



Contract Consolidation & Bundling

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Discussion Topics



- References
- Definitions
- Pre-Award Acquisition Requirements
 - Documentation
 - Notification
- Post-Award Requirements
 - Congressional Report
- Scenarios and Recommended Best Practices

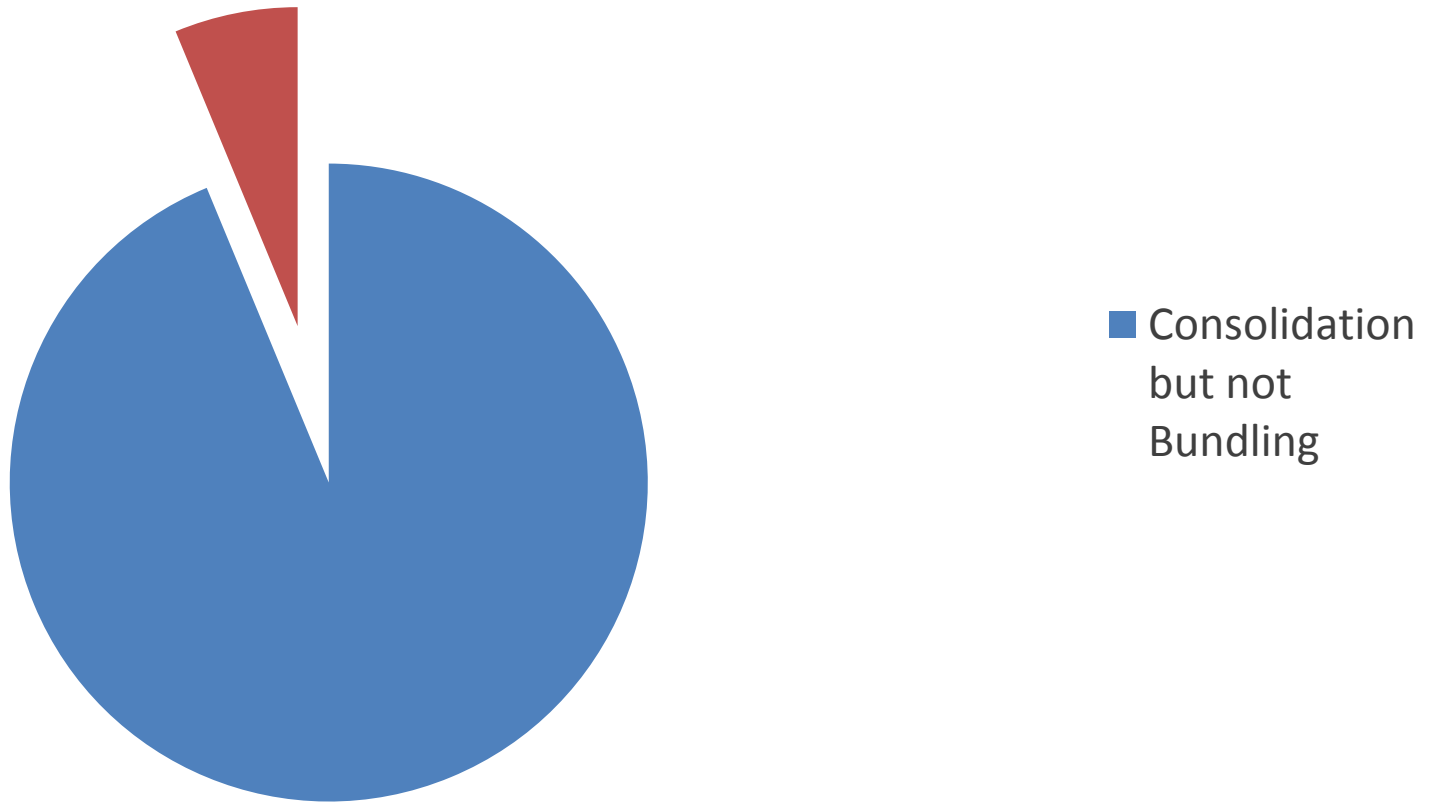


References

- FAR Part 2: Definitions of Words and Terms
- DFARS Part 205: Publicizing Contract Actions
- FAR / DFARS Part 7: Acquisition Planning
- FAR Part 8: Federal Supply Schedules
- FAR / DFARS Part 10: Market Research
- FAR Part 15: Contracting by Negotiation
- FAR Part 16: Types of Contracts
- FAR / DFARS Part 19: Small Business Programs
- 13 C.F.R 125.2

Bundling vs Consolidation

Universe of Consolidation





Consolidation

- Soliciting a single contract (including MACs) to satisfy two or more requirements for supplies or services valued in excess of \$2M that have been provided to or performed for the Federal Agency under two or more separate contracts lower in cost than the contract for which offers were solicited OR
- To satisfy requirements of a Federal Agency for construction projects to be performed at two or more discrete sites.



Bundling

- Consolidating two or more requirements for supplies or services, previously provided or performed by a small business under separate small contracts, into a solicitation for a single contract (including MACs) that is likely to be unsuitable for award to a small business concern



Substantial Bundling

- DoD
 - any bundling whose estimated contract or order value is \$8M or more
- NASA / GSA / DoE
 - \$6M or more
- Other Federal Agencies
 - \$2.5M or more



Acquisition Planning Requirements

- FAR 7.103(u): Agency-Head is responsible for ensuring that acquisition planners, to the maximum extent practicable,
 1. Structure contract requirements to facilitate competition by and among SB concerns and
 2. Avoid unnecessary and unjustified consolidation or bundling



Acquisition Planning Requirements

- FAR 7.104(d): Planner coordinates acquisition plan/strategy with SB specialist for acquisition meeting threshold for substantial bundling. SB specialist notifies Agency OSBP/OSDBU if bundling is unnecessary/unjustified or the bundled or consolidated requirement is not identified as such
- FAR 7.105(b): Acquisition plan must consider impact of consolidation/bundling for acquisition; if bundled, must identify incumbent contractors and contracts affected.



Acquisition Planning Requirements: Consolidation

- FAR 7.107-2(a): Agencies shall not consolidate contract requirements with an estimated total value exceeding \$2M unless the agency:
 1. Conducts adequate market research
 2. Identification of any alternative contracting approaches that would involve a lesser degree of consolidation;
 3. Makes a written determination signed by the SPE that is coordinated with the OSDBU/OSBP that the consolidation is necessary and justified
 4. Identify any negative impact on small business concerns
 5. Ensure steps will be taken to include small business concerns



Acquisition Planning Requirements: Consolidation

- FAR 7.107-2(b): MR must demonstrate that the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches.
- FAR 7.107-2(c): Benefits may include cost savings or price reduction and, regardless of whether quantifiable in \$ amounts
 1. Quality improvements (save time or improve/enhance performance/efficiency)
 2. Reduction in acquisition cycle times
 3. Better terms and conditions or
 4. Any other benefit



Acquisition Planning Requirements: Consolidation

- FAR 7.107-2(d):
 1. quantifiable (\$) benefits that individually or combined lead to benefits equivalent to
 - If the award value is \$94M or less: 10% savings
 - If the award value is greater than \$94M
 - \$9.4M or 5% of the award value (whichever is greater)
 2. Non-quantifiable (\$) benefits must be identified and quantified to the extent feasible
 3. Administrative cost savings alone are considered to be substantial alone if they are at least 10%.



Acquisition Planning Requirements: Bundling

- FAR 7.107-3(a): MR must demonstrate that the agency would obtain measurably substantial benefits as compared to meeting its agency's requirements through separate smaller contracts or orders.
- FAR 7.107-3(b): Agency must quantify specific benefits identified through MR and other techniques
- FAR 7.107-3(c): Benefits may include cost savings, price reduction
 1. Quality improvements (save time or improve/enhance performance/efficiency)
 2. Reduction in acquisition cycle times or
 3. Better terms and conditions.



Acquisition Planning Requirements: Bundling

- FAR 7.107-3(d) Quantifiable (\$), measurable, substantial benefits that individually or combined lead to benefits equivalent to
 - If the award value is \$94M or less: 10% savings
 - If the award value is greater than \$94M
 - \$9.4M or 5% of the award value (whichever is greater)
 - Administrative convenience alone can be classified as cost savings alone are considered to be substantial alone if they are at least 10%.



Acquisition Planning Requirements: Substantial Bundling

- FAR 7.107-4(b): When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally:
 1. Identify the specific benefits anticipated to be derived from bundling;
 2. Include an assessment of the specific impediments to participation by small business concerns as contractors that result from bundling;
 3. Specify actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;



Acquisition Planning Requirements: Substantial Bundling

- FAR 7.107-4(B) (cont):
 4. Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or order;
 5. Include a specific determination that the anticipated benefits of the proposed bundled contract or order justify its use; and
 6. Identify alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives



Bundling Notification Requirements

Notification	Incumbent SBC	SBA PCR	FBO	FBO (Annually)	SB Specialist*
Initial	X	X	X	X	X
	30 days prior to solicitation	30 days prior to solicitation	Rationale : Before issuance of solicitation	List and Rationale : 30 days within V&V	Planning: Thresholds for Substantial Bundling
Each Follow-On Bundled or Consolidated Requirement		X			
		30 days prior to solicitation			

* Engages OSDBU when bundling unnecessary/unjustified or unidentified



Acquisition Planning: Notifications

- FAR 7.107-5(a): Notification provided to affected incumbent small business concerns
 1. At least 30 days before release of the solicitation, notify any affected incumbent small business concern of Government's intention to bundle the requirement and provide name and POC information of applicable SBA PCR or SBA Area Office of Government Contracting Area Office
 2. Document contract file



Acquisition Planning: Notifications

- FAR 7.107-5(b): Notification provided to public
 1. Agency must publish on its website list and rationale for bundled requirement for which agency solicited offers or issued an award. Provide this notification within 30 days of agency's certification of contract data in Federal Procurement Data System to OFPP.
 2. Agency is encouraged to provide notification of rationale for any bundled requirement to GPE, prior to issuance of the solicitation



Acquisition Planning: Notifications

- FAR 7.107-5(c): Notification provided to SBA
 1. For follow-on bundled or consolidated requirements, the CO notify / provide SBA PCR within 30 days before release of solicitation
 - Amount of savings & benefits achieved under prior consolidation or bundling
 - Whether savings & benefits will continue to be realized if contract remains consolidated or bundled
 - Whether such savings and benefits would be greater if procurement requirements were divided into separate solicitations suitable for award to SB concerns
 - List of requirements that have been added/deleted ²⁰



Acquisition Planning: Notifications

- FAR 7.107-5(d): Agency must publish Government-wide policy regarding contract bundling, including the solicitation of teaming and JVs, on agency's website
- FAR 7.107-6: In solicitations for multiple-award contracts above substantial bundling threshold of the agency, CO must insert FAR 52.207-6 (Solicitation of Offers from SB concerns and SB Teaming Arrangements or JVs (Multiple-Award Contracts))



Contract Bundling - Concerns

- Focus on initial justification for substantial bundling
 - \$8 million or more for the Department of Defense
- Visibility of contract file documentation to support continued bundling
- Lack of definition for
 - Cost savings realized by bundling the contract requirements over the life of the contract;
 - Projections of continued cost savings



Contract Bundling - Concerns

- Compliance with the contracting agency's small business subcontracting plan
 - total dollar value awarded to small business concerns as subcontractors vs prior status as prime contractors
- Impact of bundling contract requirements on SBCs unable to compete as prime contractors and industries of such SBCs



Contract Bundling - Trends

- Limited number of reported bundling activity – 12 contracts in FY16
- Improved FPDS-NG Reporting Capability
 - Required for all agencies – Consolidated and Bundled reporting
 - Service Pack 33 on 2/3/2017
 - [https://www.fpds.gov/wiki/index.php/V1.4 SP 33.0](https://www.fpds.gov/wiki/index.php/V1.4_SP_33.0)



Contract Bundling - Trends

- Increased authorities for OSDBUs (FAR Case 2017-008)
 - Annual reviews of consolidated/bundled documentation
 - Increased collaboration with Procurement Center Representatives
 - Assignment of SB Technical Advisor to pair and assist PCRs
 - Full time, qualified, trained, familiar with requirements



Contract Bundling - Trends

- Annual Assessment Reporting to Agency Head and SBA
 - Fair share of opportunities
 - Adequacy of consolidated/bundled documentation and justifications
 - Mitigating actions

Annual Contract Bundling Report to Congress



15 U.S.C. Section 644(p)(4)(B) requires SBA to submit report on contract bundling to House and Senate Committees on Small Business

A. Number of displaced SB concerns by NAICS

Annual Contract Bundling Report to Congress



- B. Description of the activities with respect to previously bundled contracts during the preceding year, including—
- number and total dollar amount of all bundled contracts
 - For each bundled contract:
 - Justification for the bundling of contract requirements;
 - Cost savings realized by bundling the contract requirements over the life of the contract;
 - Projections of continued cost savings

Annual Contract Bundling Report to Congress



- C. Compliance with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors
- D. Impact of bundling contract requirements on SBCs unable to compete as prime contractors and industries of such SBCs.

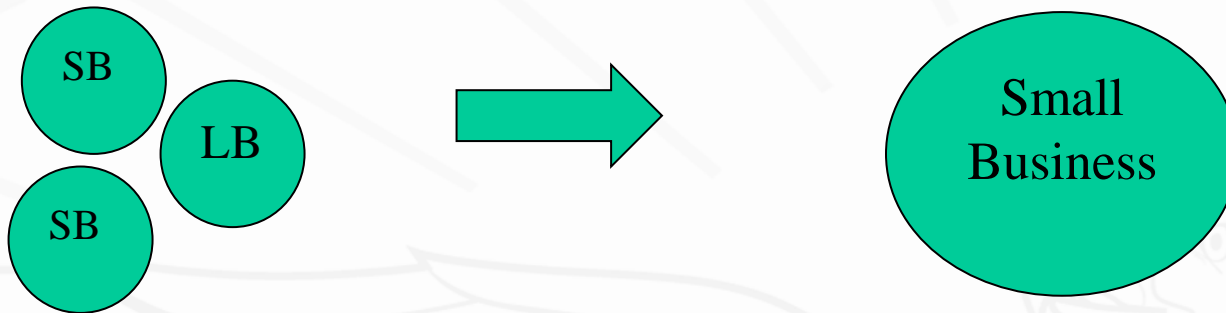
Consolidation & Bundling

Practical Application¹

¹examples provided by Christopher E. Harris

Scenario One

OUSD(I) has three different contracts for sign language support. The contract values are \$500K, \$400K, and \$1M, respectively. The incumbent contract's business sizes include two smalls and one other than small. The agency has determined that it would be more efficient and cost effective to have one contract. Market research has determined that the price of service would be reduced by \$200K, allow the agency to assign just one COR to manage it, and the requirements should be set aside for small business. Is this consolidation or bundling as defined by the Small Business Act? Why or Why not?



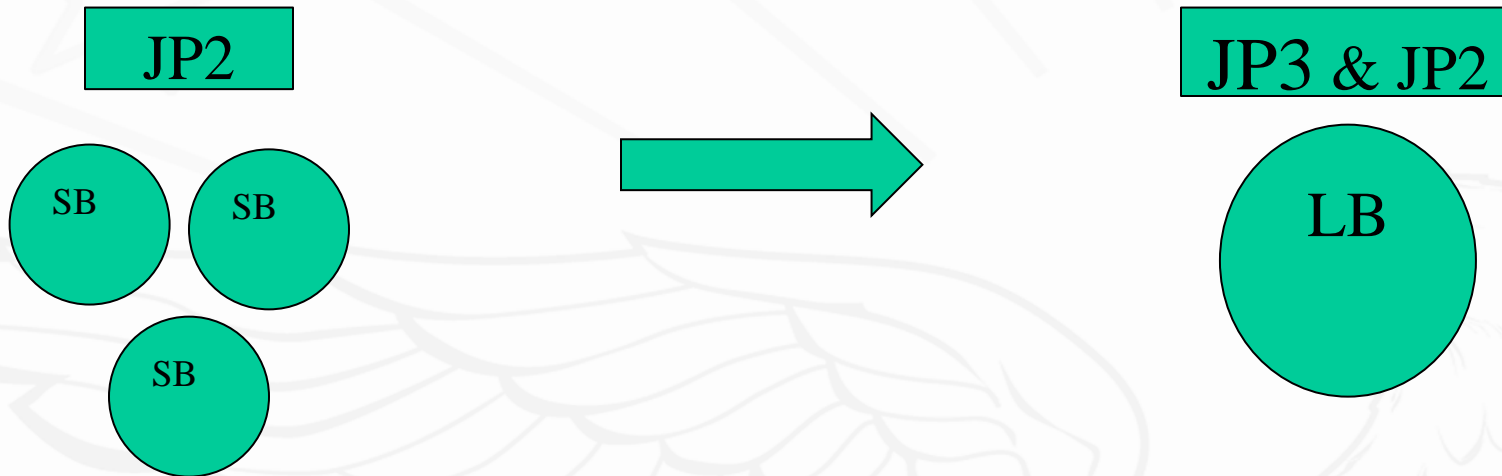
Answer--Scenario One

For the Purposes of the Small Business Act, Scenario One is Not Consolidation or Bundling because:

- It is not Consolidation because the total value of the merger does not exceed two million dollars as required by the definition of Consolidation
- It is not Bundling because the transaction does not consolidate requirement in a manner that is unsuitable for small business.

Scenario Two

Program JP2 acquired engineering services from a small business IDIQ. The ceiling of the IDIQ was \$25M. There was a reorganization in the Government and JP2 now falls under JP3. JP3 has a single award BPA with a large business for \$130M. No small businesses submitted a capability statement or quotations for the J3 BPA. J3 does not desire two multiple award vehicles for the same type of requirements; therefore the J2 IDIQ requirements will be folded into the J3 single award BPA. Does this constitute consolidation or bundling as defined by the Small Business Act?



Scenario Two

The agency planned to consolidate all small business task order requirements into a large business multiple award vehicle. These requirements were previously performed by one or more small businesses; therefore, this constitutes bundling.

See Sigmatech, Inc. B-296401



Consolidation Checklist

- Solicitation for single contract (including MACs) that combines 2 or more requirements valued in excess of \$2M
 - Previously performed for the Federal Agency/Program
 - Two or more separate contracts lower in cost than the contract for which the offers were solicited
-
- Construction to be performed at two or more discrete locations (\$2M threshold does not apply)

Bundling Checklist

- Solicitation for single contract (including MACs) that combines 2 or more requirements
- Previously performed for the Federal Agency/Program
- Requirements combined in a manner that is unsuitable for small businesses? If “No”, no further analysis is needed. If “Yes”, proceed to the next question.

Separate Smaller Contracts

- Provided by a SB or Was Previously Suitable for One or more SBs (If Yes, this is Bundling)

