

published for public comment as part of SBA's earlier January 31, 2003, proposed rule, SBA is publishing these proposed changes separately to solicit public comment before they become final.

4. Comments on Requirement for PCR, SBS and OSDBU Cooperation

SBA received four comments addressing proposed § 125.2(b)(8). This section reiterates the requirement for PCRs to work with SBSs and agency OSDBUs as early in the acquisition process as practicable, to identify acquisitions involving bundling and to increase small business prime contract participation. Several of the commenters requested additional language and guidance for developing and monitoring the utilization of small business teams.

Additionally, two of the commenters did not believe that the amendment sufficiently referenced joint ventures, teaming and mentor-protégé relationships as effective mechanisms for increasing small business access to Federal procurements. One of these commenters maintained that small business involvement in Federal procurements through subcontracting should be the exception rather than the rule. Another commenter suggested that small business teams should be based on "market driven strategies to develop the competitiveness of small firms in non-traditional areas of weakness."

SBA agrees that additional guidance on identifying and developing small business teams is necessary. Nonetheless, proposed § 125.2(b)(8) was not intended to provide such detailed guidance. The efforts to develop additional guidance are part of a separate administrative initiative to implement one of OMB's non-regulatory recommendations under Action Item 8 of its October 2002 bundling report. That item requires SBA to collect and disseminate best practices for maximizing small business opportunities. In implementing that recommendation, on January 23, 2003, SBA issued a memorandum to Senior Procurement Executives and OSDBU Directors, requesting proven strategies for increasing opportunities for small businesses. The memorandum invited the officials to submit to SBA's Office of Government Contracting no later than February 28, 2003, best practices for maximizing small business opportunities.

Once SBA completes its review of the agency submissions, it will publish a compilation of best practices, strategies and guidance for maximizing prime and subcontracting opportunities for small businesses. Since SBA will provide

additional guidance on small business teams as part of this separate initiative, it will not include such guidance in this rulemaking action and is therefore adopting § 125.2(b)(8) as proposed.

5. Comments on Clarification of Bundling Definition

SBA received seven comments on its proposal to implement the OMB bundling report recommendation to require bundling reviews for task and delivery order awards under multiple award contract vehicles. The proposed regulations add new § 125.2(d)(1)(iii) to define a "single contract" to include: (1) an indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services; and (2) an order under a FSS contract or a task or delivery order contract awarded by another agency. The proposed rule also adds new § 125.2(d)(1)(iv) defining an "order" as an order placed under a FSS contract or a task or delivery order contract awarded by another agency. The purpose of providing definitions of a "single contract" and an "order" is to clarify that task and delivery orders under multiple award contract vehicles are subject to the applicable requirements for bundling reviews and justifications.

The majority of the seven commenters expressed support for the proposed clarification. One commenter suggested that SBA clarify that the § 125.2(d)(1)(iii) definition of "single contract" is "for purposes of this subpart 125.2 only." Section 125.2(d)(1)(iii) already contains the qualifying statement "as used in this definition." SBA believes that language sufficiently clarifies that the definition of "single contract" is provided as part of the overall definition of contracting bundling. There is therefore no need for further clarifying language.

By far, the most common issue the commenters raised on the proposed definition of "single contract" and "order" was the type of multiple award contracts encompassed under the proposed definition. One commenter complained that the definition did not fully implement OMB's bundling recommendation to close the loophole of bundling task and delivery order awards because it does not cover the orders an agency issues against its own multiple award contracts. This commenter pointed out that the new definition only covers the orders placed against GSA's FSS, or against an indefinite quantity contract awarded by another agency. This commenter urged that the definition of contract bundling should include orders placed against

indefinite quantity, multiple award contracts awarded by any agency.

Also on this issue, two other commenters indicated that the regulations should not exempt an agency's order against its own multiple award contract, since agencies may also bundle requirements when ordering against their own multiple award contracts.

SBA does not agree that an agency's orders against its own contract should be subject to bundling reviews. The underlying multiple award contract of an agency is subject to the requirements for SBS and 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, SBA is not adopting this recommendation, particularly in light of the limited resources available to conduct the reviews.

Another commenter asserted that the proposed clarification under §§ 125.2(d)(1)(iii) and (iv) is "vague as to whether task or delivery orders added to existing contracts will be covered by the definition and reviewed, or whether only task or delivery orders over certain thresholds will be reviewed." Under the proposed definitions, task and delivery order awards under any indefinite quantity contract other than an agency's own multiple award contract, would be subject to SBS review under § 125.2(b)(2), if it is above the established threshold, and would be subject to review by the cognizant PCR under § 125.2(b)(3), if it involves bundling.

In particular, since § 125.2(b)(2) requires procuring activities to submit acquisitions strategies above the established threshold to SBSs, 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 SBS review for bundling. Second, § 125.2(b)(3) requires a procuring activity to submit a copy of a proposed acquisition strategy to the PCR, whenever that strategy involves a bundled requirement. Because §§ 125.2(d)(1)(iii) and (iv) define a bundled requirement to include certain task and delivery orders under another