

# HQ US ARMY MATERIEL COMMAND

## “CONTRACT BUNDLING GUIDELINES”

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**NOTE:** This document contains excerpts from SBA’s Interim Rule dated 19 Oct 99. The information provided is subject to change upon issuance of SBA’s final ruling. This document was produced in collaboration between the AMC Small Business Office and the Acquisition Policy Division.

### **DEFINITION:**

Public Law 105-135 (Small Business Reauthorization Act of 1997)

The term “bundled requirement” or “bundling” refers to the consolidation of 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 likely to be unsuitable for award to a small business concern due to –

- 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 the contract performance sites; or
- Any combination of the above.

### **GUIDANCE:**

- Sections 411 – 417 of the Small Business Reauthorization Act (Public Law 105-135)
- Honorable John P. White, Deputy Secretary of Defense, Policy Statement Memo dated 28 Oct 96

The statutory amendments recognize that the consolidation of contract requirements may be necessary and justified, in some cases, but require that each Federal agency, to the maximum extent practicable, take steps to avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation as prime contractors as well as to eliminate obstacles to small business participation as prime contractors.

## **DECISION TO BUNDLE:**

In accordance with AFARS 19.202-1(a)(1): “If circumstances dictate consolidation, written justification supporting this action shall be provided to the contracting officer by the program manager or requiring activity. The determination that a consolidated requirement cannot be placed under one of the preference programs must be approved by the Head of the Contracting Activity prior to release of the solicitation.”

An acquisition strategy that could lead to a contract containing two or more requirements with a combined average annual value, including options, is at least \$10M, is considered “substantial bundling”.

Acquisitions conducted as part of A-76 studies are exempt from the bundling rules.

## **COORDINATE EARLY WITH SBA:**

Logic dictates that you need to coordinate early in the acquisition process with the SBA, when your acquisition strategy entails bundling. Involving SBA late in the game may substantially jeopardize acquisition lead-time.

You should submit the proposed procurement well in advance to the SBA PCR for review whenever the procurement includes “bundled requirements”. The SBA PCR is authorized to appeal to the Head of the Contracting Activity, and then to the head of the agency, when it is believed a “bundled requirement” is not necessary and justified.

## **MARKET RESEARCH:**

In order to proceed with the bundled procurement, a procuring activity must conduct “market research” to determine if consolidation of requirements is necessary and justified. The market research should be performed as close to the date of release of the solicitation as practicable. The market research must quantify the identified benefits and explain how their impact would be substantial. The contracting officer must demonstrate “measurably substantial benefits” due to bundling. That means the benefits must be “measurable” **and** “substantial”. In order to be “measurable”, the benefits must be “quantifiable”. However, quantifiable benefits are not sufficient to justify bundling unless they are also “substantial”.

## **WRITTEN JUSTIFICATION:**

You must justify why consolidating requirements is essential and identify the specific benefits to be derived from bundling.

The justification for bundling **must document in quantifiable terms the “measurably substantial benefits”** to be achieved which will be expressed as a percentage of the anticipated contract award value including options. For procurements of \$75M or less, the benefits must be at least 10% of the contract value, including options. For procurements in excess of \$75M, the benefits must be at least 5% of the contract value, including options. The benefits may include cost savings, price reduction, or quality improvements that will save time or will improve or enhance performance or efficiency, reduction in acquisition cycle times, and better terms or conditions. When the benefits **do not** meet the established thresholds and it is determined that a bundled contract is necessary and justified, only the USD(A&T) may waive this requirement. In these cases, the USD(A&T) must determine that bundling is “critical to the agency’s mission success” and the procurement affords maximum small business participation.

When “substantial bundling” is involved, at a minimum, you must: 1) compare the benefits that could be derived through separate small contracts; 2) assess specific impediments to participation by small business concerns as prime contractors; 3) describe your intentions for maximizing small business participation as prime contractors, including provisions for encouraging small business teaming; and, 4) describe your intentions for maximizing small business participation as subcontractors.

A reduction in Government administrative or personnel costs alone cannot be a justification for bundling unless the administrative or personnel costs are expected to be “substantial” in relation to the dollar value of the procurement to be consolidated. Such costs savings must be at least 10% of the contract value, including options, to be substantial.

## **NOTIFYING SMALL BUSINESSES CONTRACTORS OF GOVERNMENT’S INTENT:**

All small businesses performing a contract requirement that is to be consolidated with one or more other requirements must be provided ample notification of the government's intent, at least 30 days, prior to the issuance of the solicitation for the bundled requirement.

This is a very important point and an area that could easily be overlooked when processing the solicitation. Always keep the small business contractors informed out of consideration and to avoid future problems.

## **BUNDLING CONSIDERATIONS:**

After justifying the need to bundle, alternatives need to be examined to minimize or mitigate to the maximum extent possible, the impact on small business, small disadvantaged business, small woman owned business, and/or qualified HUBZone contractors. The following suggestions are offered as areas to consider when faced with bundling requirements:

- 1) Consider the maximum number of possible awards dependent upon the derived tangible benefits. Don't be too restrictive by consolidating all requirements into one or two contracts.
- 2) Solicit during the early planning phase for public comments and/or suggestions to potential alternative strategies that may enhance small business participation as prime contractors and subcontractors.
- 3) Breakout a discrete portion (percentage of man-hours) or a discrete functional component for small business set-aside, 8(a), and/or HUBZone contracting, where appropriate. A number of the contracting activities have already successfully consolidated down to one full and open, while simultaneously issuing a number of small business set-asides and 8(a) set-asides.
- 4) Reserve one or more awards for small business, 8(a)s, and/or qualified HUBZone contractors, where appropriate, when issuing multiple awards against a single solicitation,
- 5) Minimize the proposal requirement when competing orders after the award of IDIQ contracts. The cost of proposal preparation for the IDIQ awards and each of the orders is a substantial burden for small business.
- 6) Track the number and dollars awarded under the IDIQ multiple award contracts to assure that small business, small disadvantaged business, woman owned small business, 8(a)s, and/or qualified HUBZone contractors are getting their fair share.
- 7) Encourage small business joint ventures or teaming arrangements for large bundled procurements. SBA has provided flexibility for two or more small businesses to form a contract team for the purpose of competing for bundled requirements while still maintaining small business status even though the team as a whole would exceed the designated small business size standard for the procurement.
- 8) Ensure full and open solicitations contain evaluation criteria that place significant emphasis on subcontracting or teaming with small business, small

disadvantaged business, woman owned small business, and/or qualified HUBZone contractors, where appropriate. The offeror should not only be graded on their proposed commitment to use small business, but also on providing evidence that they will live up to their small business commitment.

- 9) Place emphasis on the offeror's past experience in teaming and subcontracting with small business, small disadvantaged business, woman owned small business, and/or qualified HUBZone contractors, where appropriate, when evaluating past performance. Look for actual dollars and percentages that were provided to small business through teaming or subcontracting. Look for proof with compliance to their subcontracting plans. Grade or penalize accordingly.
- 10) Specify in the solicitation the subcontracting goals, based on contract dollars, the contractor must meet for small business, small disadvantaged business, woman owned small business, and/or qualified HUBZone contractors.
- 11) Include meaningful incentives (award fee or incentive fee) for use of small business, small disadvantaged business, woman owned small business, and/or qualified HUBZone contractors, where appropriate. A few of the contracting activities have actually contractually mandated percentages of contract value to be subcontracted to small business, small disadvantaged business, and woman owned small business. These percentages, as a minimum, should reflect the national small business goals for those individual categories.
- 12) Acquaint yourself with the successes and lessons learned from other contracting activities by closely examining their procurement strategies of like or similar requirements. This information may be obtainable from the PARC office, the Small Business Office, or contained within their shared business opportunity websites.