
**SBA FINAL RULE—A DERIVED DECISION TREE
FOR BUNDLING**

In this appendix, we have organized the SBA's final rule¹ in a process flow or decision tree format. This is meant to supplement the discussion in the main text, providing additional details for the interested reader.

DEFINITIONS

Bundled requirement: The consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts [defined below] into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern because of

- 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 contract performance sites, or
- any combination of these factors.

Measurably substantial benefits: Benefits [from bundling] are measurably substantial if, individually, in combination, or in the aggregate,

¹Small Business Administration (2000).

- they are equivalent to [at least] 10 percent of the contract value (including options) where the contract value is \$75 million or less, or
- they are equivalent to [at least] 5 percent of the contract value (including options) or \$7.5 million, whichever is greater, where the contract value exceeds \$75 million.

Benefits may include:

- Cost savings and/or price reduction,
- Quality improvements that will save time or improve or enhance performance or efficiency,
- Reduction in acquisition cycle times,
- Better terms and conditions, and
- Any other benefits.

The SBA has determined that *all anticipated benefits must be expressed in dollars.*² This permits computation of benefits as a percentage of the total anticipated contract award value (including options). For example, a reduction in cycle time must be converted to a dollar value in order to be compared to the other criteria such as cost savings.

PCRs: SBA procurement center representatives who are generally located at federal agencies and buying activities that have major contracting programs. PCRs review all acquisitions not set aside for small businesses to determine whether a set-aside is appropriate.

Separate smaller contract: A contract that has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.

Substantial bundling: Any contract consolidation that results in an award whose average *annual* value is \$10 million or more.

²See the interim rule issued on October 25, 1999.

DECISION TREE

Background for new policy: The Small Business Act requires each federal agency to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers in government contracting opportunities. To comply, agency acquisition planners must

- structure procurement requirements to facilitate competition by and among small business concerns, including small disadvantaged, 8(a), and women-owned business concerns, and
- avoid unnecessary and unjustified *bundling of contract requirements* that inhibits or precludes small business participation in procurements as prime contractors.

1. Are you pursuing a *bundled requirement*?

Yes → GO TO 2

No → STOP.

2. Is this requirement subject to a Cost Comparison Analysis conducted in accordance with OMB Circular A-76?

Yes → STOP

No → GO TO 3.

3. Before proceeding with an acquisition strategy that could lead to a contract containing *bundled* or *substantially bundled requirements*, an agency must conduct market research to determine whether bundling of the requirements is necessary and justified. During the market research phase, the acquisition team should consult with the applicable *PCR*.

The procuring activity must notify each small business that is performing a contract that it intends to bundle that requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the *bundled* or *substantially bundled requirement*. The procuring activity, at that time, should also provide to the small business the name, phone number, and address of the applicable SBA *PCR*.

When the procuring activity intends to proceed with an acquisition involving *bundled* or *substantially bundled procurement requirements*, it must document the acquisition strategy to include a determination that the bundling is necessary and justified, when compared with the benefits that could be derived from meeting the agency's requirements through *separate, smaller contracts*.

- The procuring activity may determine a consolidated requirement to be necessary and justified if, as compared with the benefits that it would derive from contracting to meet those requirements if not consolidated, it would derive *measurably substantial benefits*. The procuring activity must quantify the identified benefits and explain how their effect would be measurably substantial.
- The reduction of administrative or personnel costs alone shall not be a justification for *bundling* of contract requirements unless the administrative or personnel cost savings are expected to be substantial, in relation to the dollar value of the procurement to be consolidated (including options). To be substantial, such cost savings must be at least 10 percent of the contract value (including options).
- In assessing whether cost savings and/or a price reduction would be achieved through *bundling*, the procuring activity and SBA must use as a baseline the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

GO TO 4.

4. Does this requirement involve *substantial bundling*?

Yes → GO TO 5

No → GO TO 6.

5. Where a proposed procurement strategy involves a *substantial bundling* of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination

that the anticipated benefits of the proposed bundled contract justify its use and must include, at a minimum:

- The analysis for the *bundled requirement* [underlying the determination that it is necessary and justified as described above],³
- An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from *substantial bundling*,
- Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the *substantially bundled requirement*, and
- Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

GO TO 6.

6. Are the *bundled* or *substantially bundled requirements* necessary and justified?

YES → GO TO 7

NO → GO TO 8.

7. Where a *bundled* or *substantially bundled requirement* offers a significant opportunity for subcontracting, the procuring agency must designate the following as significant factors in evaluating offers:

- A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract, and

³In FAR 7.107(e), this is expressed as (1) the specific benefits anticipated to be derived from bundling and (5) a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

- For the evaluation of an offeror's past performance, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

Where the offeror for such a bundled contract qualifies as a small business concern [including a team of small businesses], the procuring agency must give to the offeror the highest score possible for the evaluation factors above.

GO TO 10.

8. Assistant Secretaries with responsibility for acquisition matters (Service Acquisition Executives) may, on a nondelegatable basis, determine that a consolidated requirement is necessary and justified when
 - there are benefits that do not meet the thresholds specified above but, in the aggregate, are critical to the agency's mission success, and
 - the procurement strategy provides for maximum practicable participation by small business.

GO TO 9.

9. Has the Service Acquisition Executive determined that the consolidated requirement is necessary and justified?

YES → GO TO 10

NO → Proceed with unbundled acquisition strategy.

10. Does the PCR agree that the bundled or substantially bundled requirements are necessary and justified?

Yes → GO TO 11

No → GO TO 12.

11. Where bundling is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small business prime contract participation to the maximum extent practicable. The PCR will also work to ensure that small

business participation is maximized through subcontracting opportunities.

12. The PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, the SBA may appeal the matter to the secretary of the department or head of the agency.