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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Phoenix Scientific Corporation

File: B-286817

Date: February 22, 2001

J. Hatcher Graham, Esq., McManus & Graham, for the protester.
Gregory H. Petkoff, Esq., Warren D. Leishman, Esq., and Bradley S. Adams, Esq., Department of the Air Force; Kenneth W. Dodds, Esq., Small Business Administration, for the agencies.[1]
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that an agency's solicitation is an improperly bundled procurement, in violation of the bundling restrictions in the Small Business Act, 15 U.S.C. § 631(j)(3) (Supp. IV 1998), is denied where the solicitation, while clearly comprised of consolidated requirements, does not fall within the reach of the Act because the solicitation will not result in contracts that are "unsuitable for award to a small-business concern," within the meaning of 15 U.S.C. § 632(o)(2).

2. Protester's alternative contention that the bundling in the solicitation violated the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(a)(1) (1994), is denied where the agency has established in the record that its consolidated approach is needed to satisfy its needs, and where the protester has not shown that the approach will not provide the benefits claimed, or is unreasonable.

DECISION

ABU 09953

Phoenix Scientific Corporation protests request for proposals (RFP) No. F09603-00-R-42001, issued by the Department of the Air Force, anticipating multiple-award

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ABU09954

[1]Modern Technologies Corporation (MTC), a small business offeror seeking award as a prime contractor under the FAST solicitation, intervened in this protest on a limited basis, pursuant to our discretionary authority at 4 C.F.R. § 21.3(j) (2000). MTC was represented by Michael A. Gordon, Esq., Holmes, Schwartz & Gordon.

indefinite-delivery/indefinite-quantity (ID/IQ) task order supply and support contracts for the maintenance of Air Force-managed weapons systems. The contracts anticipated by this solicitation, and the program they implement, are referred to as the Air Force's Flexible Acquisition and Sustainment Tool (FAST). Phoenix argues that the FAST solicitation is improperly bundled and impermissibly vague, and violates other procurement regulations.

We deny the protest.

BACKGROUND

Under the FAST solicitation, issued October 3, 2000, by the Warner-Robins Air Logistics Center (WR-ALC), the Air Force will award up to six ID/IQ task order contracts covering unplanned maintenance requirements for all Air Force-managed weapons systems, for a 5-year base period, with an option to extend the contracts for 2 additional years.[2] RFP at 2. As unplanned needs arise, the solicitation anticipates that the ID/IQ contract holders will compete for the award of individual task orders, up to the maximum total estimated value of the contracts, which is $7.441 billion. Contracting Officer's (CO) Statement at 2, 12. In essence, and as set forth more fully below, the unplanned maintenance sought here involves all of the Air Force's unforeseeable requirements for modifications, spare parts, repairs, and services for all the weapons systems it manages.

The scope portion of this solicitation is set forth within the statement of work (SOW), attached to the RFP as Appendix A. The SOW advises that the focus of FAST

> is the sustainment of all Air Force managed weapon systems, support systems, subsystems, and components. This requirement includes services, modifications, spares, and repairs. FAST does not include Military Construction (MILCON), Civil Engineering, or Base Operating Support (BOS). In addition, FAST will not be used for new development programs.

SOW at 4. The SOW also includes definitions of the following terms used to explain the scope of this procurement: systems, subsystems, services, modifications, spares and repairs. SOW at 17-19. For example, the SOW defines the term "spares" as reserve, replacement, and repair parts. Id. at 19. In addition, the SOW explains that

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[2]The Air Force uses the term "sustainment" to describe the universe of its maintenance needs, and this term is found throughout the materials referenced in this decision. At a hearing on this protest, an Air Force witness explained that sustainment falls into two categories--planned and unplanned--and that the FAST procurement is designed to address the unplanned portion of the Air Force's sustainment needs. Hearing Transcript (Tr.) at 11-12.

the use of FAST to buy spares is limited to spares used for modifications, and those that can be classified as contingency, limited, or critical spares. Again, definitions for these terms are set forth in the SOW. For example, a spare may be considered a "contingency spare" when

> Source for part is non-responsive, work-around source is obtained to meet near term customer requirements. Contingency spares are within the scope of FAST.

Id. FAST does not include the purchase of spares to replenish stocks of parts used in the routine maintenance, overhaul, and/or repair of equipment. Id.; Tr. at 12.

During the course of this protest, our Office asked the Air Force to provide more detail about the systems and subsystems covered by the FAST solicitation. In a written submission provided to all parties, the agency explained that the FAST solicitation would cover any need for any of the following weapons systems, or subsystems or components included in them, as limited by the definitions set forth in the scope section of the SOW:

> Fighter aircraft (A-10, F-4, F-15, F-16, F-111)
> Bomber aircraft (B-1B, B-2, B-52)
> Transport aircraft (C-5, C-130, C-141)
> Tanker aircraft (KC-135)
> Trainer aircraft (T-37, T-38)
> Reconnaissance/Command and Control aircraft (E-3, E-6, E-8, U-2)
> Air Force helicopters
> Armament (cruise and ballistic missiles, air-to-ground munitions, air-to-air munitions, electronic countermeasures)
> Space Command Control Communications Intelligence [SC3I] (ground-based radars/communications, range threat systems, telecommunications, mission planning systems)

Air Force Response to GAO, Jan. 31, 2001, at 1.

The same response also identified the following weapons systems, and the subsystems and components within them, as outside the scope of the FAST solicitation:

> Fighter aircraft (F-22, Joint Strike Fighter, F-117)
> Transport aircraft (C-9, C-17, C-12, C-20 series, C-32)
> Tanker aircraft (KC-10)
> Trainer aircraft (T-1, T-6, T-43)

Id. Although this level of detail was not included in either the RFP or the SOW, the Air Force explained that potential offerors were briefed on the information above at an Industry Day briefing held in November 1999. Id. The Air Force also explained

that this information is set forth, in a different format, on a link from its FAST webpage, http://pkec.robins.af.mil/FAST/IndDay2.htm.

With respect to small business participation in FAST, the solicitation describes a cascading consideration for award of up to six anticipated task order contracts. RFP at 27. Specifically, the solicitation advises that all offerors, including small businesses, will be considered for one of four unrestricted awards. After this selection process, any previously unselected small businesses will be considered for award of up to two contracts that are reserved for small businesses. The solicitation advises that at least 15 percent of the total value of all task orders will be awarded to small business prime contractors, and that the large business prime contractors will be required to subcontract a minimum of 23 percent of the total value of their task orders to small businesses. Id. at 18.

The Small Business Administration's Challenge to the FAST Solicitation

Prior to the initiation of this protest, and beginning even before the Air Force released the solicitation, the Small Business Administration (SBA) challenged this procurement as improperly bundled, pursuant to the process identified at Federal Acquisition Regulation (FAR) § 19.505. After first arguing, by letter dated June 15, 2000, that the Air Force lacked a reasonable justification for the bundling in the FAST solicitation, and receiving a written response from the contracting officer denying those arguments, the SBA's Procurement Center Representative appealed to the Head of the Contracting Activity (HCA) at the WR-ALC. By letter dated July 6, the HCA rejected the SBA's request to unbundle this procurement and argued that certain savings associated with the use of FAST adequately justified any bundling of the requirements in this solicitation.

By letter dated August 3, the Associate Administrator of the SBA appealed the HCA decision to proceed with this procurement over the SBA's objections to the Secretary of the Air Force, as anticipated under FAR § 19.505(c)(2). On August 29, the Secretary--acting through the Director of the Air Force's Office of Small and Disadvantaged Business Utilization--again rejected the SBA's view that this procurement is improperly bundled.

On November 14, the protester filed this challenge to the Air Force's FAST solicitation, raising many of the same arguments the Air Force rejected during its exchanges with the SBA.[3] In addition, the SBA intervened in this protest on behalf of Phoenix, and urges that the protest be sustained.

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[3]During the course of this protest, the Air Force challenged Phoenix's standing as an "interested party" to pursue a bid protest under our Bid Protest Regulations, 4 C.F.R. § 21.0(a). In its challenge, the Air Force argued that Phoenix had received only one Air Force contract in its existence, and that Phoenix has never held a contract as

(continued...)

ANALYSIS

The contention by Phoenix and the SBA that the Air Force's FAST solicitation unduly restricts competition, and improperly bundles requirements in a manner that precludes maximum participation by small businesses, leads directly to the intersection of three significant procurement initiatives--the desire to maximize full and open competition by prohibiting the unnecessary consolidation of discrete requirements in a manner that restricts competition; the desire to maximize federal government reliance on small business prime contractors by barring consolidation of procurements into packages that are not suitable for performance by small businesses; and the desire to streamline government purchases by, among other approaches, using pre-placed (and often broadly-scoped) contractual instruments, like the one here, to add speed and flexibility to an agency's buying power. Our analysis of whether this particular streamlined procurement runs afoul of the statutes governing competition and bundling necessarily begins with a review of the statutory framework in this area.

The Statutory Framework Applicable to Bundling Challenges

The Competition in Contracting Act (CICA) of 1984 provided a general statutory basis for challenging solicitations for agency requirements that, over the years, have been labeled as bundled, consolidated, or total-package procurements. See The Caption Ctr., B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174 at 4-5.[4] CICA generally requires that solicitations permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2305(a)(1) (1994). Since bundled, consolidated, or total-package procurements combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can furnish only a portion of the requirement. Aalco Forwarding, Inc., et al., B-277241.12, B-277241.13, Dec. 29, 1997, 97-2 CPD ¶ 175 at 6. The great majority of our decisions addressing

(...continued)
either a prime contractor, or a subcontractor, on any Air Force weapon system sustainment task that would fall within the scope of this procurement. Air Force Memorandum of Law at 3. After reviewing the materials submitted by Phoenix in response to the Air Force dismissal request--including the business plan it tendered to our Office, and to the Air Force, showing its intentions for participating in future Air Force procurements as a small business offeror--we concluded that Phoenix, as a potential offeror, is an interested party for purposes of pursuing this protest.

[4]Although The Caption Ctr. was our first consideration of a challenge to a consolidated procurement under CICA, the cases cited therein show an already well-established body of law for interpreting whether an agency's total-package approach was necessary to meet its needs. Id.

allegations that a solicitation improperly restricts competition have been decided under the general CICA restriction described above.

CICA's general restriction against consolidating requirements has been supplemented with a more specific statutory restriction against bundling, enacted as part of the Small Business Reauthorization Act of 1997, Pub. L. No. 105-135, 111 Stat. 2592, 2617-20 (1997). The Small Business Act, as amended, states that, "to the maximum extent practicable," each agency shall "avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors." 15 U.S.C. § 631(j)(3) (Supp. IV 1998). To implement this restriction, the Small Business Act defines bundling as:

> consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to--
>
> (A) the diversity, size, or specialized nature of the elements of the performance specified;
>
> (B) the aggregate dollar value of the anticipated award;
>
> (C) the geographical dispersion of the contract performance sites; or
>
> (D) any combination of the factors described in subparagraphs (A), (B), and (C).

15 U.S.C. § 632(o)(2); see also Federal Acquisition Regulation (FAR) § 2.101.

The Small Business Act's statutory prohibition against bundling requirements is not absolute, however, as an agency may determine that consolidation of requirements is "necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial." 15 U.S.C. § 644(e)(2)(B). The statute explains that such benefits may include: (i) cost savings, (ii) quality improvements, (iii) reductions in acquisition cycle times, (iv) better terms and conditions, or (v) any other benefits. Id. On the other hand, the statute states that "[t]he reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated." 15 U.S.C. § 644(e)(2)(C).

Bundling Under the Small Business Act

In reviewing Phoenix's contention that the FAST solicitation is improperly bundled, we recognize at the outset that this is a consolidated procurement under any common understanding of bundled procurements. On the other hand, since Phoenix argues that the FAST solicitation violates the specific restrictions against bundling

set forth in the Small Business Act, it necessarily contends that FAST is a consolidation of (1) two or more requirements previously provided under separate contracts, (2) into a solicitation of offers for a single contract, (3) that is likely to be unsuitable for award to a small business concern, as required under 15 U.S.C. § 632(o)(2). In addition, Phoenix argues that the Air Force has not shown that it is necessary to consolidate these requirements.

The Air Force replies that the FAST procurement does not fall within the reach of the Act because FAST is not a "bundled" procurement, as that term is defined at 15 U.S.C. § 632(o)(2).[5] First, the Air Force argues that the requirements found in FAST were not previously provided under separate contracts. In this regard, the agency explains that FAST was not designed to replace existing contracts, but to provide an in-house instrument to regain control over approximately $1 billion in annual expenditures by Air Force program personnel using Military Interdepartmental Purchase Request (MIPR) procedures. CO's Statement at 2. Second, the Air Force argues that it is not consolidating its requirements here into a single contract, but will award six contracts. Third, the Air Force contends that the solicitation cannot be said to be unsuitable for award to small business when it anticipates that at least two of the six awardees will be small businesses, and provides that those small business awardees will be able to compete for all task orders issued under the contract. The SBA disagrees with the Air Force's contention that this procurement is not covered by the Small Business Act restrictions on bundling.

As explained below, we conclude that the 1997 bundling provisions of the Small Business Act do not apply to this procurement. We reach this conclusion because the requirements here cannot be termed "unsuitable for award to a small-business concern" within the meaning of 15 U.S.C. § 632(o)(2).

On this issue, the SBA has argued, in essence, that the sheer magnitude of the FAST solicitation virtually guarantees that the resulting contracts will not be suitable for award to small businesses. While the SBA acknowledges that small businesses have expressed interest in participating in the procurement, it argues that these

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[5]The Air Force's contention that FAST is not a "bundled" procurement is the second instance in the three protests we have reviewed to date alleging violations of the Act's bundling restrictions where limitations in the definition of bundling have been raised as a defense by the agency. See The Urban Group, Inc.; McSwain and Assocs., Inc., B-281352, B-281353, Jan. 28, 1999, 99-1 CPD ¶ 25 at 9-10. (The other protester challenging this procurement, The Urban Group, Inc., did not allege that the procurement was improperly bundled.) We did not reach the issue of whether the solicitation in McSwain was bundled under the Act, as we concluded that the agency had established that the bundling was justified, and the protester had not shown otherwise. Id. at 10-11.

businesses are either small business teams that should not be viewed as supporting a conclusion that these requirements are appropriately bundled,[6] or are very large small businesses. SBA also contends that in a multiple-award environment, all of the awards must be set aside for small businesses, or else we must conclude that the work is unsuitable for award to small businesses.

We agree with the SBA that the magnitude of this procurement will likely exclude the participation of many small businesses that might be able to perform some portion of the work included within the FAST solicitation. We also agree with the SBA's contention that the small businesses expressing interest in this procurement are generally very large small businesses. In this regard, we note that the applicable small business size standard here is for businesses with up to 1,500 employees, and that Phoenix filed an earlier challenge arguing that the size standard should be lowered, which was denied by the SBA's own Office of Hearings and Appeals (OHA).[7] NAICS[8] Appeal of Phoenix Scientific Corp., SBA OHA No. NAICS-2000-10-05-30 (Nov. 16, 2000). On the other hand, we see nothing in the Small Business Act that elevates the interest of one type of small business over another. Thus, to the extent that the small business interest in this solicitation is from larger small businesses (to the exclusion of smaller ones), these are nonetheless small businesses and their participation here means that the contracts resulting from this solicitation cannot be termed "unsuitable for award to a small-business concern."

With respect to the SBA's contention that the failure to set aside all of the awards under a multiple-award contract shows that the contract is "unsuitable for award to a small-business concern," we again disagree. There is no link in this Act (or in the SBA's regulations implementing the Act) between a decision not to set aside a contract and a conclusion that a contract is unsuitable for award to a small business. Nor is there any evidence in the Act or regulations to support the SBA's contention that all of the work under a solicitation for a multiple-award contract

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[6]The 1997 amendments specifically provided that when an agency is soliciting for consolidated requirements, a small business may propose the use of a team of contractors to perform the work, and under these circumstances, the use of this team shall not affect its status as a small business concern. 15 U.S.C. § 644(e)(4). As SBA correctly argues, however, a Joint Explanatory Statement accompanying the bill in the Senate stated that "[t]he ability of small businesses to team with other small businesses should not be considered an opportunity for procurement officials to justify a decision to bundle one or more requirements." 143 Cong. Rec. S11526 (daily ed. Oct. 31, 1997) (joint explanatory statement, inserted by Sen. Bond).

[7]Our Office does not have jurisdiction to consider challenges to size standards, which are reviewed solely by the SBA. 4 C.F.R.§ 21.5(b)(1).

[8]NAICS is the acronym for the North American Industry Classification System. See FAR Subpart 19.303.

must be set aside for small business to avoid the conclusion that the work is unsuitable for award to a small business.

In determining whether the contracts here will be suitable for award to small businesses, we view it as significant that the Air Force has reserved at least two of its six anticipated awards under this solicitation for small businesses, and will permit those awardees to compete for all future task orders. Moreover, as noted above, the solicitation advises that at least 15 percent of the total value of all task orders will be awarded to small business prime contractors. In addition, the record shows the Air Force has received expressions of interest (and indeed, proposals) from bona fide small businesses that apparently do not view the requirements in this solicitation as unsuitable for them. Tr. at 51; Letter from Air Force to GAO at 10 (Jan. 25, 2001). In fact, one small business offeror, Modern Technologies Corporation, participated in the hearing our Office conducted in connection with this protest and argued that we should not conclude that small businesses will be unable to perform this requirement. Tr. at 122. Given these expressions of interest (and the resulting offers), we do not agree that this solicitation will result in contracts that are unsuitable for award to small business concerns. Accordingly, we conclude that the FAST procurement does not fall within the reach of the Act's bundling restrictions.[9]

Bundling Under CICA

Phoenix argues, in the alternative, that even if the Air Force's approach in the FAST procurement does not run afoul of the statutory bundling restrictions in the Small Business Act, it is nonetheless an improperly consolidated procurement under the more general restrictions established in CICA.

The reach of the restrictions against bundled procurements in CICA is clearly broader than the reach of restrictions against bundling under the Small Business Act.

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[9] Because of this conclusion, we need not decide whether the bundling provisions of the Small Business Act apply where, as here, a solicitation anticipates award of more than one contract. The Air Force points out that the statute's definition of bundling applies to "a solicitation of offers for a single contract," while the FAST solicitation seeks offers for multiple contracts. On that reading, the plain language of the statute would mandate a finding that it does not apply here. On the other hand, we recognize that what may make an acquisition "unsuitable for award to a small business concern" is the consolidation of previously separate acquisitions into one solicitation and the requirement that firms responding to that solicitation submit "offers for a single contract"--that is, each offeror must propose to perform all of the requirements, not merely some of them. This bundling concern may arise regardless of whether that consolidated contract is awarded on a single-award or a multiple-award basis, which suggests that it would be unreasonable to read the Act to exclude multiple-award contracts from its scope.

For example, unlike CICA's restrictions, the Small Business Act's bundling provisions have no application to arguments by large businesses that discrete portions of consolidated procurements should be broken out for competition. See, e.g., Pemco Aeroplex, Inc., B-280397, Sept. 25, 1998, 98-2 CPD ¶ 79, and National Airmotive Corp., B-280194, Sept. 4, 1998, 98-2 CPD ¶ 60 (cases where two large businesses argued that discrete portions of the workload of closing Air Logistic Centers should be broken out of a consolidated solicitation and competed separately). Also, as discussed above, there are other circumstances where the Small Business Act offers no relief, yet CICA may.

In addition to the differences in specificity between the bundling restrictions in CICA and those in the Small Business Act, there is also a difference in the showing required to justify bundling. The Small Business Act requires that agencies demonstrate "measurably substantial benefits" in order to justify a bundled procurement.[10] 15 U.S.C. § 644(e)(2)(B). In contrast, CICA permits solicitations to contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2305(a)(1). In interpreting CICA, we have looked to see that an agency has a reasonable basis for its contention that bundling is necessary, and we have sustained protests where no reasonable basis was shown. National Customer Eng'g, B-251135, Mar. 11, 1993, 93-1 CPD ¶ 225 at 5.

In reviewing the Air Force's claimed needs for FAST under the standards applicable to CICA, we note that the agency began its attempts to justify this procurement looking only to the justification requirements of the Small Business Act, and as part of the process of giving notice to the SBA of upcoming bundled requirements, as anticipated by FAR § 19.202-1(e)(1)(iii). By transmittal letter dated May 31, the Air Force provided the SBA with a document titled, "Rationale for Developing [FAST],"

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[10]For the record, we note that the SBA's new regulations on justifying bundled procurements require that before an agency can show "measurably substantial benefits," it must quantify the savings associated with any decision to bundle requirements, and show a cost savings of 5 percent of the contract value, for contracts valued at $75 million or more. 13 C.F.R. § 125.2(d)(5)(i), 65 Fed. Reg. 45,831, 45,834 (2000). The SBA's regulations require this quantification even if the basis for consolidating the procurement is not cost savings. As quoted above, the Act permits an agency to justify a consolidated procurement if it can show "measurably substantial benefits," which expressly include: "(i) cost savings, (ii) quality improvements; (iii) reductions in acquisition cycle times, (iv) better terms and conditions, or (v) any other benefits." 15 U.S.C.A. § 644(e)(2)(B). Alternatively, the regulations permit a limited number of agency officials to justify a consolidated procurement, even if the agency cannot show the required quantifiable cost savings, when consolidation is "critical to the agency's mission success," and steps have been taken to provide for the "maximum practicable participation by small business." 13 C.F.R. § 125.2(d)(5)(ii).

to which was appended a document titled, "Bundling Justification." Agency Report, Tab 11. The rationale document set forth some of the agency's considerations in adopting the FAST approach; the justification document estimated cost savings the Air Force argues are associated with its approach. The justification document expressly indicates that it was prepared to show a "measurable substantial benefit" from the intended bundling in the FAST solicitation, as required under the rules implementing the bundling restrictions of the Act. Bundling Justification at 1.

In its justification document, and in subsequent materials submitted to the SBA and our Office, the Air Force claims it will save at least 9.99 percent of the cost of purchasing its requirements (as it currently buys them), by consolidating its purchases under FAST. The Air Force also argues that these savings exceed the threshold required to justify bundling set forth at FAR § 7.107(b)(2). The claimed savings fall into two areas: (1) a savings of 4.49 percent achieved by avoiding the administrative fees paid when agency personnel use non-Air Force contractual vehicles to meet their needs, such as MIPRs to place orders against other military contracts; and (2) a savings of 5.5 percent associated with the competition among the ID/IQ contract awardees for task orders.

Both Phoenix and the SBA argue that the Air Force's claimed savings do not adequately justify the bundling here. We agree.

While we take no issue with the quantum of either of the two elements of the Air Force's claimed savings, we disagree with the logic of the agency's claim that these savings are associated with its decision to procure these requirements on a consolidated basis. With respect to the avoidance of administrative fees incurred through the use of other agencies' contracts, we note that such fees would be avoided by the use of any Air Force contract vehicle--whether that Air Force contract vehicle be a sole-source purchase from an original equipment manufacturer, the competitive award of a traditional single contract, or use of the multiple-award ID/IQ contracts anticipated here. Thus, we reject the Air Force assertion that these savings arise from the decision to bundle these requirements.

We find similarly unpersuasive the assertion that the consolidation of these requirements leads to the savings anticipated from the competition for task orders the Air Force anticipates among its ID/IQ contract holders. To calculate these claimed savings, the Air Force compared the prices it paid to original equipment manufacturers with the savings it achieved under full and open competition. Bundling Justification, supra, at 1-2. As with the avoidance of administrative fees, discussed above, these savings have no logical connection to justifying consolidation of the FAST workload. While we do not doubt that the limited competitions envisioned here among ID/IQ contact holders may generate savings when compared with the prices that would be paid under a single-award ID/IQ contract, these savings provide support only for the decision to use a multiple-award contract, rather than a single-award contract. These savings tell us nothing about the need to consolidate the requirements contained in this workload into one solicitation.

The Air Force's justifications for the use of FAST, however, are not limited to the cost figures it developed in response to the "measurably substantial savings" requirement of the Small Business Act, nor need they be so limited under a CICA analysis. Rather, our review of the materials prepared prior to, and during, the course of the SBA's challenge to FAST, the materials prepared during the course of this protest, and the testimony of Air Force witnesses in a hearing before our Office, leads us to conclude that other benefits from this approach adequately justify its use.

In the materials prepared for review by the SBA, the Air Force explained that it needed the FAST approach because of significant reductions in its civilian workforce, the unique requirements of maintaining an aging aircraft fleet, and decreases in Air Force funding. Rationale for Developing FAST at 1. These general contentions were amplified during the course of the protest, in a filing by the Air Force prepared in response to Questions for the Record from our Office. In essence, the agency explained it needs one contract vehicle to permit it to address unique, nonrecurring, and generally unforeseeable requirements, that arise practically anywhere the Air Force has a weapons system. In addition, the Air Force stated that these requirements call for coordination and integration of multiple tasks, with limited resources. Letter from Air Force to GAO at 8 (Jan. 25, 2001). The Air Force also pointed to its need to significantly reduce the acquisition cycle time for addressing unforeseeable maintenance and modifications associated with the use of aging aircraft for expanding requirements, and to quickly integrate related tasks in doing so. These tasks include "design engineering, fabrication and testing, technical documentation, installation and kit proofing, spares, and interim contractor support." Id. In the Air Force's view, the FAST pre-placed ID/IQ contracts will allow the agency to improve the readiness and availability of its aircraft fleet. Id.

Because of the seriousness of the needs claimed by the Air Force, and the potentially negative impact of this approach on small businesses, our Office convened a hearing to explore further the Air Force's claimed needs for FAST. During this hearing, an Air Force witness explained that the agency's resources for integrating and administering the multiple contracts for unplanned maintenance were stretched thin by reductions in staffing of more than 50 percent since the early 1990s. Tr. at 10. In addition, this witness explained in greater detail the increase in agency operational demands; the increased complexity of detecting, isolating, and determining causes of problems and finding solutions for them; and the impact of trying to maintain an aging fleet of aircraft under these circumstances. Id., at 11-12. A second witness explained that for one aging Air Force system, the C-5 transport aircraft, the agency has more than 3,000 parts with no known vendor. Id., at 42. In these cases, unforeseeable needs for these parts, often involving the need to design and fabricate them, can be met quickly using FAST.

In our view, these needs and benefits provide a reasonable basis to justify the use of a consolidated contract here. In addition, we note that the protester has not shown that these claimed benefits will not be achieved, or are unreasonable.

Phoenix also argues that the FAST solicitation is impermissibly vague, and that this vagueness is another form of bundling prohibited by CICA. See Letter to the Army in the Matter of Valenzuela Eng'g, Inc., Jan. 26, 1998, 98-1 CPD ¶ 51 at 2 ("Statements of work that are too general provide insufficient information for prospective offerors to decide whether to submit a proposal or what to offer to best meet the agency's needs"). Under this argument, Phoenix contends that the scope of work in the FAST solicitation does not adequately describe the Air Force's requirements.

As described above, the FAST solicitation advises potential offerors that the resulting ID/IQ contracts will be used for all Air Force-managed weapons systems. SOW at 4. As also described above, our Office asked the Air Force to address this issue during the course of this protest, and received a comprehensive list of the weapons systems that are covered by FAST, and those that are not.[11] While the Air Force's use of the word "all" to describe the weapons systems covered by this solicitation raised concerns about the breadth of this solicitation--i.e., bundling--it cannot be termed vague. In addition, the Air Force has imposed limits on the availability of FAST for its sustainment needs that, in essence, translate to the difference between needs that are foreseeable, and needs that are not. Tr. at 11-12. These restrictions on the use of FAST are concrete and subject to review as part of any future challenge that a task order issued pursuant to FAST exceeds the scope of the underlying contract. Given these restrictions, we do not agree that the solicitation here is improperly vague.

Before leaving the subject of bundling under CICA, we feel compelled to answer Phoenix's contention that the FAST solicitation here is as broad, and as consolidated, as any solicitation we have ever reviewed in the course of a bid protest, and the ancillary contention that if we do not sustain its challenge to this solicitation, there will be no remaining room for any future challenge under CICA that a solicitation is improperly consolidated. While we need not address the arguments between the Air Force and Phoenix over whether the solicitation here is broader than the solicitation in Valenzuela, supra, we are aware that both of these solicitations consolidate extensive requirements. Nonetheless, our review of an allegation that a solicitation is improperly consolidated does not take place in a vacuum: the breadth of a solicitation is but the starting point of our review.

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[11]The protester points out that a review of the list of the 12 types of aircraft not covered by FAST shows that these 12 aircraft types are either experimental, leased, or so new to the Air Force that they are still maintained by the original manufacturer. This observation, which appears accurate, is consistent with the Air Force's position that the scope of FAST is limited to Air Force-managed weapons systems.

Protesters challenging consolidated procurements are generally seeking the award of some identifiable portion of the work within the solicitation.[12] The agency then responds with an explanation of its need for the consolidation, which can be reviewed for its adequacy and reasonableness, as discussed above. See, e.g., Pemco Aeroplex, Inc., supra, at 8-16 (protester sought to perform depot maintenance on KC-135 aircraft, which had been unreasonably consolidated with other significant requirements); Better Service, B-265751.2, Jan. 18, 1996, 96-1 CPD ¶ 90 at 2-4 (protester sought to perform repair and maintenance on photocopiers, which had been unreasonably consolidated with the purchase of photocopiers); and Magnavox Elec. Sys. Co., B-258037, B-258037.2, Dec. 8, 1994, 94-2 CPD ¶ 227 at 7-8 (protester sought to provide mid-course guidance systems for certain missiles, which had been reasonably consolidated with the purchase of the AGM-130 missile). As shown in the Pemco Aeroplex and Better Service decisions, we will sustain such protests when the agency is unable to establish that the consolidation is necessary to meet its needs. Accordingly, our decisions are based not just on the breadth of the solicitation but on the agency's claimed need for consolidating its requirements. Our decision accepting the Air Force's need for the consolidated workload in the FAST solicitation thus in no way limits our review of future challenges to consolidated workloads either larger or smaller than the one here.[13]

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

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[12]Phoenix's posture, as mentioned in our discussion of whether Phoenix is an interested party, differs somewhat from that of most other protesters in this area.

[13]In arguing that the FAST solicitation violates statutes and regulations applicable to small businesses, Phoenix also contends that the Air Force has failed to provide 30 days notice of its intention to proceed with a bundled procurement to small businesses holding contracts for requirements that will be consolidated into FAST, as set forth at FAR § 10.001(c)(2)(i). While the Air Force has not admitted that any small business contracts will be consolidated into FAST, it also argues that Phoenix has never held a contract involving the kinds of sustainment tasks anticipated under the FAST solicitation. Despite numerous opportunities to do so, Phoenix has not provided any evidence to refute the Air Force assertion. Given the lack of evidence that Phoenix has ever been in a position to receive the kind of notice anticipated by FAR § 10.001(c)(2)(i), we fail to see how Phoenix could have been prejudiced by any failure to send such a notice.