

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 three-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. GSA specifically invites public comment on the proposed three-tier acquisition threshold and on alternatives that would best achieve the intended purposes of Action Items 4 and 5.

As part of Action Item 3, FAR 7.107(b)(1), 7.107(b)(2), 7.107(d), and 7.107(e) would be revised to add the word "order" to the additional requirements for acquisitions involving contract bundling. In an effort to streamline the requirements for reviewing and justifying bundled requirements, the proposed rule would revise the existing FAR 7.107(e) to define "substantial bundling" as any bundling that results in a contract or order that meets agency dollar amounts specified in the proposed FAR 7.104(d)(2). This change will simplify the application of FAR 7.107(e) by using the same dollar thresholds to trigger SBS notification to the agency OSDBU under the proposed FAR 7.104(d)(1), and to require supporting documentation for substantial bundling under 7.107(e). Consistent with OMB's Action Item 5, the FAR would be revised to add 7.107(e)(6) to require the identification of alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

In connection with OMB's Action Item 3, FAR 8.404(a)(1) would be revised to add that the requirement at FAR 19.202-1(e)(1)(iii) applies to orders placed against Federal Supply Schedules. Further, FAR 8.404(a)(2) would be revised to add that orders placed under a Federal Supply Schedule contract must comply with all FAR requirements for a bundled contract when the order meets the proposed FAR definition of "bundled contract".

In connection with OMB's Action Item 3, the proposed rule would add to FAR 16.505(a)(7) that orders placed under a task-order or delivery-order contract awarded by another agency must comply with all FAR requirements

for a bundled contract when the order meets the proposed FAR definition of "bundled contract."

In connection with OMB's general call for strengthening OSDBU oversight and greater utilization of their resources, the proposed rule would add FAR 19.201(d)(11) to impose a new OSDBU oversight function. Under this proposed FAR 19.201(d)(11), 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 under the programs administered under the Small Business Act; (2) the adequacy of contract bundling documentation and justification; and (3) the actions taken to mitigate the effects of necessary and justified contracting bundling on small businesses. Under this proposed rule, FAR 19.201(d)(12) would require OSDBUs to submit a copy of their assessment to the Agency Head and SBA Administrator.

FAR 19.202 would add a requirement that agencies shall establish procedures including dollar thresholds for review of acquisitions by the OSDBU Director, or the Director's designee, as to whether a particular acquisition should be awarded under FAR Subpart 19.5, 19.8, or 19.13. This proposed change would further OMB's general recommendation for the identification of alternative acquisition strategies to increase small business participation in procurements.

We propose to amend FAR 19.202(1)(e)(1)(iii) to assign additional responsibilities to the SBA Procurement Center Representatives (PCRs) and procuring activities in the acquisition planning process by adding the requirement that the contracting officer provide all information relative to the justification of contract bundling when the acquisition involves substantial bundling, including the acquisition plan or strategy, and if the acquisition involves substantial bundling, the information identified in 7.107(e). Further, 19.202(1)(e)(iii) will require the contracting officer to provide this same information to the agency OSDBU when the acquisition involves substantial bundling.

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 add language in FAR 42.1502 to require an assessment of contractor compliance with the goals identified in the small business subcontracting plan in contracts that require a subcontracting plan. As currently written, FAR 15.304(c)(3)(iii) requires that only in solicitations involving

bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans. 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.

C. Regulatory Flexibility Act

The changes 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 it proposes to increase small business contracting opportunities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis reads as follows:

1. Reasons for proposed rule

This rule proposes to amend the Federal Acquisition Regulation (FAR) to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled "A Strategy for Increasing Opportunities for Small Business." The proposed FAR changes will: (1) Clarify the definition of "bundling" to indicate it applies to orders placed against Federal Supply Schedules and another agency's Governmentwide Acquisition contracts or Multi-agency contracts when those orders otherwise meet the parameters of the definition; (2) require the small business specialist to coordinate on agency acquisition strategies at specified dollar thresholds and 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 agency; (3) reduce the threshold for "substantial bundling"; (4) revise the documentation requirements for substantial bundling to include identification of alternative acquisition strategies that would result in the bundling of fewer requirements, along with justification for not choosing those alternatives; (5) require contracting officers to provide bundling justification documentation to the agency OSDBU when substantial bundling is involved; (6) require performance evaluations to include an assessment of