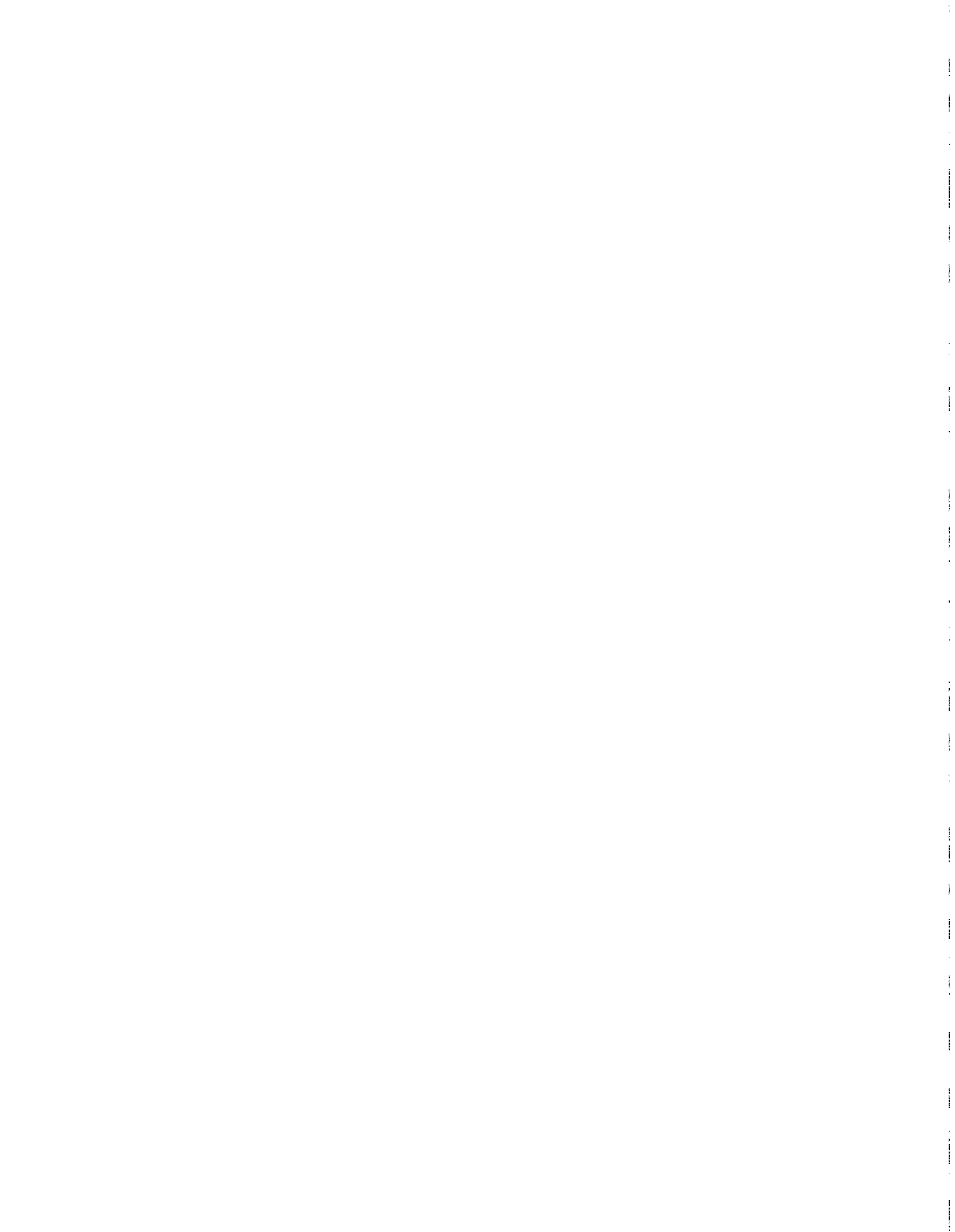


April 1994

DOD CONTRACTING

Extent and Impact of Contract Bundling Is Unknown







United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-256470

April 14, 1994

The Honorable Sam Nunn
Chairman, Committee on Armed Services
United States Senate

The Honorable Dale Bumpers
Chairman, Committee on Small Business
United States Senate

The Honorable Ronald V. Dellums
Chairman, Committee on Armed Services
House of Representatives

The Honorable John J. LaFalce
Chairman, Committee on Small Business
House of Representatives

Congress has expressed concern that small businesses are losing opportunities to contract with the federal government because contracting agencies are packaging contract requirements into acquisitions that effectively may preclude small businesses from competing. This practice is known as contract bundling. The National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160, section 847) and the accompanying congressional conference report requires that our office review (1) the extent and impact of contract bundling within the Department of Defense (DOD) using existing data and (2) the adequacy of the government's policies and procedures concerning bundling.

Results in Brief

DOD's centralized contracting data does not identify contracts that have been bundled. DOD advised us it could not provide any historical data from which we could assess the extent and impact of bundling. However, the Small Business Administration (SBA) has begun to accumulate data on the current extent of contract bundling at locations where it has assigned resident representatives, but only about half of DOD's contract dollars are obligated at these locations. Once adequately implemented, the SBA data-gathering effort could provide some empirical evidence on the magnitude of the issue. However, if such data is deemed to be insufficient for assessing whether bundling represents a significant problem requiring greater management attention, we believe that there should be reasonable

assurance that any new collection effort will accomplish its objectives without the cost exceeding its expected benefits.

DOD officials and others believe bundling could have a negative effect on small businesses that want to compete for government contracts and a positive effect on government procurement activities by reducing their workload. However, our review indicated that no one had any empirical evidence to demonstrate the benefits or the adverse effects of bundling.

The Small Business Act establishes policy guidance concerning contract bundling for DOD contracting officers and SBA representatives, and this guidance is included in the Federal Acquisition Regulation (FAR). However, this guidance does not establish monitoring and management controls to ensure that contracting officers properly identify all bundled contracts. Further, the existence of multiple definitions in addition to the one in the Small Business Act creates confusion about what constitutes bundling. For example, the definition of bundling in the National Defense Authorization Act for Fiscal Year 1994 is broader than the one in the Small Business Act.

Background

Congress for many years has expressed concern about the extent and impact of consolidating or bundling requirements into large acquisitions that diminish small business or small disadvantaged business opportunities to participate in federal procurement. This concern resulted in an amendment to the Small Business Act in 1990, requiring SBA to review all proposed bundled acquisitions for goods or services that small businesses were currently providing, but that may be unlikely for award to a small business. In 1992, Congress required SBA to study the practice of contract bundling by the federal government and its impact on small businesses. In May 1993, SBA reported that it could not determine the effect or impact of bundling, and concluded that a more extensive review over an extended period was necessary.¹ Subsequently, the National Defense Authorization Act for Fiscal Year 1994 mandated that we conduct a review similar to what Congress had previously required of SBA.

Under the provision of the National Defense Authorization Act, DOD was to be responsible for collecting data on its bundled contracts, while we were to (1) catalog the benefits and adverse effects of bundling on the Department as well as small business, (2) catalog and assess the adequacy

¹Study of the Impact of Contract Bundling on Small Business Concerns and Practical Recommendations, a report to the Senate and House Committees on Small Business (May 14, 1993).

of DOD's policy guidance to procurement personnel and small business specialists, (3) assess policy guidance to SBA's procurement center representatives, (4) assess DOD's contract bundling statements submitted to SBA, (5) assess the adequacy of small business specialist and procurement center representative authority and independence, and (6) evaluate the data collected by DOD. The accompanying conference report stated that our work should be limited to assessing existing information and that we should focus primarily on assessing the adequacy of bundling information collected, policy guidance for procurement personnel, and policy guidance and authority for small business advocates.

Data Not Available to Determine Extent and Impact

Data Not Aggregated

The current FAR procedure requires contracting officers to identify bundled acquisitions and prepare written explanations of why bundling is necessary. It also directs an SBA review of such contract actions. However, the FAR does not require that this information be aggregated in a central tracking system. Further, DOD stated that manually collecting the data would require a review of individual procurement actions, and the validity of the data would be questionable because of the subjectivity of the analysis. (See app. I.)

In July 1993, SBA began collecting data from its procurement center representatives to get a better understanding about the extent of contract bundling. Under current SBA guidance, representatives are to collect data from locations where they have resident responsibilities. The representatives are to maintain detailed records of the bundled actions and report them quarterly. Seven bundled actions were reported during the first 3-month period and five were reported during the second 3-month period. SBA officials are working with procurement center representatives to improve the quality of the reported data.

It should be recognized that SBA is collecting data at locations that represent only half of all DOD procurement dollars. Moreover, SBA is using a broader definition of bundling than is in the Defense Authorization Act. The current SBA effort, subject to the constraints described, could provide some indication of the magnitude of bundling activity. SBA officials believe

that such a measure will be sufficient to indicate whether more resources should be devoted to analyzing the impact of contract bundling on small businesses. However, such a measure will most likely not provide a definitive picture of contract bundling across the government.

In order to develop a comprehensive and accurate picture of contract bundling, the agencies collecting data—in this case SBA or DOD—would need a more extensive effort to get information on a much higher percentage of procurement dollars. However, new collection efforts will require more resources. Such actions should be taken only with reasonable assurance that the potential results are worth the additional costs. Any action should also be consistent with acquisition reform efforts to simplify procurement procedures, as well as current plans to reduce procurement personnel.

DOD officials cited the Department's overall attainment of small business contracting goals and the general reform climate, supported by the National Performance Review and other initiatives, as compelling reasons not to require any further regulation, data collecting, or reporting on contract bundling. Without providing any specifics, officials said that collecting bundling data on future contracts would be very costly and time-consuming. Finally, DOD officials said that no DOD actions were necessary because SBA is already collecting data on bundling.

Possible Effects Not Validated

For its May 1993 report, SBA cataloged the potential benefits and adverse impacts of bundling. SBA's survey showed that small businesses and small business advocates strongly believe bundling is detrimental to small businesses' ability to compete for prime contract awards because (1) widely varied expertise was required and (2) the size demanded financial resources that small businesses often lack. On the other hand, the survey responses indicated a strong perception that bundling would have a positive effect on government procurement activities by allowing them to operate more efficiently, achieve economies of scale, and promote standardized products and services.

We reviewed 46 responses from DOD small business advocates to the SBA survey that were received too late for inclusion in the SBA May 1993 report. These responses were consistent with those in the SBA report. However, like the results of the original SBA survey, the responses provided perceptions on the likely impact of bundling, but not information on actual experience or examples of good or bad results.

Policy Guidance Contains Weaknesses

The concept of contract bundling is sometimes at odds with the government's socioeconomic policies because of the potential adverse effect on small business participation in federal contract awards. The FAR directs contracting officers to give small businesses an equal opportunity to compete for all contracts that they can perform, consistent with the government's interest. However, when contracting officers determine that bundling is in the government's interest, the FAR, in implementing the 1990 Small Business Act's bundling amendment, establishes an explanation and review process that they must follow. Further, the FAR identifies the SBA procurement center representative as the review authority for acquisitions identified by contracting officers as bundled.

For an acquisition meeting the bundling definition set forth in the Small Business Act,² the FAR requires the contracting officer to prepare a statement explaining why the acquisition's barriers to small business cannot be removed. The contracting officer must provide this statement, along with the acquisition documentation, to the SBA procurement center representative for review before the solicitation is issued. The SBA representative then has authority to review the acquisition and recommend alternative procurement methods that would increase small business contracting opportunities. DOD's small business specialists have no specific authority in the process of identifying, reviewing, or reporting on bundled requirements.

The SBA review can only be performed if DOD contracting officers appropriately (1) identify bundled solicitations and (2) submit the required statement for review. However, neither the FAR nor DOD supplemental regulations establish any specific monitoring or management control procedures to ensure that bundled requirements are identified as such by contracting officers. As a result, SBA officials may not be able to exercise their review authority in all cases where it would be appropriate.

We called 16 selected SBA procurement center representatives and determined that they did not have any DOD contract bundling statements required by the FAR when proposed acquisitions are bundled.

²This definition is a part of section 208 of P.L. 101-574, the SBA Reauthorization and Amendments Act of 1990 (Nov. 15, 1990). It is codified as 15 U.S.C. 644(a) and is incorporated in the FAR in part 19, section 19.202-1(e).

Multiple Definitions Contribute to Confusion Over Bundling

The confusion that currently surrounds the practice of contract bundling and the difficulty in collecting meaningful data on its use result in part from the lack of a single, agreed upon definition. Three separate laws include different definitions of contract bundling. The first law required agencies to take specific action, and its definition was incorporated into the FAR. The other two laws required studies of bundling using different definitions of what was to be studied. Further, SBA developed a definition for its current data collection effort.

All the definitions include the concept of negative impact—that is, a proposed acquisition is bundled only when it is likely to be unsuitable for award to a small business. However, other concepts in the definitions have significantly expanded over time. For example, the earliest definition applies only to proposed acquisitions that include supplies and services currently being provided by small business. In contrast, the most recent definition³ includes the types of requirements that were previously handled as separate smaller contracts, regardless of what size business had performed them. Another example is the way an award is defined as potentially unsuitable to small business. The earliest definition cited only magnitude of the quantity or estimated dollar value as a reason. In contrast, the latest definition cites diversity and size of the work, anticipated aggregate dollar value, geographical dispersion of contract performance sites, or any combination of them. The four definitions for bundling are included in appendix II.

Program officials from both DOD and SBA agreed that a single definition of contract bundling was necessary. However, they did not agree on what that definition should be. DOD officials believe the FAR definition and its accompanying guidance is adequate, whereas SBA officials believe that their broader definition is more appropriate.

Agency Comments and Our Evaluation

We obtained written comments on a draft of this report from DOD (see app. III) and oral comments from SBA program officials. DOD generally concurred with the report except for two issues. DOD did not agree that (1) regulations do not include internal control procedures to ensure that bundled contracts are identified as such by contracting officers and (2) multiple definitions contribute to confusion over contract bundling.

³The definition is in the National Defense Authorization Act for Fiscal Year 1994, P.L. 103-160, section 847, which required our review.

DOD's disagreement with the statement on the lack of internal controls is based on the Defense FAR supplement requirement that small business specialists review proposed acquisitions. The supplement, however, only directs the specialist to make set-aside recommendations. It does not require small business specialists to check proposed actions to ensure that contracting officers identified and reported bundled requirements properly. We modified the language in the text to better reflect our findings.

DOD's assertion that the definition in the FAR has proven adequate for DOD does not address the fact that others are using different definitions. Moreover, it does not address how different definitions would affect collecting data on contract bundling.

SBA program officials told us they generally agreed with the information presented in this report. We incorporated their suggested clarifying language in the report where appropriate.

Scope and Methodology

Our review was designed to address the objectives stated in the Fiscal Year 1994 National Defense Authorization Act, as well as the accompanying conference report. However, because DOD did not provide the data called for in the act, we could not determine the extent of bundling in DOD's procurement system. We did, however, independently verify that DOD's automated contract data (DD Form 350 file) did not identify bundled contracts. Also, we determined that this data could not be used to identify trends in contract awards to small businesses that may be caused by bundling. We also reviewed the limited data collected by SBA during the first two 3-month periods on contract bundling. To get some insights into whether the SBA procurement center representatives were receiving the DOD contract bundling justification statements required by the FAR, we contacted 16 SBA procurement center representatives seeking this information.

In an attempt to evaluate the benefits and adverse effects of bundling, we reviewed SBA's contract bundling report and reviewed the 46 DOD responses to the SBA survey that were not included in SBA's contract bundling report.

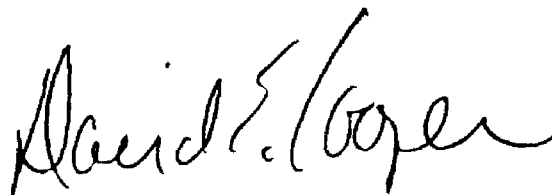
To assess the adequacy of bundling policy guidance and regulations, we reviewed applicable segments of the Small Business Act; various Defense Authorization Acts; the FAR; and the FAR supplements for DOD, the military

services, and the Defense Logistics Agency; and SBA's guidance to procurement center representatives. We also reviewed the role of the small business specialist and procurement center representative to determine their authority and independence.

We discussed the issue of contract bundling with DOD's Contract Policy and Administration Section in the Directorate of Defense Procurement, and the Office of Small and Disadvantaged Business, and SBA's Office of Procurement Assistance. We conducted our review from December 1993 through March 1994 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Chairmen of the House and Senate Committees on Appropriations, Senate Committee on Governmental Affairs, and House Committee on Government Operations; the Secretary of Defense; the Administrator, Small Business Administration; and the Director, Office of Management and Budget. Copies will also be made available to others upon request.

Please contact me on (202) 512-4587 if you or your staff have any questions concerning this report. The major contributors are listed in appendix IV.



David E. Cooper
Director, Acquisition Policy, Technology,
and Competitiveness Issues

Department of Defense's Response to Subsection 847(c) of the Fiscal Year 1994 DOD Authorization Act, Public Law 103-160



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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JAN 7 1994

DP/CPA

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to subsection 847(c) of FY94 DoD Authorization Act, P.L. 103-160 (GAO Code 705038). This provision directed the Secretary of Defense to furnish certain data on "contract bundling" to the Comptroller General not later than February 1, 1994.

I reviewed the Department's existing contract data base and asked the military departments and the Defense Logistics Agency if they were able to provide the required data. This review confirmed that the requested information is not available from the extensive contract data the Department already collects. A manual collection of this data would necessitate an individual review of millions of procurement actions. The validity of any data resulting from such a vast exercise would be open to question due to the subjectivity of the analysis.

By letter of January 5, 1994, the Department provided your evaluator-in-charge with a copy of the only data readily available in the Department on "contract bundling" (questionnaires that DoD components completed in response to a bundling study initiated by the Small Business Administration in February 1993). This is the full extent of DoD's response to the data requirements in subsection 847(c) of P.L. 103-160.

Sincerely,

Eleanor R. Spector
Director, Defense Procurement



Definitions of Contract Bundling

Public Law 101-574
(Section 208),
November 15, 1990

If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects

Public Law 102-366
(Section 321),
September 4, 1992

(f) DEFINITION.—For the purpose of this section, the term “contracting bundling” or “bundling of contract requirements” refers to the practice of consolidating into a single large contract solicitation multiple procurement requirements that were previously solicited and awarded as separate smaller contracts, generally resulting in a contract opportunity unsuitable for award to a small business concern due to the diversity and size of the elements of performance specified and the aggregate dollar value of the anticipated award.

Public Law 103-160
(Section 847),
November 30, 1993

(e) DEFINITION.—For the purposes of this section, the terms “contract bundling” and “bundling of contract requirements” means the practice of consolidating two or more procurement requirements of the type that were previously solicited and awarded as separate smaller contracts into a single large contract solicitation likely to be unsuitable for award to a small business concern due to—

- (1)the diversity and size of the elements of performance specified;
- (2)the aggregate dollar value of the anticipated award;
- (3)the geographical dispersion of the contract performance sites; or
- (4)any combination of the factors described in paragraphs (1), (2), and (3).

SBA Procedural
Notice (Control
Number 6000-582),
July 9, 1993

Bundling is the consolidation of two or more requirements, descriptions, specifications, line items or statements of work; which individually were or could be performed by small business; resulting in a contract opportunity for supplies, services or construction which may be unsuitable for award to a small business concern due to the diversity and size of the performance elements, and/or the aggregate dollar value of the anticipated award, and/or the geographical dispersion of the contract performance sites.

Comments From the Department of Defense



ACQUISITION AND
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DP/CPA

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Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, "DOD CONTRACTING: Extent and Impact of Contract Bundling Unknown," dated March 25, 1994 (GAO Code 705038), OSD Case 9644. The DoD generally concurs with the report.

Although the Department agrees with most of the report, the DoD disagrees on two points. First, the DoD does not agree that neither the Federal Acquisition Regulation nor the DoD Supplement establishes any specific internal control procedure to ensure that bundled requirements are identified as such by contracting officers. The Federal Acquisition Regulation requires contracting officers to report bundled requirements to the procurement center representative of the Small Business Administration. The Defense Supplement provides internal control by requiring that DoD small business specialists review procurements greater than \$10,000 (other than small business-small purchase set-asides) for potential small business opportunities.

Second, the DoD does not agree that multiple definitions contribute to confusion over contract bundling. The definition of contract bundling included in the Federal Acquisition Regulation has proven adequate for the Department. Neither the Military Departments nor the Defense Agencies have reported any difficulty with the definition.

The Department appreciates the opportunity to comment on the draft report.

Sincerely,

Eleanor R. Spector
Director, Defense Procurement



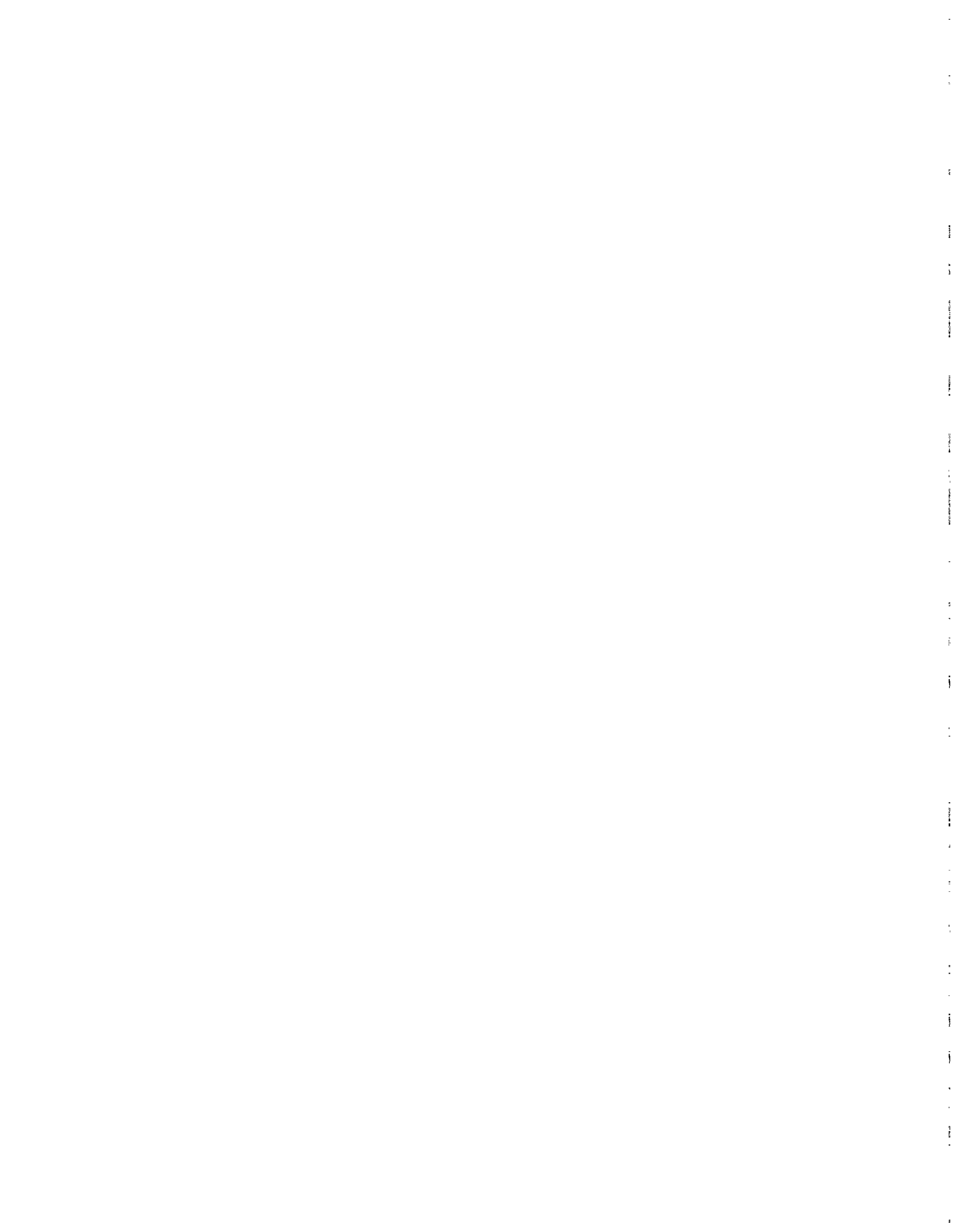
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