

# SBA MOVES TO PROTECT SMALL FIRMS FROM 'CONTRACT BUNDLING'

The U.S. Small Business Administration (SBA) in a news release dated October 25, 1999 issued interim final regulations designed to limit the "bundling" of federal procurement contracts, a practice seen as detrimental to small businesses nationwide. Plans call for the regulations to become effective before the end of the calendar year.

SBA defines contract bundling as the consolidation of two or more federal procurements into a prime contract so large that small business cannot compete for it. The Small Business Reauthorization Act of 1997 stipulated that federal agencies can only bundle contracts to achieve "measurably substantial benefits" in terms of cost, shorter acquisition cycles, or better terms and conditions, among other benefits.

"These rules are an important step forward for small government contractors, taxpayers and for the government itself," said SBA Administrator Aida Alvarez. "Government agencies and, more importantly, the taxpayers who support them, save money when small business is a viable participant in the federal procurement marketplace. The competition holds down prices."

Congress and the SBA have been tracking the trend toward the increased use of bundled contracts within the federal procurement community. Many predicted that if left unchecked, the move could lead to a decrease in prime federal contracting with small businesses, which averages about \$40 billion per year. Overall federal contracting averages over \$180 billion per year.

The interim rule, which appeared in the Federal Register on October 25, 1999 will become effective after 60 days. The SBA's government contracting website at <http://www.sba.gov/gcmed/regulatory.htm> features a link to those regulations. Any public comment received within that 60 day period will be evaluated and if appropriate, incorporated into the final rule. That will leave one step in the process, implementation in the Federal Acquisition Regulation.

Earlier this year when the SBA first asked for comment on the proposed rule, the agency sought public input in deciding what constitutes measurably substantial benefits as a justification for bundling.

The interim rule defines the term "measurably substantial benefit" by establishing a two-tiered approach to determine the benefits that can reasonably be expected from a bundled contract. These may include improvements in any of five separate areas, but they must lead to the following:

- Benefits equivalent to 10% if the contract value (including options) is \$75 million or less.
- or
- Benefits equivalent to 5% if the contract value (including options) is over \$75 million.

The regulators also establish that only the most senior procurement officials within a federal agency can make the determination to allow a bundled contract to proceed if it fails to meet the percentage benefit analysis requirements. To justify the action, that official must determine that the contract consolidation is critical to the success of the agency's mission and link that to a procurement strategy that allows for the maximum small business participation possible.

The procedures to quantify measurably substantial benefits do not apply to one class of federal procurement, those consolidated under the so-called A-76 rule (which refers to OMB circular A-76). This is a separate federal effort at cost savings.

The interim rule also establishes clear guidelines for small businesses that want to create a joint venture, or team, to go after the bundled contracts that can't be broken down. Under the old rule, small businesses banking together were sometimes disqualified because of the resulting new employee count or combined revenues would exceed SBA's definition of a small business. With the new regulations, if the firms are small before they enter the arrangement, a joint venture won't change that status.

In addition, if a bundled contract is seen as a necessity, the interim rule requires that agencies establish a significant evaluation factor that will allow to the maximum extent possible subcontracting to small businesses. Part of this may include evaluating the prime contractor's past efforts in providing small firms the chance to subcontract.