

contractor compliance with small business subcontracting goals; and (7) require the OSDBU to be responsible for conducting periodic reviews to assess agency contract bundling requirements and the extent to which small businesses are receiving a fair share of Federal procurements.

## 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 this commitment, this proposed rule provides FAR coverage that implements the recommendations of 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 service contracts. The rule should have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. In a report filed last year with the House and Senate Small Business Committee, the U.S. Small Business Administration identified from the Federal Procurement Data Center (FPDS) only four material bundling cases with a total value of \$60 million for the first three quarters of FY 2001. This represents 0.0004% of Federal contract dollar activity (contract bundling estimate rate which is \$60 million divided by \$150 billion for three-fourths of a year). The new rule now encompasses reviews of high dollar value orders. At most, this is expected to be \$3 billion. For example, using the data from table 1 for FY 2001 at DOD FFS-GWAC-MACS \$7 million or more 659 and FSS+585 = \$1.244 billion or for FY 2002 857+717 = \$1.574 billion orders to be reviewed. Applying the contract bundling estimate rate SBA's .0004% to these previously un-reviewed contract order dollars of \$3 billion, we expect that approximately \$1 million dollars of orders will be identified as bundled.

## 4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule imposes no reporting, recordkeeping, or other compliance requirements.

## 5. Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

The companion proposed rule being published by the Small Business Administration at the same time as the FAR proposed rule.

## 6. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize the Rule's Economic Impact on Small Entities

Currently, there are no practical alternatives that will accomplish the objectives of this proposed rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 2, 7, 8, 16, 19, and 42 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2002-029), in correspondence.

## D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 2, 7, 8, 16, 19, and 42

Government procurement.

Dated: January 24, 2003.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 8, 16, 19, and 42 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 8, 16, 19, and 42 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101(b)(2) in the definition "Bundling" by redesignating paragraph (3) as (4) and adding a new paragraph (3) to read as follows:

### 2.101 Definitions.

\* \* \* \* \*

*Bundling means—*

\* \* \* \* \*

(3) *Single contract*, as used in this definition, includes—

(i) An indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services (see FAR 16.504(c)); and

(ii) An order placed against an indefinite quantity contract under a—

(A) Federal Supply Schedule contract; or

(B) Task-order contract or delivery-order contract awarded by another agency (i.e., Governmentwide acquisition contract or multi-agency contract).

\* \* \* \* \*

## PART 7—ACQUISITION PLANNING

3. Amend section 7.104 by adding paragraph (d) to read as follows:

### 7.104 General procedures.

\* \* \* \* \*

(d)(1) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates award of a contract or order meeting the dollar amounts in paragraph (d)(2) of this section unless the contract or order is entirely reserved or set-aside for small business under Part 19. The small business specialist shall notify the agency Office of Small and Disadvantaged Business Utilization if the strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency.

(2) The strategy shall be coordinated with the cognizant small business specialist in accordance with paragraph (d)(1) of this section if the estimated contract or order value is—

(i) \$7 million or more for the Department of Defense;

(ii) \$5 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(iii) \$2 million or more for all other agencies.

4. Amend section 7.107 in paragraphs (b)(1), (b)(2), and (d) by adding the words "or order" after the word "contract"; revising paragraph (e), introductory text, paragraphs (e)(4) and (e)(5); and adding (e)(6) to read as follows:

### 7.107 Additional requirements for acquisitions involving bundling.

\* \* \* \* \*

(e) Substantial bundling is any bundling that results in a contract or order that meets the dollar amounts specified in 7.104(d)(2). When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally—

\* \* \* \* \*

(4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contracts, or order, that may be awarded to meet the requirements;

(5) Include a specific determination that the anticipated benefits of the