

**"Bundling" or "Consolidation":  
Will Changes In The Rules Be Good For Small Business?  
Only Time Will Tell.**

**By Susan Warshaw Ebner**

Effective October 20, 2003, there are new rules on contract bundling. See FAC 2001-17 (October 20, 2003). These changes to the FAR implement the OMB's October 2002 Report, "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." FAC 2001-17. But what is "bundling" and why is it something small business should be concerned about?

"Bundling" is defined in the FAR as "[c]onsolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to [diversity and/or size of the elements of performance, dollar value of the contract, geographical issues]." FAR 2.101(b) (October 20, 2003). The new rules define "a single contract" to now include IDIQ contract awards and orders placed under a Federal Supply Schedule, Task Order or Delivery Order contract awarded by another agency or under a government-wide acquisition vehicle. FAR 2.101(b) at "Bundling" (3). The FAR changes require that acquisition planners work with small business specialists to identify alternative strategies to reduce or minimize the scope of bundling if the contracts are for \$7 million or more at DOD; \$5 million or more at NASA, GSA, and DOE; \$2 million or more for all other agencies. FAR 7.104(d). With regard to multiple award contracts or orders, these monetary thresholds apply to the *cumulative* maximum potential value of the contract, options and orders. *Id.* at (d)(2)(ii). The newly effective FAR provisions are already in need of updating: Section 801 of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136 (enacted November 24, 2003), contains additional provisions regarding bundling; it specifically reduces the threshold for acquisition review of DOD contract bundling from \$ 7 million to \$5 million.

Consolidations that result in reducing the number of opportunities for small business contracts may not bode well for small business. Attempts to mitigate the impact of bundling are included in the revised FAR provisions. They include requiring acquisition planners to identify the incumbent contracts and contractors affected by the bundling and the impact of the proposed bundling (FAR 7.105(b)(1)); perform market research to determine whether "measurably substantial benefits" to the government/agency will be attained that justify bundling (FAR 7.107(a) and (b); FAR 10.001); prepare a justification laying out the basis for the substantial benefit finding and specifying those actions that will maximize small business participation as contractors and/or subcontractors at any tier of the contract (FAR 7.107(e)).

The FAR provides that affected incumbents shall be notified of the proposed bundled procurement at least 30 days before release of the bundled solicitation or placement of an order under an existing IDIQ-type contract. FAR 10.001(c)(2). This will facilitate an affected small business's review and challenge of the proposed bundling. Small businesses should be on the lookout for these bundling notifications so that they can determine whether to challenge the proposed bundling or how best to position themselves for a place in the following procurement.