

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