

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