

multiple award contracts. This commenter pointed out that the new definition only covers the orders placed against GSA's Federal Supply Schedules, or against an indefinite quantity contract awarded by another agency and urged that the definition of contract bundling include orders placed against indefinite quantity, multiple award contracts awarded by any agency. The Councils do not agree that an agency's orders against its own contract should be subject to additional bundling reviews. The underlying multiple award contract of an agency is subject to the requirements for Small Business Specialist (SBS) and procurement center representative (PCR) review for contract bundling and small business participation. Unlike FSS orders, theoretically, the SBS and PCR reviews of an agency's proposed acquisition strategy or plan for its multiple award contract should encompass that agency's anticipated orders under that contract. Consequently, the agency's own orders presumably were part of the underlying PCR and SBS review. It would therefore be duplicative to require yet another bundling review of each individual order the agency places against its already reviewed multiple award contract. As a result, the Councils are not adopting this recommendation, particularly in light of the limited resources available to conduct the reviews.

Another respondent noted that the proposed definition of bundling is deficient because it does not cover "new work." New work is work that was never performed by contract before. Therefore, it was never part of a separate smaller contract, and so it is not bundled, by definition. Bundling is a concept which describes consolidation of prior contracts.

Two respondents believe that the definition should be broader to include "accretive bundling," which occurs when dissimilar tasks are added onto GWACs, ID/IQs, Schedules, and multiple award type contracts. The Councils disagree. FAR Subpart 19.2 requires that the Offices of Small and Disadvantaged Business Utilization (OSDBUs) work with the Small Business Administration's PCR to identify proposed solicitations that involve bundling. Further, FAR 19.202-1(e) requires the contracting officer to provide a copy of the proposed acquisition package to the PCR at least 30 days prior to the issuance of the solicitation if the proposed acquisition is for a bundled requirement. In particular, since FAR 19.202-1 requires procuring activities to submit acquisitions strategies above the

established threshold to PCRs, strategies that contemplate orders that are above the threshold and that are not against an agency's own multiple award contract, would be subject to PCR review for bundling. Second, FAR 19.202-1 requires a procuring activity to submit a copy of a proposed acquisition strategy to the PCR, whenever that strategy involves a bundled requirement. Because the proposed definition in FAR Part 2 defines a bundled requirement to include certain task and delivery orders under another agency's contract, agencies would be required to submit such orders to PCRs for review, when the orders include bundling.

For the purposes of bundling, the proposed rule now defines a single contract to include orders placed against an indefinite quantity contract under a Federal Supply Schedule or a task-order contract or delivery-order contract awarded by another agency and requires strategy review when the estimated contract or order value reaches or exceeds the thresholds. After considering all of the comments on the proposed single contract definition within the meaning of bundling, the Councils believe that the amendment effectively implements OMB's recommendation to compel bundling reviews of task and delivery orders. The Councils are therefore adopting it as proposed.

*2. Comments on Requirement for Bundling Reviews.* The Councils received several comments concerning its proposal to add FAR 7.104(d)(1), requiring bundling reviews of proposed acquisition strategies or plans. As proposed, that section requires an agency to coordinate its acquisition strategy or plan with its SBS whenever the agency's contemplated strategy or plan contemplates award of a contract or order that exceeds the applicable agency threshold established and is not set-aside for small businesses. As previously stated, FAR 19.202-1(e) provides a minimum period of no later than 30 days before the issuance of the solicitation for the agency to coordinate its plan with the SBS. In addition, under FAR 7.104(d)(1), the SBS is required 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. Several commenters proposed exemptions for certain types of contracts (A-E services, Federal Supply Schedules). One commenter disagreed with applying contract bundling reviews to contracts (not orders) under GSA's Multiple

Award Schedules (MAS) Program. The Councils disagree. Contract bundling has been applicable to GSA's Multiple Award Schedules Program since the FAR and SBA bundling regulations first became effective. This final rule specifically covers agency orders under the MAS program and provides more detailed review of various contract actions at agency-specific thresholds. The strategy is intended to close loopholes that otherwise would allow certain types of acquisitions to escape effective review.

Some respondents commented that the proposed rule adds additional burdens and would require additional resources or a reallocation of existing resources. Although agency reallocation of resources may be necessary, the Councils believe that this rule is in response to the President's Small Business Agenda and OMB's strategy for unbundling Federal contracts to increase Federal contracting opportunities for small businesses. The proposed rule provides for eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling and ensuring maximum compliance with current contract bundling laws by fully using the resources of the Small Business Administration and agency OSDBUs.

Some commenters suggested that OSDBUs should have authority to block an acquisition. That comment ignores existing regulations that would operate in tandem with proposed FAR 7.104(d)(2). The Councils believe this recommended change is unnecessary. Specifically, FAR 19.202-1(e)(4) and FAR 19.505 already provide the mechanism for resolving disagreements with agencies concerning contract bundling and small business participation in procurements. FAR 19.202-1(e)(4) requires the contracting officer to document the basis for the rejection and notify the PCR in accordance with 19.505 if the contracting officer rejects the PCR's recommendation, made in accordance with 19.402(c)(2). FAR 19.505 allows the PCR to appeal the contracting officer's rejection to the head of the contracting activity (or designee).

The proposed rule, specifically FAR 19.201 and FAR Subpart 19.4, encourages SBSs and OSDBUs to cooperate with PCRs in reviewing procurements and in identifying possible small business contracting opportunities. SBSs and OSDBUs therefore can work with PCRs in using the PCR appeal mechanism to challenge unnecessary and unjustified contract bundling.