



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

AUG 18 2005

The Honorable John F. Kerry
Ranking Member
Committee on Small Business & Entrepreneurship
United States Senate
Washington, DC 20510

Dear Senator Kerry:

Thank you for your letter of July 27, 2005, regarding the May 20, 2005, Audit Report from the Small Business Administration (SBA) Inspector General (IG). The IG's report analyzed the contract bundling process to determine whether the SBA has been properly monitoring bundled contracting actions of Federal agencies.

The SBA takes seriously its responsibility to protect the interests of small business in the procurement process and hold procuring agencies accountable for their acquisition strategy decisions. In the last five years, the SBA has developed and implemented policies and procedures aimed at unbundling contracts and improving the process for monitoring contract bundling. Most recently, the SBA has further strengthened controls to better monitor the performance of federal buying activities. As a result of these efforts, the SBA has gone from providing small business an additional \$1 billion in contracts through investigating bundling cases in Fiscal Year 1999, to \$6 billion in unbundled contracts in Fiscal Year 2003. The SBA has also rebuilt its Procurement Center Representative (PCR) workforce from an historic low of only 35 PCRs in 1999 to 50, with plans to hire 6 more bringing the total to 56.

While the SBA appreciates the IG's efforts we must also point out that the report itself admits to flaws in the source data and can only, at best, refer to contracts in question as "possible bundlings". The SBA made a significant effort to remind the IG that the use of definitions and the reporting requirements are being improved and that the data in question may contain errors. The SBA's *2003 Report to Congress on Contract Bundling* illuminates this problem. While 2,307 contracts were reported as "bundled contracts", only 94 were "new definitive contracts" that conform to the reporting requirement. The remaining actions are modifications to existing contracts or orders under indefinite delivery contracts, items that should not be classified as "bundled contracts". Consequently, the SBA believes that the number of unreviewed bundled contracts was overstated by the IG and we continue to make significant progress in identifying and remedying all instances of bundling.



As you know, in October 2003, as a result of the President's Small Business Agenda, the SBA implemented revised regulations to preclude unnecessary bundling and mitigate the effects of necessary bundling. These regulations, among other things:

1. Revise the definition of contract bundling to include multiple award contract vehicles and task and delivery orders placed against those vehicles;
2. Require contract bundling reviews of contracts and orders under multiple award contracts above \$7 million for the Department of Defense, \$5 million for the General Services Administration, National Aeronautics and Space Administration, and Department of Energy, and \$2 million for all other agencies;
3. Require procuring activities to coordinate with their small business specialist on proposed acquisition strategies for contracts and orders above those thresholds, and direct the small business specialist to coordinate with the Office of Small and Disadvantaged Business Utilization (OSDBU) when acquisition strategies include contract bundling that is unnecessary and unjustified or not identified as bundled;
4. Reduce the threshold for substantial bundling to correspond with the proposed thresholds required for contract bundling reviews;
5. Require the documentation necessary to justify bundling to identify alternative strategies that involve less bundling;
6. Require agencies to strengthen their oversight of subcontracting plans; and
7. Require the agency OSDBU to perform certain oversight functions and submit a report to the agency head and the SBA Administrator.

In Fiscal Year 2004, Procurement Center Representatives (PCRs) conducted 24 surveillance reviews to evaluate Federal agency small business programs and monitor compliance with all aspects of the Small Business Act, including contract bundling requirements. These reviews have provided PCRs with the opportunity to identify instances of non-compliance with bundling requirements and recommend appropriate corrective actions. Further, in Fiscal Year 2005, PCRs launched a new training initiative to educate buying activity personnel on the most common deficiencies uncovered in the surveillance reviews, including contract bundling.

This increased oversight and mandatory coordination among agency officials improved the ability of small businesses to fairly compete in the procurement process. In Fiscal Year 2003, small businesses successfully obtained \$65.5 billion in contract awards, enabling the Federal government to achieve the government-wide statutory small business procurement goal. This represents a 23.1 percent increase over the \$53.2 billion they received in Fiscal Year 2002.

In your letter, however, you express concern regarding the reliability of SBA procedures and the Agency's ability to effectively monitor the Federal government's small business goals. The SBA has also taken many steps to ensure that bona-fide small businesses receive contracts intended for small business.

In Fiscal Year 2003, the SBA improved the accuracy of the data in the Dynamic Small Business Search by purging large businesses from the database and limiting the listing to only those industries where a small business qualifies as small. In late 2003, the SBA removed an additional 90,000 firms from the system. The SBA also worked with the Office of Management and Budget, General Services Administration and the Department of Defense to revamp the Central Contractor Registration (CCR) database to give the SBA oversight over the small business designation process. Effective April 2005, small businesses are no longer able to self-certify on CCR as SBA-certified small disadvantaged, 8(a), or HUBZone concerns. These fields are now populated by the SBA.

In your letter, you also cited a high percentage of reported potential bundled contracts that were not reviewed by the SBA. As stated above, it is difficult for the Agency to respond to these alleged statistics given that the IG has stated that "many of the reported bundled contracts may not actually have been bundled" and that the IG had misgivings about the integrity of the source data. In fact, in a separate review of SBA effectiveness, the IG noted that the SBA consistently appraised all six parts of the bundling analysis and appropriately challenged unsupported bundled contracts 100% of the time. The Agency stands by its commitment of focusing on large procuring activities and high impact procurements and is proud of the more than 45,000 individual procurement actions that it reviewed in Fiscal Year 2004.

You have posed a number of questions related to the IG Audit Report. The following is provided in response to your inquiries:

- 1) *What specific actions has the SBA taken to implement the recommendations made by the Inspector General in the May 2005 Audit of Contract Bundling Process?*

The SBA has taken the following actions to implement the recommendations made by the IG in the May 2005 Audit report:

- The SBA has revalidated existing PCR plans of operation for each of the Federal buying activities that they cover.

- The SBA has submitted a revision to the FAR that will enable us to collect information referenced in Section 810 of the Small Business Reauthorization Act of 2000.
 - The SBA has sent letters to the Heads of the Contract Activities instructing them to submit any procurement that incorporates contracts or orders formally performed by small business into a larger order placed against a multiple award contract, government award contract, or multiple award contract vehicle to the PCR or, if none is available, to the SBA Area Director for review and approval.
 - The SBA is implementing periodic reviews of bundling data contained in Federal Procurement Data System-Next Generation to ascertain the extent to which buying activities are complying with requirements to report bundled actions to the OSDBUs and the SBA. This data will be included in the SBA's annual contract bundling report to Congress.
 - The SBA is finalizing the contract bundling best practices guide.
- 2) *Why has the SBA not complied with the President's Executive Order on Contract Bundling, issued in October 2002, which recommended the development and distribution of a "best practices" model for contract bundling review? According to the comments offered by the Associate Deputy Administrator (ADA) for Government Contracting and Business Development, the guidance is being "finalized." Why has this process taken three years? When will the review be made public?*

The SBA is unaware of an Executive Order on contract bundling. However, the SBA is complying with the requirement contained in the President's October 2002 Report, "Contract Bundling – A Strategy for Increasing Contracting Opportunities for Small Business," for Department and agency procurement executives and OSDBUs to work together to collect and disseminate best practices for maximizing small business procurement opportunities.

Since 2000, PCRs, on a regular basis, identify best practices related to contract bundling. The PCRs have been sharing these best practices with the Office of Government Contracting (GC), Washington, DC. In 2002, GC officials requested that Federal agency procurement executives and OSDBU Directors provide the SBA with agency best practices for maximizing small business procurement opportunities which supplemented the document referenced in the IG May 2005 audit report. Having reviewed and analyzed these detailed recommendations, the SBA is near completion of a "best practices" model that will be posted on our website.

- 3) *13 CFR § 125.2(b) (1) states that "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." The testimony before the committee and the May IG report make clear that the SBA's current strategy of downsizing the number of PCRs and replacing them with e-PCRs is not working. When will the SBA correct this failed strategy and hire a sufficient number of PCRs to comply with Federal regulations?*

As part of the Agency's plan to effectively allocate resources, and ensure coverage of major procurement centers, the SBA is not downsizing but rather recruiting for six additional PCRs to bring the total number of PCRs to 56. This number should be contrasted with the 35 PCRs that SBA employed in FY 2000 after the prior Administration had severely depleted PCR resources. The PCR Strategic Plan also proposes to make greater use of technology to increase the efficiency of PCRs, enabling the SBA to intervene earlier in the acquisition planning process and more comprehensively. By using the Internet, and leveraging the efforts of the Integrated Acquisition Environment, e-PCR will complement, not replace, the PCR's efforts.

The current level of PCRs has had much success in helping small business. In Fiscal Year 2004, PCRs reviewed more than 45,000 individual procurement actions and challenged the proposed acquisition strategy for more than \$18 billion worth of these actions. PCRs successfully obtained contract awards to small business valued at more than \$11 billion. PCRs also filed 17 SBA Form 1970s, Contract Bundling Alert Forms, to stop bundling by Federal agencies on more than \$6.0 billion of actions. They successfully obtained more than \$275 million of contracts for small business. Finally, seven of the twelve secretarial appeals filed in Fiscal Years 2001 – 2004 were for contract bundling.

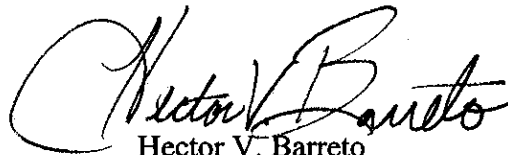
- 4) *The ADA for Government Contracting and Business Development commented in the report that: "SBA is not appraised [sic] of proposed contract bundlings through agency referrals alone. The Contract Bundling Hotline provides notifications...and if the bundling is real, a small business should come forward to notify SBA or initiate legal action." How many calls has SBA received through the Contract Bundling Hotline? Of those calls, how many were investigated by SBA? Since the passage of the SBA Reauthorization of 2000, how many bundled contracts have been reported to the SBA by small businesses? How many of these requested legal action? How many of the cases reported to the SBA by small businesses (and not by agency referral) were investigated?*

The SBA learns about proposed contracts through its online contract bundling hotline system (<http://sba.gov/GC/indexprograms-bundlingreport.html>). Small businesses located across the country can use the system to report instances of contract bundling to the Office of Government Contracting, Washington, DC. The SBA has received 52 calls through the contract bundling hotline. All of these calls were investigated.

I look forward to working with you to help mitigate the effects of unnecessary bundling on small businesses and to ensure they continue to receive their fair share of contract opportunities. Should you have additional questions, please call me at (202) 205-6605 or have your staff contact Janis Coughlin-Piester of our Office of Congressional and Legislative Affairs at (202) 205-6700.

Thank you for your continued efforts to support our Nation's small businesses.

Sincerely,

A handwritten signature in black ink, reading "Hector V. Barreto". The signature is written in a cursive style with a large initial "H".

Hector V. Barreto
Administrator