



U.S. Small Business  
Administration



# Consolidation and Bundling

# Hosts

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# Welcome to “SBA Virtual Learning 2021”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact your IT admin who manages Teams settings for your organization.
3. Captioning available for this presentation.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

# Procurement Technical Assistance Centers (APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

- Contracting officer resources: “How PTACs partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest Procurement Technical Assistance Center at <http://www.aptac-us.org>
- Past Learning Series Recordings: [SBA Webinar Library for Contracting Officers | APTAC \(aptac-us.org\)](#)

# Small Business Administration YouTube Page

SBA YouTube page posts past “First Wednesday” programming at links below.

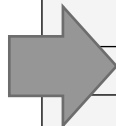
- November 4, 2020 – 8(a) Program: <https://youtu.be/QCXwMCFLB94>
- December 2, 2020 – SBIR/STTR: <https://youtu.be/uR-LkHLsnn8>
- January 6, 2021 – Surety Bonding: <https://youtu.be/3AmFc9syThA>
- February 3, 2021 – Size & Affiliation: <https://youtu.be/tga9GCvKeKw>
- March 3, 2021 – WOSB Program: [https://youtu.be/-fX\\_RbXl2UU](https://youtu.be/-fX_RbXl2UU)

# FIRST WEDNESDAY VIRTUAL LEARNING SERIES

## FY 2021 SCHEDULE

**1:00 to 2:00 PM Central Time**

FY 2021	Date	Topic
1	October 7, 2020	8(a) Program
2	November 4, 2020	8(a) Program Updates
3	December 2, 2020	SBIR/STTR Program
4	January 6, 2021	Surety Bonds
5	February 3, 2021	Size and Affiliation
6	March 3, 2021	Women-Owned Small Business (WOSB) Program
7	April 7, 2021	Consolidation/Bundling
8	May 5, 2021	Certificate Of Competency (COC)
9	June 2, 2021	Regulatory Updates
10	July 7, 2021	Subcontracting Program
11	August 4, 2021	TBD



The program schedule is for information only and is subject to change.

## One Continuous Learning Point

- Self-service: Using the PowerPoint that was sent with your invitation for this training event, fill in your name on the certificate slide and save. Download the certificate and print for your records. You submit your request for training credit IAW your agency policy, i.e. FAITAS.
- If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to [sbalearning@sba.gov](mailto:sbalearning@sba.gov).



# “SBA 1st Wednesday Virtual Learning 2021”

This Certificate is awarded to

**Insert Your Name Here**

For completion of

## Consolidation and Bundling

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Pamela J. Beavers  
Director, Area IV  
SBA Office of Government Contracting

4/07/2021

DATE

# Today's Speaker(s)

**Mr. Charles Mason**  
**Procurement Center Representative, Area IV**  
**Office of Government Contracting**  
**U.S. Small Business Administration**

**Ms. Deborah Crumity**  
**Commercial Market Representative, Area IV**  
**Office of Government Contracting**  
**U.S. Small Business Administration**

**Mr. Sam Le**  
**Deputy Associate General Counsel (Procurement Law)**  
**Office of General Counsel**  
**U.S. Small Business Administration**



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# Consolidation and Bundling

## How to identify, justify and notify

# Discussion Topics

- References
- Definitions
- Identify Consolidation and Bundling
- Justify Consolidation and Bundling
- Notifications
- SBA Congressional Reporting
- Case Studies
- Questions

# 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



# Identifying Consolidation and Bundling

# What is consolidation?

## 2.101

(1) A solicitation for a **single contract**, a multiple-award contract, a task order, or a delivery order to satisfy-

(i) **Two or more** requirements of the Federal agency for supplies or services

- that have been provided to or performed for the Federal agency under two or more **separate contracts**,
- each of which was lower in cost than the total cost of the contract for which offers are solicited; or

(ii) Requirements of the Federal agency for construction projects to be performed at **two or more discrete sites**.

(2) “**Separate contract**” means a contract that has been performed by any business, including small and other than small business concerns.

## Poll: Which of these are consolidated contracts?

- Contract X was a small-business set-aside. Contract Y was an SDVOSB set-aside. Agency decides to combine X and Y into Contract A. **Contract A** would be an SDVOSB set-aside.
- Contract X was performed by a large business. Contract Y was performed by a large business. Agency decides to combine X and Y into contract B. **Contract B** would be full and open.
- Contract C is a construction contract for construction at site X and at site Y. **Contract C** has not been solicited ever before.



# What is bundling?

## 2.101

(1) Combining **two or more requirements** for supplies or services, previously provided or performed under separate smaller contracts into a solicitation for a **single contract**, a multiple-award contract, or a task or delivery order

- that is likely to be **unsuitable for award** to a small business concern (even if it is suitable for award to a small business with a Small Business Teaming Arrangement) due to—
  - (i) The diversity, size, or specialized nature of the elements of the performance specified;
  - (ii) The aggregate dollar value of the anticipated award;
  - (iii) The geographical dispersion of the contract performance sites; or
  - (iv) Any combination of those factors.

(2) “Separate smaller contract” means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) Does not apply to a contract awarded and performed entirely outside of the United States.

## Poll: Which of these are bundled?

- Contract X was a small-business set-aside. Contract Y was an SDVOSB set-aside. Agency decides to combine X and Y into Contract A. **Contract A** would be an SDVOSB set-aside.
- Contract X was performed by a large business. Contract Y was performed by a large business. Agency decides to combine X and Y into contract B. **Contract B** would be full and open.
- Contract X and T were separate contracts performed by small businesses. Agency will award the follow-on requirements as a single **task order C** on a best-in-class GWAC without a set aside.

# What is substantial bundling?

## 7.107-4

Bundling with an estimated value of—

- **\$8 million** or more for the Department of Defense;
- **\$6 million** or more for NASA, GSA, or Dept. of Energy;
- **\$2.5 million** or more for all other agencies.

Thresholds apply to the cumulative estimated dollar value (including options) of multiple-award contracts, GSA Schedule orders, and GWAC orders.



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# Justifying Consolidation

# How to Justify Consolidation

## 7.107-2

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 senior procurement executive (SPE) that is coordinated with the Office of Small Disadvantage Business Utilization (OSDBU)/Office of Small Business Programs (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

# What kind of benefits can the agency consider?

## 7.107-2

1. Cost savings or price reductions even if not quantifiable
2. Quality improvements (save time or improve/enhance performance/efficiency)
3. Reduction in acquisition cycle times
4. Better terms and conditions or
5. Any other benefit

# What are substantial benefits for consolidation?

## 7.107-2

1. Quantifiable (\$) benefits that individually or combined lead to benefits equivalent to
  - If the award value is \$94M or less: at least 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. Reduction of administrative/personnel costs alone is not sufficient justification unless they are at least 10% of estimated contract/order value (including options).

# How to justify consolidation without substantial benefits

## 7.107-2

1. The expected benefits are critical to the agency's mission success;
  2. Procurement strategy provides for maximum practicable participation by small business;
- Approved by DoD SPE or Deputy Secretary for civilian; and
  - Determination provided to SBA upon request





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# Justifying Bundling

# How to Justify Bundling

## 7.107-3

Measurably substantial benefits.

Benefits may include:

1. Cost savings
2. Price reduction
3. Quality improvements (save time or improve/enhance performance/efficiency)
4. Reduction in acquisition cycle times or
5. Better terms and conditions.

# What are substantial benefits for bundling?

## 7.107-3

Quantifiable (\$), measurable, substantial benefits that individually or combined lead to benefits equivalent to

- If the award value is \$94M or less: at least 10% savings
- If the award value is greater than \$94M
  - \$9.4M or 5% of the award value (whichever is greater)

Reduction of administrative/personnel costs alone is not sufficient justification unless they are at least 10% of estimated contract/order value (including options).

# How to justify bundling without substantial benefits

## 7.107-3

1. The expected benefits are critical to the agency's mission success;
  2. Procurement strategy provides for maximum practicable participation by small business;
- Approved by DoD SPE or Deputy Secretary for civilian; and
  - Determination provided to SBA upon request

# Substantial Bundling: Additional Justifications

## 7.107-4

When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally:

1. Identify the specific benefits anticipated to be derived from substantial bundling;
2. Include an assessment of the specific impediments to participation by small business concerns as contractors that result from substantial bundling;
3. Specify actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;

# Substantial Bundling: Additional Justifications

## 7.107-4

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

# Subcontracting opportunities in bundled or consolidated contracts not set aside

## FAR 15.304

- Include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans; and
- Include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor.



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# Notifications



# Consolidation Notices to the Public

84 Fed. Reg. 65663

Two publication requirements in Government Point of Entry (GPE)

(1) Notice that agency has justified consolidation

- No later than 7 days after making the determination; and
- At least 7 days prior to the solicitation

(2) Copy of determination that consolidation is necessary and justified

- with the publication of the solicitation

# Notifications to small business concerns

## 7.107-5

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 serving the area in which the buying activity is located
2. Document contract file

# Notifications to public

## 7.107-5

### Notification provided to public

1. Agency must publish on its website a 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 (FPDS) to Office of Federal Procurement Policy (OFPP).
2. Agency is encouraged to provide notification of rationale for any bundled requirement to GPE, prior to issuance of the solicitation

# Notifications to SBA

## 7.107-5

### 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

# Notifications

## 7.107-5

Agency must publish Government-wide policy regarding contract bundling, including the solicitation of teaming and JVs, on agency's website

## 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))

# Substantial bundling notices to the public

84 Fed. Reg. 65663

## Two publication requirements in GPE

- (1) Notice that agency has justified substantial bundling
  - No later than 7 days after making the determination; and
  - At least 7 days prior to the solicitation
- (2) Copy of rationale with the publication of the solicitation
  - a) Bundling analysis;
  - b) SB impediments assessment;
  - c) Ways to maximize SB participation as primes, such as teaming;
  - d) Ways to maximize SB participation as subs; and
  - e) Alternative strategies and reasons for not choosing them.



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# SBA Report to Congress

# Annual Contract Bundling Report to Congress

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

- A. Number of displaced SB concerns by NAICS
- 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.



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# Case Studies

# The difference between bundling and consolidation

## CHE Consulting v. U.S. (DLA), 125 Fed. Cl. 234 (2016)

- Facts: DLA issued a GSA Schedule order for Oracle Hardware and hardware maintenance services. A small business, Affigent, won the order with a price of \$393,172. An incumbent maintenance contractor protested to the Court of Federal Claims.
- Issue: Did DLA bundle or consolidate Oracle hardware with maintenance services?

# The difference between bundling and consolidation

**CHE Consulting v. U.S. (DLA), 125 Fed. Cl. 234 (2016)**

## Result:

- Any consolidation is not required to be justified because the order is valued at less than \$2 million.
- The order does not meet the definition of bundling because the awardee was a small business, and the other two offerors were small businesses. Also, SBA reviewed and approved the order.

# Justifying substantial bundling

## InSap Services v. Dept. of the Army, B-417596.2 (2019)

- Facts: The Army sought to combine 10 separate IT contracts—6 performed by small business—into one task order for Enterprise Resource Planning (ERP) systems. Value of **\$991 million**. The Army calculated the following savings:
  - \* \$123 million in reductions in contractor staff/transfer to Army personnel  
(through a consolidated help desk, for example)
  - \* \$23 million in government labor for procurement and administrative costs,  
based on the costs of procuring the existing 10 contracts
- Issue: Did the Army adequately justify substantial bundling based on reductions in costs?

# Justifying substantial bundling

## InSap Services v. Dept. of the Army, B-417596.2 (2019)

### Result:

- To be measurably substantial, the benefits must exceed \$49.5 million.
- The contract cost savings did not net out the cost of having government employees perform contractor tasks. After accounting for government costs, the net savings are \$96 million.
- The government cost savings did not account for the costs of awarding and administering the bundled contract.
- Still the resulting \$96 million still exceeds the required savings.

# Justifying consolidation

## Vantext Service Corp. v. Dept. of the Army, B-290415 (2002)

- Facts: The Army sought to consolidate portable latrine services at Fort Bragg, Fort Drumm, and Fort Campbell, with waste removal (grease trap cleaning) services at Fort Campbell. A small business submitted the winning bid at \$2.2 million. A portable latrine service company protested, arguing that it was disadvantaged because it does not perform waste removal.
- The Army argued that the consolidation reduced administrative burden by avoiding multiple solicitations, and multiple contractors
- Issue: Did the Army adequately justify its consolidation?

# Justifying consolidation

## Vantext Service Corp. v. Dept. of the Army, B-290415 (2002)

### Result:

- The resulting consolidated contract does not facilitate competition.
- Convenience is not a legal basis for combining requirements, without evidence that cost savings are significant.
- At least 31 companies could provide portable latrine services alone.
- *“Restricting competition is presumed to raise, not lower, the cost that the government will pay, and the desire to reduce administrative costs is generally neither a permissible nor a logical basis to restrict competition.”*



# Poll: Why do we justify consolidation and bundling?

- (1) Adverse effect on small business, especially the smallest of them.
- (2) It's the law.
- (3) You would lose a GAO protest.
- (4) SBA needs to report bundling to Congress.



# Questions