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AUG 7 2001

IN REPLY
REFER TO J-33
PROCLTR 01-11

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: DLA Bundling Coverage
(DLAD Sections 7.107; 8.404; 10.001; 15.304; 15.305; 19.202-1; 90.1101)

The purpose of this PROCLTR is to provide Defense Logistics Acquisition Directive (DLAD) 4105.1 coverage pertaining specifically to contract bundling. We felt it necessary to supplement the bundling coverage found in the Federal Acquisition Regulation (FAR) because bundling is an issue of particular concern within the context of the integrated logistics systems re-engineering that we pursue. DLA activities must be able to group requirements wherever it makes sense to do so, but we must first ensure that the benefits from consolidation outweigh the potential adverse impact on the small business community.

Because of the organization of the FAR system, most of the affected material is actually located outside Part 19, where one would ordinarily turn first for guidance on small business issues. Cross-references have accordingly been provided in Part 19 to these other DLAD sections.

This PROCLTR is effective immediately, and will expire upon incorporation of the coverage set forth in the Attachment into the electronic DLAD. The point of contact is Mary Massaro, J-336, who can be reached at DSN 427-1366 ((703) 767-1366), or via email addressed to mary-massaro@hq.dla.mil.

WILLIAM J. KENNY
Executive Director
Logistics Policy and Acquisition Management

Attachment



PART 7

ACQUISITION PLANNING

SUBPART 7.1 - ACQUISITION PLANS

- 7.102 Policy.
- 7.103 Agency-head responsibilities.
- 7.104 General procedures.
- 7.104-90 Acquisition Planning Executive Council (APEC) reviews.
- 7.105 Contents of written acquisition plans.
- 7.107 Additional requirements for acquisitions involving bundling.

SUBPART 7.1 - ACQUISITION PLANS

7.107 Additional requirements for acquisitions involving bundling.

(a) "Necessary and justified" (with regard to bundling) is a two-part determination, made with the aid of market research. It means not only that the consolidation is considered essential from a management perspective, but also that the benefits accruing from consolidating requirements, as compared to contracting on a non-consolidated basis, would be measurably substantial (as defined in FAR 7.107(b)). Note that the definition of "measurably substantial" contains a requirement for quantification of benefits.

(c) (90) If quantification of the benefits of a bundled acquisition does not equal quantification levels set forth in FAR, you will ordinarily have to abandon the consolidation. However, in exceptional situations it may still be possible to proceed with the contracting action. You must seek the approval, via determination and findings, of the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)), that bundling is necessary and justified. In that case, even though the quantified benefits do not reach the specified dollar equivalents, they must be shown to be critical to the agency's mission success. The acquisition strategy described in the request to USD(AT&L) must provide for maximum practicable participation by small business concerns. Reduction of administrative or personnel costs alone cannot be used as justification for bundling in support of the request to USD(AT&L).

(91) For an acquisition requiring USD(AT&L) permission to proceed with the bundled requirement, submit your request for approval of the determination and finding to 5-335; it will be routed through 5-33, 5-3, DLA-DB, and the Director, DLA, who will sign out the request to OSD. There are no timeframes in the statute or FAR for use of this procedure, but it is essential that you submit your justification at the earliest possible date. Therefore, you should forward the request within 30 days of your determining that the proposed acquisition will not generate savings in accordance with established levels, as set forth in FAR (that is, within 30 days of your performing a bundling analysis). Under no circumstances may you issue a bundled solicitation until you have received the determination and finding, granting the permission, from USD(AT&L).

(e) In establishing the procurement strategy for any bundled requirement, whether or not of a dollar value constituting substantial bundling, the contracting officer may want to address the following considerations as part of the market research required to be conducted in accordance with FAR 10.001(a) and (c) and 10.002(e): benefits; impediments to small business prime contracting participation; actions to maximize small business subcontracting participation; and affirmative determination that the benefits justify bundling. However, in cases not involving substantial bundling, FAR does not require that the documentation of the research results be so extensive as it would be for instances of substantial bundling. See 10.001.

(90)(i) If a bundling analysis has already been performed on a contract action, it is not necessary to perform a new bundling analysis before exercising an option.

(ii) For new acquisitions, procurement history should be analyzed from the three immediately preceding years to determine whether there have previously been separate,

smaller contracts for these requirements that were or could have been performed by small businesses.

(iii) For a long-term contract with an "add/delete" clause, you must perform a bundling analysis before you add individual/groups of items via clause exercise, if the change modifies the contract and constitutes a new consolidation. On the other hand, if the add/delete clause is merely a mechanism by which items, always intended to be part of the acquisition and included in the initial analysis, are "phased in" (for pricing and other purposes), then the additions do not constitute a new consolidation, and a new bundling analysis is not required.

(91) Remember that the SBA can appeal to the head of a contracting agency certain decisions made by the agency that SBA believes will adversely affect small businesses. One such appealable decision pertains to any bundling of contract requirements the SBA considers to be unnecessary or insufficiently justified. Whenever a proposed consolidation of requirements, at least some of which were formerly filled by small businesses, is likely to render the resultant contract unsuitable for award to a small business concern, the SBA may challenge that solicitation. (See the definition of bundling at FAR 2.101 for aspects of a procurement that might make small business participation unlikely.) Given the seriousness of these consequences, you must be able to show that any such proposed consolidation is "necessary and justified" (as defined in (a), above), and that benefits that are anticipated to accrue to the Government will be "measurably substantial," as explained in FAR 7.107(b). You cannot rely solely on reduction of administrative or personnel costs as a justification for bundling, unless these savings are expected to be substantial. If you cannot determine that a consolidation of requirements is necessary and justified, and that its benefits will be measurably substantial (including situations where you cannot quantify such benefits), you must not proceed with the bundling without approval by USD(AT&L).

(92) In cases where there is disagreement between the SBA and the contracting officer over a bundled or substantially bundled requirement, the PCR or SBA Area Office may initiate an appeal to the head of the contracting activity. Levels of appeal and associated timeframes are provided in FAR 19.402(c)(2) and 19.505.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 8.4 - FEDERAL SUPPLY SCHEDULES

§.404 Using schedules.

SUBPART 8.4 - FEDERAL SUPPLY SCHEDULES

8.404 Using schedules.

(a) General. If a federal supply schedule (FSS) has been established for an individual item of supply or service, rather than for consolidated requirements, bundling would only be a consideration if a single FSS order aggregated smaller, previously purchased quantities into a large, single lot beyond the reach of small contractors. Under ordinary circumstances (that is, when quantities purchased are such that small businesses could fulfill the requirement), it is unnecessary to perform a bundling analysis prior to placing an order against such a schedule. On the other hand, if a FSS provides a variety of services or items, or can be "customized" to provide a new mix of items or services that were or could have been previously acquired from a number of small sources (or if significantly larger quantities are, in fact, being acquired), there is a risk that

bundling could occur. Bundling analysis must be performed prior to placing this kind of mixed or unusually large order against such a schedule. See sections 7.107, 10.001, 15.304, 15.305, and 19.202-1.

PART 10

MARKET RESEARCH

10.001 Policy.

(a)(2)(iii) Generally, DLA activities will not delay an acquisition to conduct market research when the estimated dollar value is less than the simplified acquisition threshold (SAT), unless the contracting officer determines it is cost-effective to do so, or unless a bundling analysis must be performed pursuant to FAR 10.001 (a)(2)(iv). Note that acquisitions valued below the SAT are automatically reserved and set aside exclusively for small business concerns, unless the contracting officer does not have a reasonable expectation that two or more small businesses will submit competitive offers. Therefore, unless there is an exception to the set-aside requirement, or it is withdrawn or dissolved because small businesses failed to offer, bundling analysis shall not be required below the SAT. In case of exception to or withdrawal or dissolution of a set-aside, this market research requirement can generally be satisfied by:

*identifying two or three small businesses that recently provided the item or service; and
calling them to determine why they failed to respond to the request for quotations.*

If the new acquisition strategy caused them to decline to participate, additional sources should be sought, using such resources as the SADBUs office and the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (<http://pro-net.sba.gov/>). If this subsequent step also fails to yield any small business sources, you must perform a bundling analysis.

(a)(2)(iv) Market research must be performed before you proceed with an acquisition strategy that could lead to a bundled contract. Even if you combine services with supplies in a new strategic sourcing procurement, different from the way either was purchased before, this represents a consolidation within the meaning of the statute sufficient to trigger the market research requirement. The fact that this is a new requirement does not remove it from consideration as a bundling, if aspects or portions of it were previously performed as separate, smaller contracts. Market research must be conducted to determine whether the consolidation is necessary and justified, even for acquisitions that are ultimately found not to be bundlings. (It is not bundling, though - and does not require performance of this type of market research - when the entire requirement has been revised, as, for example, when engineering or safety studies dictate that a different part be substituted for an item previously acquired for that application. Even if only small businesses supplied the previous part, and even if only large businesses produce the new part, it cannot be considered a bundle, regardless of the aggregate size of the new requirement. That is, nobody, including any small business, would previously have performed any portion of the requirement as a separate, smaller contract.)

(c)(2) The procuring activity, at least 30 days prior to solicitation issuance for a bundled requirement, must notify each incumbent small business concern that it intends to consolidate the requirement that the incumbent is currently filling with one or more other requirements. This cannot be fulfilled solely via Commerce Business Daily (CBD) or Federal Business Opportunities (FedBizOpps) notice, although such notice should also be provided, to facilitate small business teaming. This must be accomplished by separate notification of each affected small business: that is, of every small contractor who received an award on the last procurement for any portion of the consolidated requirement. This notice requirement also pertains to small businesses who receive award for a portion of the requirement (i.e., a separate, smaller contract) after performance of the bundling analysis, but prior to solicitation of the consolidated requirement. You

may use any written medium, including **FAX**, e-mail, the Internet, or hard copy, to provide notice to individual contractors.

PART 15

CONTRACTING BY NEGOTIATION

SUBPART 15.3 - SOURCE SELECTION

15.304 Evaluation factors and significant subfactors

(c) (3) Statute (15 U.S.C. 637(d)(4)(G)(i) and (ii)) requires that, where a bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in offer evaluation:

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

15.305 Proposal evaluation.

(a) (5) As stated in the **FAR**, the procuring agency must give to the small business offeror on bundled acquisitions the highest possible score for the factors set forth in **15.304 (c) (3)**, above. However, note that subcontracting plans are not required from small business concerns, and are only required *from* large businesses *for* contracts valued at \$500,000 or more (\$1 million or more in the case of construction).

PART 19

SMALL BUSINESS PROGRAMS

SUBPART 19.2 - POLICIES

- 19.201 General policy.
19.202-1 Encouraging *small* business participation in acquisitions.

SUBPART 19.2 - POLICIES

19.202-1 Encouraging *small* business participation in acquisitions.

(e)(90) Contract Bundling. See section 7.107, paragraph 10.001(c), and subparagraphs 15.304(c) (3) and 15.305(a) (5) for a complete discussion of this topic.

SUBPART 90.11 - ACQUISITION PLANNING

90.1101 Contents of written acquisition plans. (Paragraphs are *numbered to conform with coverage at FAR 7.105 and DFARS 207.105.*)

(b) Plan of action.

(1) Sources.

(i) Discuss the nature, extent, and results of the market survey and any market research performed or requested in support of the acquisition strategy developed (see also FAR Part 10 and state whether the acquisition will be conducted under FAR Part 12). Conduct and report the results of bundling analysis, as appropriate; see sections 7.107 and 10.001.

(ii) Discuss applicability of socioeconomic requirements, e.g., small business set-asides, 8(a), and minority-owned business, empowerment contracting, and results of discussions with Small and Disadvantaged Business Utilization representatives, including any conclusions as to whether the proposed action constitutes a bundling, and whether bundling analysis has been or will be conducted. Also consider use of such sources as Javits-Wagner-O'Day Act- (JWOD-) qualified agencies for the blind or other severely disabled. Discuss any pertinent foreign purchase/sales matters. Discuss applicability of progress payments, economic price adjustments, bid guarantees, or performance bonds.
