

bundling, asserting that this was the only acquisition strategy that would benefit small businesses.

Like the other suggestions concerning this section, SBA believes that these recommendations also would unduly interfere with the operational efficiencies of the procurement process. Both governing law and OMB's October 2002 bundling report acknowledge that necessary and justified contract bundling may serve a useful purpose. SBA therefore has no authority to prohibit all bundled contracts, including those that are determined to be both necessary and justified.

In addition, the comment that OSDBUs should have authority to block an acquisition ignores existing regulations that would operate in tandem with proposed § 125.2(b)(2). Specifically, existing § 125.2(b)(6) already provides a mechanism for resolving disagreements with agencies concerning contract bundling and small business participation in procurements. Section 125.2(b)(6) authorizes Procurement Center Representatives (PCRs) to initiate an appeal to the head of the contracting activity when there is a disagreement concerning the bundling of a requirement or the suitability of an acquisition to be set aside for small business competition. The proposed rule, specifically § 125.2(b)(8) and § 125.2(d)(7)(ii), encouraged 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.

Accordingly, SBA believes that the proposed § 125.2(b)(2) properly balances the need for SBS reviews of acquisition strategies, with the need for operational efficiency in the procurement process. In adopting § 125.2(b)(2), SBA has made three minor revisions. The first clarifies that the proposed strategies are for "acquisitions" that meet the applicable dollar threshold. The second revision adds language to reinforce the SBS's responsibility to assist in identifying alternative strategies when an acquisition plan involves substantial bundling. The third revision adds a new § 125.2(b)(2)(ii) to explain the application of the dollar thresholds to multiple award contracts and orders. The new § 125.2(b)(2)(ii) indicates that the thresholds provided in § 125.2(b)(2)(i) apply to the cumulative value of an acquisition strategy that contemplates multiple award contracts or orders, including options.

2. Comments on Acquisition Dollar Thresholds

SBA specifically requested comments on the proposed § 125.2(b)(2)(i). That section establishes three separate agency-specific dollar thresholds that would trigger the bundling reviews required under § 125.2(b)(2) and the additional documentation and justification required for substantial bundling under § 125.2(d)(1)(v) (discussed below). The three-tier dollar threshold proposed was \$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.

SBA received nine comments on this proposal. Only one of the nine commenters objected to the adoption of any dollar threshold. That one objecting commenter believed that the imposition of thresholds for SBS bundling reviews would mean that contract bundling could occur below the established thresholds without review. This commenter asserted that focusing review on contracts above the threshold would somehow eliminate bundling reviews of smaller contracts and thereby reduce rather than increase contracting opportunities for small businesses.

This commenter misunderstands the purpose and application of the proposed thresholds under § 125.2(b)(2)(i). The proposed thresholds are not intended to relieve procuring officials of their existing responsibilities to justify contract bundling at any dollar threshold, and to mitigate the effects of necessary bundling. The existing § 125.2(b)(3), which implements 15 U.S.C. 644(a), requires procuring activities to provide a copy of all proposed bundled procurements, irrespective of amount, to the activity's PCR at least 30 days before the solicitation is issued. The proposed § 125.2(b)(2)(i) leaves that requirement in place, and focuses additional resources instead on reviewing higher-dollar valued procurements that will likely have an even greater adverse impact by foreclosing small business prime contract participation.

Proposed § 125.2(b)(2)(i) is intended to supplement and not replace current PCR reviews of procurement strategies. As a result, instead of reducing small business contracting opportunities as the objecting commenter asserts, proposed § 125.2(b)(2)(i) and related provisions will serve to expand small business access to Federal contracts by providing more reviews of those

bundled procurements that possess the greatest potential to harm small businesses.

With the exception of that one objecting commenter, the remaining eight commenters on § 125.2(b)(2)(i) supported the adoption of dollar thresholds for SBS reviews, but expressed diverse opinions as to the appropriate structure and amount of the thresholds. One commented that the proposed three-tier approach and dollar amounts are reasonable, but further indicated that the Agency should be aware that substantial bundling may occur at levels below the threshold.

Two commenters recommended that SBA reduce the dollar amounts—one of these commenters failed to specify any alternative amount, while the other recommended the adoption of thresholds between \$1 and \$2 million.

Two other commenters recommend increasing the thresholds to an unspecified amount. Both of these commenters believed that higher thresholds would better accommodate the limited agency resources available to conduct bundling reviews and provide the additional justifications required for substantial bundling.

Two additional commenters believed that adopting different thresholds for different agencies would unnecessarily complicate the acquisition process. They recommended that SBA adopt a single government-wide threshold that would apply to all agencies equally. One of these two commenters suggested that SBA establish the government-wide threshold at \$7 million. The other commenter urged that DOD be subject to the same dollar threshold as the other agencies. This commenter asserted that it is just as important for DOD to sustain its small business industrial base as it is for civilian agencies. This commenter further 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-tier approach is too complicated. This commenter suggested that SBA adopt one threshold of either \$2 or \$5 million for all agencies and a second threshold of greater than \$5 million to trigger "additional requirements" for all agencies procurements above that amount.

As SBA explained in its preamble to the proposed rule published on January 31, 2003, 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 tier approach is two-fold: (1) To target those contracting actions for