ARMY CONTRACTING AGENCY

Army Service Strategy
Panels Guidebook
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Revision 1

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Foreword

This document provides information and guidance about how the Headquarters, U.S. Army Contracting Agency, Operations & Career Management Directorate (SFCA-CO), process requests concerning **Army Service Strategy Panels (ASSP)** that require approval by the Director, U.S. Army Contracting Agency (ACA). The Director, ACA, is responsible for approving acquisition strategies for proposed service acquisitions from ACA contracting offices that fall within the dollar thresholds described in the Army Federal Acquisition Regulation Supplement (AFARS) Subpart 5137.5 for Heads of Contracting Activities (HCAs) and Acquisition Instruction 5137.5.

NOTE: Service acquisitions that are part of a weapon acquisition program or automated information systems in accordance with DoDD 5000.1 and/or DoDI 5000.2 will be reviewed and approved as part of the program management review process.

Revision 1 adds enclosure 4 - Sample Performance Metrics for Acquisition Strategies

This Guidebook has been approved for release by the Act Director of the Army Contracting Agency, Mr. Bryon Young.

1.0 Introduction

The Army Service Strategy Panels (ASSPs) is a review and approval process implementing the management structure for the procurement of services in the Department of the Army.

The National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107) Section 801, Management of Procurement of Services, mandated that the Secretary of Defense establish and implement a management structure for the procurement of services for the Department of Defense. Section 2330, Procurement of Services: Management Structure outlined the requirements for the management structure.

The Army implemented the mandates of Public Law 107-107 in the AFARS, Subpart 5137.5, Army Management and Oversight of the Acquisition of Services.

AFARS Subpart 5137.5-3, Review Thresholds, identifies the dollar thresholds for review and approval of ASSPs. The review and approval dollar threshold for HCAs is greater than $100M and less than $500M, or when identified as a special interest (see subparagraph 5137.5-3 (d) and see the Acquisition Instructions at http://aca.saalt.army.mil/ACA/docs/Community/acq_instr.pdf).

2.0 Definitions

CICA Bundling is a doctrine developed where the "bundling" of requirements may run afoul of the Competition in Contracting Act (CICA). This notion of CICA bundling is a concept arising strictly from GAO bid protest decisions and is not contained in any acquisition statute, or regulation as defined in FAR Subpart 2.101.

Section 801 Bundling is legislation pursuant to Section 801 of the 2004 Authorization Act dealing with bundling and is implemented at DFARS Part 207.120. That section defines **consolidation** of contract requirements to mean the use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts. Enclosure 1 contains the format for Sample Consolidation Determination and Findings.

3.0 The ASSP Process Begins

3.1 As requirements are identified, each Chief of Contracting Office in conjunction with their regional headquarters should hold a strategy meeting with their customer. This strategy meeting will investigate consolidation, Small Business (SB) bundling and CICA bundling issues to meet the customer desired contract scope and type. Consolidation, SB bundling, and CICA bundling are described in the enclosure. The lead contracting office will ensure the customer is aware of the requirements for justifying consolidation and bundling of requirements. The Department of Defense's Office of the Small Business Programs has written a helpful guidebook to assist you and your customer in providing the required information for SB bundling and consolidation. The guidebook is entitled "Benefit Analysis Guidebook" and is found at web page http://www.acq.osd.mil/osbp/news/guidebook.htm.

3.2 A copy of the review performed by the PARC Counsel must be included, if applicable, in the strategy package submitted to HQ ACA, Operations & Career Management Directorate (SFCA-CO).

3.3 Enclosure 2 contains an article written by an ACA attorney, Mr. Roger Neds regarding consolidation, SB bundling and CICA bundling along with recent GAO decisions. In view of GAO's decisions, the ACA recommends addressing the benefits analysis (cost savings) found in chapter 5 of the guidebook for the consolidation/bundling of the requirements. These benefit factors include, but are not limited to, cost savings (price reduction), efficiencies, cost avoidance, and/or personnel cost reductions. Also consider administrative savings however, administrative saving alone is not a sufficient factor to justify consolidation and SB bundling.

3.4 Enclosure 3 contains a timeline based on current history for ASSP approval.

4.0 ASSP Approval Process

4.1 SFCA-CO will review the strategy for all service acquisitions, excluding construction services, with a total planned value of $100M - $500M. The Director of Operations & Career Management (SFCA-CO) receives requests to conduct an ASSP from ACA PARC offices to review and approve acquisition strategies for service acquisitions on behalf of ACA contracting offices. PARC office staff, small business, and legal counsel will review the acquisition strategy for accuracy and completeness before sending the ASSP request to HQ ACA.

4.2 The Director, Operations & Career Management, assigns a procurement analyst to be the action officer for each ASSP approval request.

4.3 A procurement analyst will conduct an initial review of the acquisition strategy to ensure it addresses the required factors using the "Acquisition Strategy Content Checklist "(see page 8). The HQ ACA Small Business Directorate and the Office of Counsel will review the ASSP documentation using the "Acquisition Strategy Content Checklist for Small Business" (see page 12).

(1) If the Acquisition Strategy is complete, the Procurement Analyst coordinates the strategy within HQ ACA (i.e., Contract Operations & Career Management, Office of Counsel, Small Business, and Resource Management) for comments and recommended improvements.

(2) If the Acquisition Strategy is not complete, the Procurement Analyst will send the strategy back to the PARC Office with recommended corrections. When a complete acquisition strategy is received it will be coordinate IAW 4.3(1) above.

4.4 The Procurement Analyst collects and reviews comments from internal HQ ACA coordination and will:

(1) Validate and consolidate comments and recommendations and send to the PARC office, and will request that a revised acquisition strategy and ASSP briefing slides be provided by a specific date.

(2) Hosts a teleconference, at the request of the field contracting office, to clarify any issues regarding the review of ASSP documentation.

4.5 Should the PARC Office and/or the field contracting office not agree with the requested change or clarification a rationale must be supplied to the Procurement Analyst with any unresolved issues will be decided by the Director of the ACA.

4.6 The contracting office should submit the revised acquisition strategy and ASSP briefing slides no later than ten days before the ASSP meeting.

4.7 The Procurement Analyst checks the ACA Director's calendar and selects a date and time for the ASSP meeting as follows:

(1) ASSP should normally be scheduled ten days after the suspense date set for the revised acquisition strategy and briefing slides.

(2) Check to see if a VTC conference will be required; considering location and time differences of ASSP participants.

(3) .Check availability of Suite 302 Conference Room with the HQ ACA Executive Officer. If available, ensure scheduled date is placed on the SAALT 302 Skyline Conference Room "Outlook" calendar.

4.8 The Procurement Analyst will -

(1) Review the revised acquisition strategy and briefing slides to ensure that recommended corrections were incorporated and the revised package is complete.

(2) Notify the requestor via e-mail announcing the ASSP date, time, and location to all expected participants with revised acquisition strategy and final briefing slides attached.

(3) Coordinate VTC requirements, if applicable and prepares read ahead package for the Director.

(4) Schedule and conduct a pre-brief for the Director. Others attending the pre-brief will be determined based on the approval level of the ASSP, but will include ACA legal counsel and ACA Director of Small Business.

5.0 Conduct the ASSP

5.1 The Procurement Analyst is responsible for taking notes and summarizing the ASSP in a memorandum for record. If corrective actions are necessary, they will be identified in the memorandum for record.

5.2 The Procurement Analyst will provide a copy of the memorandum for record to the PARC Office. If corrective actions are necessary, a date will be set for submitting the revised acquisition strategy.

5.3 The Procurement Analyst will prepare a Form 5 to staff the ASSP approval memo for the Director's signature. The Form 5 will be coordinated with the HQ ACA directorates that participated in the ASSP.

5.4 A memorandum approving or disapproving the ASSP and will identify any reporting requirements.

6.0 Supporting Documentation

6.1 Supporting documentation may vary with the acquisition approach anticipated, but at a minimum should contain the following:

(1) DD Form 2579
(2) Performance Work Statement
(3) Market Research Report
(4) J&A (sole source)
(5) Award Fee Plan
(6) D&F (for bundled and consolidated requirements)
(7) Cost Benefit Analysis (for bundled and consolidated requirements)
(8) Briefing slides

6.2 Additional notional supporting documentation that may be requested to support the ASSP process such as: Source Selection Plan; Performance Requirements Summary; and, Quality Assurance Surveillance Plan.

7.0 Acquisition at or above $500M

7.1 All service acquisitions, excluding construction services with a total planned value of $500M or above shall be forwarded simultaneously to both SFCA-CO and the Directorate for Executive Agency functions for review and approval. Both Directorates will review the strategy at the same time to expedite the process.

7.2 HCA concurrence and approval is required before the proposed strategy is staffed to DASA (P&P) for approval. HCA ASSP procedures require a briefing prior to approval. It is also strongly recommended that concurrence from the Army, Small Business Director is obtained before scheduling the HCA level briefing. The Army, Small Business Director requires a summary document to support the strategy that shows a synopsis of the market research and resulting program layout for contracts that will be awarded as a result of the acquisition in question. The summary document should show which portions are broken out for small businesses, even if the requirements are not included in the instant procurement strategy. Ensure the summary contains detailed specific data (i.e. number of contracts, estimated capacity).

8.0 ACQUISITION STRATEGY CONTENT CHECKLIST
(IAW AFARS Subpart 5137.5-6 and lesson learned from prior ASSP approvals)

Date: _____

Prepared by: _____

TITLE: _____

	YES	NO	N/A	COMMENTS
1. REQUIREMENT				
a. Identified outcomes to be satisfied (performance, schedule and cost)?				
b. Is requirement/outcome performance-based?				
(i) If not, was AAE approval obtained >$50M?				
c. Do you intend to use a Non DoD Contract? Provide rationale.				
d. Identified how requirement was previously satisfied?				
(i) Procurement History (dollar value, term, contract type, bus size, number of offerors, source selection method)				
(ii) Challenges that drive the mission or acquisition approach (e.g., BRAC, mobilization, cost growth, & changes from previous contract if a follow-on)				
e. Any Congressional Interest? (brief summary of resolution)				
(i) If >$2B, advance notification to USD (ATL) required				
2. RISKS				
a. Current and potential costs? (e.g., competitive environment, contract type, funding short falls, etc.)				
b. Schedule risks (e.g., transition period, surge requirements) and performance risks (e.g., technical complexity, availability of qualified personnel) ?				
c. Level of stated risks?				
d. Risk mitigation plan? (Risk Management Guide for DOD Acquisition found at web page: http://www.acq.osd.mil/se/publications.htm				
(i) Tie to Evaluation (past performance)/Contract Management/Contract Type/special provisions/Metrics/Award Fee				
3. COMPETITION				
a. How will full & open competition be provided?				
(i) Describe your market research (e.g., results from Industry Day/DRFP/sources sought notice, RFI, Internet search, lesson learned from similar efforts, standard industry practices)				
(ii) Is this a consolidated requirement? If so, AAE approval required >$5M.				

b. If other than full & open competition; explain why and provide citation.

4. IMPLICATIONS

a. How will acquisition support SB goals?

(i) If this is a bundled requirement include the analysis.

Does it follow the Benefits Analysis Guidebook (e.g., CICA bundling)?

(ii) Summary of SBA PCR concur/nonconcur on the 2579

b. How will acquisition support any other socio-economic programs?

(i) Address Subcontracting Potential and Goals

(ii) SB subcontracting goals and the use of SF 294/295

c. Assessment of liquidated damages IAW FAR 19.705-7

5. BUSINESS ARRANGEMENTS

a. Identified how acquisition will be funded?

(i) Estimated dollar value of the procurement (broken out per year to include phase-in period and factoring escalation into the out years) (address method of escalation)

(ii) Address whether funding is available and the type of funds

b. Type of business arrangement (e.g., single or multiple award task order contract).

(i) Address Contract Type with rationale for selection

(a) If award fee discuss award fee plan, related criteria and evaluation process & how metrics incorporated

(b) If previous contract contained award fee, provide history of award fee percentage earned by contractor

(2) Is this a Commercial Service (i.e. use of FAR Part 12)

(3) Source Selection Process/Basis for Award/Major Factors/Subfactors (Consistent with draft/final SSP)

Discuss best value (LPTA/Trade-off)

Discuss Formal/informal

- Discuss adjectival ratings to be used (See Source Selection Guide)
- Do not include the name of the SSA only if formal SS
- Discuss price/cost evaluation process

(4)Address any waivers/deviations that will be required

(5) Discuss Contract Administration--COR/Involvement of DCMA/DCAA/Surveillance Plan

. Discuss COR training

. QASP

. Method of ensuring contract oversight

. PRS

c. Duration of business arrangement? (i.e., base period and all options).

d. Cost estimate for the total planned acquisition and pricing arrangements (i.e., fixed price, cost reimbursement, time and materiel, labor hour, or variations and address mitigation of possible cost overruns (how will you keep cost controlled)

e. Milestone Timeline to Award

6. MULTI-YEAR CONTRACTS

a. If multi-year service contract, address plans for budgeting for termination liability.

b. OMB Circular A-11 requires multi-year service contracts to be scored as operating leases; address budget scorekeeping that will result from the use of the proposed contracting strategy.

7. LEASES

Included lease-purchase strategy if required by OMB Circular A-94?

8. METRICS

a. Cost, schedule, performance, small business, and customer satisfaction tied to the acquisition metrics that measure service acquisition outcomes against requirements. (If metrics are not submitted with the acquisition strategy, the metrics must be submitted for the Decision Authority approval prior to execution of any business instrument.)
1) Measurable. Tied to Key Performance Parameters (e.g., performance discriminators in the PRS and award fee plan).
b. If metrics are not submitted with acquisition strategy, the metrics must be submitted for the Decision Authority approval prior to execution of any business instrument (e.g., contract, MIPR).

9.0 SAMPLE Acquisition Strategy Review Cover Memo

Date

MEMO

TO: HQ ACA, Operations and Career Management Directorate (SFCA-CO)

FROM: Region

SUBJECT: Acquisition Strategy Review for
_____

- The (title) acquisition is submitted for HQ ACA review and HCA approval. A regional review was performed and the following comments were addressed/resolved with the DOC:
- Include legal review comments.
- Anything else the region would like us to consider.
- Point of contact for this action is _____.

Enclosures:
Region's Analyst ASSP Comments
Region's Attorney ASSP Comments

10.0 ACQUISITION STRATEGY CONTENT CHECKLIST
FOR
FOR SMALL BUSINESS

Date: _____

Prepared by: _____

TITLE:

_____

	YES	NO	N/A	COMMENTS
1) REQUIREMENT				
a. Has the role of Small Business in Source Selection plans were addresses? (i.e. past performance documents evaluated and stratified minimum subcontracting goals).				
c. Has the analysis of set-aside versus reserved awards with rational for selection been prepared?				
d. Has the history of small business in previous contracts for this item/service been discussed in the strategy. (1) Did the data identify how it would be used to determine the instant procurement's Strategy? (2) Was there any new consolidation which impacts Small Businesses?				
e. Has the information on Small Business incentives been provided in the strategy (i.e., PPIMS/CPARS Reports or Award Fee)?				
f. Have the award fees for sole source awards to ANCs or competition limited to ANCs been identified in the strategy?				
g. Has the NAICS code(s) selected and opportunities for small business at the threshold been discussed?				
h. Has the grouping of requirements into various solicitations and the impact and opportunities for Small Businesses been discussed?				
i. Are there any Congressional Interest in the procurement?				
j. Has SBA approved the DD Form 2579? If not why?				
2) MARKET RESEARCH				

a. Has market research for small business participation been conducted?

b. Was an industry Day held? How many companies attended? How many were Small Businesses?

3) BUSINESS ARRANGEMENTS

a. Was the type of funds to be obligated discussed?(For example, is the work described more accurately as refurbishment or construction? This determines appropriate use of OMA v. MCA funds.)

b. Was the rationale for contract described in the strategy? (Note: cost-type contracts, Labor Hour, and Time and Material contracts are particularly scrutinized due to the high potential of cost overruns and misuse.)

c. If a cost-benefit analysis is conducted due to bundling/consolidation, in addition to savings anticipated, was it discussed in the strategy? (Strategy should identify lessons learned from other similar efforts, standard industry practices, and parametric cost estimates.)

d. Were analysis of alternatives identified? (Could Army have used an Air Force or Navy contract for the same items and achieved greater savings? Or why is this buy different from similar ones the Army is conducting?)

e. Are there future opportunities for small business if there is a future down select?

f. Has Risk Management been addressed? (This is particularly key for high dollar bundling of requirements for award to a single contractor. Concern is the single point of failure if a contractor can't/doesn't perform and the potential for cost overruns and misuse.)

4) METRICS

Has metrics for inspection and acceptance, quality assurance, etc., and the associated COR, COTR, QAE, etc. been discussed?

11.0 (Encl 1)

DEPARTMENT OF THE ARMY
DETERMINATION AND FINDINGS
[TITLE OF PROCUREMENT]

1. I have reviewed the requirement for (description of supply or service) that (requiring activity) proposes to solicit as a consolidated procurement action under 10 USC 2382. My review resulted in the following findings: ..."

FINDINGS

1. The Headquarters, US Army Corps of Engineers, through its [name office/District] contracting activity, plans to solicit offers for [describe succinctly] and has conducted market research that demonstrates that consolidation of this procurement is both necessary and justified.

2. Description of the Procurement Action: Procurement is intended to [explain optimize the efficiency of the function, mission, what the contract is intended to do] including [estimated number of contracts]. [If a portion is targeted toward SB, describe briefly the provisions.] Primary NAICS code is [#]. Estimated total value for a base and four option periods...(or whatever) is $$$$$.

3. Applicable Statutes/Regulations: 10 U.S.C. 2382 (2004) and Defense Federal Acquisition Regulation Supplement, Consolidation of Contract Requirements, 69 Fed. Reg. 55986 (Sept. 17, 2004).

4. Results of Market Research:

What market research was done. Other fed agencies, public announcements, sources sought, industry day forum, analysis of existing and similar services, private sector firms, associations etc. (Executive level limited details here, but refer to enclosure for full details if appropriate. Don't get into cost and benefits issues here)

5. Alternative Contracting Approaches Involving a Lesser Degree of Consolidation, and Rationale for Rejection: [for **each alternative approach**, show all the following info – need not be subparagraphs if a single short discussion will do]:

(a) Quality; [Benefits of the consolidated approach exceed those expected for this alternative ... (explain)]

(b) Acquisition cycle [Benefits of the consolidated approach exceed those expected for this alternative ... (explain)]

(c) Terms and conditions; [Benefits of the consolidated approach exceed those expected for this alternative ... (explain)]

(d) ID other benefit(s) [Benefits of the consolidated approach exceed those expected for this alternative ... (explain)]

(e) Cost [Benefits of the consolidated approach exceed those expected for this alternative ... (explain)] Note that if not quantifiable explain why not and upon what bases the determination was made that the consolidated approach is better. Note that savings in admin and personnel costs alone are not enough, but they can be included]

6. Circumstances, facts, reasoning supporting the determination: [Supporting documents should be attachments – keep the discussion here brief and positive assertions/ The "business decision" discussion. You can include here the use of award fee and aggressive subcontracting if those are mitigation strategies, for example, – but make it a sentence or two, not a dissertation – refer to attachments if need be.]

7. An assertion that Measurably Substantial Benefits (and cost greater than 5%) are expected from consolidation. If a bundling analysis was done, it can be an attachment. If a bundling analysis did not need to be done, briefly explain that the contract is not considered substantial bundling because..... ...] An assertion that the agency is taking reasonable steps to mitigate the impact on BOTH competition AND small business.

DETERMINATION

Upon the basis of the findings above I hereby determine, pursuant to the authority of 10 USC 2382, that the proposed consolidation of the requirements for [Services] is necessary and justified.

Date:

Claude M. Bolton, Jr.
Assistant Secretary of the Army
(Acquisition, Logistics and Technology)

12.0 (Encl 2)

BUNDLING CONTRACT REQUIREMENTS

Where the Whole Must be Less than the Sum of its Parts

Introduction. In virtually every major procurement we advise on, there is some aspect of the acquisition where the customer has consolidated requirements in the contract vehicle. This consolidation, or "bundling" has been a great source of political concern resulting in legislative and regulatory changes. As a result, this area of our practice continues to confuse our customers and frustrate everyone on the acquisition team. The purpose of this article is to give an overview of the three different bundling requirements and their legal bases, when the requirements will apply to a particular acquisition, and some potential courses of action. My hope is that this will be a tool for helping to explain and advise our customers on this often confusing concept.

Small Business Bundling. The first requirement concerning bundling stems from the Small Business Act (SBA). It is this definition of "bundling" that is found at FAR Part 2.101(b). That provision states that bundling occurs when two or more requirements that had been previously procured under separate smaller contracts are consolidated into a solicitation for a single contract that is unsuitable for award to a small business concern. Under this definition, a requirement is not "bundled" if it had been previously acquired as a consolidated requirement or if the consolidated requirement is suitable for a small business award. Consequently, both the past procurement history and the ability of small business to compete are key to determining whether a requirement is bundled. Only if both of these conditions are present, would a proper bundling analysis that demonstrates that the bundling is cost effective be required before the acquisition could occur.

Section 801 Bundling. Section 801 of the 2004 Authorization Act is the most recent legislation dealing with bundling and is implemented at DFAR Part 207.170. That section defines consolidation of contract requirements to be when an agency uses a single contract to satisfy two or more requirements that had been previously acquired under separate smaller contracts lower in cost than the total cost of the consolidated contract. As in small business bundling, the Section 801 bundling requirements do not apply if the requirements had been procured together previously. However, should the requirement fall under the purview of Section 801, then a number of items must be addressed in the acquisition strategy when the procurement is expected to exceed $5 million. These include a requirement for a market survey, an analysis of possible alternate contracting approaches, and a determination by the senior procurement executive that the consolidation is necessary and justified. The statute and regulation go on to address the issue of administrative convenience and savings by providing that such savings must be substantial in relation to the total cost of the procurement before these types of savings can justify the consolidation. Finally, the small business personnel are required to do annual reviews to

determine the impact that such consolidations have had on small businesses both as prime and subcontractors.

In many ways, these two provisions complement each other. Both apply only to newly consolidated requirements. Both also have provisions that show a concern for small business. The primary difference is what happens when a requirement is found to be bundled. If a requirement is bundled under the SBA definition, then the agency has a generalized requirement to conduct a bundling analysis. If a requirement is bundled under the Section 801 definition, there is specific guidance on what at least a portion of the analysis must contain that must be addressed in the acquisition strategy.

CICA Bundling. In addition to the statutory and regulatory requirements, a doctrine has developed where the "bundling" of requirements may run afoul of the Competition in Contracting Act (CICA). This notion of CICA bundling is a concept arising strictly from GAO bid protest decisions and is not contained in any acquisition statute or regulation. Since the passage of CICA, there has been a tension between the ways an agency may define its requirements and whether that particular definition hinders full and open competition. Over the years the GAO has issued a number of decisions in this area to include decisions where agencies have tried to join requirements. However, in 2002, the GAO started using the term "bundling" in these kind of decisions and developed the concept of CICA bundling.

The case that actually established CICA bundling as a separate concept which served as a basis to sustain a protest is Vantex Service Corporation, B-290415. The solicitation challenged in Vantex was a small business set-aside to acquire portable latrine rental services and waste removal services at Fort Campbell. Fort Campbell had been acquiring these services together since the mid 1980s. Vantex could perform the portable latrine portion of the requirement but not the waste removal portion. Since it could not offer on the one consolidated requirement, it filed a protest alleging that the requirement was improperly bundled. The Army responded by arguing that it was administratively easier to award and handle one contract, that this requirement had a long history of being successfully fulfilled in this way, and that the requirement still generated adequate small business competition. The GAO ruled in favor of the protestor stating that by keeping those offerors who could only perform one of the functions out of the competition, the Army violated CICA. The GAO went on to hold that "administrative convenience" by itself would not justify bundling requirements. Rather, the Army would need to demonstrate that it realized a real savings from combining the requirements.

The Vantex decision teaches a number of important points. First, the case establishes the importance of the distinct concept of "CICA bundling." Second, although a procurement may not violate the FAR Part 2 definition of "bundling", the procurement may still violate the doctrine of "CICA bundling." In this regard, note that Fort Campbell had acquired the services on a combined basis in the past and that the procurement was a small business set-aside. Either of these factors alone would keep the procurement from being bundled under the FAR and Small Business Act definitions. That was not enough to sway the GAO.

Third, the GAO makes it very clear that administrative convenience by itself will never justify combining requirements.

While the GAO has now issued a number of decisions in this area, there is one other case that is particularly noteworthy. EDP Enterprises, B-284533.6 involved a small business set aside competition among private offerors in the A-76 study for the Directorate of Logistics at Fort Riley. All of the functions under the Directorate of Logistics (DOL) were combined into one package for proposals by the private offerors. Prior to the A-76 competition, the food service work had been performed by EDP under a separate contract. EDP protested the consolidation of the food service work with the rest of the DOL functions in the A-76 study. EDP argued that this consolidation constituted improper bundling since EDP could not offer on the whole package of DOL functions but only on the food service portion. The GAO agreed that this was "bundling" and looked to see if the Army had a proper justification for combining the requirements. The Army argued that this consolidation was in accordance with its long standing doctrine where food services are grouped with the other logistics functions and that this grouping is in fact the way the Army organizes to go to war.

The GAO rejected this argument and found the grouping of the requirements was improper "CICA bundling." The GAO language on this point is very revealing:

> We do not question the agency's decision to classify food services as logistics support functions to be administered by the DOL. Rather, our concern is whether the agency has provided a reasonable justification of its needs in terms of including food services in the same RFP with base, vehicle, and aircraft maintenance services. In our view, the fact that the agency is organized in a manner which results in the administration of the performance of all of these functions by one particular office (which may in itself be reasonable) does not provide a basis for insisting that all of these varied services be procured from one source.

The clear lesson from EDP is that just as administrative convenience is an inadequate justification for combining requirements, so is the fact that a group of requirements may be within the responsibility of a single directorate.

Adequate Justification. When requirements are consolidated, the Government can proceed to procure the consolidated requirements without violating CICA if it has adequate justification. The GAO has issued several opinions where it has found adequate justification. The first of these is Teximara Inc., B-293221.2. In this procurement, the Air Force combined fourteen requirements into a single requirement as part of an A-76 study. The Air Force (perhaps in light of the EDP decision) assembled a 114 page study in two sections that analyzed the combination of these requirements and demonstrated that there would be economic savings as a result of the consolidation. The study was performed by an in-house team of several individuals and took about six months to complete. The Air Force study was clearly the type of business case

analysis the GAO found lacking in EDP and some of the earlier cases where protests were sustained. While the Teximara decision provides an example as to what constitutes a proper justification for bundling requirements, the time, effort, and expense necessary to do this kind of analysis on every potentially bundled requirement makes this solution problematical in many situations for our customers.

In American College of Physician Services Inc; COLA, B-294881, B-294881.2, the GAO upheld a different basis for consolidating requirements. This procurement combined the acquisition of professional accreditation services and laboratory proficiency testing services for U.S. Navy hospitals. In responding to the protest, the Navy did not offer any economic justification for the consolidation of the two requirements. Rather the Navy argued that the requirements needed to be joined because of mission performance reasons. The Navy had experienced problems with reporting delays between the contractor who oversees proficiency testing and the contractor who made the accrediting determinations. By having one contractor performing both requirements, the Navy concluded that it was more likely to obtain an immediate review and the monitoring of test results needed to keep a laboratory accredited and functioning. The GAO found the Navy's analysis to be reasonable and an adequate justification for bundling the two requirements.

In B.H. Aircraft Company Inc., B-295399.2, the GAO relied both on an economic argument and a mission necessity argument in its denial of a CICA bundling protest. This acquisition was for the procurement of spare parts for the F404 aircraft engine. Prior to this acquisition, the spares had been procured from a number of different small businesses. The strategy developed by the Defense Logistics Agency (DLA) was to have one contractor that would provide logistical support, sourcing and supply of all spares. To justify this consolidation, DLA prepared a "rough order of magnitude" business case analysis that compared the ongoing costs of the supply of spares to the expected cost to the Government under the new scheme. DLA concluded that by being able to reduce inventory to a 120 day reserve and by control of the supply chain, it would save $28.3M over five years. DLA also argued that the overall management of the spare parts process was necessary to prevent shortages of parts and maintain the military readiness of the aircraft. The GAO found that this combination of economic analysis and mission necessity was adequate justification for the consolidated requirement.

Potential Courses of Action. In light of the recent GAO case law in this area, the question becomes what alternatives may we offer our customers to help them acquire the goods and services they need in a timely and efficient manner. I believe there are four possible courses, each of which has pros and cons that must be weighed depending on the individual circumstances of the procurement. However, all of these solutions require the customer and the Contracting Officer to have a solid understanding of the marketplace they are dealing with. A thorough market survey, close contacts with the small business community, and an understanding of any past procurement history are all essential in advising our customer on the proper course.

The first alternative is to do the kind of economic, business case analysis that the GAO has consistently referred to in their decisions and approved in the Teximara case. Assuming the study supports the consolidation of requirements, this approach will give the customer the single contact he/she wants and do it in a way that is virtually immune from a protest. The downside is the obvious expenditure of resources, both money and time, that this will cost the Government. Realistically, most studies like this would be done through contract. That will still cost the customer the money to do the study and require a lot lead time. One way to help the customer to some degree would be for ACA to put a master contract(s) in place for this service where the Contracting Officer could just write a delivery order and the study could be started quickly.

The second alternative is for the Government to show that the consolidation is necessary to ensure mission success. Under this approach, the customer may be able to adequately justify a bundled requirement without going through the time and expense of a full blown business case study that was done in Teximara. Additionally, if successful in this approach, the customer would be assured of only having the single contact that it desires.

However, for this approach to have any chance of success, the Government must demonstrate a direct linkage between the consolidation decision and the execution of the mission. In EDP, the fact that Government wanted its contract to be in alignment with its organizational structure was not enough to justify the consolidation of requirements. However, in American College of Physician Services, the showing that the consolidation would prevent the risk of a medical laboratory not being accredited and subsequently being ineffective was the kind of direct linkage that could support a bundling decision. Similarly, in B.H. Aircraft, the GAO cited to the increase in the ability to maintain military readiness of the aircraft as a reason to justify a bundling decision. In both of these cases, the Government was able to directly link the need to consolidate requirements to specific mission performance.

Finally there is one cautionary note that must be kept in mind in following this course of action. While the GAO has consistently held that a proper business case analysis will justify a bundling decision, the concept of justifying a bundling decision on the basis of mission necessity is still a relatively undeveloped concept in the case law. The American College of Physician Services case is the only opinion where a mission necessity argument was enough by itself to justify a bundling decision, and that decision involved combining two very narrow and technical requirements. It is still unclear how the GAO will judge this approach in the larger, broader procurements that we perform for our customers.

The third alternative involves restructuring the procurement. Under this approach, the solicitation would permit offerors to offer on a single or combination of requirements to include a possible offer on all requirements. Part of the evaluation criteria would be for those offerors who choose to offer on a combination of requirements to demonstrate the savings they generate by combining requirements. This could include items such as cross-training, combining overlapping functions, or utilizing a common management approach.

The source selection evaluation board would then evaluate the various approaches and recommend the approach or combination of approaches that would provide the best value to the Government. In effect, this course of action transfers the effort that would be done up front under the first alternative and asks the offerors to provide the kind of data and analysis we need to have.

The obvious advantage is that this will save the upfront expenditure of resources that a customer is facing under the first alternative. However, there are two potential downsides to this approach. The first is the customer will not have any reasonable expectation ahead of time as to how his/her requirements will eventually be met. While it is easy to say that such an expectation should not matter since the customer will, in the end, get the best value, such an approach discounts the "human factor" that is crucial to good customer relations.

The other downside is that this will add an extra burden to what we expect from our evaluators. For a small number of requirements, this should not be a big problem and the approach could work very well. However, this approach will become more complex as the number of combined requirements increases. At some point, a procurement could bundle so many requirements that it would be impossible for an offeror to consider the possible combinations or for an evaluation team to judge them all.

Finally, no discussion of this alternative is complete without one caveat. There are no cases where this approach has been tested in a protest before the GAO. However, it is the consensus of the senior attorneys in ACA that if done properly, this approach is highly likely to survive any GAO protest. If there are any acquisitions in the pipeline where this approach looks attractive, please let me know as we are on the look out for the right case to try this method.

The fourth alternative is perhaps the simplest of all and at the same time the most radical. This approach would entail issuing the solicitation in the normal course of business and waiting to see if a bundling protest is filed. The obvious advantage of this approach is that the customer avoids all of the resource issues and troubles involved in doing a business study while still retaining the possibility of getting a single or few awardees. The downside is that should a protest be filed, it will in all likelihood be a winner and corrective action will have to be taken. Under the current rules, such a protest would have to be filed by the closing date of the solicitation, so any challenge would be known early in the process.

In my discussions with attorneys and acquisition professionals, this approach is sometimes viewed as unseemly or an attempt to circumvent the rules. What these comments truly address is the fact that as the keepers of the government acquisition process, we have an obligation to make sure all offerors are treated fairly and that the process we use appears to be a fair process. For that reason, before embarking on this course of action, the Contracting Officer must, at a minimum, do thorough market research and ensure that the procurement is properly publicized and vetted with the small business community. When this is completed, the Contracting Officer may decide to recommend this course of action if, based on all of the facts and circumstances, he/she is satisfied that the requirements do not violate CICA and that he/she has a high degree of confidence that a protest is not forthcoming.

In summary, the problems with consolidating requirements are far more difficult and complex than one would expect from just reading the FAR. The concept of CICA bundling is an area the GAO continues to enforce strongly. This will pressure our customers to make decisions and expend resources beyond what they would reasonably expect. This becomes even more difficult since the concepts behind CICA bundling are in many ways counter intuitive to notions that our customers have about what makes good business sense. For those reasons, it is imperative that we educate our customers in this area early on, and that we take an active role as business advisors to steer them to the course of action that will help them best meet their needs while staying within the bounds of the law. To this end, early involvement by both the Contracting Officer and supporting legal counsel is crucial.

13.0 (Encl 3)

ASSP Timeline based on History

		Cumulative Days
Identified need	Map out initial strategy	Pre-submittal for review
	Market Research and ASSP supporting Documents	Pre-submittal for review
> $100 M	write ASSP Documents	Pre-submittal for review
	Submit draft ASSP and supporting Documents to ACA HQ	10
	ACA/AE* Review ASSP	20
	comments returned to Region	22
	Revised ASSP	32
	ACA/AE review of ASSP	40
	Provide comments to Region	42
	Region Briefs Director ACA	48
	Director Approves	53
> $500M **	Region brief Army Small Business	57
	Army Review	65
	Army Provides Comments to Region	67
	ASSP re-write and briefing slides	75
	ASSP prebrief to Mrs. Ballard	85
	Brief Mrs. Ballard	95
	Ms. Ballard Approves	105
> $2B	Approval by ASA(ALT) for OSD review	115
	OSD Approval and Notification	125
	Written Approval from Mrs. Ballard with any special instructions	127

* When above $500M the AE staff will review concurrently with ACA HQ staff

** Army review consist to OGC, Army Small Business & ASA(FM) at a minimum

14.0 (Encl 4) SAMPLE PERFORMANCE METRICS FOR ACQUISITION STRATEGIES

The following metrics are provided as "sample" performance metrics that may be used as you are developing an acquisition strategy. You may use these "samples" as possible starting points and tailor what works best for your requirement into the performance metrics for your acquisition strategy.

Four different "samples" are provided: 1. Logistics and Maintenance; 2. Information Systems Engineering Services; 3. Advisory and Assistance Services; and 4. Engineering Services. The categories should not limit the use of the format or content. Example, Sample # 1 for Logistics and Maintenance is not restricted to use for logistic and maintenance requirements.

14.1. LOGISTICS AND MAINTENANCE:

A. Program-level Metrics:

Program-level metrics will be employed to assess the success of the program and to guide the direction of the program over its total life. Program-level metrics may include competition, socio-economic goals, mission capability, client satisfaction, and cost control.

(1.) **Competition:** FAR 16.505(b) requires fair opportunity be considered for each order exceeding $2,500. Data will be collected in the Quarterly Program Report that provides visibility of the usage of the contract requirements.

METRIC: Fair opportunity

TARGET/GOAL: 90 percent of task orders are competed. Target attainment will be assessed annually.

Information will also be captured in the Quarterly Program Report to detect trends of consistent utilization of exceptions by any single contracting office or for any contractor.
Periodic review of task order documentation will be conducted to determine the supportability of exceptions to fair opportunity.

(2.) **Socio-Economic Goals:** Data will be collected on a quarterly basis that illustrates (a.) whether small business primes are complying with FAR 52.219-14 (Limitation on Subcontracting), and (b.) the degree to which small businesses (and subcategories) are utilized as subcontractors.

(a.) METRIC: Limitation on subcontracting

TARGET/GOAL: < 50 percent of the cost of contract performance incurred for personnel is expended for employees of other than the small business prime contractor – target attainment will be assessed annually.

(b.) METRIC: Small business subcontracting

TARGET/GOAL: > 10 percent of awarded dollars under the unrestricted suite. Target attainment will be assessed annually.

(3.) **Mission Capable Status:** Logistics support is a key contributor to a unit's mission capable status. Data will be collected on a quarterly basis that will provide visibility under each maintenance task order as to attainment of (a.) readiness and (b.) reliability standards that will be applied at the individual task order level.

(a.) METRICS: Readiness

TARGETGOAL: Readiness standards set forth in individual task orders are achieved 95 percent of the time.

(b.) METRIC: Reliability

TARGETGOAL: Reliability standards set forth in individual task orders are achieved 95 percent of the time.

(4.) **Reduce Logistics Footprint:** The size or presence of logistics support required to sustain and deploy equipment, vehicles and systems (i.e., logistics footprint) has a direct relationship to the cost of maintenance and the mission capability of a unit. Measurable elements include inventory/equipment, personnel, facilities, transportation assets and real estate. A key enabler for reducing the logistics footprint is the reduction in maintenance down time, thereby increasing readiness and reliability. For purposes of this acquisition, the target/goal will focus on reducing the overall effort expended for maintenance for the XYZ major command.

METRIC: Reduce maintenance hours

TARGET/GOAL: Reduce the maintenance hours expended (as depicted on the Maintenance Allocation Charts) by 1 percent annually for XYZ major command maintenance task orders.

(5.) **Client Satisfaction:** The success of a program is directly tied to the perceptions of those that use the services of the program. Surveys will be created and administered on an annual basis seeking feedback from ordering offices and requirements organizations that obtain support under this contract program.

METRIC: Client satisfaction rating

TARGET/GOAL: 95 percent of comments express overall satisfaction

Feedback will also be obtained via the "ICE" survey program, and from the Industry and Customer Councils.

(6.) **Cost Control:** The success of any program has a direct reflection on the cost of executing services. Data will be collected on a quarterly basis that will provide visibility under each task order as to the ability to complete the required services within the obligated funding.

METRIC: Cost control

TARGET/GOAL: 99 percent of task orders provide required services within funded/awarded amount

B. Task Order Level Metrics:

Performance-Based Acquisition methods will be used to the greatest extent possible. These methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed or outcomes achieved meet contract standards. Metrics at the Task Order level should be presented in terms that are clear and unambiguous, and are linked to incentives and penalties to the greatest extents possible. Metrics should have reasonable measurement periods (i.e., the contractor must be provided sufficient opportunity to come up to speed before the standard is applied). Metrics should be tailored to the specific outcomes and objectives of the task. The Task Ordering Guide will discuss metrics, and will include a repository of sample Performance Work Statements, Performance Requirements Summaries and other documentation that might be deemed useful.

Typical metrics that may be used at the Task Order level include, but are not limited to:

- Cost control
- Readiness
- Reliability
- Mean Time Between Failure (MTBF)
- Mean time Between Critical Failure
- Operational Availability
- Schedule

14.2. INFORMATION SYSTEMS ENGINEERING SERVICES:

A. Contract-level Metrics:

Contract-level metrics will be set forth in a Quality Assurance Surveillance Plan and integrated into the Past Performance Information Reporting System. The Quality Assurance Surveillance Plan will be tailored for each order with task-specific metrics, and will be rolled-up annually for a Performance Assessment Report. The areas to be monitored include: Quality of Product/Service, Schedule, Cost Control, Personnel Management, and Business Relations to include small business participation.

Contract performance will be assessed annually and will be measured in accordance with the Quality Assurance Surveillance Plan against the following goals:

(1.) **Quality of Service:** 98% of the task orders are completed satisfactorily by meeting all task order requirements.

(2.) **Schedule:** 95% of all task orders completed within the negotiated schedule.

(3.) **Cost Controls:** 99% of all task orders are completed within the negotiated price for items in the contractor's control.

(4.) **Management of Personnel:**

(a.) On 95% of the task orders, the contractor provides qualified personnel within 15 days of task order award or departure of personnel.

(b.) On 100% of quick response task orders, the contractor provides qualified personnel "boots-on-the-ground" within 36 hours.

(5.) **Small Business Participation:** 100% of all Small Business participation goals are met. Measured in accordance with the contract level Quality Assurance Surveillance Plan quarterly.

B. Task Order-level Metrics:

Task order performance will be measured in accordance with a Quality Assurance Surveillance Plan tailored to the requirements of each task order. Monthly task order reports will be rolled into the annual Performance Assessment Report at the contract level.

14.3. ADVISORY AND ASSISTANCE SERVICES:

Task orders will require submission of technical reports, contract performance and cost reports, status briefings, and/or final reports for the task order effort. In addition, a Quality Assurance Surveillance Plan (QASP) will be developed and used to assure that systematic quality assurance methods are used in the administration of task orders. A Contracting Officer's Representative (COR) will be appointed to assist with administration of each task order performed on-site at a government facility.

Contractor performance under this program will be assessed at least annually at the task order, BPA and Program Levels. Task order metrics will be established based on the specific task order circumstances and may include quality of service; cost effectiveness; timeliness of performance, business relations; and/or customer satisfaction. Task order performance will be assessed annually, typically by the COR.

The annual BPA award term decision will include consideration of actual performance against established task order metrics as well as responsiveness, competitiveness, and utilization of small business subcontractors and team members. The annual award term decision will be made by the [fill in position title] at the Acquisition Center.

At the program level, metrics will be established as follows:

- Internal Customer Service – 90% Satisfaction Rate (Customer Survey)
- Timeliness – 20 day average Task Order processing time
- Cost Savings – 2% savings as compared to GSA rates
- Competition – 70% of competitive task orders receive two or more quotes
- Socio-Economic Program Support – 60% of obligated dollars to small business

  (Includes Prime and Direct Team Member awards)
- Number of Task Orders/Obligations – Collected for informational purposes

14.4. ENGINEERING SERVICES;

The performance-based [title of requirement] Engineering Services task orders will require submission of technical reports, contract performance and cost reports, status briefings, and/or final reports. Contractor performance under these contracts will be assessed at least annually at the contract and/or task order levels. Performance will be assessed in accordance with FAR 42.15 utilizing procedures outlined in AFARS 5142.1503-90 for the input of

performance evaluations into the Army's Past Performance Information Management System (PPIMS). Since the contractors' past performance evaluations and assessments within this central repository may be used for source selection and other deliberative purposes within the entire DoD, the contractors' performance is a critical factor for their future DoD involvement. Such areas of performance to be evaluated may include the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer. Performance assessment will be accomplished by the acquisition team comprised of the program and contracting offices, the customer, and cognizant technical, requirements, contract management and contract audit offices, as an on-going process throughout the contract period of performance.

Examples of Engineering Services contract-level metrics that may be established are as follows:

- Performance - satisfactory performance ratings 97% of the time
- Internal Customer Service - 90% satisfaction rate as determined by customer surveys (other defined measures may be developed as contracts progress)
- Timeliness -100% timely in meeting performance with no performance issues or notification delays attributable to contractor negligence or lack of initiative
- Control of Cost items - Remains within approved estimates for cost reimbursable items with no cost overruns 100% of the time with no overruns due to contractor inefficiencies or insufficient planning
- Competition - Submits proposal in response to 70% of competitive task order Requests for Proposal
- Socio-Economic Program Support - LB firms ensure that up to 23% of total contract dollars are awarded to SB. Small Business Prime Contractors ensure that 20% of subcontracted dollars are awarded as follows: Small Disadvantaged Business- 5.0%; Women Owned SB- 5.0%; Service-Disabled Veteran-Owned SB-3.0% and HUBZone SB- 3.0%.

Engineering Services task order metrics will be established based on the specific task order circumstances and may include quality of service; cost effectiveness; timeliness of performance; business relations; customer satisfaction and/or exceeding subcontracting plan goals. Failure to meet the established metrics will result in negative performance ratings and may render a contractor ineligible for task order competition or may be used as a basis for exclusion from future awards as determined by the Contracting Officer.