

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule imposes no new reporting or recordkeeping requirements.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, requires that SBA publish a final regulatory flexibility analysis. According to the RFA, the analysis must include: (1) A statement of need for and objective of the rule; (2) a summary of significant issues raised by public comments in response to SBA's Initial Regulatory Flexibility Act (IRFA) and an assessment of issues and changes made as a result; (3) a description of and estimate of the number of small entities to which the rule applies; (4) a description of the reporting, recordkeeping and other compliance requirements and an estimate of the classes of small entities subject to the requirements and type of professional skill necessary for the preparation of the report or record; and (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the objectives of applicable statutes and of the reasons the agency selected the alternative adopted in the rule.

1. Reason for and Objective of the Rule

The objective of this rule is to further the Administration's commitment to create a government strategy for unbundling Federal contracts to increase Federal contracting opportunities for small business. The rule will: (1) Revise the definition of "bundling" to apply to orders placed against Federal Supply Schedules, Government-wide Acquisition Contracts, and Multi-agency Contracts when those orders meet the definition; (2) require the SBS to coordinate agency acquisition strategies at specified dollar thresholds and notify the agency Office OSDBU when those strategies include unidentified or unjustified bundling; (3) reduce the threshold and revise the documentation required for "substantial bundling;" (4) require contracting officers to provide bundling justification documentation to the agency OSDBU when substantial bundling is involved; and (5) require agency OSDBUs to conduct annual reviews of agency efforts to maximize small business participation in procurements.

2. Summary of Public Comments in Response to IRFA

SBA received no comments on its IRFA.

3. Estimate of the Number of Small Entities To Which Rule Applies

This final rule will apply indirectly to all large and small entities that seek award of Federal contracts. The rule is expected to 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, government-wide acquisition contracts, and multi-agency contracts. Applying the contract bundling estimate of 0.0004% to these un-reviewed orders, SBA expects approximately \$1 million will be identified as bundled. This rule establishes a three-tier 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 Reporting and Other Compliance Requirements

This rule imposes no new reporting or recordkeeping requirements.

5. Summary of Efforts to Minimize Significant Economic Impact

In the preamble to this rule, SBA addressed the steps the Agency has taken to minimize significant adverse economic impact on small entities consistent with the objectives of applicable statutes and the reasons the Agency selected the alternatives adopted in this rule.

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small business, Technical assistance.

■ For the reasons set forth in the preamble, SBA amends 13 CFR part 125 as follows:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 1. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701 and 9702.

■ 2. Amend § 125.2 as follows:

■ a. By revising the heading of paragraph (b);

■ b. By revising paragraph (b)(1);

■ c. By redesignating paragraphs (b)(2) through (b)(7) as paragraphs (b)(3) through (b)(8);

■ d. By adding new paragraph (b)(2);

■ e. By revising redesignated paragraph (b)(3), introductory text, (b)(6)(iii), and (b)(8);

■ f. By revising paragraphs (d)(1)(iii), (d)(2)(i) and (ii), (d)(5)(i)(A) and (B) and (d)(7), and adding paragraph (d)(1)(iv); and

■ g. By adding paragraph (e).

The revisions and additions to § 125.2 read as follows:

§ 125.2 Prime contracting assistance.

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(b) *Responsibilities in the acquisition planning process.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs are responsible for reviewing all acquisitions not set-aside for small businesses to determine whether a set-aside is appropriate and to identify alternative strategies to maximize the participation of small businesses in the procurement.

(2) As early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, or prior to placing an order without a solicitation, the procuring activity must coordinate with the procuring activity's Small Business Specialist (SBS) when the acquisition strategy contemplates an acquisition meeting the dollar amounts in paragraph (b)(2)(i) of this section, unless the contract or order is entirely reserved or set-aside for small business concerns as authorized under the Small Business Act. The SBS must notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) if the strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements. If the strategy involves substantial bundling, the SBS shall assist in identifying alternative