

CONTRACT BUNDLING

A Strategy for
Increasing Federal Contracting Opportunities
for Small Business

October 2002



*Executive Office of the President
Office of Management and Budget
Office of Federal Procurement Policy*



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, DC. 20503

OFFICE OF FEDERAL
PROCUREMENT

October 29, 2002

The President
The White House
Washington, DC 20500

Dear Mr. President:

In March of this year, as part of the Small Business Agenda, you called upon the Office of Management and Budget to prepare a strategy for unbundling federal contracts. On behalf of the Office of Federal Procurement Policy within the Office of Management and Budget, I am pleased to submit the enclosed strategy for increasing federal contracting opportunities for small businesses.

As you know, the number and size of bundled contracts within the executive branch have reached record levels. Although contract bundling can serve a useful purpose, the effect of this increase in contract bundling over the past ten years cannot be underestimated. Not only are substantially fewer small businesses receiving federal contracts, but the federal government is suffering from a reduced supplier base. American small businesses bring innovation, creativity, competition and lower costs to the federal table. When these businesses are excluded from federal opportunities through contract bundling, our agencies, small businesses and the taxpayers lose.

The enclosed report provides an aggressive strategy for holding agencies accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling. The recommendations propose a series of regulatory changes to ensure maximum compliance with current contract bundling laws and full use of the resources of the Small Business Administration and agency Offices of Small and Disadvantaged Business Utilization.

With successful implementation of this strategy, we will be making a significant step forward towards ensuring that small businesses and entrepreneurs have access to federal contracting opportunities.

Sincerely,



Angela B. Styles
Administrator

Enclosure

PREFACE

On March 19, 2002, the President unveiled a Small Business Agenda that proposed several substantive steps toward creating a dynamic environment where small businesses and entrepreneurs can flourish. The plan included new tax incentives, health care options, and a reduction in regulatory barriers. And for those small businesses seeking to do business with the federal government, the President announced several proposals to improve the access of small businesses to federal contracting opportunities. Specifically, the President called upon the Office of Management and Budget (OMB) to prepare a strategy for unbundling contracts.

In late March, the Office of Federal Procurement Policy (OFPP), within OMB, created an interagency working group to develop strategies for unbundling contracts. This group, chaired by Michael Gerich from OFPP, met on many occasions during the summer and early fall and was instrumental in creating the final report.

OMB and the interagency working group sought significant public comment. On May 6, 2002, OMB issued a notice in the Federal Register requesting public comments. We received 27 public comments on contract bundling and issues related to the access of small businesses to federal contracting opportunities. On June 14, 2002, OMB held a public meeting where interested parties were given an opportunity to express their views. Fourteen individuals made presentations at that public meeting. Comments received from the public, both in writing and at the public meeting, were considered in the preparation of this report.

Special thanks should be given to the following people for their participation in the development of this report: Janis Coughlin, OMB; Luz Hopewell, SBA; Janet Koch, DOD; Karyn Richman, OMB; and Linda Williams, SBA.

TABLE OF CONTENTS

I.	Executive Summary	1
II.	Background	1
	A. What is Contract Bundling?	2
	B. Why are Contracts Bundled?	3
	C. What is the Impact of Contract Bundling on Small Businesses?	3
	D. What Sectors of the Workforce are Responsible for Contract Bundling Issues? ...	6
III.	Strategy: Action Plan	8

I. Executive Summary

A strategy for unbundling contracts must recognize the combined challenges and benefits of a reduced acquisition workforce and the need to maintain an overall acquisition system that is fair, efficient, and transparent. We cannot afford to revert back to the paperwork and labor-intensive system of the past. Nor can we pursue operational efficiencies at the expense of reducing small business opportunities. The challenge is to strike an appropriate balance between operational efficiency, opportunity, and fairness.

To address contract bundling in the executive branch, the following actions will be taken:

1. Ensure accountability of senior agency management for improving contracting opportunities for small business.
2. Ensure timely and accurate reporting of contract bundling information through the President's Management Council.
3. Require contract bundling reviews for task and delivery orders under multiple award contract vehicles.
4. Require agency review of proposed acquisitions above specified thresholds for unnecessary and unjustified contract bundling.
5. Require identification of alternative acquisition strategies for the proposed bundling of contracts above specified thresholds and written justification when alternatives involving less bundling are not used.
6. Mitigate the effects of contract bundling by strengthening compliance with subcontracting plans.
7. Mitigate the effects of contract bundling by facilitating the development of small business teams and joint ventures.
8. Identify best practices for maximizing small business opportunities.
9. Dedicate agency Offices of Small and Disadvantaged Business Utilization (OSDBUs) to the President's Small Business Agenda.

II. Background

Each year, the federal government awards over \$200 billion in contracts. In fiscal year 2001, there were 11.4 million contract actions valued at \$234.9 billion. Federal

agencies state that they generally award nearly 23 percent of the total dollars spent on federal procurements each year to small businesses. In addition, in fiscal year 2001, large businesses subcontracted approximately \$35.5 billion in federal work to small businesses.

A. What is Contract Bundling?

The Small Business Reauthorization Act of 1997 defines contract bundling as “consolidating two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern.” The Act lists several factors that might cause unsuitability for award to a small business. These are - -

- the diversity, size, or specialized nature of the elements of the performance specified;
- the aggregate dollar value of the anticipated award;
- the geographical dispersion of contract performance sites; or
- any combination of these criteria.¹

The Act requires each federal department and agency, to the maximum extent practicable, to: (1) structure contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and (2) avoid unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors.

Prior to bundling any contracts, agencies are required to conduct market research to determine whether contract bundling is necessary and justified. To justify contract bundling, agencies must demonstrate "measurably substantial benefits," such as cost savings, quality improvements, reduction in acquisition cycle times, or better terms and conditions.² The Small Business Administration’s implementing regulations further define "measurably substantial benefits" by requiring agencies to demonstrate - -

- for contracts of \$75 million or less - - benefits equivalent to 10 percent of contract value (including options), or

¹ The definitions of “bundled contract,” “bundling of contract requirements,” and “separate smaller contract” are codified in section 3(o) of the Small Business Act (15 U.S.C. § 632(o)).

² The statutory requirements for agencies to conduct market research to determine whether consolidation of procurement requirements is necessary and justified, including identification of “measurably substantial benefits,” are codified in section 15(e) of the Small Business Act (15 U.S.C. § 644(e)).

- for contracts over \$75 million - - benefits equivalent to 5 percent of contract value (including options) or \$7.5 million, whichever is greater.³

Several provisions of the Federal Acquisition Regulation (FAR) establish responsibilities for agency personnel who are considering contract bundling. The FAR places responsibility on agency acquisition planners to structure requirements, to the maximum extent practicable, to facilitate competition by and among small business concerns, and avoid unnecessary and unjustified bundling. Agency contracting officers are required to: (1) perform market research to determine whether bundling is necessary and justified; (2) justify their determinations in acquisition strategy documentation that identifies measurably substantial benefits that meet the statutory and regulatory requirements; and (3) consult with SBA representatives on their acquisition strategies.⁴

B. Why Are Contracts Bundled?

Increased demands to make the acquisition process quicker and less complex coupled with reductions in the overall acquisition workforce have driven acquisition managers to bundle requirements. To meet these demands and increase customer satisfaction, agencies have increasingly consolidated contractual requirements into larger contracts and used limited and simplified competition procedures for acquiring products and services.⁵

C. What is the Impact of Contract Bundling on Small Businesses?

According to a report prepared for SBA's Office of Advocacy, for every 100 "bundled" contracts, 106 individual contracts are no longer available to small businesses. For every \$100 awarded on a "bundled" contract, there is a \$33 decrease to small businesses.⁶ Because these types of contracts "run longer and encompass a greater scope, competition is reduced in terms of frequency and the number of opportunities."⁷ Analysis

³ SBA's bundling regulations are codified at 13 C.F.R. § 125.2.

⁴ See FAR sections 7.103 and 7.107 (48 C.F.R. § 1, 7.103 and 7.107) for more information on acquisition planning. Also see FAR Part 10 (48 C.F.R. § 1, 10) and FAR Subpart 19.4 (48 C.F.R. § 1, 19.4) for more information on agency responsibilities to conduct market research and cooperation with SBA.

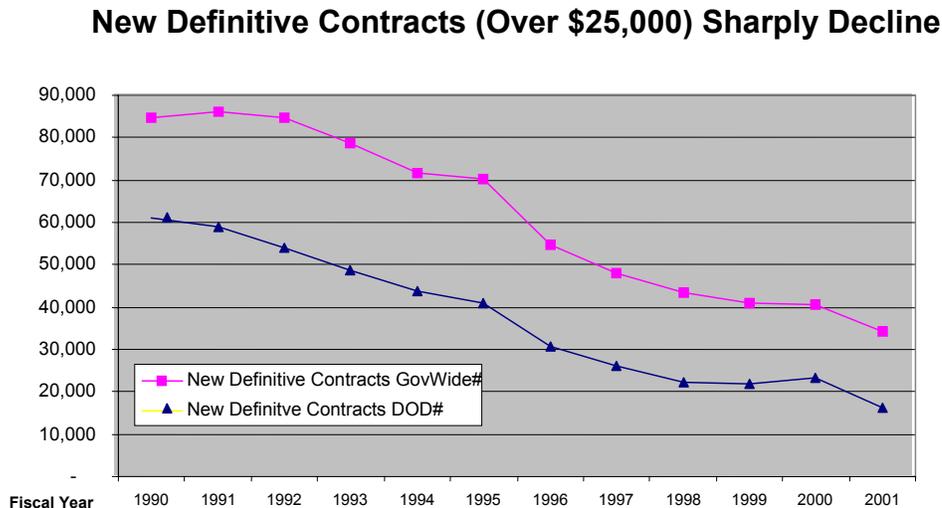
⁵ For a more detailed description of the reasons for agency contract consolidation, see Case Studies in DOD Contract Consolidations: A Study for the Office of Small and Disadvantaged Business Utilization, Appendix C, Logistics Management Institute (LMI), December 2000.

⁶ The Impact of Contract Bundling on Small Business FY 1992 - FY 1999 (Eagle Eye Publishers for the U. S. Small Business Administration, Office of Advocacy, September 2000). In Small Business: Limited Information Available on Contract Bundling's Extent and Effects (GAO/GGD-00-82, March 2000), GAO questioned the probative value of an earlier report by Eagle Eye, because the definition of contract bundling used by Eagle Eye did not correspond with the statutory definition. The later Eagle Eye report (cited above) relies on a similar definition, and thus is subject to the same scrutiny. Nevertheless, we use these figures as anecdotal evidence of the impact of contract bundling and similar practices that may not meet the statutory definition.

⁷ LMI report, *supra*, note 5, pages 4-5 and 4-6.

of the data indicates that, even though the overall dollars spent in contracting with small businesses remained relatively constant, there has been a sharp overall decline in new contract awards. Figure 1 shows a decline in new contract awards (i.e., new contracts rather than contract modifications or orders under existing contracts), from a high of 86,243 in fiscal year 1991 to a low of 34,261 in fiscal year 2001.⁸

Figure 1: New Definitive Contracts (over \$25,000)

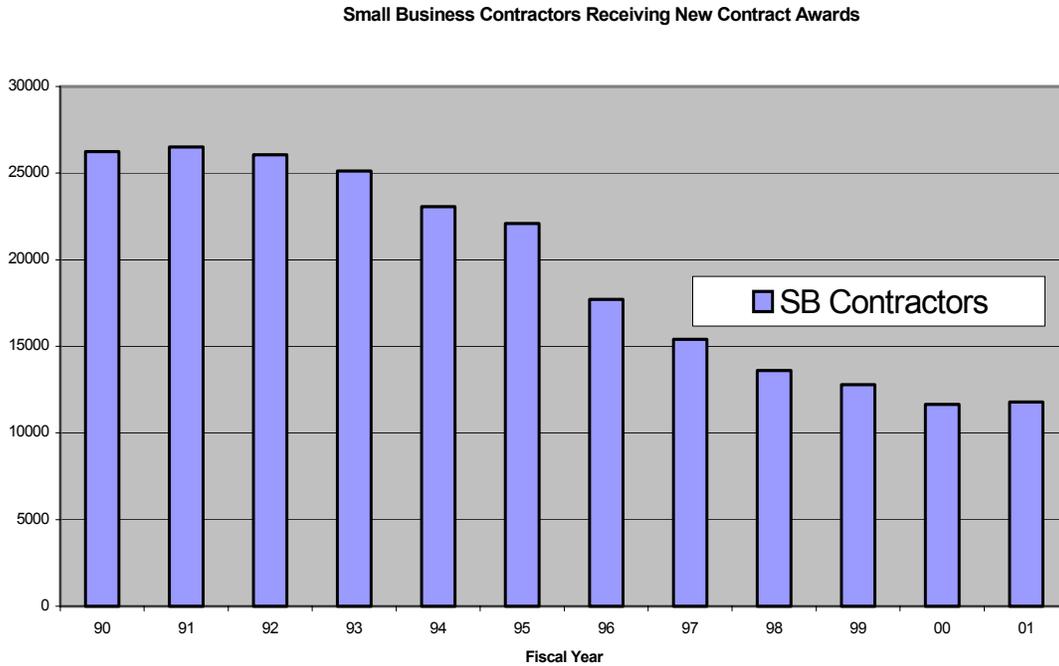


We also found that significantly fewer small businesses are receiving federal government contracts. Figure 2 shows a dramatic decline in the number of small business contractors receiving new contract awards, from a high of 26,506 in fiscal year 1991 to a low of 11,651 in fiscal year 2000.⁹ The significant reductions in new contract awards and the number of small business contractors receiving contract awards signals an increase in contract bundling and a decline in small business opportunities.

⁸ GAO concluded in 2001 that “. . . small businesses received a higher share in fiscal year 1999 of expenditures in new contracts for most categories of goods and services than they did in fiscal year 1993.” (Small Business: Trends in Federal Procurement in the 1990s, GAO-01-119, January 2001, page 12). However, as indicated in Figure 1, the total number of new contract awards declined significantly from fiscal year 1990 to fiscal year 2001. Figure 3 indicates that, during the same period, there was a substantial increase in orders under contracts.

⁹ These figures are based on cumulative data obtained from the Federal Procurement Data System (FPDS).

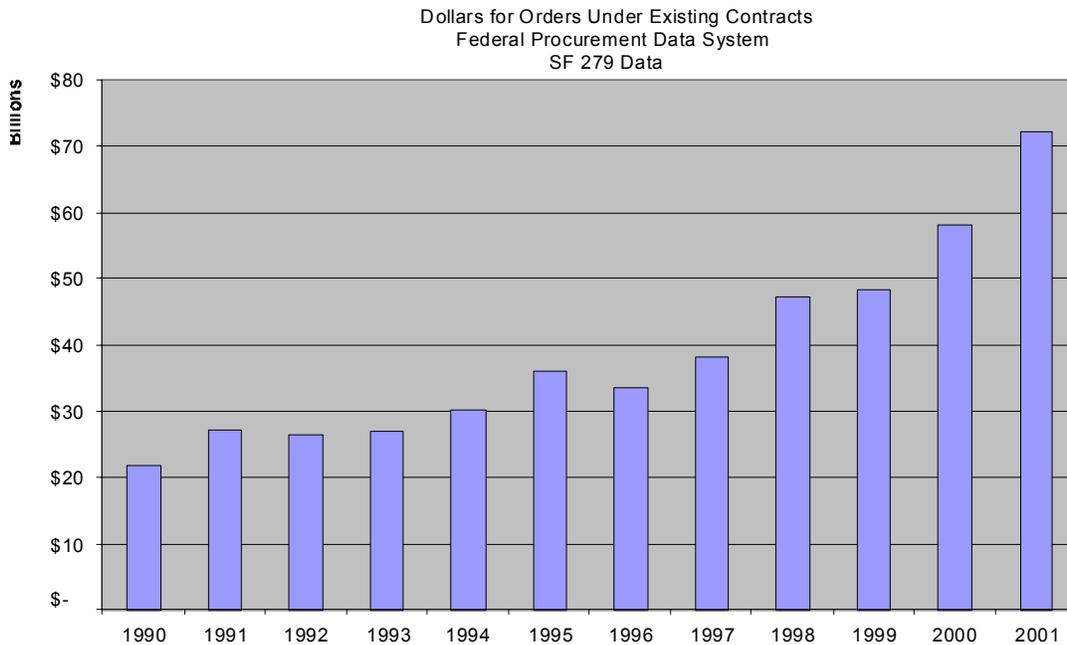
Figure 2: Small Business Contractors Receiving New Contract Awards



This decline in small business participation has been exacerbated by the use of contract vehicles that are not uniformly reviewed for contract bundling. Orders under agency multiple award contracts (MACs), multi-agency contracts, Government-Wide Acquisition Contracts (GWACs), and GSA’s Multiple Award Schedule Program are not subject to uniform reviews for contract bundling issues. This lack of uniform review is a problem because, while there has been a sharp decline in other contract actions, there has been a significant increase in orders under these contracts.

Figure 3 shows an increase in department and agency expenditures for orders under existing contracts, from \$21 billion in fiscal year 1990 to a high of \$72 billion in fiscal year 2001. With total fiscal year 2001 procurements valued at \$234.9 billion, orders under existing contracts represent about 31 percent of the total.

Figure 3: Dollars for Orders Under Existing Contracts



D. What Sectors of the Workforce are Responsible for Contract Bundling Issues?

A wide range of agency contracting personnel have responsibilities for fostering small business contracting opportunities and addressing contract bundling issues. For example, the Small Business Act assigns responsibility to agency Offices of Small and Disadvantaged Business Utilization (OSDBUs) to identify proposed solicitations that involve significant contract bundling requirements, and to work with agency contracting personnel and the SBA on procurement strategies to increase the participation by small businesses as prime contractors and subcontractors.¹⁰ By regulation, agency contracting personnel must identify and report to SBA the bundled contracts that the agency has determined are necessary and justified and the small businesses that would be displaced by contract bundling.

1. Agency Acquisition Workforce

The acquisition workforce is composed of numerous career fields. Contracting and purchasing personnel are just a part of the overall acquisition workforce, but they hold

¹⁰ See section 15(k)(5) of the Small Business Act, 15 U.S.C. § 644(k)(5).

primary responsibility for meeting various agency small business contracting goals. In addition, they perform a wide range of duties including: conducting market research; planning acquisitions; soliciting potential contractors; negotiating costs, prices, and terms of contracts; and awarding and administering contracts.

2. Offices of Small and Disadvantaged Business Utilization

The Small Business Act (15 U.S.C. § 631, et seq.) requires each department and agency with contracting authority to establish an OSDBU, with reporting authority to the head of the agency. These offices promote contracting opportunities for small businesses, including small business concerns owned and controlled by veterans, service-disabled veterans, women, and socially and economically disadvantaged individuals, as well as those small businesses located in Historically Underutilized Business Zones (HUBZones). OSDBUs are responsible for ensuring that small businesses have the maximum practicable opportunity to participate in the performance of federal contracts as both prime contractors and subcontractors.

With regard to contract bundling, OSDBUs work with SBA to: (1) identify proposed solicitations that involve bundling; (2) facilitate small business participation as prime contractors; and (3) facilitate small business participation as subcontractors and suppliers where participation by small business concerns as prime contractors is unlikely. OSDBU staff assigned to agency contracting offices, known as small business specialists, advise agency contracting and requirements personnel on small business issues and identify potential small business sources. They also review small business subcontracting plans and evaluate contractor performance under those plans. While some agencies may require participation of a small business specialist in the acquisition planning process, there is no government-wide requirement for participation by a small business advocate (internal or external to the agency) as a member of the acquisition planning team.

3. Procurement Center Representatives (PCRs)

SBA assigns Procurement Center Representatives (PCRs) to major contracting offices to implement small business policies and programs. PCR responsibilities include: reviewing proposed acquisitions and recommending alternative procurement strategies; identifying qualified small business sources; reviewing subcontracting plans; conducting reviews of the contracting office to ensure compliance with small business policies; counseling small businesses; and sponsoring and participating in conferences and training designed to increase small business opportunities. Forty-seven PCRs represent SBA at 255 department and agency contracting offices across the country. PCRs cover 11.6 percent of the 2,200 federal contracting offices. However, the 255 contracting offices award approximately \$120 billion of the \$200 billion awarded in federal contracts each year.

III. Strategy: Action Plan

To address contract bundling in the executive branch, the following actions will be taken:

1. Ensure accountability of senior agency management for improving contracting opportunities for small business.

Senior agency management will be held accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary and justified contract bundling. Agencies will be required to report to OMB's Deputy Director for Management on a periodic basis on the status of agency efforts to address contract bundling issues. This approach will provide high-level accountability for contract bundling while maintaining a proper balance with mission critical issues. The first agency status reports will be due January 31, 2003.

2. Ensure timely and accurate reporting of contract bundling information through the President's Management Council.

Recording and distributing timely and accurate information on contract bundling is the key to accountability. OMB, agencies and the SBA can use this information to monitor contract bundling trends and adjust practices as warranted. The President's Management Council (PMC), composed of deputy secretaries and administrators from the 26 major executive branch departments and agencies, will ensure agency accountability for timely and accurate reporting on contract bundling efforts and statistics. The PMC will be tasked with assisting OMB's Deputy Director for Management with monitoring the status of agency efforts to address contract bundling.

3. Require contract bundling reviews for task and delivery orders under multiple award contract vehicles.

The definition of contract bundling in the FAR and SBA regulations will be clarified to require contract bundling reviews by the agency OSDBU for task and delivery orders under multiple award contract vehicles. Because contract bundling reviews are not specifically required by the FAR or SBA regulations for agency multiple award contracts (MACs), multi-agency contracts, Government-Wide Acquisition Contracts (GWACs), or GSA's Multiple Award Schedule Program, these contracts and the orders placed under these contracts effectively escape review. Recent and significant increases in this type of contracting make contract bundling review essential. Proposed regulatory changes will be prepared by January 31, 2003.

4. Require agency review of proposed acquisitions above specified thresholds for unnecessary and unjustified contract bundling.

SBA regulations and the FAR will be modified to require contract bundling reviews of proposed acquisitions above agency-specific dollar thresholds. Individual agency review thresholds for acquisitions between \$2 million and \$7 million should be established based on an agency's volume of contracts and in consultation with the SBA and agency OSDBU. The review will be conducted by the agency OSDBU under guidelines established by the SBA before an agency finalizes a specific acquisition plan. However, appropriate time limits will be established to ensure expeditious consideration. Proposed regulatory changes will be prepared by January 31, 2003.

5. Require identification of alternative acquisition strategies for the proposed bundling of contracts above specified thresholds and written justification when alternatives involving less bundling are not used.

SBA regulations and the FAR will be modified to require agencies to specifically identify alternative acquisition strategies that involve less bundling when an agency contemplates a bundled contract above a threshold between \$2 million and \$7 million. Where a bundled contract is used for an acquisition above the specified threshold, a written justification for using a bundled contract should identify these alternative strategies and the rationale for choosing a particular strategy over alternatives that could involve less bundling. Individual agency thresholds will be established based on an agency's volume of contracts and in consultation with the SBA and agency OSDBU. Proposed regulatory changes will be prepared by January 31, 2003.

6. Mitigate the effects of contract bundling by strengthening compliance with subcontracting plans.

In acquisitions where contract bundling is determined to be necessary and justified, actions will be taken to mitigate the effects of bundling by increasing subcontracting opportunities for small businesses. Federal contractors that receive contracts of \$500,000 for products or services or \$1 million for construction are generally required to prepare plans for subcontracting with small businesses.¹¹ Compliance with these subcontracting plans and agency oversight of contractor compliance with the plans has been inconsistent.¹² To encourage greater small business participation as subcontractors in bundled acquisitions, the FAR will be amended to require agencies to use contractor compliance

¹¹ See FAR Subpart 19.7 (48 C.F.R. § 1, 19.7).

¹² For an examination of agency oversight of contractor compliance with small business subcontracting plans, see Small Business Subcontracting Report Validation Can Be Improved, GAO-02-166R Subcontracting Data, December 13, 2001.

with sub-contracting plans as an evaluation factor for future contract awards. Agencies also will strengthen oversight of contractor efforts to comply with subcontracting plans by establishing procedures that designate personnel responsible for monitoring contractor compliance with subcontracting plans, delineate responsibilities of such personnel, and monitor their performance. These procedures will include specific requirements for agency monitoring of contractor efforts to comply with subcontracting plans for agency multiple award contracts (MACs), multi-agency contracts, Government-Wide Acquisition Contracts (GWACs), and GSA's Multiple Award Schedule Program contracts and orders under all of these types of contracts. Proposed regulatory changes will be prepared by January 31, 2003.

7. Mitigate the effects of contract bundling by facilitating the development of small business teams and joint ventures.

In acquisitions where contract bundling is determined to be necessary and justified, actions will be taken to mitigate the effects of bundling by encouraging the development of teams of small businesses to effectively compete for bundled or consolidated contracts that might be too large or diversified for individual small businesses to perform. SBA bundling regulations encourage the formation of teams of small business contractors to compete for bundled contracts.¹³ However, small businesses face obstacles to forming these teams due to relatively limited time available to respond to agency procurement solicitations, time that could otherwise be used to prepare a proposal in response to the solicitation. Agencies will train and otherwise facilitate early development of teams of small business contractors to compete for upcoming procurements. Also, SBA will determine if regulatory changes are appropriate to encourage the development of these teams and joint ventures.

8. Identify best practices for maximizing small business opportunities.

Some agency acquisition plans and justifications for bundling contracts include successful strategies for maximizing prime and subcontracting opportunities for small businesses. In cooperation with department and agency procurement executives and OSDBU directors, SBA will collect and disseminate these examples and incorporate them in appropriate training courses and materials.

9. Dedicate agency OSDBUs to the President's Small Business Agenda.

In accordance with these recommendations, agency OSDBUs are expected to significantly increase reviews of proposed acquisitions for contract bundling as well as monitor contractor compliance with subcontracting plans. Heads of departments and agencies will ensure that agency OSDBU resources are dedicated to the President's Small Business Agenda by issuing guidance, training personnel, and reallocating resources as necessary.

¹³ See SBA's bundling regulations, *supra*, note 3.