

REPORT TO CONGRESS

ON

CONTRACT BUNDLING

Fiscal Years 2004 and 2005

This report is provided in accordance with Section 810 of the Small Business Reauthorization Act of 2000 (Public Law 106-554).

U.S. SMALL BUSINESS ADMINISTRATION

Preface

Section 810 of Public Law (Pub. L.) 106-554, approved on December 21, 2000, added a new section 15(p) entitled *Database, Analysis and Annual Report With Respect To Bundled Contracts* to the Small Business Act (15 USC 644(p)). Although broad in scope, section 15(p)(5)(B) contains a provision that limits the type of data the U.S. Small Business Administration (SBA) can collect from agencies to “only information collected through *existing* agency data collection sources currently available” (emphasis added). This provision of the statute has a profound effect on the ability of the Agency to gather and analyze data relative to contract bundling. For example, the Department of Defense (DOD) procurements represent over 60 percent of total Federal procurement dollars. DOD’s existing data sources do not include sufficient information to quantify the extent to which bundling of contract requirements impacts the ability of small businesses to compete as Federal prime contractors or to compare the savings realized under an existing bundled contract with the potential savings that may occur if that bundled contract is re-competed in its current configuration. Without this information, SBA is unable to assess whether agencies actually achieved the estimated savings they used to justify the original bundled contract. In addition, SBA is unable to assess if these savings will continue if the bundled contract is re-competed exactly as originally solicited. This inability to collect and analyze “new” bundling information impedes SBA’s ability to fully comply with the statutory data collection and reporting requirement set forth in Pub. L. 106-554. This report contains a summary of all currently reported data on the extent of contract bundling in fiscal years 2004 and 2005.

Executive Summary

The Federal Procurement Data System-Next Generation (FPDS-NG); <https://www.fpds.gov>) is the Federal Government's only official source of Federal procurement information. It is part of the integrated acquisition environment (IAE), a key Administration management initiative (<http://www.acquisition.gov>). FY 2004 was the first operational year for FPDS-NG and a significant upgrade from the previous system, the Federal Procurement Data System (FPDS).

One major change relates to how the Government collects data on contract bundling. FPDS-NG is comprised of 125 data elements. One of the data elements (i.e., 8N) is Contract Bundling. It designates that the value of the contract, including all options, is expected to exceed \$5 million. To enter data in this field, the contracting officer must determine that the contract action is a result of consolidating two or more requirements previously solicited, provided or performed under separated smaller contracts into a solicitation for a single contract likely to be unsuitable for award to a small business concern. The element may also indicate exceptions to applying the substantial benefits analysis required by the Federal Acquisition Regulation (FAR) 7.107. Previously there was no \$5 million threshold for the contract bundling reporting data element. This threshold may explain why there are significantly fewer records for FY 2004 and FY 2005.

For FY 2004, FPDS-NG data shows that the DOD made 386 bundled contract actions obligating \$600,571,933. This was comprised of 225 delivery orders for \$192,340,746 against 11 contracts. The balance (\$408,231,187) was 160 modifications to 16 contracts. The civilian sector shows 253 bundled contract actions obligating \$223,742,333.78. This was comprised of delivery orders for \$136,787,491.51. Stand alone contracts for civilian agencies totaled \$77,882,646.99. The balance (\$9,072,195.28) purchase was from orders. The significant bundling amounts were reported by the National Aeronautics and Space Administration (NASA) and the Department of Health and Human Services (HHS).

For FY 2005, FPDS-NG data shows that DOD made 645 bundled contract actions obligating \$1,783,265,820. This was comprised of 484 delivery orders for \$1,283,589,432. The balance (\$499,676,388) was 161 modifications. The civilian sector shows 250 bundled contract actions obligating \$417,132,563.95. This was comprised of delivery orders for \$346,069,590.92. Stand alone contracts for civilian agencies totaled \$70,788,654.46. The balance (\$274,318.57) was from purchase orders.

The data for FY 2004 and FY 2005 indicates that contract bundling represents a very small percentage of the over \$300 billion and \$314 billion, respectively, of Federal procurement dollars for prime contracts. In FY 2004, the small business share was 23 percent or \$69.2 billion. In FY 2005, the small business share was 25.3 percent or \$79.6 billion. However, contract bundling is usually cumulative. This means that once a small business contract is bundled, it is unlikely to be unbundled, thus permanently precluding small businesses from competing. For this reason SBA remains vigilant regarding contract bundling and continues to explore ways, such as contractor teaming arrangements, to enhance small business competitiveness for larger contracts.

Of particular interest is the use of orders against Federal Supply Schedules (Schedules), orders which now comprise half of all buying activity. (See FYs 2004 and 2005 Federal Procurement Reports at the following website:
http://www.fpdsg.com/downloads/FPR_Reports/fpr_section_III_agency_views.pdf).

In 2002, SBA amended its regulations to require that Federal Offices of Small and Disadvantaged Business Utilization (OSDBU) assess their respective agency's contract bundling activities (13 CFR 125.2(e)) and report their findings to SBA. Those regulations became effective in FY 2004. Some agencies, including DOD, did not submit the report to SBA as required. The reports submitted indicated that major agencies are aware of their responsibilities. However, because these agencies lack the resources to review the thousands of orders placed against Schedules, other approaches should be considered. For example, routine audits of orders against Schedules could identify irregularities and noncompliance.

Background

The acquisition reforms of the 1990s changed how the Federal Government buys goods and services in support of mission needs. 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. Agencies are taking existing smaller contracts and combining them into one larger contract to streamline the procurement process and reduce costs.

This practice, known as contract consolidation, has a negative affect on the ability of small businesses to compete for Federal contracts. Smaller contracts that are consolidated to such an extent that they present a barrier to the ability of small businesses to compete for such contracts are considered to be "bundled contracts." Consequently, firms that in the past were able to compete in the Government arena are no longer able to do so. The fallout from the implementation of contract bundling, which resulted from acquisition reform is highlighted below:

- (1) The reduction of the number of firms available to meet the Government's requirements; and
- (2) Reduced competition.

The Small Business Reauthorization Act of 1997 (Pub. L. 105-135), Section 412, defined bundling of contract requirements as "consolidating two or more procurement requirements for goods and 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 due to: (A) the diversity, size, or specialized nature of the elements of the performance specified; (B) the aggregate dollar value of the anticipated award; (C) the geographic dispersion of contract performance sites; or (D) any combination of the factors described in subparagraphs (A), (B), and (C)."

The statute requires agencies to conduct market research to determine if the consolidation of contract requirements is necessary and justified. Consolidation is necessary and justified if agencies can derive measurably, substantial benefits that result in cost savings, quality improvements, reductions in acquisition cycle time, or better terms and conditions. Agencies are also required to report to FPDS-NG, bundled contracts expected to exceed \$5 million, including all options. Agencies began reporting information on bundled contracts to the FPDS in October 2000.

Bundling Database

Section 810, Pub. L. 106-554 requires SBA to implement a contract bundling database, conduct an analysis of bundled requirements, and submit a report to Congress within 1 year of enactment and each March thereafter. The report is required to include the following information:

- (i) The number of small businesses, by industry classification, displaced as a result of the bundled procurement;

- (ii) A description of the activities of each Federal agency with respect to previously bundled contracts during the preceding fiscal year, including:
 - (1) the number and dollar value of bundled contract requirements; and with respect to each bundled contract:
 - (a) The justification for the bundled contract;
 - (b) The cost savings realized over the life of the contract;
 - (c) The extent to which maintaining the bundled status will continue to result in cost savings;
 - (d) The extent to which bundling the requirements complied with the agencies subcontracting plan; and,
 - (e) The impact of bundling on small businesses' ability to compete as prime contractors.

With respect to the required contract bundling database, Section 810 requires the following:

- (1) The database contain information on each bundled contract and the small businesses displaced as prime contractors as a result of the bundled contract,
- (2) SBA access information collected in the FPDS to assist in implementing this data collection requirement, and
- (3) Federal agencies provide, upon request of SBA, procurement information collected through "existing agency data collection sources." However, Pub. L. 106-554 (15 USC 644(p)(5)(B)) also limited the type of data SBA could collect to "procurement information collected through existing agency data collection sources."

Based on these requirements, SBA used the existing data collection mechanisms in order not to create additional reporting burdens or require the commitment of additional computer resources.

SBA requested a change to the Federal Acquisition Regulations (FAR) Council that would require agencies to provide information to SBA's Procurement Center Representatives (PCRs) on the initial bundled contract, and any bundled contract that is to be re-competed as a bundled contract. This information would include the displaced small businesses, the savings actually achieved during the original bundled contract, the estimated savings to be realized under the follow-on bundled contract, and the savings or benefits realized if the contract remained bundled as compared to issuing separate smaller contracts to small businesses. After reviewing our request, the FAR Council determined that a majority of the data elements were new and unavailable. In response, SBA now sits on the FPDS-NG Contract Control Board to improve existing data collection and develop reports focusing on small business competitiveness issues.

Contract Bundling Regulations

On March 19, 2002, when the President announced his Small Business Agenda, a key component was for agencies to avoid unnecessary contract bundling. The Office of Management and Budget (OMB) was requested to develop a strategy for unbundling contracts. OMB's October 2002 Report to the President, entitled "Contract Bundling: A Strategy for Increasing

Federal Contracting Opportunities for Small Businesses,” outlined nine specific steps to eliminate unnecessary contract bundling and mitigate the effects of necessary contract bundling on small businesses. The strategy sought to hold agencies accountable for avoiding unnecessary contract bundling, close the regulatory loopholes, mitigate the effects of contract bundling by requiring agencies to strengthen their oversight of subcontracting plans, and use their Office of Small and Disadvantaged Business Utilization (OSDBU) to review requirements for contract bundling implications.

The OMB report indicated that new contract awards declined from a high of 86,243 in FY 1991 to a low of 34,261 in FY 2001. The number of small businesses receiving new contract awards declined from a high of 26,506 in FY 1991 to a low of 11,651 in FY 2000. 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. This not only drives small firms out of Federal contracting, but also discourages new firms from entering the Federal market and, thereby, decreases competition. The taxpayer will ultimately pay more for Government goods and services.

While small business participation has declined in numbers, the dollar amounts to small businesses have increased. Part of the explanation could be the expanded use of contract vehicles such as multiple award contracts. Before 2004, orders under these vehicles were not subject to uniform reviews for contract bundling and small business participation. While there has been a sharp decline in new contract awards, there has been a significant increase in orders under these contracts. Department and agency expenditures for orders under existing contracts, increased from \$21 billion in FY 1990 to a high of \$72 billion in FY 2001. With total FY 2001 procurements valued at \$234.9 billion, orders under existing contracts represented about 31 percent of the total.

On October 20, 2003, as a result of the OMB Report, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council agreed on a final rule amending the FAR governing contract bundling as follows:

- Revised the definition of contract bundling to include multiple award contract vehicles and task and delivery orders against those vehicles
- Require contract bundling reviews of contracts and orders under multiple award contracts above \$7 million for the (DOD), \$5 million for the General Services Administration, the NASA , and the Department of Energy, and \$2 million for all other agencies
- Require procuring activities to coordinate with their small business, specialist proposed acquisition strategies for contracts and orders above those thresholds and require the small business specialist to coordinate with the OSDBU when acquisition strategies include contract bundling that is unnecessary and unjustified or not identified as bundled
- Reduce the threshold for substantial bundling to correspond with the proposed thresholds required for contract bundling reviews
- Require the documentation necessary to justify bundling to identify alternative strategies that involve less bundling

- Require agencies to strengthen their oversight of subcontracting plans
- Require the OSDDBU to perform certain oversight functions and submit a report to the Agency Head and the SBA Administrator

SBA and FAR regulations also require agencies, as part of acquisition planning, to conduct market research and perform a benefit analysis to determine if consolidating contract requirements will result in savings to the Federal Government. As part of the market research, agencies are required to consult with their local PCRs and notify small businesses that would be displaced as a result of the bundling of the requirements. The regulations require agencies to provide the PCRs with a copy of the acquisition strategy for the bundled contract and the measurably substantial benefit analysis that was used to determine if the consolidation was necessary and justified.

Analysis of FPDS-NG Data on Contract Bundling

Agencies are required, among other things, to report to the FPDS-NG specific data elements for each contract action more than \$25,000. SBA's analysis was limited to those contract actions that agencies reported as "Bundling of Contract Requirements".

In FY 2004, FPDS-NG data shows that DOD made 386 bundled contract actions obligating \$600,571,933. This was comprised of 225 delivery orders for \$192,340,746 against 11 contracts. The balance (\$408,231,187) was 160 modifications to 16 contracts. The civilian sector shows 253 bundled contract actions obligating \$223,742,333.78. This was comprised of delivery orders for \$136,787,491.51. Civilian agency stand alone contracts totaled \$77,882,646.99. The balance, (\$9,072,195.28) was purchase orders. NASA and HHS reported the most significant bundling amounts of all civilian agencies.

For FY 2005, FPDS-NG data shows that DOD made 645 bundled contract actions obligating \$1,783,265,820. This was comprised of 484 delivery orders for \$1,283,589,432. The balance (\$499,676,388) was 161 modifications. The civilian sector shows 250 bundled contract actions obligating \$417,132,563.95. This was comprised of delivery orders for \$346,069,590.92. Stand alone contracts for civilian agencies totaled \$70,788,654.46. The balance (\$274,318.57) was from purchase orders.

Before an agency can proceed with a bundled contract, it must demonstrate measurably substantial benefits, with cost savings equivalent to 10 percent of the estimated contract value if the value is \$75 million or less (including options); or 5 percent or \$7.5 million (whichever is greater) if the contract value (including options) exceeds \$75 million. SBA PCRs work closely with buying activity staff, including the Agency Small Business Specialists, to mitigate the negative effects of bundling on small business. In many cases, proposed bundled contracts are "unbundled" and those where bundling is determined to be necessary and justified, SBA PCRs ensure that opportunities for small businesses, i.e., aggressive subcontracting goals, are included. In FYs 2004 and 2005, SBA found it necessary to file only two and four secretarial appeals, respectively.

The data for FY 2004 indicates contract bundling represents a small percent of the over \$300 billion Federal procurement dollars for prime contracts. In FY 2004, the small business share was 23 percent or \$69.2 billion. In FY 2005, the small business share was 25.3 percent or \$79.6 billion. However, contract bundling is usually cumulative. This means that once a small business contract is bundled, it is unlikely to be unbundled, thus permanently precluding small business from competing. For this reason SBA remains vigilant regarding contract bundling and continues to explore ways, such as teaming, to help small businesses more effectively compete for larger contracts.

Limitations Concerning Available Data

Based on SBA's PCR reviews, agencies often consolidate requirements previously performed by small businesses under separate smaller contracts and issue an order against an existing multiple award contract, Schedule contract, or Government wide Acquisition Contract. The new regulations require that these consolidations be reported as bundled contracts if they meet the definition of bundling. The regulations provide agencies with better guidance on how to identify bundled contracts so that more accurate and complete information can be reported to FPDS-NG. However, SBA's preliminary review of the data indicates that the ambiguities with the current definition of contract bundling may cause FPDS-NG reporting discrepancies.

FPDS-NG is comprised of 125 data elements. One of the new data elements added to FPDS-NG is 8N Contract Bundling. It designates that the value of the contract, including all options, is expected to exceed \$5 million. To enter data under the element, the contracting officer must determine that the contract action is a result of consolidating two or more requirements previously solicited, provided or performed under separated smaller contracts into a solicitation for a single contract likely to be unsuitable for award to a small business concern. The element may also indicate exceptions to applying the substantial benefits analysis required by FAR 7.107. Previously there was no \$5 million threshold for contract bundling reporting. This threshold may explain why there are significantly less records for FY 2004.

Conclusion

SBA remains concerned about the ability of small businesses to compete in the Federal marketplace and remains dedicated to work with the acquisition community and small businesses to ensure that they are able to compete. SBA is committed to the President's Small Business Agenda to ensure that agencies avoid unnecessary and unjustified contract bundling. By implementing the new regulations and holding agencies accountable, an environment will be created in which small business owners will have greater opportunities to successfully compete for Federal prime and subcontracting awards. SBA conducts surveillance reviews to monitor agencies' compliance with small business programs and to identify best practices. SBA will continue to work with the agencies to develop acquisition strategies to minimize the impact of contract bundling on the small business community and to increase competition.



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

September 21, 2006

The Honorable Donald Manzullo
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed is the U.S. Small Business Administration's (SBA) "fiscal years (FY) 2004 and 2005 Report to Congress on Contract Bundling." Prepared pursuant to the Small Business Reauthorization Act of 2000 (Public Law 106-554), the report presents data on the extent of contract bundling in FYs 2004 and 2005. This report also describes actions taken by SBA to improve oversight and monitoring of contracting bundling.

An identical letter and a copy of this report have been sent to Senators John F. Kerry and Olympia Snowe, and Congresswoman Nydia Velázquez. If you have any questions concerning this report, please contact C. Edward "Tee" Rowe, Associate Administrator in the SBA Office of Congressional and Legislative Affairs at (202) 205-6700.

Thank you for your continued support of SBA's government contracting programs and small businesses nationwide.

Sincerely yours,

Steven C. Preston

Enclosure



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

September 21, 2006

The Honorable Nydia Velázquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Velázquez:

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U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

September 21, 2006

The Honorable Olympia Snowe
Chair, Committee on Small Business
and Entrepreneurship
United States Senate
Washington, DC 20510

Dear Madam Chair:

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U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

September 21, 2006

The Honorable John Kerry
Ranking Member
Committee on Small Business
and Entrepreneurship
United States Senate
Washington, DC 20510

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