



Federal Register

**Friday,
January 31, 2003**

Part V

Department of Defense General Services Administration National Aeronautics and Space Administration Small Business Administration

**13 CFR Part 125 and 48 CFR Parts 2, 7,
et al.**

**Small Business Government Contracting
Programs; Federal Acquisition Regulation;
Contract Bundling; Proposed Rules**

SMALL BUSINESS ADMINISTRATION**13 CFR Part 125**

RIN: 3245-AF07

Small Business Government Contracting Programs**AGENCY:** Small Business Administration (SBA).**ACTION:** Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its regulations governing small business prime contracting assistance, to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled "Contract Bundling, A Strategy for Increasing Federal Contracting Opportunities for Small Businesses." The proposed changes would: revise the definition of bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracting vehicles; require procuring activities to coordinate with the Small Business Specialist (SBS) proposed acquisition strategies or plans contemplating award of a contract or order above specified dollar thresholds and require the SBS to notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary, unjustified, or not identified as such by the procuring activity; reduce the threshold and revise the documentation required for "substantial bundling;" require contracting officers to provide bundling justification documentation to the agency OSDBU when "substantial bundling" is involved; and require agency OSDBUs to perform certain oversight functions.

DATES: Comments must be received on or before April 1, 2003.**ADDRESSES:** Send Comments to Linda G. Williams, Associate Administrator for Government Contracting, 409 Third Street, SW., Mail Code 6530, Washington, DC, 20416, by email to dean.koppel@sba.gov, or by facsimile to (202) 205-6390. Upon request, SBA will make all public comments available.**FOR FURTHER INFORMATION CONTACT:** Dean Koppel, Assistant Administrator, Office of Policy and Research, by telephone at (202) 401-8150, or by email at dean.koppel@sba.gov.**SUPPLEMENTARY INFORMATION:****A. Background**

On March 19, 2002, the President unveiled a Small Business Agenda that proposed several substantive steps toward creating a dynamic environment

where small businesses and entrepreneurs can flourish. Included in the President's plan were several proposals designed to improve the access of small businesses to Federal contracting opportunities. Among other things, the President called upon the Office of Management and Budget (OMB) to prepare a strategy for unbundling Federal contracts.

Contract bundling is defined in Section 3(o) of the Small Business Act to mean the consolidation of two or more requirements for goods and services into a single procurement that is "unlikely to be suitable for award to a small business concern." 15 U.S.C. 632(o). Over the past decade, the number and size of bundled contracts have increased sharply and have resulted in a dramatic decline in small business Federal contracting opportunities.

In response to the President's call for a strategy to unbundle contracts, the Office of Federal Procurement Policy (OFPP), within OMB, created an interagency working group to develop a plan for increasing contracting opportunities for small businesses. As part of the working group's efforts, OFPP published a notice in the **Federal Register** soliciting public comments and held a public meeting on June 14, 2002, to provide interested parties an opportunity to express their views on contract bundling. By the end of the comment period, OFPP received 27 public comments and 14 individual presentations at the June 14 public meeting.

Based on the working group's analysis of available data and information, including the public comments received in writing and at the June 14, 2002, public meeting, OMB issued a report in October 2002, entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." See <http://www.acqnet.gov/Notes/contractbundlingreport.pdf> or <http://www.acqnet.gov/>. The report cites data indicating that for every 100 "bundled" contracts, 106 individual contracts are no longer available to small businesses. See OMB Report at 3. The report also notes that for every \$100 awarded on a "bundled" contract, there is a \$33 decrease to small businesses. *Id.*

To address the harmful effects of contract bundling on the Nation's small businesses, OMB's report offers a 9-point action item plan designed to hold agencies accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling. Several of these action items, such as the action items

calling for greater accountability of senior agency management, and for the collection and dissemination of best practices for maximizing prime and subcontracting opportunities for small businesses, will be implemented through separate agency initiatives including OMB, SBA and agency Offices of Small and Disadvantaged Business Utilization (OSDBUs).

Other action items, however, require a series of amendments to SBA's regulations and applicable provisions of the Federal Acquisition Regulation (FAR), to ensure maximum compliance with current contract bundling laws. Specifically, to close the loophole that enables agencies to avoid bundling reviews of consolidated task and delivery orders, Action Item 3 dictates regulatory changes to expressly require bundling reviews of multiple award contract vehicles and task and delivery orders under such procurements. OMB's report notes that there has been a significant increase in the use of such contracting vehicles. Since neither the FAR nor SBA's regulations specifically require bundling reviews of orders under multiple award contracts, multi-agency contracts, Government-wide Acquisition Contracts and the General Services Administration (GSA) Multiple Award Schedule Program, an explicit regulatory amendment mandating such reviews is essential.

Action Item 4 proposes the establishment of agency-specific acquisition dollar thresholds, within the range of \$2 million and \$7 million, that would trigger bundling reviews by the agency OSDBU. In addition, to ensure that agencies explore alternative acquisition strategies before bundling contracts above those thresholds, Action Item 5 mandates that when an agency contemplates a bundled procurement above the established threshold, the agency must identify alternative acquisition strategies and justify the rationale for selecting a particular strategy over another that would involve less bundling.

Finally, as a means of mitigating contract bundling determined to be necessary and justified, Action Item 6 calls for measures to strengthen compliance with the plans of large business prime contractors for subcontracting with small businesses. In addition, Action Item 7 further requires measures to facilitate small business teams including joint ventures to effectively compete for bundled contracts. In connection with Action Item 7, the report requires that SBA determine whether regulatory changes are appropriate to encourage the

development of such small business teaming arrangements.

This rule proposes to amend part 125 of SBA's regulations to implement these specific Action Items. SBA invites comments on this proposed rule. The proposed amendments were drafted in conjunction with a companion proposal to amend applicable provisions of the FAR, which is also published for comment in the **Federal Register** as a separate rulemaking action.

B. Section-by-Section Analysis

SBA proposes to amend § 125.2(b) to assign additional responsibilities to SBA Procurement Center Representatives (PCRs) and procuring activities in the acquisition planning process. With respect to PCRs, the proposed rule would revise § 125.2(b)(1) to require that when a PCR reviews an acquisition not set-aside for small businesses, the PCR must also identify alternative strategies to maximize the participation of small businesses in the procurement. Currently, § 125.2(b)(1) provides only that PCRs must review acquisitions not set-aside for small businesses to determine whether a set-aside would be appropriate. This proposed change would further OMB's general recommendation for the identification of alternative acquisition strategies to increase small business participation in procurements.

As required in connection with Action Items 4 and 5 of OMB's report, the proposed rule would add a new § 125.2(b)(2) to require bundling reviews of proposed acquisition strategies or plans contemplating award of a contract or order above specified dollar thresholds. As proposed, § 125.2(b)(2) would require that if an agency's contemplated acquisition strategy or plan exceeds the applicable acquisition threshold established in the proposed § 125.2(b)(2)(i) and is not set-aside for small businesses, the agency must coordinate the acquisition strategy or plan with the cognizant Small Business Specialist (SBS). The proposed § 125.2(b)(2) would also require the SBS to notify the agency OSDBU if the proposed acquisition strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements. To ensure that the procuring activity consults the SBS at the earliest practical stage of the acquisition planning process, the proposed § 125.2(b)(2) would require the agency to coordinate the acquisition strategy or plan with the SBS as early in the planning process as practicable, but no later than 30 days before the issuance of the solicitation.

The acquisition dollar thresholds established in the proposed § 125.2(b)(2)(i) consist of 3 separate agency-specific dollar thresholds: \$7 million or more for the Department of Defense; \$5 million or more for the National Aeronautics and Space Administration, the Department of Energy and GSA; and \$2 million or more for all other agencies. The dollar amounts of the 3-tier acquisition threshold are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities, and are intended to target contracting actions that would most likely involve contract bundling, while at the same time, minimize the extent to which the bundling reviews would disrupt the procurement process of the individual agency. SBA specifically invites public comment on the proposed 3-tier acquisition threshold and on alternatives that would best achieve the intended purposes of Action Items 4 and 5.

Consistent with OMB's Action Item 6 proposal to mitigate the effects of contract bundling by strengthening compliance with small business subcontracting plans, the proposed rule would clarify the language in § 125.2(b)(5)(iii)(C), redesignated as § 125.2(b)(5)(iii)(C), to make clear that as part of their responsibilities to ensure that small business participation is maximized through subcontracting opportunities, PCRs may review an agency's oversight of its subcontracting programs, including its overall and individual assessment of contractor compliance. As currently written, the existing § 125.2(b)(5)(iii)(C) suggests that PCRs need only review an agency's assessment of a contractor's subcontracting plan compliance under bundled contracts. Based on the findings of the General Accounting Office (GAO) that agency oversight of large business compliance with subcontracting plans has been inconsistent, this proposed change contemplates a more systemic review of an agency's general oversight as well as its individual assessment of contractor subcontracting plan compliance to facilitate greater consistency in agency oversight in the future. *See* GAO Report, "Small Business Subcontracting Report Validation Can Be Improved," GAO-02-166R Subcontracting Data, December 13, 2001.

The proposed rule would also redesignate § 125.2(b)(7) as § 125.2(b)(8), and revise it to clarify that PCRs must work with the cognizant SBS and agency OSDBU as early in the acquisition process as practicable to identify acquisitions involving bundling

and to revise acquisition strategies to increase the probability of small business participation through small business teams as prime contractors. The existing § 125.2(b)(7) does not expressly encourage early bundling reviews and does not specifically require OSDBU involvement. As a result, this proposed change will not only make early coordination among the appropriate small business contracting personnel more likely, but it will also further OMB's call for bundling reviews of proposed acquisition strategies.

Furthermore, since the proposed § 125.2(b)(8) specifically requires PCRs, the cognizant SBS and the agency OSDBU to recommend the restructuring of acquisitions as necessary to increase small business prime contract participation through small business teams, this provision also effectuates the recommendation in Action Item 7 for measures to encourage small business teams and joint ventures to mitigate the effects of contract bundling.

To implement OMB's Action Item 3 requirement for bundling reviews of task and delivery orders under multiple award contract vehicles, the proposed rule would add a new § 125.2(d)(1)(iii) to define a "single contract" to include: (1) An indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services; and (2) an order under a Federal Supply Schedule contract or a task or delivery order contract awarded by another agency (*i.e.*, government-wide acquisition contract or multi-agency contract). This proposed rule would also add a new § 125.2(d)(1)(iv) to define an "order" to mean an order placed under a Federal Supply Schedule contract or a task or delivery order contract awarded by another agency. By adding these definitions of a "single contract" and an "order," the regulations would make clear that task and delivery orders under multiple award contract vehicles may fall within the scope of the definition of contract bundling and are therefore subject to the applicable requirements for bundling reviews and justifications.

In an effort to streamline the requirements for reviewing and justifying bundled requirements, the proposed § 125.2(d)(1)(v) revises the existing § 125.2(d)(1)(iii) to define "substantial bundling" as any bundling that meets the dollar amounts specified in the proposed § 125.2(b)(2)(i). This change will simplify the application of § 125.2(b)(2)(i) and § 125.2(d)(7), by using the same dollar thresholds to trigger SBS reviews under the proposed § 125.2(b)(2)(i), and to require supporting documentation for

substantial bundling under § 125.2(d)(7).

In the nature of a technical amendment, this proposed rule would revise § 125.2(d)(2) to specify each category of small business concerns for which the Small Business Act requires agencies to foster participation in Federal procurements. This rule also proposes technical amendments to § 125.2(d)(5), to clarify that bundled orders are subject to the same benefits analysis for demonstrating that the bundling is necessary and justified.

In keeping with OMB's recommendation in Action Item 5 that agencies identify alternative acquisition strategies for proposed bundling of contracts and justify the reason for not selecting an alternative that would involve less bundling, the proposed rule would add a new § 125.2(d)(7)(i)(E). This section would require that in the event of substantial bundling, the agency must identify the alternative strategies that would reduce or minimize the scope of the bundling and the rationale for not selecting those alternatives. Further, under the proposed new § 125.2(d)(7)(ii), at least 30 days prior to the release of a solicitation, the procuring agency would be required to provide both the PCR and the agency OSDBU a copy of the proposed acquisition strategy, including the analysis required under § 125.2(b)(3) and (d)(7).

Finally, in connection with OMB's general call for strengthening OSDBU oversight and greater utilization of their resources, the proposed rule would add a new § 125.2(e) to impose a new OSDBU oversight function. Under this proposed § 125.2(e), OSDBUs would be required to conduct periodic reviews to assess: (1) The extent to which small businesses are receiving their fair share of Federal procurements; (2) the adequacy of bundling documentation and justification; and (3) the adequacy of actions taken to mitigate the effects of necessary and justified contracting bundling, including the agency's oversight of large business prime contractor compliance with their subcontracting plans. OSDBUs would also be required to submit a copy of their assessment to the Agency Head and SBA Administrator.

C. Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

OMB has determined that this rule is a significant regulatory action under Executive Order 12866. The proposed rule implements the recommendations

of the OMB report: "Contract Bundling, A Strategy for Increasing Federal Contracting Opportunities for Small Business." This plan is part of the President's initiative for small business growth.

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.

The proposed rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule proposes to implement the recommendations of OMB to increase Federal contracting opportunities for small businesses. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) was prepared and is provided below.

Initial Regulatory Flexibility Analysis

13 CFR Revision—Contract Bundling

The proposed rule may 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, *et seq.*, because the rule proposes to implement the recommendations of the Office of Management and Budget to increase Federal contracting opportunities for small businesses. Therefore, an Initial Regulatory Flexibility Analysis has been prepared and is as follows:

1. Reasons for Proposed Rule

This rule proposes to amend 13 Codified Federal Regulation (CFR) Subpart 125.2 to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled "Contract Bundling, A Strategy for Increasing Opportunities for Small Business." The proposed CFR changes will: (1) Clarify the definition of "bundling" to expressly include task and delivery orders placed against Federal Supply Schedules, Government-wide Acquisition Contracts (GWACs), and multi-agency contracts when those orders meet the definition; (2) require procuring activities to coordinate acquisition strategies above specified dollar thresholds with the Small

Business Specialist (SBS) and require the SBS to notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary, unjustified, or not identified as such by the procuring activity; (3) reduce the threshold and revise the documentation required for "substantial bundling;" (4) require contracting officers to provide bundling justification documentation to the agency OSDBU when "substantial bundling" is involved; (5) require agency OSDBUs to perform certain oversight functions.

The rule is expected to have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. It imposes no reporting, recordkeeping, or other compliance requirements. No relevant Federal rules duplicate, overlap, or conflict with the rule and currently, there are no practical alternatives that will accomplish the objectives of this proposed rule.

2. Objectives of and Legal Basis for This Rule

The objective of this proposed rule is to further the Administration's commitment of creating a Government strategy for unbundling Federal contracts to increase Federal contracting opportunities for small business. In order to accomplish the Administration's commitment, this proposed rule is to provide CFR coverage implementing the recommendations of the Office of Management and Budget (OMB) in its report entitled "Contract Bundling, A Strategy for Increasing Opportunities for Small Business."

3. Description of and Estimate of the Number of Small Entities to Which the Rule Will Apply, or an Explanation if Such Estimate Is Not Available

The proposed rule will indirectly apply to all large and small entities that seek award of Federal contracts. The rule is expected to have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. In the Small Business Administration's 2001 State of Small Business Report filed with the House and Senate Small Business Committees, using data obtained from the Federal Procurement Data Center, the Agency identified only 4 material bundling cases with a total value of \$60 million for the first 3 quarters of Fiscal Year (FY) 2001. This represents 0.0004% of Federal contract

dollar activity (\$60 million divided by \$150 billion for the first 3 quarters of the fiscal year). Based on FY 2001 data, the proposed rule will impact approximately \$3 billion in orders placed against Federal Supply Schedules (FSS), GWACs, and multi-agency contracts. Applying the contract bundling estimate of 0.0004% to these un-reviewed orders, SBA expects approximately \$1 million will be identified as bundled. This proposed rule establishes 3 dollar thresholds ranging from \$2 million or more for the majority of civilian agencies to \$7 million or more for the Department of Defense. The dollar amounts are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities and are intended to target reviews of the contracting actions that would most likely involve contract bundling without unduly disruption the acquisition process of the individual agency.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule imposes no reporting, recordkeeping, or other compliance requirements.

5. Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

None.

6. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize the Rule's Economic Impact on Small Entities

Currently, there are no practical alternatives that will accomplish the objectives of this proposed rule. However, SBA invites alternative proposals from the public.

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and Recordkeeping requirements, Small business, Technical assistance.

For the reasons set forth in the preamble, SBA proposes to amend part 125 of title 13 of the Code of Federal Regulations 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. Amend § 125.2 as follows:
- By revising the heading of paragraph (b);
 - By revising paragraph (b)(1);
 - By redesignating paragraphs (b)(2) through (b)(7) as paragraphs (b)(3) through (b)(8);
 - By adding paragraph (b)(2);
 - By revising redesignated paragraph (b)(3), introductory text, (b)(6)(iii), and (b)(8);
 - By revising paragraphs (d)(1)(iii), (d)(2) (i) and (ii), (d)(5)(i) (A) and (B) and (d)(7), and adding paragraphs (d)(1) (iv) and (v);
 - By adding paragraph (e).

The revisions and additions to § 125.2 read as follows:

§ 125.2 Prime contracting assistance.

(b) *Responsibilities in the acquisition planning process.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs are responsible for reviewing all acquisitions not set-aside for small businesses to determine whether a set-aside is appropriate and to identify alternative strategies to maximize the participation of small businesses in the procurement.

(2) As early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, the procuring activity must coordinate with the procuring activity's Small Business Specialist (SBS) when the acquisition strategy contemplates award of a contract or order meeting the dollar amounts in paragraph (b)(2)(i) of this section, unless the contract or order is entirely reserved or set-aside for small business concerns as authorized under the Small Business Act. The SBS must notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) if the strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements.

(i) The procuring activity must coordinate the acquisition strategy with the cognizant SBS in accordance with paragraph (b)(2) of this section if the estimated contract or order value is:

- \$7 million or more for the Department of Defense;
- \$5 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(C) \$2 million or more for all other agencies.

(3) 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: * * *

* * * * *

(6) * * *

(iii) The PCR will also work to ensure that small business participation is maximized through teaming arrangements and subcontracting opportunities. This may include:

(A) Recommending that the solicitation and resultant contract specifically state the small business subcontracting goals, which are expected of the contractor awardee;

(B) Recommending that the small business subcontracting goals be based on total contract dollars instead of subcontract dollars; and

(C) Reviewing an agency's oversight of its subcontracting program, including its overall and individual assessment of a contractor's compliance with its small business subcontracting plans. The PCR will furnish a copy of the information to the SBA Commercial Market Representative (CMR) servicing the contractor.

* * * * *

(8) PCRs will work with the cognizant SBS and agency OSDBU as early in the acquisition process as practicable 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 SBS and PCR will facilitate small business participation as subcontractors or suppliers.

* * * * *

(d) * * *

(1) * * *

(iii) Single contract, as used in this definition, includes:

(A) An indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services; and

(B) An order placed against an indefinite quantity contract under a Federal Supply Schedule contract or a

task or delivery order contract awarded by another agency (*i.e.*, Government-wide acquisition contract or multi-agency contract).

(iv) Order means an order placed under:

(A) Federal Supply Schedule contract; or

(B) Task-order contract or delivery-order contract awarded by another agency, (*i.e.*, Government-wide acquisition contract or multi-agency contract).

(v) Substantial bundling means any bundling that meets the dollar amounts specified in paragraph (b)(2)(i) of this section.

(2) * * *

(i) Structure procurement requirements to facilitate competition by and among 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; and

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

* * * * *

(5) * * *

(i) * * *

(A) Benefits equivalent to 10 percent of the contract or order value (including options) where the contract or order value is \$75 million or less; or

(B) Benefits equivalent to 5 percent of the contract or order value (including options) or \$7.5 million, whichever is greater, where the contract or order value exceeds \$75 million.

* * * * *

(7) Substantial bundling. (i) 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:

(A) The analysis for bundled requirements set forth in paragraph (d)(5)(i) of this section;

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

(C) Actions designed to maximize small business participation as prime

contractors, including provisions that encourage small business teaming for the substantially bundled requirement;

(D) 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; and

(E) The identification of the alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives (*i.e.*, consider the strategies under paragraphs (b)(6) (i) and (d) of this section).

(ii) At least 30 days prior to the solicitation release, the procuring activity shall provide the PCR and the agency OSDBU a copy of the proposed acquisition, including the analysis required by paragraph (d)(7) of this section, the acquisition plan, any bundling information required under paragraph (b)(3) of this section, and any other relevant information. The PCR and agency OSDBU or SBS, as applicable, shall work together to develop alternative acquisition strategies identified in paragraph (b)(6) of this section to enhance small business participation.

* * * * *

(e) *OSDBU Oversight Functions.* The Agency OSDBU must:

(1) Conduct periodic reviews to assess the:

(i) Extent to which small businesses are receiving their fair share of Federal procurements, including contract opportunities under programs administered under the Small Business Act;

(ii) Adequacy of the bundling documentation and justification; and

(iii) Adequacy of actions taken to mitigate the effects of necessary and justified contract bundling on small businesses (*e.g.*, review agency oversight of prime contractor subcontracting plan compliance under the subcontracting program).

(2) Provide a copy of the assessment under paragraph (e)(1) of this section to the Agency Head and SBA Administrator.

Dated: January 22, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03-2158 Filed 1-30-03; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 8, 16, 19, and 42

[FAR Case 2002-029]

RIN: 9000-AJ58

Federal Acquisition Regulation; Contract Bundling

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled, "A Strategy for Increasing Federal Contracting Opportunities for Small Business."

DATES: Interested parties should submit comments in writing on or before April 1, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2002-029@gsa.gov. Please submit comments only and cite FAR case 2002-029 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAR case 2002-029. The TTY Federal Relay Number for further information is 1-800-877-8973.

SUPPLEMENTARY INFORMATION:

A. Background

On March 19, 2002, the President unveiled a Small Business Agenda that proposed several substantive steps toward creating a dynamic environment where small businesses and entrepreneurs can flourish. The plan included new tax incentives, health care options, and a reduction in regulatory barriers. For those small businesses