

SBA1st Wednesday Virtual Learning 2016
4. "Thinking Over Consolidated and Bundled Contracts
January 6, 2016

Transcript

Carla: Good morning, and welcome to the live SBA Web Conference. My name is Carla, and I will be moderating today's session. With that, I will turn the call over to Dwight Johnson. Dwight, please go ahead.

Dwight Johnson: Happy New Year, everybody. Thank you for joining us for our First Wednesday of 2016. We hope you had a very fine holiday season and wish you the best in 2016. Today, we are talking about Thinking Over Bundled and Consolidated Contracts. This is the first time for us. Obviously, we are going to be covering a great deal in a very short amount of time. Next slide, slide 2, please.

This is, I am Dwight at the bottom, and our presenter today is Jan Kaiser in Chicago and Valerie Coleman is back assisting us as well today. Now, one of the key things I like to remember is that link at the top. If you have any questions at any time, and we always like questions, if we don't address it today, we will ... You know who to contact. You can ask anytime. Slide 3, please.

This is the link to our area offices. Keep in mind these are your contacts for these different, four different, items. Also, keep in mind as a reminder, if you are doing a Woman-owned Small Business Set Aside, it is link code-specific. Also, the regs are in place of doing sole source. Next slide, please.

This is slide 4. This is our standard slide. Again, welcome, and we have pretty much covered that except always keep in mind that SBALearning@SBA.gov is a very important way to link to us. We will be talking more about that in a minute. We appreciate the participation of the procurement technical assistants that are in this program. Next slide, please.

This is 5. Next month, we will be talking about services available to veterans. Slide 6, please.

We suggest that you take credit for continuous learning points, for participation. As we always say, it is rather complex. Many of you are not able to access the interface. If you don't do that, we do not have a record of your participation. That is where you email SBALearning@SBA.gov to verify your participation. When you do that, you also get the post program email, which includes the recording of the program. Slide 7, please.

This is the certificate which you complete and keep for your records. Slide 8, please. I will turn it to Jan Kaiser.

Jan Kaiser: Thanks, Dwight. I hope everyone is having a good start to their New Year, and thank you for participating in this session of the First Wednesday Webinar Learning Series. One of my resolutions this year is to finish a book I started. I can

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hardly put it down. It is called The Revenant, and it is about a man who was mauled by a bear, left for dead and crawled hundreds of miles to civilization. Based on really dramatic previews, I am also trying to work up the courage to see the new Leonardo diCaprio movie based on the book.

As I have been preparing for this talk, it made me think about how that character in the book is all alone quite a bit of the time. I want to make sure that you realize that, as you work through your acquisitions that may involve bundling and consolidation, these situations don't need to be nearly so intense, particularly those involving bundling and consolidation, by involving your team and including your PCR. There are folks out there that you can talk to. This is a complicated topic. I think that Dwight mentioned that. As we follow along, you might want to take notes about things, even the slides. We have got only a short amount of time to talk about this topic. Of course, we are restricted by the size of information that we can provide on each slide. Sometimes you are going to have to go and look some of the information up, but we try to give you the references as often as possible so that you can do that.

SBA understands that acquisitions staff has a difficult time while on the one hand meeting Small Business requirements to provide maximum practicable opportunity to small business concerns, and on the other hand, with declining budgets, receiving directives or messages that are requesting contracting folks to seek out contract consolidation and strategic sourcing initiatives. However, these diminish small business opportunities, which is why we have this topic in our SBA learning series. Next slide, please.

Dwight Johnson: 9.

Jan Kaiser: Today, we will be using the FAR and referencing the CFR, or Code of Federal Regulations, to discuss bundling and consolidation. A little ground work should be laid down in this discussion because we have an audience with varying levels of experience. The regulations that all executive agencies promulgate are published in the CFR. They are codified there after first being published in the Federal Register. Some agencies get a whole CFR title to themselves. For instance, SBA has Title 13 CFR, which is called Business Credit and Assistance. Title 48 of the CFR is called the Federal Acquisition Regulation System, and it is composed of the FAR, or the Federal Acquisition Regulations, and the agency FAR Supplement. The FAR is a regulation that is drafted by and applies to multiple agencies. GSA, DOD and NASA share responsibility for maintaining it. Unlike other CFR titles, this one is not specific to the same agency.

Your agency may very well have supplemental guidance by way of FAR supplements like the VA's VAR, the DOD DFAR or GSA's GFAR, or policy directives in addition to the FAR supplements regarding bundling and consolidation. You should become familiar with these as well.

Consolidation and bundling are, as we have said, complicated topics which we will do our best to present today. To begin our discussion, I wanted to talk about and review some basic definitions to ensure that we are on the same page through this presentation. When we talk about a contract, it means that mutually-binding legal relationship obligating the seller to furnish supplies and services, including construction, and the buyer, to pay for them. These can include things like job orders or task letters issued under basic ordering agreements, letter contracts, orders such as purchase orders, and it also includes bilateral contract mods. If you want to look up more about contracts and what constitutes a contract, you are going to want to look in FAR, part 16.

FAR, Part 2, where definitions are housed in the FAR, doesn't currently contain a definition of consolidation, so we are going to use the definition that the CFAR has. Consolidation is defined as, consolidating contract requirements, "Consolidated contracts or consolidated requirements, meaning solicitation for a single contract or a multiple award contract, to satisfy two or more requirements of the federal agency for goods or services that have been provided to, or performed for, the federal agency under two or more separate contracts, and the total cost of which exceeds \$2 million, including options, or to satisfy requirements of the federal agency for construction projects to be performed at two or more discrete sites."

Dwight Johnson: I think that we are on Slide 10, Jan.

Jan Kaiser: Yes. I'm sorry. Thank you.

Dwight Johnson: Next slide, please.

Jan Kaiser: When we talk about consolidation, we want to talk about what is a separate contract, and that means a contract that has been performed by any business, including small and other than small businesses. We are not going to ... Also, we are not going to settle the discrete site question when we talk about construction because that can become a whole other issue as well. One thing I want to talk about, too, is that a proposed rule was issued in the Federal Register on June 3 of 2015 by DOD, GSA and NASA, to amend the FAR, to implement sections of the Small Business Jobs Act and regulatory changes made by the Small Business Administration, which provide for a government-wide policy on the consolidation and bundling contract requirements. Comments were due in August, so you want to watch for future updates to the FAR, regarding both bundling and consolidation. This is such a dynamic topic, so things are changing all the time.

What we will be referring to is the FAR, the CFAR and some of the changes that will be coming up that will be implemented in the FAR, with the proposed rule once it becomes a final rule. That reminds me that you should also refer to the current regs whenever you are ... so that you have got some framework for your discussion within this presentation. If you are not working on a bundled or a

consolidated procurement right now, as you inherit a project or you are assigned a project or something is looming, you are going to want to look at the regulations and make sure you are following the most current ones because that is the ones that everyone on your team, including the SBA, will try to be referencing when we are viewing the procurement.

This slide talks about contract consolidation and shows and illustrates the point where ... By the way, this graphic was used by Dan Shackelford from the U.S. Army Medical Command. I believe that he is retired now, but it illustrates the point, which is that this is for a solicitation for a single contract or a multiple award contract to set aside two or more requirements that were previously provided or performed for the department or agency. You can see that in this slide. It is also an important distinction here that small businesses, when you are talking about consolidation, may still compete on this consolidated contract as a prime contractor.

Dwight Johnson: This is slide 11.

Jan Kaiser: We are on slide 11. You could have a small business set-aside that is a consolidation. Next slide.

Dwight Johnson: Slide 12.

Jan Kaiser: Now that we have established what a consolidated contract is, let's talk about bundled contracts. All bundled contracts are consolidated contracts because bundled contracts are a sub-set of consolidated contracts. Next slide, please.

Dwight Johnson: Slide 13.

Jan Kaiser: Consolidating two or more requirements for supplies or services previously provided or performed under separate smaller contracts into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern is what is going to constitute bundling. This can be due to diversity, size or the specialized nature of the elements of the performance that is being specified in the solicitation, the aggregate dollar value of the anticipated award, the geographical dispersion of the contract performance sites or any combination of the factors that I just described.

Let's look at the term smaller contracts and single contract as described in the definition of bundling. Next slide, please.

Dwight Johnson: 14.

Jan Kaiser: A separate smaller contract, as used in this definition, means a contract that has been performed by one or more small business concerns that was unsuitable ... Sorry, that was suitable for award to one or more small business concerns. When we talk about a single contract, that is described as a single contract, a

multiple award contract or a task order that is likely to be unsuitable for award to a small business concern. This definition does not apply to a contract that will be awarded and perform entirely outside of the United States. Next slide, please.

Dwight Johnson: 15.

Jan Kaiser: Here is the graphic that is for those visual folks where we are looking at bundling is consolidating two or more requirements for supplies or services previously provided or performed under separate smaller contracts into a solicitation that is likely to be unsuitable for award to a small business, and at least one of the original contracts was performed by or was suitable for small business. A small business, here is the key point with bundling, a small business is unlikely to be able to compete on a bundled contract. Next slide, please.

Dwight Johnson: 16.

Jan Kaiser: Let's talk about structuring the requirement. Acquisition planners, to the maximum extent practicable, shall ... and this is also a FAR reference ... structure contract requirements to facilitate competition by and among small business concerns and avoid unnecessary and unjustified bundling that precludes small business participation as contractors. One analogy that I might make is when traveling by air, the federal government requires a flight plan to be filed prior to departure. They even have a federal form for that pilot to complete. That might be like the DD2579 or GSA2689, so you are going to fill out this form. Much like a pilot, you are driving your acquisition. The information that is needed for a pilot would be the aircraft identification, the special equipment, departure/arrival points, cruising altitudes, the route of the flight. Also, fuel calculations might be made as well as alternate airports identified in case of an emergency.

When you are doing an acquisition that involves consolidation or bundling, you are going to, in an analogous way, talk about your acquisition and identify lots of things that will assist the SBA and the reader of your documentation as you describe the need. Or, to justify your bundling or consolidation, you are going to need to describe some specific elements in your plan. As you are structuring your requirements, you are going to need to keep those things in mind as well as remind the other folks on your team, which should include your cost and price folks, if you have members of your team that you can call on, like that, or your technical advisors. All of those people should be aware of some of the information that they are going to have to provide you, in order to structure the requirement and perform the next function, which is market research. If we can, go to the next slide.

Dwight Johnson: 17.

Jan Kaiser: If an agency contemplates awarding a bundled contract, the agency should consult with the local SBA PCR, and the link to the PCR directory online is provided here. An important point is that, if a PCR is not assigned, it doesn't mean you don't do that. It means that you contact the SBA Office of Government Contracting Area Office, serving the area in which the procuring office is located, so not where the work is going to be done but the area in which the procuring office is located. Next slide, please.

Dwight Johnson: 18.

Jan Kaiser: Conduct market research to determine whether bundling is necessary and justified, so market research may indicate that bundling is necessary and justified if an agency or the government would derive measurably substantial benefit. Because of the potential impact on small business participation, the agency must provide this market research and document those measurably substantial benefits. Next slide, please.

Dwight Johnson: 19.

Jan Kaiser: First, in this process of benefit analysis, in justifying bundling and assessing if cost savings could be achieved, you are going to have to consider the cost that could have been charged or, where data is available, could be charged by ... sorry, has been charged or could be charged by small business concerns for the same or similar work. There is where you are going to look at your previous performance history or, as I said, involve someone from a technical team, whoever is giving you your independent government estimate for this, or price analysis for this work or product. You are going to need to coordinate with them in performing your benefit analysis. Next slide, please.

Dwight Johnson: 20.

Jan Kaiser: Agency involvement is required when a bundled or consolidated action is being justified as being critical to the agency mission and doesn't meet measurable substantial benefit thresholds. If you are intending to justify, because this consolidation or bundle needs to be performed because it is critical to the agency's mission success, then you are really looking at a higher level of approval, and the acquisition strategy provides for maximum practicable participation by small business concerns, so you are still going to have to address that in your benefit analysis.

7.107-2(a) in the June Federal Register that I talked about earlier, that is going to implement some FAR changes, provides that a written determination is required for consolidation when it is determined to be necessary and justified. Consolidation, in the Code of Federal Regulations part, that 13 CFAR that SBA is working from and what is being implemented into the FAR, consolidation has risen in its level of importance in some places as much as bundling. Next slide, please.

Dwight Johnson: 21.

Jan Kaiser: The agency must quantify the identified benefits and explain how their impact would be measurably substantial. This is another important note that folks want to use, but that regs specifically address, that reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least 10% of the estimated contract or order value, including options of the bundled requirements. Next slide.

Dwight Johnson: 22.

Jan Kaiser: Bundling is not always bad. However, because of the potential impact on small business participation, market research must be conducted to determine whether bundling is necessary and justified. Market research may indicate that bundling is necessary and justified if the agency or government tend to write ... Remember, the measurably substantial benefit, and these are specifically addressed in the FAR. Next slide, please.

Dwight Johnson: 23.

Jan Kaiser: These measurably substantial benefits that you will want to address in your benefit analysis and consider, in explaining to and providing along with your market research that you are going to need to address, so you are going to want to gather information that will prove or show that measurably substantial benefits will be garnered through individually, or in any combination or aggregate cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency. Maybe there is a reduction in acquisition cycle time. You may get better terms and conditions and describe any other benefits that you and your technical folks, or that you can describe as measurably substantial that might even be included in this list but are compelling. Next slide, please.

Dwight Johnson: 24.

Jan Kaiser: The agency may determine bundling to be necessary and consolidation to be necessary, and justified, if, as compared to not bundling or consolidated, it would derive these measurably substantial benefits equivalent to ... and here is where the measurably substantial benefits is given a measure, is given a threshold. If the value is greater than 94 million, including options, the benefits must be at least 5% of the estimated contract or \$9.4 million, whichever is greater. If the value is \$94 million or less, including options, the cost savings must be at least 10% of the estimated contract value.

Dwight Johnson: Jan, these are the numbers. This is how you measure measurably substantial. You have got the 5% and 10% threshold. This is not clear, as I view it right now, and this applies to both consolidation and bundling. Again, part of the message, something happened about ...

Jan Kaiser: It's why it's important, because it shows thresholds that SBA uses now on consolidations as well as bundling. Because it is in 13 CFR 125.2(d), the SBA is using this because it is a federal regulation, it's a law, so they are being used for consolidation as well as bundling, and it will [inaudible 00:26:31] to the FAR, we are hoping, sometime soon because, as I said, the comments to the June 3 FAR, Federal Register, that includes part 7 and part 19, where bundling is addressed, those comments were due in August, so I am not sure, but I hope that they get those implemented soon. We are on slide 25, I believe.

Dwight Johnson: Yeah.

Jan Kaiser: Because are going to talk ... The benefit analysis in the acquisition strategy is much more detailed when it involves substantial bundling. That is, if the estimated contract or order value, including options, is \$8 million or more for the Department of Defense, \$6 million or more for NASA and GSA and Department of Energy, and \$2.5 million or more for all other agencies. These thresholds for substantial bundling is in FAR, part 7, and it requires more rigorous documentation, and FAR, part 7 at 107(e) provides a list of the information that the contracting officer must provide in addition, to document the file. Next slide, please.

Dwight Johnson: 26.

Jan Kaiser: Acquisition strategy. The small business specialist shall notify the agency, Office of Small and Disadvantaged Utilization or Office of Small Business Programs, if the strategy involves contract bundling that is unnecessary, unjustified or not identified as bundled by the agency. This is also in FAR, part 7. If the strategy involves substantial bundling, the small business specialist shall also assist in identifying alternative strategies that will reduce or minimize the scope of bundling. Next slide, please.

Dwight Johnson: 27.

Jan Kaiser: This slide talks about the acquisition plan. The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts for substantial bundling under the contract or order. Oh, I'm sorry, unless the contract or order is entirely reserved or set aside for small business under FAR, part 19. You might meet the dollar amount for substantial bundling, but it is considered a consolidation because it is suitable for award to a small business. Again, the proposed FAR 7.105 covers the contents of a written acquisition plan, and the contracting agency is to consider it required sources of supply as well as address the impact of any consolidation or bundling that might affect participation of small businesses in the acquisition, and identify incumbent contractors and contracts affected by the consolidation or bundling. Next slide, please.

Dwight Johnson: 28.

Jan Kaiser: Remember that consolidation is a consolidation of several contracts that were performed or provided as individual contracts, and they are going to be consolidated into one contract action, and that action can be awarded to a small business, but bundling means that you are going to consolidate these different contracts for work that has been, or could be, provided by anyone under a separate contract, including a small business, and they are going to bundle those into one acquisition. I saw a question that had come by that someone had requested a repeat of what the difference is, between bundling and consolidation.

Prior to release of the solicitation, at least 30 days before release of the solicitation, or 30 days prior to placing an order without a solicitation, the contracting officer must notify any affected incumbent small business concern of the government's intention to bundle the requirement and should notify any affected incumbent small business concerns of how the concerns may contact the appropriate Small Business Administration representative. That is the PCR, and, remember, we had provided the link to the directory of PCRs online, so you can obtain that information there and share it with any affected incumbent small business concerns so that they can contact the PCR regarding their consolidated or bundled procurement.

Prior to release of the solicitation, next slide, they are also going to provide a copy of the proposed acquisition package to the SBA Procurement Center representative at least 30 days prior to issuance of the solicitation, if the proposed acquisition is for supplies or services currently being provided by a small business, and the proposed acquisition is of a quantity or estimated dollar value with the magnitude which makes it unlikely that a small business can compete for the contract, and the proposed acquisition is for construction and seeks to package or consolidate discrete construction projects, and the magnitude of this consolidation makes it unlikely that small businesses can compete for the prime contract.

Again, we are not going to settle the issue of what is a discrete construction project because I know that there is whole other topic right there, but let's keep on track with bundling and consolidation. Each one of these, as I have learned in contracting, over the years, there is always the ... except for when or ... you have to be aware of all of the exceptions that can be applied and when they are appropriate. The regulations, as many of you are aware, you have to dive in and look at your individual procurement and the situation or the circumstances that are around that particular solicitation. Next slide.

Dwight Johnson: 30.

Jan Kaiser: In addition to providing a copy ... You have got to provide a copy of the proposed acquisition to the SBA PCR at least 30 days prior to issue of the

solicitation. Also, if the proposed acquisition is for a bundled requirement, then the contracting officer shall provide all information relative to the justification of contract bundling, including the acquisition plan or strategy, and if the acquisition involves substantial bundling, the information identified in FAR 7.107(e), which provides a list to the contracting officer that they must use to provide additional info, identifying alternative strategies and actions designed to maximize participation for a small business. When the acquisition involves substantial bundling, the contracting officer shall also provide the same information to the agency Office of Small and Disadvantage Business Utilization. Next slide, please.

Dwight Johnson: 31.

Jan Kaiser: Bundling acquisition documentation. The contracting officer must also provide a statement to the SBA, explaining why the proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement. This is why I was equating this to the flight plan where you might, as you are flying somewhere, identify alternative airports along your route to land at, in case of an emergency. This is the same situation when you are directing a solicitation like this or a procurement where you are looking at alternatives. The SBA may come back and question did you examine this, did you look at breaking out that, so the proposed acquisition, it has to describe why it can't be divided into reasonably small lots, to permit offers on quantities less than the total requirement. Delivery schedules, why they can't be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the government. Next slide, please.

Dwight Johnson: 32.

Jan Kaiser: The contracting officer must also explain why the proposed acquisition cannot be structured so as to make it likely that small businesses can compete for the prime contract. Also, describe if a consolidated construction project cannot be acquired as separate discrete projects or why bundling is necessary and justified. It is important to note that the proposed acquisition should be described in layman's terms and connect the dots for the reader because, if you have been involved in developing the acquisition, you are very into the terminology, the type of service or product or building or facility that is being constructed, whatever it is, you are very into it, whereas someone from SBA who's just stepping into it, maybe you need to catch them up with what some of the terms are, define technical terms, and the best thing is to discuss something in person as well as document, maybe walk them through what your documentation is that you are providing to the PCR. Next slide, please.

Dwight Johnson: 33.

Jan Kaiser: Required information for SBA regarding re-competes of consolidated bundled contracts. This is new and important. That is a phrase I stole from Dwight, earlier. This is new and important, but, in 13 CFR 125.2, the PCRs will review whether, for bundled and consolidated contracts that are recomputed to see that the amount of savings, whether it is 5% or 10%, whichever was applicable, and benefits that were achieved under the prior bundling are consolidation of contract requirements, such savings and benefits will continue to be realized if the contract remains bundled or consolidated, or such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for awards to small business concerns.

Another comment here is to provide the previous bundling consolidation memoranda, so the documentation that you had done on the original bundled or consolidated procurement, you want to provide that when you are re-procuring so that it can be examined, to see if the things that you thought were going to happen really turned out that way. Did everyone live happily ever after? Next slide, please.

Dwight Johnson: 34.

Jan Kaiser: SBA has 15 days after receipt of the acquisition package to make a recommendation, so you want to include these days in your plan of action and milestones as you determine how long it's going to take for you to do a procurement. You want to include plenty of time for the SBA to make a review of the documentation that you provide them. Next slide, please.

Dwight Johnson: 35.

Jan Kaiser: If the SBA has some recommendations regarding the procurement, if the contracting officer, after SBA performs the review, if the contracting officer rejects the SBA representative's recommendation, the contracting officer shall document the basis for the rejection and notify the SBA representative in accordance with 19.505, which is the rest of the usual format for rejecting SBA recommendations, and you can find those at 19.505. They are not specific to bundling or consolidation, and then that can then proceed on to what is called an SBA Form 70, and once that is ... If the procurement center representative or PCR chooses to file an SBA Form 70, the procurement stops, so you want to, as I said, be persuasive, complete and all of those things when you are providing your description of your project and your documentation to the SBA PCR. Next slide, please.

Dwight Johnson: 36.

Jan Kaiser: Bundled contracts. We wanted to talk about how that applies to source selection. For bundling, and really any unrestricted procurement, factors should be included, measuring small business participation and past performance in sub-contracting so that the Federal Register that was published June 3, and

then, in the CFR that the SBA is following, this is also addressed for consolidation as well as bundling. DOD has a benefit analysis guide book that they put together. It is a little bit dated, but a lot of the FAR strategy and a lot of the FAR guidance was developed, and heavily influenced by, the guidance that was provided in the DOD Benefit Analysis guide book. The link is provided on this slide. Next slide, please.

Dwight Johnson: 37.

Jan Kaiser: I know that I have discussed, multiple times, the June 3, 2015 Federal Register, but I wanted to go over it a little bit, again, because there is going to be some changes that you should be aware of and considering, in structuring consolidated and bundled requirements as we go into the new year. These changes that were addressed, some of them revise the definition of bundling and adds a new definition for consolidation of contract requirements, consolidated contract or consolidated requirements. They put those things together, and also it addresses the consolidation of construction requirements. Next slide.

Dwight Johnson: 38.

Jan Kaiser: 38, right, Dwight?

Dwight Johnson: Yeah.

Jan Kaiser: Okay. It also adds a definition for Small Business teaming arrangement. It clarifies that agencies are to ensure that unnecessary and unjustified consolidation is avoided. It clarifies that small business is to be a discipline that is represented in the acquisition planning team. Hopefully, everyone is doing that as well anyway, on a regular basis, regardless of whether it's consolidated. Anytime you can, you want to involve small business, but particularly on consolidated and/or bundled procurements. This also will clarify if a requirement is considered both consolidated and bundled, and agency must follow the guidance regarding bundling. I don't know why that needed specific clarification, but evidently that was an element that they felt needed to be addressed in the FAR.

It also clarifies that an agency may not conduct an acquisition exceeding \$2 million, that is a consolidation of contract requirements unless the agency senior [inaudible 00:44:32] position officer justifies the consolidation by showing the benefits of the consolidated acquisition substantially exceeds the benefit of each possible alternative approach and identifies any negative impact on small business concerns and requires federal agencies to notify current small business contractors of an agency's intent to bundle a contract requirement that was not previously bundled, at least 30 days prior to issuance of the solicitation and provides public notification of the intent to bundle and notify SBA of a follow-on bundled or consolidated contract requirement.

From what I understand, the public notification may also include a Fed biz office announcement. A lot of that stuff is going to be in the Federal Register that was published on June 3. That was my last slide.

Dwight Johnson: Okay. Thank you very much. Could we go back to slide 24, Carla, please? As we are doing that, keep in mind, here, we have been taught, and that is ... We tweaked the PowerPoint, and so the version you received is slightly different than this one, and the point is, also, if you are going to be sure you get this same PowerPoint, even with this awful slide, you will probably fix this, be sure to email us, SBAlearning@sba.gov. One little thing here is, on slide 24, the messy one, we have been asked the difference between bundling and consolidation.

As all of us view this a little bit differently, the way this appears now, with the change in the regulations, consolidation has been moved up to almost be on par with bundling because we are looking at those numbers, the 5% and 10% savings, and if you want to get to those savings and show us those savings, you have to go through a whole lot of work to get there. Bundling has some requirements, such as notifications to Small Business, and that sort of thing, that consolidation doesn't, but this is where the rubber hits the road. Valerie, why don't you take it away, please, with our questions.

Valerie: Okay. We've got quite a few questions.

Dwight Johnson: Good.

Valerie: We only have about 12 minutes, so if we can go through these pretty quick ... Jan, on slide 34, you talked about SBA has 15 days. Is that calendar days or business days?

Jan Kaiser: Oh, what a great question.

Dwight Johnson: Calendar.

Jan Kaiser: Is it calendar? I don't think it ... It said 15 days. That was ...

Dwight Johnson: Right. Maybe it's business.

Jan Kaiser: Yeah.

Valerie: We can check that out. Another question. I am going to consolidate the questions since we are talking about consolidation. "Some vendors can provide Internet services, while others provide cable, others provide phone service, and some vendors can provide one or more of these things but only for certain geographical areas. Some vendors can provide all of the above as a package at a discount. If an agency wanted to contract with a single company to provide all these things for a large geographical area, such as a state, would that be considered bundling?"

Dwight Johnson: It could be, and the thing is that it is a step in here. It could be. It depends on whether small business can still compete for it. If small business can still compete, it might be a consolidation. It is something for market research.

Jan Kaiser: Market research, and, remember, we were talking about your persuasive ... You are going to have to provide your savings and benefits. Yeah, if it was previously performed, or could have been performed by a small business, and you are consolidating all of those into one contract, you are going to have to elaborate on the savings that the government is going to enjoy versus the small businesses that you may be displacing. It is going to hinge on the market research and the analysis that is provided in the file and to the SBA.

Valerie: Okay. Another question. If you all don't have an answer to this, I have an example. It said, "Could you provide an example of a non-DOD acquisition that could be a bundled acquisition?" If you all don't have one, I have one. NASA had security services at all 10 of its locations, and they were looking at putting all 10 of them together and issuing it under one contract, and several of the locations were already being awarded and being performed by small businesses. That is an example of a non-DOD acquisition that possibly could have been a bundled acquisition. "Can you clarify if the thresholds for a substantial bundling are applicable for consolidation?"

Jan Kaiser: I am sorry. Can you repeat that question?

Valerie: "Can you clarify if the thresholds for substantial bundling are applicable for consolidation?"

Dwight Johnson: I believe, no. That is where the difference is, between consolidation and bundling.

Valerie: Okay. Let's see. "Can you address how consolidation and bundling are impacted by the strategic sourcing program?"

Dwight Johnson: What is going to happen is, if you are re-competing a strategic sourcing, we are going to review, we are going to want to review the previous consolidation bundling analysis that is on record, but also that may be in place, but if you are starting with one, there definitely will be a consolidation memorandum in place. Usually, these allow for small business reserves, so that gets you over the hurdle of small business isn't eligible to compete. Consolidation is definitely going to be part of it, and the savings will need to be demonstrated.

Valerie: Another question. "Will small business incumbents be given consideration in sub-contracting? It would lessen the economic impact of the bundling."

Dwight Johnson: They are eligible to work, to try to work, as sub-contractors, and that brings up an interesting point. Oftentimes people think a sub-contracting opportunity is

the same for small businesses prime, and it isn't. It is not as desirable as being a prime contractor.

Jan Kaiser: Right. Whether right of first refusal applies anywhere in there is an element as well.

Valerie: Another one says, "One of the issues that comes up most often," for this person, "Is whether or not a requirement is new or had been provided on a previous acquisition. Is there a definition for previous?"

Dwight Johnson: That is a case by case thing, and we have been known to rule that, if work could be performed by small business, so on some of these things there may be instances where the work technically is new, but we know that that same work is completed by small business on a routine basis in many different places, and in different contracts in the federal market.

Jan Kaiser: This is one of those things where it depends. It depends on the work and what the change is when making this consolidation. It is going to depend because some of the quantities may be being changed, but that might not necessarily mean that we might not agree that that is not the same work because the quantity is being changed. It all depends, and it has to be discussed on, really, a case by case basis, and that is why I was saying that except for when ... You have got to look at the regs and then look at the acquisition, and then each one of them has different elements that make them individual sometimes.

Valerie: We got a clarification on the 15 days. Someone was very nice to send it in, for 19.505(c)2, and it is 15 working days, and we also got a definition from FAR 2, defines day as, "unless otherwise specified, as calendar day," but apparently FAR 19.505 says "working days," so if people want to, write that down. "SBA.gov has a bundling consolidation hot line on its website. What happens when information is submitted via that hot line?"

Dwight Johnson: That goes to the cognizant procurement center representative and/or headquarters.

Valerie: Let's see. We have another one that says, "That is for an appeal, not a review."

Jan Kaiser: I saw that. I saw that 15 working days in FAR 19.505, and earlier, I got distracted because I was really looking for it, and I lost where we were, in our conversation, because I was thinking I've got to find that, but I hadn't been able to locate it yet.

Valerie: I have a question from a very good friend of mine, whom I will not mention, but it says, "Any ETA on the definition of discrete sites?"

Jan Kaiser: No, not that I am aware of, but it is a very good question. When you are talking about construction, it is a whole hornet's nest.

Dwight Johnson: That's not very positive.

Jan Kaiser: I'm sorry, but it's true.

Dwight Johnson: That's not good.

Jan Kaiser: I wish we could have been there.

Valerie: Dwight, you did say that you will be sending out the updated PowerPoint on the slides that needed a little tweaking on them, correct?

Dwight Johnson: Yes, indeed.

Valerie: Okay. We did have one other comment. The math on slide 24, your favorite slide, Dwight?

Dwight Johnson: Yes?

Valerie: The math is not correct on the 5%.

Dwight Johnson: On top of everything else.

Valerie: Yes. We will need to look at that also. I was trying to see if ... There is no more questions that I have received.

Dwight Johnson: Okay. Now, that seems odd. We have covered a very complicated subject, and we tried to give you an overview of this process, and you can send a question while I am talking a little bit, here, but obviously it is a complicated process because SBA takes it very seriously. One of our concerns here, when we look at this subject, is that you may come to us, run into us, and say, "Oh, guess what? This is structured so that Small Business still gets the same percentage of work," or whatever, but the thing is, the number of small businesses participating is being reduced. Obviously, this is a very important issue. All of this is based upon legislation that goes into the CFAR and the Federal Register and the FAR, so it is important that, if you have something like this brewing, you should notify [inaudible 00:57:54] SBA, really quickly, because we have to understand this, and the earlier we are involved, the better. We are going to ask a whole lot of questions, and we have to understand it perfectly before we are going to concur with something. Go ahead.

Valerie: One of the comments came back, Dwight, several people said that they are waiting to see what comes out of the comments from the Federal Register, so that may be ... Very quick, and I apologize for interrupting you, Dwight, but we got another question, really quick.

Dwight Johnson: Good.

Valerie: We get this one all the time. "Can you please provide the Web or email address for obtaining the certificate of course completion?"

Dwight Johnson: What you do is, you receive all that information in the post program email, so that is why you need to be sure you are on that list, so SBALearning@SBA.gov.

Valerie: Will that also include a transcript of today's presentation, Dwight?

Dwight Johnson: Yes, if you can bear reading it.

Valerie: Okay.

Jan Kaiser: Also, the slides that has the certificate, if you go into the PowerPoint, you insert your name into that slide, if you have the PowerPoint, and print that off, and that is your certificate.

Valerie: All right. I don't have any more questions.

Dwight Johnson: Okay. We could have ... Thank you, Jan. Thank you, Carla. Thank you, Valerie. Thank you all for joining us. We will be back in February, talking about services and veterans. Really, please, do ask any of us any questions you have, at any time, because this is complicated, and we want everyone to do it right, but, of course, our job is to maximize opportunities for Small Business. With that, Happy New Year, again, and we shall be back in February. Have a great day.