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## Decision

**Matter of:** Edmond Scientific Company

**File:** B-410179; B-410179.2

**Date:** November 12, 2014

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Ron R. Hutchinson, Esq., and Gerard F. Doyle, Esq., Doyle & Bachman LLP, for the protester.

Frank A. March, Esq., Department of the Army; and John W. Klein, Esq., and Sam Q. Le, Esq., Small Business Administration, for the agencies.

Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. The set-aside provisions of Federal Acquisition Regulation (FAR) §§ 19.502-4 and 16.505(b)(2)(i)(F) apply to competitions for task and delivery orders issued under multiple-award contracts.

2. Protest is denied where agency used discretion pursuant to FAR §§ 19.502-4 and 16.505, as well as 13 C.F.R. § 125.2(e)(6)(ii), not to set aside for small businesses a task order issued under a multiple-award contract.

3. Protest alleging agency erred in using “best mix” standard in determining not to set-aside a task order for small business is denied where record shows the evaluation was reasonable.

4. Protest alleging agency improperly bundled and/or consolidated requirements is denied where record shows the task order was for new requirements and did not consolidate previous requirements within the meaning of the Small Business Act or the Small Business Jobs Act.

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### DECISION

Edmond Scientific Company (Edmond), of Chantilly, Virginia, a small business, protests the decision by the Department of the Army, Medical Research Acquisition Activity, not to set aside for small businesses task order proposal request (TOPR) No. TOPR-14, issued under a multiple-award, indefinite-delivery/indefinite-quantity

(ID/IQ) contract for a variety of business-process and other support services.<sup>1</sup> The protester argues that the Army's decision not to reserve this task order for small business participation lacked a reasonable basis, was an abuse of discretion, and violated Federal Acquisition Regulation (FAR) § 19.502-2(b), the so-called "Rule of Two." Edmond also protests that the agency improperly bundled and/or consolidated requirements under the TOPR.

We deny the protest.

## BACKGROUND

On February 1, 2008, the Army awarded the TRICARE Evaluation and Management Support (TEAMS) contract,<sup>2</sup> a multiple-award ID/IQ contract with a 10-year period of performance, to provide numerous management, business-process, and other services. Agency Report (AR), Tab 1, Legal Memorandum at 2. The TEAMS contracts are administered by the Defense Health Agency's TRICARE Management Activity (TMA) to provide services that assist TMA in planning and managing its activities and programs. AR, Tab 10, TEAMS Contract, at 37. The TEAMS contract was awarded to a total of 19 firms—three small businesses (including Edmond), and sixteen other than small businesses. AR, Tab 1, Legal Memorandum at 2. As relevant here, the 2008 TEAMS contract provided that all delivery orders would be competed using the fair opportunity provisions of FAR Part 16 for ID/IQ contracts.<sup>3</sup> AR, Tab 10, TEAMS Contract, at 70. The TEAMS contract also reserved the right to direct task orders to small business or service-disabled, veteran-owned small business fair opportunity competitions, which would be limited entirely to small businesses which were awarded a TEAMS contract. *Id.* The TEAMS contract did not specify what standard would be applied in determining whether to set-aside such task order competitions.

On July 9, 2014, the Army issued a request for information (RFI), notifying the three small business TEAMS contract holders that the agency was contemplating the

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<sup>1</sup> The estimated value of the task order at issue is greater than \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e)(1)(B).

<sup>2</sup> TRICARE, which is managed by the Defense Health Agency, is a comprehensive managed healthcare program for active duty personnel, National Guard and Reserve service members, and retirees, as well as their dependents and/or survivors. 32 C.F.R. § 199.17 (2011); [www.tricare.mil/tma](http://www.tricare.mil/tma).

<sup>3</sup> When conducting a task order competition under FAR § 16.505, agencies are required to provide contract holders with a "fair opportunity" to be considered for task orders. FAR § 16.505(b)(1).

issuance of a TOPR as a total small business set-aside for clinical and transformational operations management support for the Navy Bureau of Medicine and Surgery (BUMED).<sup>4</sup> Protest at 4.

The RFI included a draft performance work statement (PWS) and requested that the small businesses provide a statement, tailored to the PWS, of the firm's capability to perform the requirement, including demonstrating past performance for projects of the same and/or similar size and complexity. AR, Tab 3, RFI at 1. The RFI also encouraged the small businesses to identify any business arrangements with other firms that would enhance the business's ability to provide information such as reach-back staffing capabilities to minimize vacancies and turnover, especially for key personnel. Id.

Edmond and one other small business timely submitted capability statements. AR, Tab 1, Legal Memorandum at 3. The Army's market research team reviewed the past performance and business arrangements provided in these capability statements and documented its findings. AR, Tab 8, Market Research Memorandum, at 2-4. The market research team identified a number of concerns with both of the small business statements. For example, the market research team questioned the magnitude and complexity of the scope of Edmond's experience in information technology efforts; Edmond's ability to manage the elements of the PWS; the adequacy of Edmond's focus on quality, based on some errors in the submission; and Edmond's ability, given the partners with which it would team, to offer a single, integrated approach to the work. Id. at 3. The market research team had similar concerns about the second small business's capability statement. Id. at 2-3.

Based on the two submissions, the market research team determined that there was "not a reasonable expectation of obtaining from small businesses the best operational sources consistent with the demand of the proposed acquisition for the best mix of costs, performance, and schedules, as defined by FAR subpart 19.5, Small Business Set Asides." Id. at 4. The Army notified the firms that, in accordance with FAR § 19.502, the task order would not be set aside, and released the TOPR on an unrestricted basis to all TEAMS contract holders. AR, Tab 9, Notice of Set-Aside Decision, at 1; Tab 11, TOPR, at 1.

The TOPR, as released, contemplated the issuance of a cost-reimbursement task order valued at \$[deleted] million, including a base year and three one-year option periods, to the vendor offering the best level of effort and labor mix to support BUMED. TOPR at A-1, A-3. The support anticipated here included performing clinical and transformational operations management support related to clinical

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<sup>4</sup> BUMED provides health care for sailors, Marines, service family members and retirees in times of war or peace. TOPR at B-1.

health services, product line management, and capabilities development. Id. at A-6. The TOPR states that BUMED has been receiving support for several years from contractors to improve its business processes and is now transitioning to sustaining what it has achieved, and building on its previous efforts to improve processes, standardize practices, and realize efficiencies. Id. at B-1. In addition, BUMED is seeking to align its future needs with constrained resources as it considers the Defense Health Agency's integration<sup>5</sup> and transformational requirements. Id.

The TOPR outlines specific tasks to be performed in ten separate sections. As relevant here, the section description and associated tasks under sections 2.2.2, 2.2.3, 2.2.5, and 2.2.10 are addressed in more detail. Section 2.2.2, Studies and Analysis, focuses on providing support in managing the newly-formed Defense Health Agency transition to full operating capability; management of organizational policy; and business analysis and decision support. Id. at B-7 to B-8. Section 2.2.3, Business Process Improvement (clinical program management), is focused on providing a value-driven, integrated healthcare delivery system through process standardization and a product line operating model to sustain standardization. Id. at B-8 to B-10. Section 2.2.5, Navy Pharmacy Operations, focuses on the importance of pharmacy operations in an integrated healthcare delivery system through program management support to regional pharmacists and BUMED, and managing change and change requests to the Pharmacy standard operating procedures (SOP). Id. at B-15 to B-19. Section 2.2.10, Innovation and Futures Support, focuses on Navy and DOD futures planning through program development, subject matter expertise, detailed assessment, and project-follow-up.<sup>6</sup> Id. at B-31 to B-32.

On August 4, Edmond filed this protest with our Office.

## DISCUSSION

In its protest, Edmond alleges that the agency was required to use the Rule of Two to decide whether to set aside this task order, and argues that the agency's use of a different standard was an abuse of discretion. In the alternative, Edmond asserts that the agency improperly bundled and/or consolidated the requirements of four

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<sup>5</sup> The Defense Health Agency (DHA) was created to realize savings in the military health system through adoption of common clinical and business processes and the consolidation and standardization of various shared services. Full operating capacity is expected by October 2015, at which time DHA will manage shared services that are expected to include, but are not limited to, the TRICARE health plan, pharmacy programs, medical education and training, and other common business and clinical processes. TOPR at B-7.

<sup>6</sup> The TOPR states that "innovation and futures concept development" focuses on healthcare and out-of-the-box thinking supporting the warfighter. TOPR at B-31.

prior contracts into the TOPR. Supp. Protest at 2. In addition, the Small Business Administration (SBA) joins the protester in all of its arguments--i.e., that the agency abused its discretion in deciding not to set aside this task order, that the agency should have used the Rule of Two when determining whether to set-aside the task order, and that the agency improperly bundled and consolidated the requirements of the TOPR.<sup>7</sup> As discussed below, we disagree.

#### Additional Background on the Requirements for Set-Asides

As an initial matter, the “Rule of Two” describes a long-standing regulatory policy intended to implement provisions in the Small Business Act, 15 U.S.C. § 644(a), requiring that small businesses receive a “fair proportion of the total purchases and contracts for property and services for the Government.” 49 Fed. Reg. 40,135 (Oct. 3, 1984). Accordingly, the Rule of Two requires agencies to set aside for small business participation an acquisition over \$150,000 if there is a reasonable expectation of receiving fair market offers from at least two responsible small business concerns. FAR § 19.502-2(b).

On September 27, 2010, Congress passed the Small Business Jobs Act to address the ongoing effects of the financial crisis on small businesses. H. Rept. 111-499. As relevant here, section 1331 of the Small Business Jobs Act deals with the question of setting aside for small businesses the task orders that are issued under multiple-award contracts. The provision states:

“Section 15 of the Small Business Act (15 U.S.C. 644), as amended by this Act, is amended by adding at the end the following:

(r) MULTIPLE AWARD CONTRACTS.--Not later than 1 year after the date of enactment of this subsection, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

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(2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 253j(b)), set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2) ...”

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<sup>7</sup> Because Edmond and the Army’s contentions raise legal questions related to the Small Business Jobs Act, and the SBA regulations implementing it, our Office solicited and obtained the views of the SBA on these questions.

15 U.S.C. § 644(r) (emphasis added). This provision required the Office of Federal Procurement Policy (OFPP) and SBA to create regulations that provide agencies guidance on exercising the discretion to set-aside task orders under multiple-award contracts, as contemplated by the Small Business Jobs Act. See FitNet Purchasing Alliance, B-406075, Feb. 3, 2012, 2012 CPD ¶ 64 at 5-6. Consistent with that directive, the OFPP amended FAR part 19 and subpart 16.5 in November, 2011, and SBA issued regulations in October, 2013.

On November 2, 2011, FAR part 19 and subpart 16.5 were amended to add sections 19.502-4 and 16.505(b)(2)(i)(F). 48 C.F.R. §§ 19.502-4 and 16.505; 76 Fed. Reg. 68,032 (Nov. 2, 2011). The new provisions set forth at FAR § 19.502-4 state that pursuant to section 1331 of the Small Business Jobs Act, “contracting officers may, at their discretion . . . [s]et aside orders placed under multiple-award contracts for any of the small business concerns identified in 19.000(a)(3)” (emphasis added).<sup>8</sup> FAR § 19.502-4(c). For multiple-award contracts other than those under the Federal Supply Schedule Program, FAR § 16.505(b)(2)(i)(F) repeats the FAR part 19 statement that contracting officers “may, at their discretion” set aside orders placed under multiple award contracts for any of the small business concerns identified in § 19.000(a)(3). The preamble to this rule makes no mention of the applicability of the Rule of Two. See 76 Fed. Reg. 68,032, supra.

On October 2, 2013, SBA promulgated its own regulations to implement section 1331 of the Small Business Jobs Act. 78 Fed. Reg. 61,114 (Oct. 2, 2013); 13 C.F.R. § 125.2. Subsection 125.2(a) states that the regulations apply to multiple award contracts. Relevant here, the regulation at 13 C.F.R. § 125.2(e)(6) states that a contracting officer has the authority to set aside orders against multiple award contracts that were competed on a full and open basis. Subparagraph (e)(6)(ii) explains that a contracting officer may state in a solicitation and resulting multiple-award contract that: (1) based on the results of market research, orders will be set aside whenever the Rule of Two (or any alternative small business set-aside) has been met; or (2) the agency will preserve the right to set aside orders using the Rule of Two on an order-by-order basis (emphasis added). 13 C.F.R. § 125.2(e)(6)(ii).

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<sup>8</sup>Small businesses under FAR § 19.000(a)(3) include 8(a) business development participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program.

## A Set-Aside Was Not Required

The issue before us is whether the Army abused its discretion in not reserving this task order for small business participation, and whether the Army was required, under current law and regulations, to base its determination on a Rule of Two analysis. We first consider the application of the Rule of Two here, and then turn to whether the decision, generally, was an abuse of discretion. We conclude that the Rule of Two had no application here, and that the Army's determination was reasonable.

We start with the observation that section 1331 of the Small Business Jobs Act does not directly address this question. As the SBA argues, the purpose of the Act was to direct the SBA and OFPP to promulgate regulations to establish guidance. Nonetheless, it is worth noting that the statute refers to establishing guidance under which Federal agencies may, at their discretion, set aside for small businesses orders placed against multiple-award contracts.

Turning next to the above-cited FAR provisions, we think it is beyond debate that these regulations, by their plain language, grant discretion to a contracting officer about whether to set aside for small business participation task orders placed under multiple-award contracts. See FAR §§ 19.502-4, 16.505(b)(2)(i)(F).

With respect to the SBA's regulations, we read those regulations as granting to the contracting officer discretion to do one of two things when issuing the underlying solicitation for a multiple-award contract, either: (1) provide notice that the agency will apply the Rule of Two whenever market research leads the agency to conclude that the conditions for applying the Rule have been met; or (2) reserve the right to apply the Rule of Two on an order-by-order basis. 13 C.F.R. § 125.2(e)(6)(ii). Contrary to the SBA's argument in this protest, that the Army must apply the Rule of Two, see SBA Comments at 9-12, the plain language of the regulation provides that the contracting officer may elect to commit the agency, in its multiple award contracts, to applying the Rule of Two when creating the underlying multiple-award contracts.<sup>9</sup>

Thus, while a solicitation (and ensuing multiple-award contract) may mandate a set-aside task order competition in every instance in which the Rule of Two is satisfied, or may preserve the agency's right to consider a set-aside using the Rule of Two, the solicitation here expressly did not make either of these commitments. Here, the

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<sup>9</sup> While this Office is required to give great deference to an agency's reasonable interpretation of its own regulation, see S.F.A. Corp., B-212855, Jan. 9, 1984, 84-1 CPD ¶ 57 at 2, it is also true that where the language of a regulation is plain on its face, and its meaning is clear, there is no reason to move beyond the plain meaning of the text.

TEAMS contract, which was formed in 2008, some two years prior to the passage of the 2010 Act (and 5 years prior to promulgation of the SBA's regulations), did not state that the Rule of Two would be used to determine whether to set aside task orders. Instead, as set forth above, the TEAMS contract reserved the right to set aside orders for small businesses, but did not specify the standard that would apply in making these determinations. AR, Tab 10, TEAMS Contract, at 70. Thus, the Army was not required to apply the Rule of Two in its set-aside determination, and this aspect of Edmond's protest is denied.<sup>10</sup>

Moreover, we conclude that the Army's decision not to set aside the task order for small businesses was reasonable. As set forth above, the TEAMS contract did not identify a particular standard for assessing the availability of capable small businesses in determining whether to set aside a requirement. The record shows that the Army, in exercising its discretion, performed market research by issuing an RFI that sought information from interested small businesses holding one of the underlying ID/IQ contracts. In response, it received capability statements from Edmond and one other small business TEAMS contractor, which were evaluated by the agency's technical representative. The evaluations were considered by the market research team, which prepared a memorandum and documented its conclusion that, based on the responses received, and consistent with the demands of the proposed acquisition, the Army did not have a reasonable expectation of obtaining from small businesses the best operational sources for the best mix of costs, performance, and schedule, as defined by FAR part 19.5, Small Business Set Asides. AR, Tab 8, Market Research Memorandum, at 4. We have reviewed the contemporaneous documentation and conclude that it provides a reasonable basis for the Army's decision.<sup>11</sup> We deny this ground of protest.

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<sup>10</sup> To the extent that the protester and the SBA argue that the outcome on the set-aside question here should be based on our decision in Delex Systems, Inc., B-400403, Oct. 8, 2008, 2008 CPD ¶ 181, we disagree. In Delex, our Office concluded that the set-aside provisions of FAR § 19.502-2(b), *i.e.* the Rule of Two, apply to competitions for task and delivery orders issued under multiple-award contracts. In our view, the holding in Delex has been superceded by the passage of section 1331 of the Small Business Jobs Act, in which Congress directed the preparation of "guidance under which Federal agencies may, at their discretion . . . set aside orders placed against multiple award contracts for small business concerns . . ." 15 U.S.C. § 644(r). We view this statutory grant of discretion as not requiring the Rule of Two, except when a multiple award contract, or a solicitation for a task order, expressly anticipates the use of the Rule. See 13 C.F.R. § 125.2(e)(6)(ii); See also FitNet Purchasing Alliance, *supra*.

<sup>11</sup> The protester complains that the "best mix" standard that the Army applied is reserved in the FAR for research and development contracts, see FAR § 19.502-2(b)(2), and argues that its use is inappropriate here. We disagree. We find no bar  
(continued...)

## Bundling and Consolidation

In its supplemental protest, Edmond argues that the Army improperly bundled requirements from four prior BUMED task orders into the requirements of the TOPR.<sup>12</sup> Alternatively, Edmond argues that even if we disagree regarding bundling, GAO should nonetheless conclude that the agency improperly consolidated two of the prior BUMED task orders.

Before turning to the specifics of Edmond's arguments, we first set forth additional background on the prior BUMED procurements related to Edmond's bundling arguments. Specifically, BUMED has previously purchased support services related to business process improvement under at least four prior task orders.

Task Order W81XWH-08-D-0028-0017 (Task Order 0017)<sup>13</sup>: The Army issued a TEAMS task order to Deloitte in 2010 for program management support for NAVMED/BUMED pharmacy and pharmacy operations through policy recommendations for the Board related to prescription medication and development of a pharmacy SOP and audit/standardization processes. AR, Tab 21, Task Order 0017, at 10, 16; AR, Tab 18, Contracting Officer's (CO) Supp. Statement, at 3. The task order covered all aspects of NAVMED/BUMED policy and core business processes for pharmacy operations. *Id.* at 10. The Army states that the tasks under this order were fully implemented and there is no follow-on requirement. AR, Tab 17, Supp. Legal Memorandum, at 6.

Task Order N00178-04-D-4020-EX01 (Task Order EX01): The Navy issued a cost-reimbursement level-of-effort task order to Deloitte in 2013 for business process reengineering through recommendations on, and process methodologies for, programs such as Medical Home Port, Integrated Health Communities, clinical

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(...continued)

to the agency's use of that standard in light of the absence of any identified standard in the TEAMS contract for making set-aside determinations.

<sup>12</sup> The protester originally cited nine task orders as being improperly bundled. Supp. Protest at 3. In the supplemental agency report, the agency offered a response on all nine task orders. Supp. AR at 6-12. In its supplemental comments, the protester only contends that four contracts were bundled. Protester's Supp. Comments at 7. We view the allegations regarding the other five task orders as abandoned, since the Army provided substantive responses in its report, and the protester did not further address the allegations in its comments. edCount, LLC-Protest and Costs, B-407556.3, et al., Aug. 15, 2013, 2013 CPD ¶ 195 at 5.

<sup>13</sup> This is the only TEAMS-specific task order that the protester claims is bundled. The three remaining task orders were issued by the Navy for BUMED requirements.

standardization, and futures assessment. AR, Tab 18, CO Supp. Statement at 3-4; AR, Tab 22, Task Order EX01, at 7. The task order contemplated business process improvements focused on four categories: (1) initiative identification and scoping of potential business improvement opportunities, (2) business analysis, (3) implementation strategies and plans, and (4) implementation management and education. Id. at 10. The CO explains that there is no follow-on requirement for this task order. AR, Tab 18, CO Supp. Statement, at 3.

Task Order N00189-12-C-Z111 (Task Order Z111): The Navy issued an 8(a) set-aside to Universal Coating Services, Inc., in September, 2012, to support Navy futures operations with policy development and program implementation plans regarding military health system governance and resource management decisions. AR, Tab 24a, Task Order Z111, at 23-24. The contractor provides executive-level support to senior leaders by compiling information, notes, and presentations for reference and consultation and provides administrative support through such tasks as filing and scheduling. AR, Tab 18, CO Supp. Statement, at 5. The CO states that the requirements for this task order are ongoing, with a period of performance through September, 2015. Id. at 4.

Task Order N00189-13-D-Z040 (Task Order Z040): The Navy issued a level-of-effort task order under a Navy ID/IQ contract to Improvement Path System, a small business, in March 2013 for a short-term process and industrial engineering solution for specific functions, such as laboratory test flow improvements. Id. at 7. Commands throughout BUMED headquarters and medical treatment facility locations can request task orders under this ID/IQ contract for process improvements focused on implementing efficiency in specific function areas, such as ancillaries,<sup>14</sup> supply chain, clinical service lines, and administrative processes. Id.; AR, Tab 28a, Task Order Z040, at 6-11. The CO states that this is an ongoing requirement with an ordering period through September, 2016. AR, Tab 18, CO Supp. Statement, at 7.

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) (2013). Bundling, for purposes of the Small Business Act, means “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.” See 15 U.S.C. § 632(o)(2); see also FAR § 2.101. The term “separate smaller contract” is defined as “a contract that has been performed by 1 or more small business concerns or was suitable for

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<sup>14</sup> Ancillaries include such areas as labs, radiology, pharmacy, operating rooms, and central distribution. AR, Tab 28a, Task Order Z040, at 6.

award to 1 or more small business concerns.” 15 U.S.C. § 632(o)(3); FAR § 2.101; Star Food Service, Inc., B-408535, Nov. 1, 2013, 2013 CPD ¶ 246 at 2.

Here, the protester alleges that Section 2.2.3, Business Process Improvement (clinical program management) bundled requirements from Task Orders EX01 and Z040; Section 2.2.5, Navy Pharmacy Operations, bundled requirements from Task Order 0017; and section 2.2.10, Innovation and Futures Support, bundled requirements from Task Order Z111. Protester’s Supp. Comments at 8-18.<sup>15</sup>

The SBA also asserts that requirements were improperly bundled; specifically, that Section 2.2.2, Studies and Analysis, and 2.2.3 of the TOPR bundled requirements from Task Order EX01, and Section 2.2.5 bundles requirements from Task Order 0017. SBA’s Supp. Comments at 2-3. SBA also notes that Section 1313 of the Small Business Jobs Act added provisions on consolidation of contract requirements to Section 44 of the Small Business Act, 15 U.S.C. § 657q, and that under its regulations implementing the consolidation statute, certain restrictions apply before agencies may consolidate task orders under multiple award contracts into a single task order. See, e.g., 13 C.F.R. § 125.2(c), (d).

In response, the Army contends that the TOPR simply does not consolidate previous requirements, both because it is a solicitation for new requirements that does not replace any prior contracts, and because the work to be performed is distinguishable from the prior contracts cited. AR, Tab 17, Supp. Legal Memorandum, at 5. The agency contends that although the names of tasks in the TOPR appear similar to tasks under prior task orders, the work to be performed differs. For example, the agency contends that Task Order 0017 focused on developing the Pharmacy SOP and audit/standardization processes, while section 2.2.5 focuses on implementing the SOP and audit/standardization processes. The agency explains that Task Order Z111 required executive-level administrative support, while section 2.2.10 would provide program management support. Similarly, when examining the requirement of section 2.2.3 against Task Order EX01 and Z040, the agency states that section 2.2.3 focuses on the wholeness of medical operations and an integrated healthcare model, while Task Order Z040 focused on function-specific efficiency improvements and Task Order EX01 focused on business process recommendations.

The Army also maintains that, in any event, the specific facts with respect to the earlier contracts do not fit a definition of bundling. As indicated in the descriptions of the prior task orders, above, the Army asserts that of the four, two (0017 and

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<sup>15</sup>The protester originally identified procurements by their task order proposal request number. In the supplemental agency report, the agency identifies these requirements by their task order number. Accordingly, our references to the task orders use the task order numbers provided by the agency.

EX01) have been completed—by a large business—and have no follow-on requirement. The agency argues that these do not fit the bundling definition’s requirement that the “separate smaller contracts” being consolidated were performed by one or more small business concerns. See 15 U.S.C. § 632(o)(3). The remaining two, Z111 and Z040, are ongoing contracts being performed by small businesses, and thus, by definition, are not being displaced by a bundled procurement.

On this record, we do not view the TOPR as a “consolidation” of two or more requirements as contemplated by the Small Business Act or Small Business Jobs Act, and therefore find no violation of the Small Business Act requirements pertaining to bundling.<sup>16</sup> Although we have only discussed some pertinent examples in this regard, we have reviewed the requirements contemplated by each task order and the TOPR and, based on the agency’s explanation and our examination of the record, we find no basis to conclude that the TOPR consolidated any prior requirements.<sup>17</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>16</sup> Because we do not view the TOPR as a consolidation of two or more procurement requirements—a threshold condition to a showing of improper substantial bundling or consolidation—we need not address whether other aspects of the protest have merit, such as whether the prior task orders could have been awarded to small businesses; nor will we separately analyze the protester’s arguments concerning substantial bundling and consolidation.

<sup>17</sup> We similarly find that the agency did not consolidate contract requirements as contemplated by the Small Business Jobs Act. While 15 U.S.C. § 657q(c) requires an agency to consider the effect of contract consolidation on small businesses for procurements over \$2 million, we view the TOPR to be a solicitation for new requirements, as discussed above. As a result, we conclude that the facts here do not demonstrate a consolidation of contract requirements as those terms are used in 15 U.S.C. § 657q(a)(2).