

seeking to do business with the Federal Government, the President announced several proposals to improve the access of small businesses to Federal contracting opportunities. Specifically, the President called upon the Office of Management and Budget (OMB) to prepare a strategy for unbundling 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 or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single award contract 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 unbundled 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 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. The report also notes that according to a report prepared for the Small Business Administration (SBA) Office of Advocacy, for every \$100 awarded on a "bundled" contract, there is a \$33 decrease to small businesses.

To address the harmful effects of contract bundling on the nation's small businesses, OMB's report offers a nine-point action 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, the collection and dissemination of best practices for maximizing prime and subcontracting opportunities for small businesses and facilitating development of the teams of small business contractors, will be implemented through initiatives conducted by OMB, SBA, and procuring agencies.

Other Action Items, however, require a series of amendments to SBA's regulations and applicable provisions of the Federal Acquisition Regulation (FAR). Action Item 3 recommends 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, Governmentwide acquisition contracts and the General Services Administration (GSA) Multiple Award Schedule Program, an explicit regulatory amendment mandating such reviews is necessary.

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 Office of Small and Disadvantaged Business Utilization (OSDBU). In addition, to ensure that agencies explore alternative acquisition strategies, Action Item 5 recommends 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 the FAR to implement these specific Action Items. The proposed amendments were drafted in conjunction with a companion proposal to amend applicable provisions of the SBA regulations which is also published for comment in the **Federal Register** as a separate rulemaking action.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## **B. Section-by-Section Analysis of the Federal Acquisition Regulation**

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 to the bundling definition in FAR 2.101 the definition of 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) include an order under a Federal Supply Schedule contract or a task-or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract). By adding the definition of a "single contract", the regulations would make clear that some orders may fall within the scope of the definition of contract bundling and are, therefore, subject to the applicable requirements for bundling reviews and justifications.

As required in connection with Action Items 4 and 5 of OMB's report, the proposed rule would add FAR 7.104(d)(1) to require the planner to coordinate the acquisition plan or strategies with the cognizant small business specialist (SBS) when the strategy contemplates award of a contract or order meeting the agency dollar amounts as indicated in proposed new FAR 7.104(d)(2), unless the contract or order is entirely reserved or set-aside for small business under FAR Part 19. As proposed in FAR 7.104(d), the SBS shall notify the agency OSDBU if the proposed acquisition strategy involves contract bundling that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements. In addition, as required in proposed FAR 7.104(d)(2), the acquisition strategy shall be coordinated with the cognizant small business specialist in accordance with FAR 7.104(d)(1) if the estimated contract or order value dollar thresholds established in the proposed three separate agency-specific dollar