In implementing the new statutory bundling provisions, the rule also requires a procuring activity to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work "bundled" requirements, and authorizes SBA to appeal to the head of the contracting activity, and then to the head of the agency, "bundled" requirements that SBA believes not to be necessary and justified. Whenever the procurement includes in its statement of work a "substantial bundling" of contract requirements, Section 15(a)(3) of the Small Business Act requires that the procuring activity must document that the benefits to be derived from the bundled contract justify its use.

The Small Business Act does not define "substantial bundling." SBA seeks public comments on appropriate ways to define substantial bundling (e.g., in terms of a threshold contract value, or a threshold number of geographic locations and SIC codes).

The rule defines what "measurably substantial benefits" are for purposes of determining whether bundling is necessary and justified. The rule defines "measurably substantial benefits" to include, in any combination, or in the aggregate, cost savings; quality improvements that will save time, improve or enhance performance or efficiency; reduction in acquisition cycle times; better terms and conditions; or any other quantifiably substantial benefits. In assessing whether cost savings would be achieved through bundling, the analysis must compare the cost that has been charged by small businesses for the work that they have

performed and, where available, the cost that could have been or could be charged by small businesses for the work not previously performed by small business. In order to proceed with a bundled procurement a procuring activity must quantify the identified benefits and explain how their impact would be substantial.

The statute recognizes that in some circumstances bundling should be permitted because of the benefits that flow to the Government because of it. Congress has made a determination that those benefits overcome any impact on small business in certain circumstances. However, it is also clear from the statutory language requiring contracting officers to demonstrate "measurably substantial benefits" and from the Joint Explanatory Statement cited above that Congress intends that meaningful controls should be in place that are capable of enforcement to preclude unnecessary and unjustified bundling. Pursuant to the statute, there are two requirements that must be satisfied. The benefits to be derived by the Government must be "measurable" and they must be "substantial." In order to be "measurable," the benefits must be quantifiable. Pursuant to the statutory language, however, quantifiable benefits are not sufficient to justify bundling unless they are also "substantial." As an example, OMB Circular A-76 sets forth a measure of substantial savings when determining whether the government will convert to or from in-house or contracted performance of certain commercial support activities. SBA is committed to developing objective and quantifiable criteria for determining when a consolidation of procurements will provide "measurably substantial benefits," and, thus, when bundling will be necessary and justified.

The proposed regulation identifies areas in which there may be "measurably substantial benefits," including cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, or better terms and conditions. The proposed rule does not however, set forth specific criteria for measuring whether these benefits or improvements, which are to be derived, are "substantial." SBA specifically requests comments on appropriate measurements that PCRs may use to gauge whether or not a benefit is "substantial."

The proposed regulation also reiterates the statutory requirement that the reduction of administrative or personnel costs alone cannot be a justification for bundling unless the

administrative or personnel costs are expected to be "substantial" in relation to the dollar value of the procurement (including options) to be consolidated. In determining whether the reduction of administrative or personnel costs are "substantial," the statute clearly requires a comparison between the administrative or personnel costs without bundling to those anticipated with bundling. As with defining substantial benefits, SBA is committed to implementing a quantifiable test for determining whether administrative or personnel cost savings are expected to be "substantial." SBA specifically requests comments on how best to define "substantial" administrative or personnel cost savings.

SBA is concerned that bundled contracts will render small business participation as prime contractors unlikely. SBA has proposed in § 125.2(b)(5), that its Procurement Center Representatives (PCR), in recommending alternative procurement methods to agencies, include, under appropriate circumstances, (1) breaking up the procurement into smaller discrete procurements to render them suitable for small business set-asides; (2) breaking out discrete components, where practicable, to be set aside for small business; or (3) when issuing multiple awards against a single solicitation, reserving one or more awards for small companies. SBA invites the public to offer suggestions on other creative strategies which may enhance small business participation as prime contractors.

**Compliance With Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)**

SBA certifies that this rule, if adopted in final form, would not be a significant rule within the meaning of Executive Order 12866. The rule does not impose costs upon the businesses which may be affected by it. It is not likely to have an annual economic impact of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

SBA has determined that this rule may have a significant beneficial economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. SS 601-612. The proposed rule can potentially apply to all small businesses that are performing or may want to perform on the prime contract opportunities of the Federal Government. In Fiscal Year 1996, all

categories of small businesses were responsible for 314,965, or 68 percent, of the total number of contract actions in excess of \$25,000. While there is no precise estimate of the number of small entities or the extent of the economic impact, SBA believes that a significant number of small businesses would be affected. SBA has submitted a complete Initial Regulatory Flexibility Analysis of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration. For a copy of this analysis, please contact Anthony Robinson at (202) 205-6465.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required on the Government by law.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

**List of Subjects**

*13 CFR Part 121*

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

*13 CFR Part 125*

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

For the reasons set forth above, SBA proposes to amend Title 13, Code of Federal Regulations (CFR), as follows:

**PART 121—[AMENDED]**

1. The authority citation for 13 CFR part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103-403, 108 Stat. 4175, 4188.

2. Section 121.103 is amended by revising paragraph (f)(3)(i) to read as follows:

**§ 121.103 What is affiliation?**

\* \* \* \* \*

(f) *Affiliation based on joint venture arrangements.* \* \* \*

(3) *Exclusion from affiliation.* (i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for

a Federal procurement without regard to affiliation under paragraph (f) of this section so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(A) The procurement qualifies as a "bundled" requirement, at any dollar value, within the meaning of § 125.2(d)(1)(i) of this chapter; or

(B) The procurement is other than a "bundled" requirement within the meaning of § 125.2(d)(1)(i) of this chapter, and:

(1) For a procurement having a revenue-based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(2) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds \$10 million.

\* \* \* \* \*

**PART 125—[AMENDED]**

3. 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, 9702.

4. Section 125.2 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, by revising newly designated paragraph (b), and by adding new paragraphs (a) and (d) to read as follows:

**§ 125.2 Prime contracting assistance.**

(a) *General.* Small business concerns must receive any award or contract, or any contract for the sale of Government property, that SBA and the procuring or disposal agency determine to be in the interest of:

(1) Maintaining or mobilizing the Nation's full productive capacity;

(2) War or national defense programs;

(3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or

(4) Assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(b) *PCR and procuring activity responsibilities.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set aside for small businesses to determine whether a set-aside is appropriate.

(2) A procuring activity must provide a copy of a proposed acquisition

strategy (e.g., Department of Defense Form 2579, or equivalent) to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance whenever a proposed acquisition strategy:

(i) Includes in its description goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely;

(ii) Seeks to package or consolidate discrete construction projects; or

(iii) Meets the definition of a bundled requirement as defined in paragraph (d)(1)(i) of this section.

(3) Whenever any of the circumstances identified in paragraph (b)(2) of this section exist, the procuring activity must also submit to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) a written statement explaining why:

(i) If the proposed acquisition strategy involves a bundled requirement, the procuring activity believes that the bundled requirement is necessary and justified under the analysis required by paragraph (d)(3)(iii) of this section; or

(ii) If the description of the requirement includes goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects,

(A) The proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement;

(B) Delivery schedules cannot be established on a basis that will encourage small business participation;

(C) The proposed acquisition cannot be offered so as to make small business participation likely; or

(D) Construction cannot be procured as separate discrete projects.

(4) In conjunction with their duties to promote the set-aside of procurements for small business, PCRs will identify small businesses that are capable of performing particular requirements, including teams of small business concerns for larger or bundled

requirements (see § 121.103(f)(3) of this chapter).

(5)(i) If a PCR believes that a proposed procurement will render small business prime contract participation unlikely, or if a PCR does not believe a bundled requirement to be necessary and justified, the PCR may recommend to the procurement activity alternative procurement methods which would increase small business prime contract participation. Such alternatives may include:

(A) Breaking up the procurement into smaller discrete procurements;

(B) Breaking out one or more discrete components, for which a small business set-aside may be appropriate; and

(C) When issuing multiple awards under task order contracts, reserving one or more awards for small companies.

(ii) Where bundling is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small business prime contract participation to the maximum extent practicable.

(6) In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, whether or not the acquisition is a bundled or substantially bundled requirement within the meaning of paragraph (d) of this section, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the secretary of the department or head of the agency. The time limits for such appeals are set forth in 19.505 of the Federal Acquisition Regulation (FAR) (48 CFR 19.505).

(7) PCRs will work with a procuring activity's Small and Disadvantaged Business Utilization Specialist (SADBUS) to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SADBUS and PCR will facilitate small business participation as subcontractors or suppliers.

\* \* \* \* \*

(d) *Contract bundling*—(1) *Definitions*—(i) *Bundled requirement or bundling*. The term "bundled requirement or bundling" refers to the consolidation of two or more

procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to—

(A) The diversity, size, or specialized nature of the elements of the performance specified;

(B) The aggregate dollar value of the anticipated award;

(C) The geographical dispersion of the contract performance sites; or

(D) Any combination of the factors described in paragraphs (d)(1)(i) (A), (B), and (C).

(ii) *Separate smaller contract*: A separate smaller contract is a contract that has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.

(2) *Requirement to foster small business participation*: The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers in the contracting opportunities of the Government. To comply with this requirement, agency acquisition planners must:

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small disadvantaged, 8(a) and women-owned business concerns; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

(3) *Requirement for market research*.

(i) In addition to the requirements of paragraph (b)(2) of this section and before proceeding with an acquisition strategy that could lead to a contract containing bundled or substantially bundled requirements, an agency must conduct market research to determine whether bundling of the requirements is necessary and justified. During the market research phase, the acquisition team should consult with the applicable PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(ii) The procuring activity must notify each small business which is performing a contract that it intends to consolidate that requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the bundled or substantially bundled requirement. The procuring activity, at that time, should

also provide to the small business the name, phone number and address of the applicable SBA PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(iii) When the procuring activity intends to proceed with an acquisition involving bundled or substantially bundled procurement requirements, it must document the acquisition strategy to include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency's requirements through separate smaller contracts.

(A) The procuring activity may determine a consolidated requirement to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not consolidated, it would derive measurably substantial benefits. The procuring activity must quantify the identified benefits and explain how their impact would be substantial. Measurably substantial benefits include any one, or more, of the following in any combination, or in the aggregate:

(1) Cost savings and/or price reduction;

(2) Quality improvements that will save time or improve or enhance performance or efficiency;

(3) Reduction in acquisition cycle times;

(4) Better terms and conditions; or

(5) Any other quantifiably substantial benefits.

(B) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the administrative or personnel cost savings are expected to be substantial, in relation to the dollar value of the procurement to be consolidated (including options).

(C) In assessing whether cost savings and/or a price reduction would be achieved through bundling, the procuring activity and SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

(4) *Substantial bundling.* Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed

bundled contract justify its use, and must include, at a minimum:

(i) The analysis for bundled requirements set forth in paragraph (d)(3)(iii) of this section;

(ii) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(iii) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement; and

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

(5) *Significant subcontracting opportunity.* (i) Where a bundled or substantially bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in evaluating offers:

(A) A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and

(B) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(ii) Where the offeror for such a bundled contract qualifies as a small business concern, the procuring agency must give to the offeror the highest score possible for the evaluation factors identified in paragraph (d)(5)(i) of this section.

5. Section 125.6 is amended by adding the following new paragraph (g) at the end thereof:

**§ 125.6 Prime contractor performance requirements (limitations on subcontracting).**

\* \* \* \* \*

(g) Where an offeror is exempt from affiliation under § 121.103(f)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the team or joint venture, not its individual members.

Dated: December 22, 1998.

**Aida Alvarez,**  
Administrator.

[FR Doc. 99-560 Filed 1-12-99; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-CE-56-AD]

RIN 2120-AA64

#### Airworthiness Directives; Ayres Corporation S2R Series and Model 600 S2D Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede Airworthiness Directive (AD) 97-17-03, which currently requires inspecting the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking on Ayres S2R series and Model 600 S2D airplanes, and replacing any lower spar cap where fatigue cracking is found. That AD resulted from an accident on an Ayres S2R series airplane where the wing separated from the airplane in flight. The proposed AD would retain the initial inspection and possible replacement requirements of AD 97-17-03, would require the inspections to be repetitive, would add certain Ayres airplanes to the Applicability of the AD, would change the initial compliance time for all airplanes, and would arrange the affected airplanes into four groups instead of three based on usage and configurations. The actions specified by the proposed AD are intended to detect fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

**DATES:** Comments must be received on or before March 15, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-56-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706-3090. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Satish Lall, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office,