

Service/Agency for this Policy

The Defense Contracting Management Agency (DCMA)

Suggested Language

Part A – improvements to the CPSR

10 USC §2319a. Encouragement of new competitors: Small Business Access to the Contractor Purchasing System Review process

(a) In this section, the term “Contractor Purchasing System Review (CPSR)” is the comprehensive review of a contractor’s system for management and administration of their federal supply chain conducted in accordance with FAR Part 44.3 and DFARS 252.244-7001.

In this section, the term "CPSR qualification requirement" means a requirement for purchasing system approval in accordance with FAR Part 44.3 and DFARS 252.244-7001 that must be obtained by an offeror before award of a contract.

In this section, the term “Purchasing System Desk Review (PSDR)” means a purchasing system review that meets the requirements and objectives of FAR Part 44.3 and DFARS 252.244-7001(c) but does not conclude with purchasing system approval in accordance with FAR 44.305-2 or disapproval in accordance with FAR 44.305-3 and DFARS 252.244-7001(d)(3)(iii). PSDRs will be specifically conducted on a limited remote basis with the explicit intent of qualifying small businesses for access to the contract bid and proposal process. Successful completion of the PSDR process results in an authorization for the offeror to proceed with the bid and proposal process but does not qualify as purchasing system approval.

In this section, the term “small business” means any contractor who does not meet the federal funding threshold applicable to Contractor Purchasing System Reviews (CPSR) set forth in FAR 44.302 and/or DFARS 244.302, regardless of their actual business size or classification.

(b) The head of the agency and its contracting officers shall, when establishing a CPSR qualification requirement-

(1) prepare a written justification stating the necessity for establishing the CPSR qualification requirement and specify why the CPSR qualification requirement must be demonstrated before contract award;

(2) publish a formal request for information regarding the CPSR qualification requirement in a timely manner and in general accordance with FAR 10.002(b)(2)(iii) that: (A) provides clear notice of the CPSR qualification requirement to all potential offerors;

(B) notifies potential offerors of the availability and general requirements of the PSDR process;

(C) notifies potential offerors of the availability of support during the development of offeror purchasing system via the Mentor Protégé Small Business Purchasing System Development Initiative; and

(D) includes a requirement that offeror delivery of all requested documents and other artifacts during the CPSR qualification process must be maintained and provided in electronic format.

(3) ensure that potential offerors deemed eligible for PSDR in accordance with the considerations set forth in subsection (c) are provided a prompt opportunity to participate in either a PSDR or a comprehensive CPSR, conducted by the Defense Contract Management Agency (DCMA), prior to or during the bid and proposal process but in all cases prior to award of the subject contract; and

(4) ensure that a potential small business offeror seeking purchasing system qualification is promptly informed as to whether such qualification is attained and, in the event that qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c) When determining eligibility for participation in the PSDR process, small business offerors shall (1) meet the general requirements for responsibility set forth in FAR Part 9 generally;

(2) submit a complete and certified copy of SF1408A, entitled “Pre-award Survey of Prospective Contractor Purchasing System” within the time frame established by the Contracting Officer;

(3) submit evidence of participation in the Mentor Protégé Small Business Purchasing System Development Initiative (if available) within the time frame established by the Contracting Officer; and

(4) maintain eligibility for participation in both the contact bid and proposal process generally and the PSDR process specifically through award of the contract.

(d)(1) After contract award, contracting officers will coordinate with DCMA to ensure that all small businesses receiving awards as a result of a PSDR receive a comprehensive CPSR in full accordance with DFARS 252.244-7001 and FAR 44.3 within 18 months of contract award.

(2) The cognizant Administrative Contracting Officer (ACO) will coordinate with the cognizant Procuring Contracting Officer (PCO) prior to a final determination of purchasing system disapproval in accordance with DFARS 252.244-7001(d)(3)(iii).

(3) The contracting officer may, at their sole discretion, take appropriate measures to mitigate financial and performance risk in the event of a final determination of purchasing system disapproval, including but not limited to withholding payments in accordance with DFARS 252.244-7001(f) and DFARS 252.242-7005(e) and/or termination of the contract for convenience.

Part B – Improvements to the Mentor-Protégé Program

Proposed Revisions to Section 831 of PL 101-510

(b) PURPOSE, insert the following text at the end of the subsection:

(1) Small Business Purchasing System Development Initiative: The purpose of the Small Business Purchasing System Development Initiative is to provide small business offerors the opportunity to support Department of Defense mission objectives via large agency contract vehicles while substantially mitigating the general cost and quality risks associated with contractor supply chain performance.

(d) MENTOR FIRM ELIGIBILITY, insert the following text at the end of the subsection:

(3) for participation in the Small Business Purchasing System Initiative, the mentor certifies and provides evidence that the mentor currently administers an acceptable purchasing system that has been approved during at least two (2) consecutive Contractor Purchasing System Reviews conducted in accordance with FAR 44.3 and DFARS 252.244-7001(c).

(f) FORMS OF ASSISTANCE:

Revise (1) to read as follows: “Assistance, by using mentor firm personnel and resources, in –

Add the following text at the end of (f)(1):

(D) Mentors participating in the Small Business Purchasing System Development Initiative shall also provide specific support to the protégé in the development of their contractor purchasing system, including but not limited to policy and procedure development, file development, internal review program development, evaluation and validation of purchasing system output, and training.

(g) INCENTIVES FOR MENTOR FIRMS, insert the following text at the end of the subsection:

(5) A mentor firm participating in the Small Business Purchasing System Development Initiative shall receive the following incentives in addition to those included in (1)-(4) of this subsection: (A) the Mentor will receive credit towards the attainment of subcontract participation goals applicable to such mentor firm for revenue awarded to the Protégé as the direct result of Protégé participation in the Purchasing System Desk Review (PSDR) process. Such credit will be applied until either (i) the protégé gains purchasing system approval during two (2) consecutive CPSRs; or (ii) the Contracting Officer withdraws approval of the protégé purchasing system during the term of the Mentor Protégé Agreement, whichever occurs first.

(B) If the mentor firm and the protégé are performing as prime contractors under the same contract vehicle, the mentor firm will receive a one-step increase (e.g. “Average” to “Above Average”) on any evaluation criteria related to Small Business Participation applied to task order awards under that shared contract vehicle. In the event the mentor firm has received the maximum score on any such criteria, the one-step increase can be applied by the Contracting Officer to any other non-performance-based evaluation criteria applied to the award.

Part C – Proposed Report Language to accompany legislative text

PROVIDING NONTRADITIONAL CONTRACTORS EXPEDITED ACCESS TO THE CONTRACTOR PURCHASING SYSTEM REVIEW (CPSR) PROCESS

The Committee recognizes the overarching importance of the Department’s ongoing efforts to both control contractor supply chain costs during the acquisition process and ensure that only qualified offerors are awarded prime contracts for support of the Department’s information technology (IT) needs. The Committee therefore understands why, as part of these efforts to apply cost controls throughout multiple phases of the acquisition process, offeror maintenance of an approved purchasing system via the CPSR process has effectively become a pre-requisite for performance as a prime contractor under major acquisition vehicles administered and/or funded by the Department. While the Committee commends the Department’s use of existing regulatory mechanisms to ensure the efficient and effective expenditure of taxpayer monies, we are also concerned that the use of the CPSR process (which was originally created for the surveillance of large manufacturing concerns and whose review process has not been materially updated in more than 30 years) as a cost control and risk mitigation mechanism has the unintended effect of prohibiting otherwise qualified small businesses and other nontraditional contractors from participating as prime contractors under Department-funded acquisition vehicles. In particular, the Committee notes that the CPSR process cannot be initiated per regulation until a contractor receives at least \$50M in federal funding in the previous year, which prohibits literally tens of thousands of small businesses and commercial IT firms (many of whom are at the forefront of developing emerging and next generation technologies such as Artificial Intelligence) from participation as a prime contractor on major Department-funded acquisition vehicles. In addition the Committee is concerned that the Defense Contract Management Agency’s (DCMA) pervasive but nevertheless informal requirement that all CPSRs are performed onsite or “in plant,” even when the contractor is an IT service provider with no production lines or manufacturing capabilities, requires significant funding for government personnel travel without identifiable benefit to the Department.

To address these concerns while encouraging continued Departmental use of the CPSR process to mitigate cost and performance risks associated with contractor supply chains, the Committee has implemented 10 U.S.C. 2319A, entitled “Encouragement of New Competitors: Small Business Access to the Contractor Purchasing System Review Process,” which creates the Purchasing System Desk Review (PSDR) initiative. The intent of the PSDR initiative, which is closely modeled after the existing pre-award survey of contractor accounting systems via Standard Form 1408, is to reduce administrative burdens on qualified nontraditional contractors by providing an on-ramp to eventual purchasing system approval during the proposal process for new and current Department-funded acquisition vehicles. In addition, the Committee has updated the existing Mentor-Protégé Program to provide qualified large businesses with practical incentives to support the PSDR initiative and its objective of drastically increasing the participation of nontraditional contractors as prime contractors on major Defense-funded IT acquisition vehicles.

In order to efficiently implement the PSDR initiative in a timely manner, the Director, DCMA, is directed to provide an implementation plan for initiation of a PSDR pilot program in Fiscal Year 2021 no later than 60 days from the enactment of this Act. In addition, the Committee directs the Director, DCMA, to provide an analysis of potential cost savings derived from the performance of remote CPSRs on contractors who primarily report under North American Industry Classification System (NAICS) codes for service providers. This analysis, which will be provided no later than 30 days from enactment of this Act, will also provide an initial plan for DCMA performance of CPSRs of IT and engineering service providers on a remote basis using existing technologies widely available to the government and commercial markets. The intent of the Committee is to reallocate excess travel funding identified during this analysis to personnel increases required by the Director, DCMA’s PSDR pilot program implementation plan.

Budget Implications

Due to the outdated requirements that the CPSR process must be conducted on-site, DCMA spends nearly half of its annual budget for performance of CPSRs on travel costs. While this may have made sense given the original CPSR focus on manufacturers and the previous lack of now-common audits and reviews for surveillance of manufacturing lines, raw materials and working conditions (including Material Management and Accounting, Property, and Quality Assurance), it no longer makes sense to expend travel funds for the inspection of IT service contractors when those reviews are generally conducted via email and conference call even when DCMA sends personnel onsite. Given that IT contracts now account for a large percentage of DoD’s annual contracts as well as the vast majority of today’s (as well as tomorrow’s) CPSRs, DCMA is (by its own admission) effectively wasting as much as half of the budget currently allotted to CPSRs with costs that provide no benefit to the taxpayer, the contractor, or DCMA itself.

By initiating remote PSDRs and CPSRs for IT service contractors, shifting current funding from travel, and using those funds to hire additional analysts (FSCMO estimates 10-20 new analysts, GS-11 – 14, would be optimal for implementation of a pilot program that will offer the PSDR process to 100-150 small and innovative businesses in its first year), DoD will be able to increase its access to small businesses as prime contractors while simultaneously increasing retention for DCMA employees and maintaining the high standards that our military demands, all at no additional cost to the American taxpayer.