

rule to incorporate parallel changes in 13 CFR part 125. At the same time, SBA is issuing a proposed rule to provide more guidance on subcontracting, including guidelines for evaluating a company's good faith efforts to comply with subcontracting plan requirements. When the SBA proposed rule becomes final, the Councils will consider incorporating appropriate provisions in the FAR.

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. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is as follows:

### Final Regulatory Flexibility Analysis

FAR Case 2002–029, Contract Bundling

This Final Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

#### 1. Reasons for the final rule:

This rule amends 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 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 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 Office of Small and Disadvantaged Business Utilization when substantial bundling is involved; (6) require contractor performance evaluations to include an assessment of contractor compliance with small business subcontracting goals; and (7) require the Office of Small and Disadvantaged Business Utilization to be responsible for conducting annual 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 final rule is to further the Administration's commitment of creating a Government strategy to increase Federal contracting opportunities for small business. In order to accomplish this commitment this final rule provides FAR coverage that implements the recommendations of the Office of Management and Budget (OMB) in its report entitled "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 final rule will indirectly apply to all large and small entities that seek award of Federal 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 the SBA's 2001 State of Small Business Report filed with the House and Senate Small Business Committees, SBA identified only four material bundling cases with a total value of \$60 million for the first three quarters of Fiscal Year (FY) 2001. This represents 0.0004% of Federal contract dollar activity (\$60 million divided by \$150 billion for the first three quarters of the fiscal year). Based on FY 2001 data, the final rule will impact approximately \$3 billion in orders placed against FSS contracts, Governmentwide acquisition contracts, and multiagency contracts. Applying the contract bundling estimate of 0.0004% to these unreviewed orders, SBA expects approximately \$1 million will be identified as bundled. This rule establishes a three-tiered dollar threshold of \$7 million for DOD, \$5 million for NASA, DOE and GSA, and \$2 million for all other civilian agencies. The dollar amount is based on a comparative analysis of the number and size of the contracting actions of the major procuring activities and is intended to target reviews of the contracting actions that would most likely involve contract bundling, without undue disruption to the acquisition process.

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 final rule imposes no reporting, recordkeeping, or other compliance requirements.

5. Relevant Federal rules that may duplicate, overlap, or conflict with the rule:

Simultaneously with the publication of this final rule, SBA is publishing its final rule on contract bundling to implement the required action items in OMB's October 2002 report, entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." In some instances, SBA's final rule duplicates language in the FAR final rule.

6. Description of any significant alternatives to the final 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 final rule.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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, 10, 16, 19, and 42

Government procurement.

Dated: October 16, 2003.

**Laura Auletta,**

*Director, Acquisition Policy Division.*

## Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–17 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–17 is effective October 20, 2003.

Dated: October 9, 2003.

**Deidre A. Lee,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: October 2, 2003.

**David A. Drabkin,**

*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: October 2, 2003.

**Tom Luedtke,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 7, 8, 10, 16, 19, and 42 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 8, 10, 16, 19, and 42 is revised to read as follows:

**Authority:** 40 U.S.C. 121(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 paragraph (4) and