

Accordingly, the Councils believe that the proposed FAR 7.104(d)(2) properly balances the need for SBS reviews of acquisition strategies with the need for operational efficiency in the procurement process. In adopting FAR 7.104(d)(2), the Councils have made minor revisions. The first is a technical change to clarify that the proposed strategies include "acquisitions" meeting the dollar threshold. The second is the inclusion of additional language reinforcing the SBS's responsibility to assist in identifying alternative strategies when an acquisition plan involves substantial bundling.

3. *Comments on Acquisition Dollar Thresholds.* FAR 7.104(d)(2) establishes three agency-specific dollar thresholds that would trigger the bundling reviews required under FAR 7.104(d)(1). The three-tiered dollar threshold proposed is: \$7 million or more for the Department of Defense (DoD); \$5 million or more for the National Aeronautics and Space Administration (NASA), the Department of Energy (DoE) and the General Services Administration (GSA); and \$2 million or more for all other agencies.

The Councils received numerous comments on FAR 7.104(d)(2). Several respondents suggested increasing the agency review thresholds by doubling or tripling them or raising the threshold as applied to a particular agency. A few respondents recommended lowering the thresholds, either for review of Federal Supply Schedule orders or as applied to a particular agency. Of these respondents, some believed that adopting different thresholds for different agencies would unnecessarily complicate the acquisition process. They recommended adoption of a single Governmentwide threshold that would apply to all agencies equally. One of these respondents suggested that the Councils consider keeping the threshold already provided in FAR 7.107(e) for documenting substantial bundling (\$10 million). Another respondent indicated that close monitoring of DOD's procurement is essential to limiting the adverse impact of contract bundling on small businesses. Another commenter also believed that the three-tiered approach is too complicated. This commenter suggested one threshold of \$1 million. The proposed dollar amounts of the thresholds are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities. The objective of the tiered approach is two-fold: (1) to target those contracting actions for individual agencies that would most likely involve significant contract

bundling as well as opportunities for small business contracting; and (2) to minimize the extent to which the bundling reviews would disrupt the procurement process of individual agencies. The Councils continue to believe that the proposed three-tiered threshold will best achieve those objectives. The Councils therefore decline to adopt the recommendations for a single Governmentwide threshold to trigger bundling reviews. The respondents' expressed diverse opinions as to the appropriate structure and amount of the thresholds were not persuasive enough to divert from the proposed range in the strategy (*i.e.*, \$2 million, \$5 million, and \$7 million) or the proposed regulatory approach (three thresholds). The Councils are instead adopting the proposed threshold of \$7 million for DoD, \$5 million for NASA, DoE and GSA, and \$2 million for all other agencies. These agency-specific levels will capture those procurements that would most likely involve contract bundling for individual agencies, will minimize the disruption to the procurement process, and will properly account for the limited resources and contracting personnel to conduct the bundling reviews.

One respondent recommended that the rule clearly state the basis for determining review levels on orders placed against GSA, NASA, and DoE contracts by other agencies with lower thresholds and recommends that the specific agency threshold apply to that agency regardless of whether another agency's contract is used. An agency's threshold applies to that agency regardless of whether another agency's contract is being used.

4. *Comments on Additional Requirements for Acquisitions Involving Bundling.* Two respondents disagreed with the proposed requirement to identify alternative strategies and recommended deleting that requirement. The Councils disagree. The proposed language is intended to require agencies to fully investigate all alternatives to bundling during the acquisition planning stage.

Several respondents did not agree with thresholds proposed for substantial bundling. However, these comments were not persuasive enough to divert from the proposed thresholds. The Councils recognize that lowering the threshold for "substantial bundling" would mean enlarging the number of procurements that would require the additional written justification under FAR 7.107. However, the Councils continue to believe that this change will simplify the application by using the same three-tiered dollar threshold to

trigger the bundling reviews and the required supporting analysis for substantial bundling. Also, the changes in the requirement for written justifications are consistent with OMB's report recommendations relating to the identification of alternative acquisition strategies.

Finally, one respondent recommended that FAR 7.105 be changed to require any requirement previously procured be identified and an explanation given if it was satisfied by a separate smaller contract or order and is now planned for consolidation into contract or order. The Councils agree and have added the following language: "When the proposed acquisition strategy involves bundling, identify the incumbent contractors and contracts affected by the bundling".

5. *Comments on Part 8—Required Sources of Supplies and Services.* Three comments were received for this part. The first respondent believes that clarifying that FSS contracts must comply with bundled contracts is helpful but the proposed requirement at 19.202-1(e)(1)(iii) cited in 8.404(a)(1) is unnecessary. The Councils believe that this reference is appropriately placed and is necessary in Part 8 in order to advise those contracting officers utilizing Part 8 to know what is applicable and not applicable to orders placed against Federal Supply Schedules. The second respondent recommends caution in opening the Schedules program to mandatory compliance without considering the impact on meeting agency needs. The strategy of the definition is intended to include orders placed against the Schedules program in order to close loopholes that otherwise would allow acquisitions to escape effective review. Finally, the third respondent believes that federal statutes specifically provide that task and delivery orders issued under a Schedules contract satisfy statutory competition requirements. While FSS contracts meet the statutory competition requirements, the bundling statute is silent on orders placed against these contracts. Including Schedule orders in the definition of bundling will close loopholes that currently allow those orders to escape effective review.

6. *Comments on Part 16—Types of Contracts.* Two comments were received. The first respondent opposes the requirement in FAR 2.101 whereby the definition affects the contract and task order requirements in 16.505(a)(7) and believes it would be devastating to the Government's procurement of surveying and mapping services, disruptive to emergency response activities (*e.g.*, war efforts), and urges