

From the Washington Business Journal

:http://www.bizjournals.com/washington/blog/fedbiz_daily/2014/06/why-bundling-of-contracts-isnt-going-away.html

Jun 13, 2014, 12:41pm EDT

Battle Lines

Why bundling of contracts isn't going away



[William Welch](#)

Partner, McMahon, Welch and Learned PLLC- *Washington Business Journal*

Congress has taken several steps to prevent the consolidation of small business contracts by federal agencies. This example shows that General Services Administration, and apparently the Government Accountability Office, might not have gotten the memo.

Protesting contractors: American Toner & Ink, Spring Lake, Minnesota; KPaul Properties LLC, Indianapolis, Indiana; Dolphin Blue Inc., Dallas, Texas; and Capital Shredder Corp., Rockville, Maryland.

Contracting agency: GSA

Protest issue: Whether the GSA has complied with the requirements of the Small Business Jobs Act when it combined several smaller GSA schedule contracts into a larger multiple award contract for office supplies.

Decision: Protest [denied](#) by GAO June 9, 2014

Post-mortem: Congress has provided several protections for small businesses to prevent agencies from consolidating several smaller contracts into larger contracts where small businesses are less able to compete for the award. The Small Business Act prevents this sort of consolidation as does the Competition in Contracting Act. Congress has passed a new law in 2010, the Small Business Jobs Act, that provides similar protections against consolidation

of contracts that will squeeze small businesses out of the competition.

In this case, the GSA issued a combined solicitation for multiple office supply items that will be available for order by many federal agencies. The GSA expected to make 24 awards under this program, but the consolidated contracts would not be restricted to small businesses only. The protesters, which are all small businesses, argue that the solicitation consolidates and therefore will compete with several existing GSA Schedule 75 contracts for office supply items. The protesters argue that Schedule 75 holders that do not receive an award, many of whom are small businesses, will be shut out of the competition because their small GSA schedule contracts will not be considered by other agencies that order from the more convenient consolidated contract. The protesters argue that this violates the 2010 Small Business Jobs Act.

The SB Jobs Act requires agencies to consider the effect on small businesses of the consolidation of agency contract requirements over \$2 million. Specifically, prior to issuing a consolidating solicitation agencies must conduct market research, assess and identify the impact of contract consolidation on small businesses, and make a written determination that the consolidation is necessary and justified.

The protesters argued that GSA did not consider the economic effect on small businesses that typically market its products through existing GSA Schedule 75 contracts. The GAO invited comments from the SBA, which supported the protester's position. The SBA argued that GSA failed to do any sort of data analysis on the impact to small businesses.

But the GSA argued that the growth in GSA Schedule 75 contracts has resulted in scattered purchases and a wide range of prices for similar items. The government could obtain many benefits under consolidation — such as part number standardization to enable smart shopping, better terms and conditions, reduced cycle time, and improvements for the needs of the federal employee.

The GAO denied the protest, arguing that the SB Act did not require any sort of data analysis or cost-benefit analysis in reaching its decision to consolidate.

This is hard for me to swallow. While the Act apparently does not use the terms "data analysis" or "cost-benefit analysis," it is difficult for me to see how the GSA could assess the real impact of consolidation on small businesses without doing some sort of quantification and assessment of the financial impact of consolidation. The SBA had it right when it claimed that GSA's assessment of the effect of consolidation on small businesses was "perfunctory" and lacked concrete data or analysis. This was more of a justification for the convenience of the ordering agency rather than an assessment of the impact on small businesses. Both GSA and GAO got it wrong.