



Acquisition Research Program: Creating Synergy for Informed Change

Examining Reasons for, and Impact of, Bundled and Consolidated Contacts at the U.S. Department of the Navy

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The Department of the Navy Bundling & Consolidation Study



- Review of FY2010 Federal Procurement Data System (FPDS) data - recent record year for bundling/consolidation per House Armed Services Committee Panel on Business in the Defense Industry
- DOD-wide: 224 contracts worth \$21.1 billion; DON share: 44 contracts (about 20 percent) worth \$831,948,735.18 (about 4 percent)
- Support from NPS Acquisition Research Program/DON OSBP
- Unique study: It addressed features of these DON contracts; buying commands' actions' and buying commands performance in awarding fair share of contracts to small firms. At the same time, study followed Title 15/Title 10 definitions; it presumed these FPDS contracts meet Title 15/Title 10 definitions and data otherwise was accurately reported. None of 4 major prior studies followed all of these protocols.
- This study had two objectives:
 - #1 To resolve disagreements between 4 major prior studies
 - #2 To provide practical recommendations to DON OSBP on reducing bundling/consolidation, improving DON small business performance, and improving DON defense acquisition system



Bundling & Consolidation: The Legal Framework



- **AUTHORITIES** as of FY2010:
- Competition in Contracting Act of 1984 - implicit
- Small Business Reauthorization Act of 1997, codified in the Small Business Act of 1953, 15 U.S.C. §632, and implemented in FAR §§7.104 & 7.107
- National Defense Authorization Act for FY2004, §801, codified in 10 U.S.C. §2382 and implemented in DFARS §207.170-3
- Guidance: DOD Office of Small Business Programs, Benefit Analysis Guidebook (2007)

<http://www.acq.osd.mil/osbp/news/Bundling%20Guidebook%20October%202007.pdf>



Bundling & Consolidation: The Legal Framework cont'd



- Legal concepts of bundling and consolidation substantially overlap, but “the rules that apply to bundling are more restrictive” . . . “In the most general terms, for DOD, a consolidation is the combining of two or more previous contracts into a single solicitation, and a bundled contract is a consolidation that is unsuitable for award to a small business as a prime contractor even though one or more of the previous contracts was performed (or could have been performed) by a small business. To put it another way, a solicitation that consolidates requirements does not always bundle them, but a solicitation that bundles requirements always consolidates them.” - DOD OSBP
- **Title 10 Consolidation:** 2 or more requirements consolidated into one, over \$5.5 million, prohibited unless defense agency’s senior procurement executive conducts market research, identifies alternatives with “lesser degrees of consolidation,” and determines that consolidation is necessary and justified
- **Title 15 Bundling:** 2 or more requirements (previously performed or suitable for performance by small business) consolidated into one, unsuitable for award to small businesses, prohibited unless agency head (with assistance from OSBP small business specialist) determines it is necessary and justified, and if “substantial bundling” at over \$7.5 million, alternative acquisition strategies and additional reviews are required



Bundling & Consolidation: The Legal Framework cont'd



- **BENEFITS:** known as “substantially exceeding” than benefits from less consolidation (under Title 10) or “measurably substantial” benefits (under Title 15); include cost, quality, acquisition cycle efficiencies, improved terms and conditions, and other benefits. **Congress was concerned that government officials combine contracts for convenience, and made it clear that administrative/personnel convenience or savings cannot justify bundling or consolidation unless dollarized or “substantial.”**
- **Title 15 Bundling:** agencies must obtain a quantified benefits premium quantified at between 5% and 10% of total bundled contract value, unless Service Acquisition Executive or USD AT&L determine it’s mission critical and assures maximum small business participation;
- **Title 10 Consolidation:** quantification not required; documentation required
- **DOD OSBP guidance is to “strongly encourage” DOD buyers “to quantify the benefits” regardless whether it’s bundling or consolidation.**
- **APPLICATION SCOPE:**
 - Title 10, Section 2382: applies to all contracts worldwide awarded to large or small businesses
 - Title 15, Section 632: does not apply to small business set-asides (can have CICA bundling); FAR does not apply to overseas awards or performance



Bundling & Consolidation Literature: Active Policy, Scant Research Attention

- Only 4 major research studies (= both qualitative and quantitative) in the last decade
- Study #1 Small Business Administration Office of Advocacy, *The Impact of Contract Bundling on Small Business* (2002, performed by Eagle Eye Publishers, Inc.)
- Study #2, Government Accountability Office, *Contract Management: Impact of Strategy to Mitigate Effects of Contract Bundling Is Uncertain* (2004, GAO-04-454)
- Study #3 Timothy Nerenz, *Government Contract Bundling: Myths and Mistaken Identity* (2006-07, published in the Defense Acquisition Research Journal)
- Study #4, Nancy Moore, Clifford Grammich, Julie DaVanzo, Bruce Held, John Coombs, Judith Mele, *Enhancing Small Business Contracting Opportunities in the DOD* (2008, Rand Corp. National Defense Research Institute Technical Report 601-1)



Bundling & Consolidation Literature: Three Key Propositions

- Prop #1 Contract Bundling is Not a Serious Obstacle to Small Business Participation in Government/Defense Contracting
 - Prop #2 Small Firms Lack the Capability to Perform Legitimately Combined Military/Government Needs, and so Are Properly Excluded from Justified Bundled or Consolidated Contracts
 - Prop #3 Save for Alleged Small Businesses Problems, Bundling or Consolidation Provide Overall Benefit to Defense Acquisition System
-
- Q: Are bundling/consolidation problems for small firms and defense acquisition system?
 - A: SBA Advocacy (2002) – Yes; GAO (2004) – non-committal; Nerenz (2007) and Moore (2008) – possibly, No



Prop #1, Contract Bundling is Not a Serious Obstacle to Small Business Participation in Government/Defense Contracting

- **SBA Advocacy (2002):** FY2001 bundling highest in 10 years; 16.4 percent of contract awards and 51 percent of all reported Federal contract spending; for DOD, 10 percent of awards/55 percent of spending; bundling involved well over 34,000 contracts and drove about 15,000 small firms out of business; small firms lose about 33 cents on each bundled dollar. White House OFPP adopted this methodology in 2002.
- **GAO (2004):** almost 3,400 DOD contracts/over 75 percent of DOD contract dollars exceeded substantial bundling threshold in FY2002, but only 8 bundled contracts of unreported value
- **Nerenz (2007):** Bundling = under 2 percent of GAO bid protests during 1995-2004; SBA Advocacy study over-inclusive, used extra-statutory definitions of bundling
- **Moore, et al. (2008):** Bundling/consolidation less than 2 percent of DOD contract awards or dollars in FY2001-04; bundling & consolidation “practices may have mixed results for prime contracting opportunities but possibly providing them the same total dollars.”



Prop #2, Small Firms Lack the Capability to Perform Legitimately Combined Government/Military Needs, and so Are Properly Excluded from Justified Bundled or Consolidated Contracts



- Prop #2 reflects current law
- SBA Advocacy (2002): challenged indirectly; defined bundling as contracts incorporating “dissimilar activities” and lowered substantial bundling to \$1 million; as a result, showed that small firms performed many bundled contracts; did not address when bundling is necessary.
- GAO (2004): did not address, simply stated that most agencies reported they did not engage in bundling
- Nerenz (2007): bundling that was approved by the SBA and (also) not protested to the GAO is presumptively proper
- Moore (2008): small firms excluded because of large firms’ capabilities for Performance-Based Logistics, System-of-Systems Engineering, and business outsourcing. Moore (2008) study recommended DOD consider whether small firms can best contribute to innovation at Tier 1 or lower tiers (with implications for future awards of DOD contracts).



Prop #3, Save for Alleged Small Business Problems, Bundling or Consolidation Provide Overall Benefit to Defense Acquisition System

- SBA Advocacy (2002): “the growing lack of diversity and stratification in the federal industrial base being fueled by bundling will have long term and detrimental consequences to the government’s ability to procure needed services and supplies at competitive prices”; assertion untested
- GAO (2004): did not address systemic impact of bundling; claimed FPDS data was insufficient/inaccurate to do so
- Nerenz (2007): low bid protests filings challenging bundled contracts government-wide (less than 5 in FY1995–2004) in comparison with the annual rate of protests filed (1,300 to almost 3,000 per year) showed either that bundling was extremely rare or that all bundling that was not protested was appropriate/useful
- Moore (2008): bundling/consolidation driven by two commercial industry practices: (1) “supply chain transformation” through long-term relationships with limited number of suppliers, strategic sourcing, and “lean” manufacturing; (2) preference to combine goods and services together so as to “guarantee and level of operational performance” while earning more for services AND also providing either better performance or lower overall prices. Examples of practices include Performance-Based Logistics, Strategic Sourcing, Total Life Cycle Systems Management. Moore(2008) recommended DOD justify or explain its consolidation/bundling with comparisons to the private sector.



Finding I. High-Value Contract Bundling is Symptomatic of Below-Average Small Business Contracting Performance by Navy Commands

- (Non-linear) Relationship between bundling/consolidation and small business contracting performance of buying commands: high-level bundling is associated with below-average small business performance
- Bundling/consolidation is uneven among DON commands:
 - Top tier (double-digit share; 2 commands) = over 52% of total contract spending
 - Middle tier (between 2% and 10% share; 6 commands) = over 38% of total contract spending
 - Low tier (under 2% share; 6 commands) = under 9% of total contract spending
- Small business share of contract spending:
- DON-wide = 15.99%
- DON commands without bundling/consolidation = 32.78%
- ALL DON commands with bundling/consolidation = 7.69 %
- Small business contract performance at DON commands with bundling/consolidation:
- Commands with below-DON-wide small business performance = 66.93% of total DON bundled/consolidated contract dollars
- Commands with above-DON-wide small business performance = 33.17% of total DON bundled/consolidated contract dollars



Finding I. High-Value Contract Bundling is Symptomatic of Below-Average Small Business Contracting Performance by Navy Commands

BUNDLING AND COSOLIDATION ACTIVITY BY COMMAND		
Command	Contracts Value	Command Share
NAVAL FAC ENGINEERING CMD EUR SWA	\$274,320,944.32	32.97%
COMMANDER MARCORSYSCOM	\$162,533,621.00	19.54%
NSWC CRANE	\$81,871,194.00	9.84%
NAVSUP WEAPON SYSTEMS SUPPORT MECH	\$79,342,491.00	9.54%
STRATEGIC SYSTEMS PROGRAMS	\$49,437,854.00	5.94%
NAVAL FACILITIES EXPEDITIONARY	\$46,353,072.00	5.57%
SPACE AND NAVAL WARFARE SYSTEMS	\$32,111,171.93	3.86%
NAVSUP FLT LOG CTR NORFOLK	\$32,036,988.03	3.85%
NAVSEA HQ	\$16,120,500.00	1.94%
NAVSUP WEAPON SYSTEMS SUPPORT	\$15,538,153.90	1.87%
NAVFAC ENGINEERING COMMAND HAWAII	\$13,760,057.00	1.65%
NAVFAC SOUTHWEST	\$11,714,772.00	1.41%
NAVFAC SOUTHEAST	\$10,037,000.00	1.21%
NAVAL AIR SYSTEMS COMMAND	\$6,770,916.00	0.81%
Grand Total	\$831,948,735.18	100.00%



**SMALL BUSINESS PERFORMANCE OF COMMANDS
ENGAGING IN BUNDLING AND CONSOLIDATION**

Department /Command	Total Dollars	LB Dollars	Small Biz Dollars	Small Biz Share
NAVFAC HAWAII	\$321,095,593.32	\$150,609,557.31	\$168,736,585.73	52.55%
NAVFAC SOUTHEAST PANAMA CITY	\$1,086,557,539.26	\$601,447,213.16	\$487,471,602.24	44.86%
NAVFAC EXPEDITIONARY PT HUENEME	\$506,172,067.51	\$299,616,301.24	\$186,585,513.62	36.86%
NAVFAC SOUTHWEST SAN DIEGO	\$2,715,588,129.94	\$1,899,717,320.58	\$793,759,461.53	29.23%
NAVSUP WEAPON SYSTEMS SUPPORT MECH	\$1,074,217,227.59	\$770,910,414.14	\$300,582,707.92	27.98%
NAVSUP FLT LOG CTR NORFOLK	\$1,775,484,225.14	\$1,119,896,031.29	\$412,444,749.01	23.23%
NSWC CRANE	\$1,400,599,909.85	\$1,137,087,934.65	\$256,363,949.31	18.30%
MARCORSYSCOM QUANTICO	\$7,183,482,758.10	\$6,043,542,233.92	\$1,091,532,717.39	15.20%
SPAWAR SAN DIEGO	\$2,616,862,292.52	\$2,434,239,814.78	\$181,038,679.74	6.92%
NAVSUP WEAP SYS SUPPORT PHILA	\$1,944,930,431.48	\$1,875,723,849.15	\$60,103,423.73	3.09%
NAVSEA HQ WDC	\$16,910,837,271.37	\$15,749,252,023.89	\$474,239,900.41	2.80%
STRATEGIC SYSTEMS PROGRAMS WDC	\$1,937,492,455.08	\$1,491,199,854.01	\$54,055,062.89	2.79%
NAVAL FAC ENG CMD EUR SWA SIGONELLA	\$230,422,259.81	\$229,535,685.16	\$815,763.12	0.35%
NAVAIR SYS COM PAX RIVER	\$19,171,866,231.98	\$19,107,361,076.94	\$59,002,646.98	0.31%
SUBTOTAL: BUNDLING OR CONSOLIDATION COMMANDS	\$58,875,608,392.95	\$52,910,139,310.22	\$4,526,732,763.62	7.69%
SUBTOTAL: COMMANDS WITHOUT	\$28,980,314,089.75	\$18,720,931,455.83	\$9,525,462,646.60	32.87%



Finding II. Small Businesses Have the Capability to Perform Most Bundled or Consolidated Contracts, Suggesting Their Exclusion Is Not Ability-Based

- **Impact of bundling/consolidation on small business:**
 - SBA Advocacy (2002)/OFPP methodology = small firms lose 33% of all bundled spending (\$0.33 on every \$1)
 - **Real adverse impact: between 95% (exclusion) and 83% (exclusion within capabilities of small firms)**
- **Measurement 1: Exclusion.**
- **23 beneficiaries of DON bundled/consolidated contracts (only 2 small firms) received 44 contracts; each firm receiving 2 contracts on average**
- **Top tier (2 large firms) = 39% or \$322 million; middle tier (9 large firms) = 49.36% or almost \$411 million; low tier (9 large firms) = about 12% or under \$99 million**
- **Small biz tier (2 firms) = 4.54% or \$38 million**
- **Total volume of DON bundled/consolidated contracts from which small firms were excluded: over 95%**



BUNDLING AND CONDOLIDATION BENEFICIARIES		
Contractors	Contracts Value	Share
HAWAIIAN DREDGING CONSTRUCTION COMPANY, INC.	\$5,574,000.00	0.67%
AVIS RENT A CAR	\$5,638,320.00	0.68%
RADIOLOGY SERVICES OF HAMPTON ROADS LLC	\$5,674,321.96	0.68%
UNITED INFRASTRUCTURE PROJECTS FZCO	\$5,905,588.00	0.71%
LOCKHEED MARTIN SERVICES INC	\$6,770,916.00	0.81%
RAYTHEON COMPANY	\$6,935,563.00	0.83%
MULTINATIONAL LOGISTIC SERVICES LTD	\$7,652,611.42	0.92%
TRITON MARINE CONSTRUCTION CORP.	\$8,186,057.00	0.98%
BELL BOEING JOINT PROJECT OFFI	\$8,602,590.90	1.03%
W. G. YATES & SONS CONSTRUCTION COMPANY	\$10,037,000.00	1.21%
TETRA TECH EC, INC.	\$11,714,772.00	1.41%
BAE SYSTEMS LAND & ARMAMENTS, L.P.	\$16,120,500.00	1.94%
U.S. TRAINING CENTER, INC.	\$18,710,054.65	2.25%
LA TERMICA SRL	\$21,000,000.00	2.52%
HARRIS CORPORATION	\$21,862,016.00	2.63%
SENTEK CONSULTING INCORPORATED	\$32,111,171.93	3.86%
NAVISTAR DEFENSE LLC	\$46,353,072.00	5.57%
INTERSTATE ELECTRONICS CORPORATION	\$49,437,854.00	5.94%
SOCIEDAD ESPAOLA DE MONTAJES INDUSTRIALES SA	\$60,000,000.00	7.21%
LOCKHEED MARTIN CORPORATION	\$79,342,491.00	9.54%
EDO COMMUNICATIONS AND COUNTERMEASURES SYSTEMS INC.	\$81,871,194.00	9.84%
HEIL CO., THE	\$140,671,605.00	16.91%
DERICHEBOURG MULTISERVIZI SPA	\$181,777,036.32	21.85%
Grand Total	\$831,948,735.18	100.00%



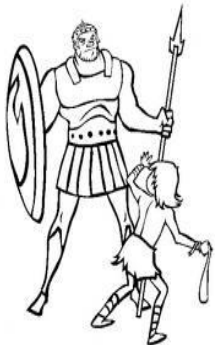
Finding II. Small Businesses Have the Capability to Perform Most Bundled or Consolidated Contracts, Suggesting Their Exclusion Is Not Ability-Based

- Measurement 2: Exclusion within capabilities of small firms.
- Key de facto capability measure for small businesses: whether contract size falls within the SBA small business size standard cap. Size standard caps (12-month employee-based or 3-yr average revenue-based) determine what firms are small within each North American Industrial Classification (NAICS) category code.
- Six-part test for NAICS code assignment to each contract: (1) “industry descriptions” in the NAICS Manual, (2) description of the product or service in solicitation documents, (3) “value and importance” of the procurement’s components, (4) functions of products and services procured, (5) prior procurement classifications in similar purchases, and (6) the purposes of the Small Business Act. Assignments usually made based on component accounting for the greatest share of contract value.
- Bundled/consolidated spending concentration per NAICS code:
- Top tier (3) NAICS categories: over \$426 million or 51%
- Middle tier (5) NAICS categories: under \$323 million or about 39%
- Low tier (8) NAICS categories: under 83 million or about 10%



Finding II. Small Businesses Have the Capability to Perform Most Bundled or Consolidated Contracts, Suggesting Their Exclusion Is Not Ability-Based

- Measurement 2: Exclusion within capabilities of small firms (CONTINUED)
- Conversion between SBA employee-based and revenue-based size standards: \$141,252.69 in contract spending per small biz job supported
 - Source: SBA 2010 Annual Performance Report
- Formula to determine small business capability to perform DON bundled or consolidated contracts within specific NAICS:
 - Average value of bundled or consolidated contract within a NAICS category/ SBA's contract spending per job supported = 1, less than 1, greater than 1
- Total NAICS categories: 17
- Small Business capability to perform NAICS categories of bundled or consolidated contracts:
 - Individual small business could perform (greater or equal to 1): 14 NAICS categories
 - Joint ventures or teams of small businesses could perform (equal to below 2 or 3): 2 NAICS categories
 - Large businesses or large-small team under the Department of Defense Mentor-Protégé Program (equal to below 10): 1



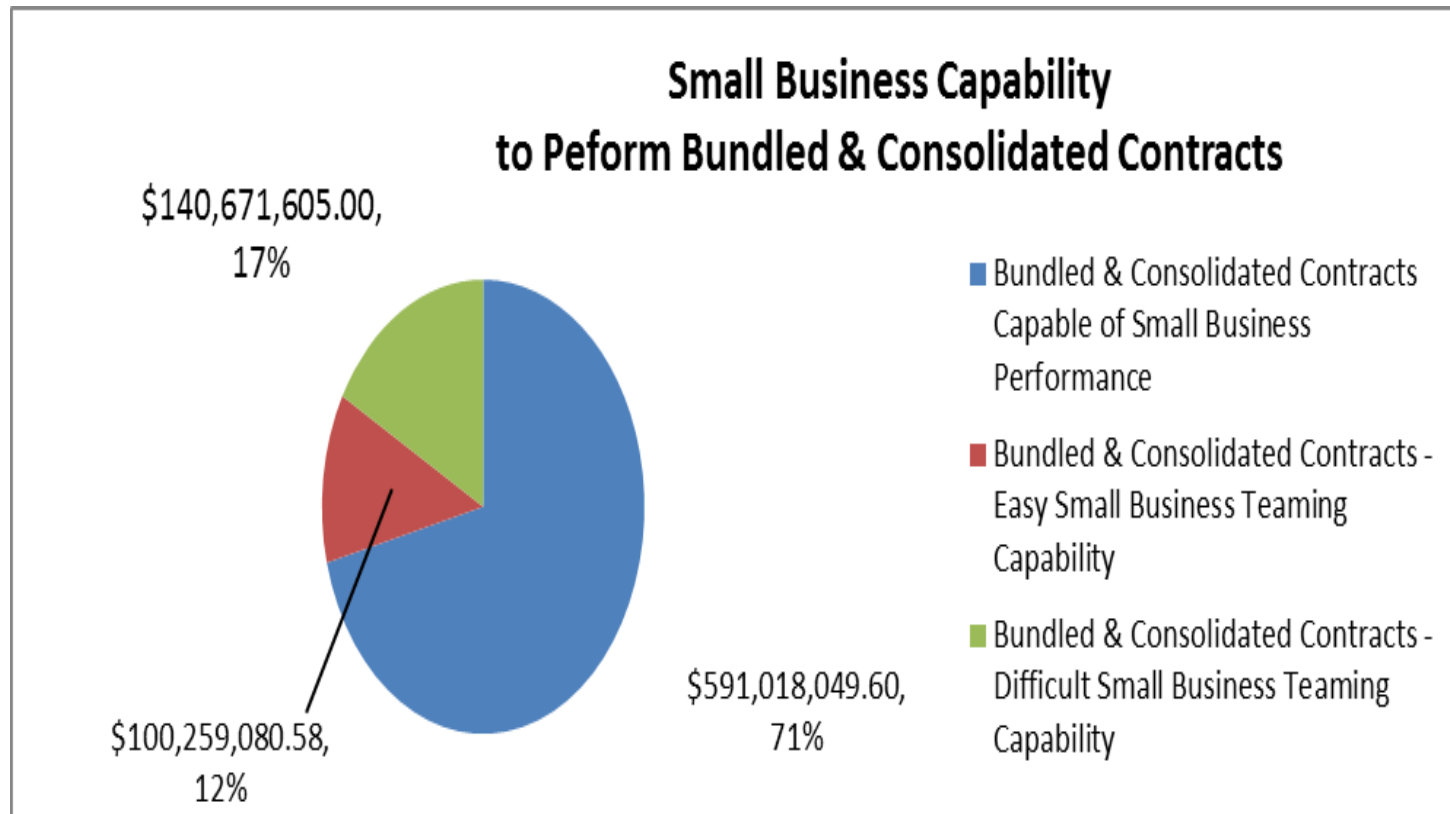
BUNDLING/CONSOLIDATION NEEDS BY NAICS CODE		
NAICS Code Descriptions	Total Contracts Value	Share
PASSENGER CAR LEASING	\$5,638,320.00	0.68%
PHARMACEUTICAL PREPARATION MANUFACTURING	\$5,674,321.96	0.68%
AIRCRAFT MANUFACTURING	\$6,770,916.00	0.81%
PORT AND HARBOR OPERATIONS	\$7,652,611.42	0.92%
REMEDICATION SERVICES	\$11,714,772.00	1.41%
OTHER HEAVY AND CIVIL ENGINEERING CONSTRUCTION	\$13,760,057.00	1.65%
OTHER AIRCRAFT PARTS AND AUXILIARY EQUIPMENT MANUFACTURING	\$15,538,153.90	1.87%
OTHER GUIDED MISSILE AND SPACE VEHICLE PARTS AND AUXILIARY EQUIPMENT MANUFACTURING	\$16,120,500.00	1.94%
<i>ALL OTHER MISCELLANEOUS SCHOOLS AND INSTRUCTION</i>	<i>\$18,710,054.65</i>	<i>2.25%</i>
INDUSTRIAL BUILDING CONSTRUCTION	\$21,000,000.00	2.52%
HEAVY DUTY TRUCK MANUFACTURING	\$46,353,072.00	5.57%
COMMERCIAL AND INSTITUTIONAL BUILDING CONSTRUCTION	\$75,942,588.00	9.13%
BARE PRINTED CIRCUIT BOARD MANUFACTURING	\$79,342,491.00	9.54%
<i>ENGINEERING SERVICES</i>	<i>\$81,549,025.93</i>	<i>9.80%</i>
RADIO AND TELEVISION BROADCASTING AND WIRELESS COMMUNICATIONS EQUIPMENT MANUFACTURING	\$103,733,210.00	12.47%
<i>METAL TANK (HEAVY GAUGE) MANUFACTURING</i>	<i>\$140,671,605.00</i>	<i>16.91%</i>
FACILITIES SUPPORT SERVICES	\$181,777,036.32	21.85%
Grand Total	\$831,948,735.18	100.00%



SMALL BUSINESS CAPABILITY TO PERFORM BUNDLED & CONSOLIDATED CONTRACTS

NAICS Code Descriptions	Average Value	Current Size Standard	\$-Based Size Standard*	Small Biz Team Size
AIRCRAFT MANUFACTURING	\$6,770,916.00	1,500	\$211,879,035.00	1
ALL OTHER MISCELLANEOUS SCHOOLS AND INSTRUCTION	\$18,710,054.65	\$7,000,000.00	\$7,000,000.00	3
BARE PRINTED CIRCUIT BOARD MANUFACTURING	\$39,671,245.50	500	\$70,626,345.00	1
COMMERCIAL AND INSTITUTIONAL BUILDING CONSTRUCTION	\$12,657,098.00	\$33,500,000.00	\$33,500,000.00	1
ENGINEERING SERVICES	\$40,774,512.97	\$4,500,000.00	\$4,500,000.00	10
FACILITIES SUPPORT SERVICES	\$12,118,469.09	\$35,500,000.00	\$35,500,000.00	1
HEAVY DUTY TRUCK MANUFACTURING	\$23,176,536.00	1,000	\$141,252,690.00	1
INDUSTRIAL BUILDING CONSTRUCTION	\$7,000,000.00	\$33,500,000.00	\$33,500,000.00	1
METAL TANK (HEAVY GAUGE) MANUFACTURING	\$140,671,605.00	500	\$70,626,345.00	2
OTHER AIRCRAFT PARTS AND AUXILIARY EQUIPMENT MANUFACTURING	\$7,769,076.95	1,000	\$141,252,690.00	1
OTHER GUIDED MISSILE AND SPACE VEHICLE PARTS AND AUXILIARY EQUIPMENT MANUFACTURING	\$16,120,500.00	1,000	\$141,252,690.00	1
OTHER HEAVY AND CIVIL ENGINEERING CONSTRUCTION	\$6,880,028.50	\$33,500,000	\$33,500,000.00	1
PASSENGER CAR LEASING	\$5,638,320.00	\$25,500,000.00	\$25,500,000.00	1
PHARMACEUTICAL PREPARATION	\$5,674,321.96	750	\$105,939,517.50	1
PORT AND HARBOR OPERATIONS	\$7,652,611.42	\$25,500,000.00	\$25,500,000.00	1
RADIO AND TELEVISION BROADCASTING AND WIRELESS COMMUNICATIONS EQUIPMENT MANUFACTURING	\$34,577,736.67	750	\$105,939,517.50	1
REMEDIATION SERVICES	\$11,714,772.00	\$14,000,000.00	\$14,000,000.00	1
Grand Total	\$18,907,925.80	*Based on SBA FY2010 Goal of Contract Expenditure Per Job Supported: \$141,252.69		

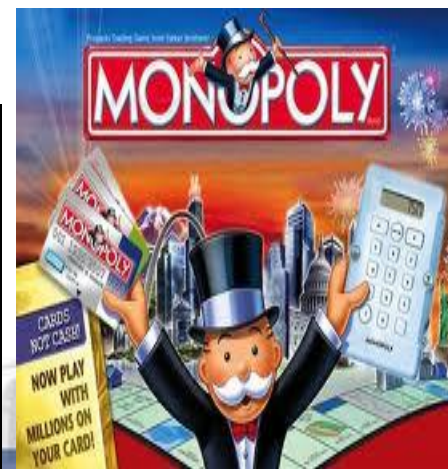
Finding II. . Small Businesses Have the Capability to Perform Most Bundled or Consolidated Contracts, Suggesting Their Exclusion Is Not Ability-Based



Finding 3. Bundling and Consolidation Materially Reduces Full & Open Competition in DON Contracts

- Full & open competition or legal equivalents = only 70% of bundled/consolidated contracts value (over \$583.9 million)
- Sole source: over 29% percent of bundled/consolidated contracts value (over \$242 million)
- Simplified Acquisition Procedures FAR Part 13: another 0.7% percent (approximately \$5.7 million) (competition only to the “maximum extent practicable” and sole source brand name preferences allowed)
- As shown above, each beneficiary on average got 2 bundled or consolidated contracts

COMPETITION FOR BUNDLED & CONSOLIDATED CONTRACTS		
Extent Competed	Contracts Value	Competition Share
COMPETED UNDER SAP	\$5,674,321.96	0.68%
FULL AND OPEN COMPETITION	\$583,964,220.32	70.19%
NOT COMPETED	\$242,310,192.90	29.13%
Grand Total	\$831,948,735.18	100.00%



Finding 4. Bundling and Consolidation Hinders Preference for Commercial Items

- FAR Preference for Commercial Items:

FAR 1.102 requires “maximizing the use of commercial products and services”; procedures established in FAR Part 12 and elsewhere

- DON Bundling/Consolidation Needs (by standard product/service description; tiers by spending volume and share of bundled/consolidated contracts):

- Top tier (2 descriptions): 37.3% or \$310 million
- Middle tier (9 descriptions): 35.52% or about \$296 million
- Lower tier (13 descriptions): 16% or about \$133 million

- Commercial items procedures used only in low-tier product/service needs

- Total spending = 4.53% or about \$37.68 million
- Product/service needs included: Drugs & Biologicals, Lease & Rent of Vehicles and Trailers, Logistics Support Services, and Other Education & Training Services (turnkey counter-terrorism, etc. training center)



BUNDLING & CONSOLIDATION NEEDS BY PRODUCT/SERVICE		
Product/Service Description	Contracts Value	Share
LEASE-RENT OF VEHICLES-TRAILERS-CYC	\$5,638,320.00	0.68%
DRUGS AND BIOLOGICALS	\$5,674,321.96	0.68%
MAINT-REP-ALT/AIRPORT RUNWAYS	\$5,905,588.00	0.71%
CABLE CORD WIRE ASSEMBLY - COMM EQ	\$6,530,385.00	0.78%
MAINT-REP OF AIRCRAFT COMPONENTS	\$6,770,916.00	0.81%
LOGISTICS SUPPORT SERVICES	\$7,652,611.42	0.92%
CONSTRUCT/OTHER INDUSTRIAL BLDGS	\$10,037,000.00	1.21%
HARZ REMV/CLEAN-UP/DISP/OP	\$11,714,772.00	1.41%
FIRE PROTECTION SERVICES	\$12,175,007.57	1.46%
CONSTRUCT/ALL OTHER NON-BLDG FACS	\$13,760,057.00	1.65%
MAINT-REP-ALT/DINING FACILITIES	\$15,000,000.00	1.80%
MISCL AIRCRAFT ACCESSORIES COMPS	\$15,538,153.90	1.87%
LAUNCHERS, GUIDED MISSILE	\$16,120,500.00	1.94%
OTHER ED & TRNG SVCS	\$18,710,054.65	2.25%
BLDGS & FAC / ADMIN & SVC BLDGS	\$21,000,000.00	2.52%
COMM SECURITY EQ & COMPS	\$21,862,016.00	2.63%
PROGRAM MANAGEMENT/SUPPORT SERVICES	\$32,111,171.93	3.86%
MAINT-REP-ALT/MISC BLDGS	\$45,000,000.00	5.41%
TRUCKS AND TRUCK TRACTORS, WHEELED	\$46,353,072.00	5.57%
ENGINEERING AND TECHNICAL SERVICES	\$56,309,048.00	6.77%
ELE ASSEMB-BDS CARDS-ASSOC HARDWARE	\$72,812,106.00	8.75%
ELEC COUNTERMEASURE & QUICK REAC EQ	\$75,000,000.00	9.01%
LUBRICATION & FUEL DISPENSING EQ	\$140,671,605.00	16.91%
FACILITIES OPERATIONS SUPPORT SVCS	\$169,602,028.75	20.39%
Grand Total	\$831,948,735.18	100.00%



Finding 4. Bundling and Consolidation Hinders Preference for Commercial Items

- Actual use of Commercial Item Procedures on Eligible Contracts:
- Eligibility for Use of Commercial Item Procedures
 - FPDS reported = 95% or about \$794.3 million of total DON bundled/consolidated contracts
 - Commercial Item non-applicable categories:
 - FPDS reported: Construction and Building categories FPDS-reported;
 - Likely n/a: Other Communications Security, Electronic Countermeasures, and Guided Missile Launchers
- Total ineligible contracts: just under 19% or almost \$158 million
- Total eligible contracts: over 81% or over \$647 million; of those, commercial item procedures not used in \$636 million
- Non-use = 94% of all CI-eligible contracts, or 76.51% of total DON bundled/consolidated contracts

USE OF COMMERCIAL ITEMS PROCEDURES IN BUNDLED AND CONSOLIDATED CONTRACTS		
CONTRACT TYPE	Amount	Share
NON-COMMERCIAL ITEMS (ACTUAL OR LIKELY)	\$157,779,573.00	18.97%
COMMERCIAL ITEMS	\$674,169,162.18	81.03%
COMMERCIAL ITEM LIKELY – PROCEDURES NOT USED	\$636,493,854.15	76.51%
COMMERCIAL ITEM – PROCEDURES USED	\$37,675,308.03	4.53%
Grand Total	\$831,948,735.18	100.00%

IMPACT OF BUNDLING AND CONSOLIDATION ON COMMERCIAL SUPPLIERS		
Commercial Item Purchases	Contracts Value	Share
COMMERCIAL ITEM	\$37,675,308.03	4.53%
DRUGS AND BIOLOGICALS	\$5,674,321.96	0.68%
LEASE-RENT OF VEHICLES-TRAILERS-CYC	\$5,638,320.00	0.68%
LOGISTICS SUPPORT SERVICES	\$7,652,611.42	0.92%
OTHER ED & TRNG SVCS	\$18,710,054.65	2.25%
COMMERCIAL ITEM PROCEDURES NOT USED	\$794,273,427.15	95.47%
BLDGS & FAC / ADMIN & SVC BLDGS	\$21,000,000.00	2.52%
CABLE CORD WIRE ASSEMBLY - COMM EQ	\$6,530,385.00	0.78%
COMM SECURITY EQ & COMPS	\$21,862,016.00	2.63%
CONSTRUCT/OTHER INDUSTRIAL BLDGS	\$10,037,000.00	1.21%
CONSTRUCT/ALL OTHER NON-BLDG FACS	\$13,760,057.00	1.65%
ELE ASSEMB-BDS CARDS-ASSOC HARDWARE	\$72,812,106.00	8.75%
ELEC COUNTERMEASURE & QUICK REAC EQ	\$75,000,000.00	9.01%
ENGINEERING AND TECHNICAL SERVICES	\$56,309,048.00	6.77%
FACILITIES OPERATIONS SUPPORT SVCS	\$169,602,028.75	20.39%
FIRE PROTECTION SERVICES	\$12,175,007.57	1.46%
HARZ REMV/CLEAN-UP/DISP/OP	\$11,714,772.00	1.41%
LAUNCHERS, GUIDED MISSILE	\$16,120,500.00	1.94%
LUBRICATION & FUEL DISPENSING EQ	\$140,671,605.00	16.91%
MAINT-REP OF AIRCRAFT COMPONENTS	\$6,770,916.00	0.81%
MAINT-REP-ALT/AIRPORT RUNWAYS	\$5,905,588.00	0.71%
MAINT-REP-ALT/DINING FACILITIES	\$15,000,000.00	1.80%
MAINT-REP-ALT/MISC BLDGS	\$45,000,000.00	5.41%
MISCL AIRCRAFT ACCESSORIES COMPS	\$15,538,153.90	1.87%
PROGRAM MANAGEMENT/SUPPORT	\$32,111,171.93	3.86%
TRUCKS AND TRUCK TRACTORS, WHEELED	\$46,353,072.00	5.57%
Grand Total	\$831,948,735.18	100.00%



Finding 5. Bundling and Consolidation Seriously Hinders DON Paying Contractors for Performance (Use of Performance-Based Services Acquisitions)

- **Performance-Based Services Acquisitions (PBAs):**
 - Authorized by FAR 37.6; White House OFPP goal to use PBAs on at least 50% of eligible contracts
- **PBA eligibility**: 52% of DON bundled/consolidated contracts, or about \$431 million; rest were construction or manufacturing
- **Actual PBA use in PBA-eligible contracts**:
 - only 22% or over 95 million;
 - 78% or over \$336 million spent without PBAs
- **Taxpayer \$\$\$ waste warning: data suggests DON buyers lost control once performance objectives across multiple service requirement lines were combined into single contracts**



PERFORMANCE-BASED ACQUISITION ELIGIBLE SERVICE CONTRACTS REPORTED AS BUNDLED OR CONSOLIDATED		
PBA USE	Contracts Value	PBA Share
NO - SERVICE WHERE PBA IS NOT USED.	\$336,011,947.32	77.89%
YES - SERVICE WHERE PBA IS USED.	\$95,374,628.00	22.11%
Grand Total	\$431,386,575.32	100.00%



Finding 6. Private Sector “Best Practices” Apparently Have a Minor Impact on Bundling/Consolidation

- Requirements with product/service descriptions suitable for “best practices” (e.g., system-of-systems engineering, Total Life Cycle Costs, or Performance-Based Logistics) = under 10% percent of volume of bundled and consolidated contracts.
- It appears that 90% percent of DON bundled/consolidated contract dollars were awarded in this way for reasons other than “best practices.”
- This is consistent with data showing rampant non-use of PBAs

BUNDLING/CONSOLIDATION DUE TO PRIVATE SECTOR “BEST PRACTICES”: SYSTEM-OF-SYSTEMS, TOTAL LIFECYCLE COST, OR PERFORMANCE-BASED LOGISTICS REQUIREMENTS

Requirements	Value	Share
MAINT-REP OF AIRCRAFT COMPONENTS	\$6,770,916.00	0.81%
MISCL AIRCRAFT ACCESSORIES COMPS	\$15,538,153.90	1.87%
LAUNCHERS, GUIDED MISSILE	\$16,120,500.00	1.94%
LOGISTICS SUPPORT SERVICES	\$7,652,611.42	0.92%
PROGRAM MANAGEMENT/SUPPORT SERVICES	\$32,111,171.93	3.86%
Total	\$78,193,353.25	9.40%



Finding 7. Consolidation and Bundling Hurts U.S. Defense Industrial Base (Large & Small U.S. Firms)

- **Bundled/consolidated awards to foreign-based firms:**

- Almost \$282 million, or over 33% percent of DON bundled/consolidated contracts; some of that money went to foreign subsidiaries of U.S. firms.
- Foreign-funded non-Foreign Military Sales contracts: \$24 million, or 2.8% percent of the total value of bundled and consolidated contracts. These include: \$15 million to an Italian firm under Industrial Building Construction NAICS in Italy (at about 1.8% percent of the total value), and \$9 million to a Spanish firm for Commercial & Institutional Building Construction NAICS work in Spain (at about 1% percent of the total value). Foreign-funded designations questionable because same beneficiaries received US-funded contracts of similar descriptions.

Other foreign-sourced NAICS categories (dollars and share of total bundled/consolidated contracts value): Facilities Support Services at about \$181.8 million, or 21.85%; Industrial Building Construction, at \$21 million, or 2.52%; Commercial and Institutional Building Construction at \$60 million, or 7.21% percent; Port and Harbor Operations at approximately \$7.7 million, or 0.92% percent; and Passenger Car Leasing at over \$5.6 million, or 0.68% percent.



Finding 7. Consolidation and Bundling Hurts U.S. Defense Industrial Base (Large & Small U.S. Firms)

- **Bundled/consolidated awards to foreign-based firms:**
- As shown above, U.S. small businesses are **presumptively capable to perform an average bundled/consolidated contract in ALL DON foreign-sourced NAICS categories** (average contract value below SBA size standard cap)
- If capability does not explain exclusion of U.S. small firms, what does?
- Likely explanation: artificial bureaucratic barriers to entry created by foreign governments.
- Example (Italian local licensing requirements): All offerors on U.S. projects were “required to submit a Societa Organismi D’Attestazione (SOA), a certification evidencing compliance with Italian law regarding the qualifications of companies competing for public works contracts. . . . An SOA certifies a company to be qualified in particular categories and classifications of work. . . . Submission of an SOA in the name of another contractor is permissible in certain circumstances under a system called avvalimento, authorized by Italian law.” (Bilfinger Berger, GAO B-402496, 2010).



International Contracts: Contractor Home Countries, Places of Performance, NAICS Descriptions	Contracts Value	Share
BAHRAIN	\$5,638,320.00	0.68%
BAHRAIN	\$5,638,320.00	0.68%
PASSENGER CAR LEASING	\$5,638,320.00	0.68%
ITALY	\$202,777,036.32	24.37%
ITALY	\$202,777,036.32	24.37%
FACILITIES SUPPORT SERVICES	\$181,777,036.32	21.85%
INDUSTRIAL BUILDING CONSTRUCTION	\$21,000,000.00	2.52%
MALTA	\$7,652,611.42	0.92%
MISSING	\$7,652,611.42	0.92%
PORT AND HARBOR OPERATIONS	\$7,652,611.42	0.92%
SPAIN	\$60,000,000.00	7.21%
SPAIN	\$60,000,000.00	7.21%
COMMERCIAL AND INSTITUTIONAL BUILDING CONSTRUCTION	\$60,000,000.00	7.21%
UNITED ARAB EMIRATES	\$5,905,588.00	0.71%
KENYA	\$5,905,588.00	0.71%
COMMERCIAL AND INSTITUTIONAL BUILDING CONSTRUCTION	\$5,905,588.00	0.71%
UNITED STATES	\$549,975,179.44	66.11%
Grand Total	\$831,948,735.18	100.00%



Finding 8. U.S. Taxpayers Were Likely Shortchanged on Expected Benefits from Bundling and Consolidation

- Congress/DOD OSBP guidance required or “strongly encouraged” DON buyer to obtain a 5% to 10% percent premium in “measurably substantial benefits” from contract bundling or to prove “substantially exceeding” benefits from consolidation by dollarizing them. Expected benefits from bundling/consolidation on over \$831 million = over \$77.7 million.
- Over 71% percent of these benefits would have been expected from contracts that individual small firms could perform, and another over 12% percent would have been expected from contracts which that teams of up to three3 small firms could perform.
- Without reviewing contract files, it is hard to assume that large firms provided the kind of benefits on over 83% percent of the value of bundled and consolidated contracts value that small firms could not have also provided.

Small Business Performance Capability	Contracts Value	Contracts Share	Expected Benefits
Contracts Capable of Small Business Performance	\$591,018,049.60	71.04%	\$55,217,923.18
Contracts - Easy Small Business Teaming Capability	\$100,259,080.58	12.05%	\$9,367,054.38
Contracts - Difficult Small Business Teaming Capability	\$140,671,605.00	16.91%	\$13,142,735.46
Total	\$831,948,735.18	100.00%	\$77,727,713.02



Observations on 3 Key Propositions from Major Bundling/Consolidation Studies

- As to **Prop #1** (Contract Bundling is Not a Serious Obstacle to Small Business Participation in Government/Defense Contracting)
 - Commands responsible for 2/3 of DON bundling/consolidation were “anchors” weighing down DON small business performance
 - SBA Advocacy/OFPP methodology vastly understated impact of bundling/consolidation on small business contracts
- As to **Prop #2** (Small Firms Lack the Capability to Perform Legitimately Combined Military/Government Needs, and so Are Properly Excluded from Justified Bundled or Consolidated Contracts)
 - Small firms were apparently capable of performing the vast majority of DON bundled/consolidated contract spending
 - Bundling/consolidated requirements likely involving so-called private sector “best practices” constituted a miniscule portion of total DON bundled/consolidated contracts
- As to **Prop #3** (Save for Alleged Small Businesses Problems, Bundling or Consolidation Provide Overall Benefit to Defense Acquisition System)
 - Bundling/consolidation seriously undermines fundamental systemic and legal principles of the defense acquisition system, such as: competition, paying for performance, preference for commercial terms and suppliers, and support for U.S. industrial base. In particular, foreign requirements for U.S. contractors’ “attestation” may be a major cause of consolidation
 - Expected value to U.S. taxpayers from consolidation is highly questionable due to small business capabilities



Action recommendations for SECNAV OSBP to improve DON small business contracting performance and defense acquisition system

- #1 To improve DON small business performance, **annually track top bundling and consolidation commands for additional oversight.**
- #2 To enable easier finding of capable small firms, teams, or mentor-protégé arrangements, **create a simplified size standards-to-contracts value conversion chart where all size standards are expressed in dollars.** May need SBA consent.
- #3 To increase competition, **amend the Navy-Marine Corps Acquisition Regulation Supplement (NMCARS) to ensure review by Navy Competition Advocate General of most non-competed bundled or consolidated contracts.**
- #4 To ensure that contractors are paid for performance, **amend NMCARS to ban or strictly limit the ability of buying commands to choose not to use PBA terms and procedures on all bundled and consolidated services contracts.**
- #5 To implement regulatory preference for commercial items, **amend NMCARS to strictly limit the choice not to use commercial item terms and procedures on eligible bundled or consolidated contracts.**
- #6 To strengthen the U.S. defense industrial base, **amend the NMCARS to require consideration of impact on U.S. defense industrial base when foreign firms receive bundled or consolidated contracts.**
- #7 To strengthen the U.S. defense industrial base, **review, revise, or enforce international trade and defense agreements to reduce trade barriers and help U.S. firms get work on the United States' own bases overseas.**

