

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