



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Nautical Engineering, Inc.

File: B-309955

Date: November 7, 2007

Jacob B. Pankowski, Esq., John J. Field, Esq., and Marisa Miller, Esq., Nixon Peabody, LLP, for the protester.

John J. Ralston, Esq., U.S. Coast Guard, for the agency.

Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging consolidation of requirements previously provided under separate small contracts as improper bundling under the Small Business Act is denied where agency reasonably demonstrates that measurably substantial benefits to the government justify the consolidation.
 2. Protest challenging consolidation of requirements as a violation of the Competition in Contracting Act is denied where agency demonstrates that the consolidation is reasonable.
-

DECISION

Nautical Engineering, Inc. (NEI) protests the terms of request for proposals (RFP) No. HSCG85-07-R-6253PM, issued by the Department of Homeland Security (DHS), U.S. Coast Guard, for maintenance and repair of Coast Guard cutters based in Alameda, California. NEI contends that the RFP violates the Small Business Act by improperly bundling two types of maintenance and repair services that were previously provided under separate smaller contracts. The protester also contends that the consolidation of these services violates the Competition in Contracting Act of 1984 (CICA).

We deny the protest.

BACKGROUND

The U.S. Coast Guard Maintenance and Logistics Command Pacific (MLCPAC) is the organization responsible for maintenance and logistics support for all Coast Guard missions throughout the Pacific Area. The solicitation seeks proposals to provide maintenance and repair services for three 378-foot Coast Guard high endurance cutters based in Alameda, California. This class of ship is generally referred to by the hull classification initials WHEC.¹ The WHEC cutters require periodic maintenance and repair services in two forms: (1) “dry dock” services, wherein the ship is removed from the water at a certified contractor facility, and (2) dockside services, wherein work is performed on the ship while it remains in the water. The cutters receive maintenance and repair service during scheduled “availabilities” during which they are removed from operational service. Each cutter is normally scheduled for one dry dock availability every 4 years and one dockside availability every 3 years, in addition to any needed unplanned or emergency repairs. The agency currently obtains services for each WHEC cutter individually, with separate contracts for dry dock and dockside availabilities.

In November 2004, the Coast Guard began a review to attempt to identify benefits that could be achieved by transitioning from the agency current model of awarding individual contracts for each service for each ship, to what is known as a “phased maintenance model,” *i.e.* multi-year, multi-ship contracts that involve the contractor in both the long-term planning and performance of maintenance and repair services. Contracting Officer’s (CO) Statement ¶ 12. Among these anticipated benefits are the reduction of costs from leveraging a large volume of work, learning curve efficiencies from repeat work on the cutters (as opposed to the current model, where contractors may not work on the same ship), better management of costs resulting from advanced planning, and decreased length of maintenance availabilities, which results in an increase in the ships’ operational time. Agency Report (AR), Tab 27, Add. to WHEC Cutter Acquisition Plan (Bundling Analysis), 4-6.

To implement its review, the Coast Guard proposed to use this phased maintenance approach for its WHEC cutters based in Alameda. As relevant here, the new phased maintenance approach included consolidating all maintenance and repair work, including the dry dock and dockside work, into a single contract. The agency’s requirements for maintenance and repair were also subject to a geographic restriction: under Coast Guard regulations all work on the WHEC cutters based in Alameda must be performed within 75 miles of Alameda. AR, Tab 32, Coast Guard Pacific Area Instruction 3100.1E.

¹ The three WHEC cutters are the Boutwell, Morenthau, and Sherman. A fourth cutter, the Munro, was initially part of the agency’s intended procurement, but was deleted from the procurement prior to the issuance of the solicitation due to its assignment to a different home port.

Because the new approach involves consolidation of the dry dock and dockside services, some of which had been provided by small businesses such as NEI, the Coast Guard undertook an analysis of the potential impact on competition of its phased maintenance approach. The agency's analysis addressed whether the solicitation constitutes "bundling" under the Small Business Act. As discussed in detail below, the Small Business Act prohibits agencies from bundling two or more procurement requirements for goods or services that were previously provided under separate smaller contracts into a single solicitation that is likely to be unsuitable for award to a small business. 15 U.S.C. § 632(o)(2), see also Federal Acquisition Regulation (FAR) § 2.101. An exception to the prohibition on bundling exists when agencies can demonstrate that the government would receive "measurably substantial benefits" from the bundling valued at 10 percent of the estimated contract or order value (including options), if the contract is \$86 million or less (or valued at 5 percent of the estimated contract value if the contract is for more than \$86 million). 15 U.S.C. § 644(e)(2)(c); FAR § 7.107(b). The Coast Guard estimated the value of this contract at \$11.4 million, and thus decided it would need to show a benefit of at least ten percent, or at least \$1.14 million, to justify bundling this work. AR, Tab 34, Acquisition Plan, at 3.

The Coast Guard also conducted market research in February-March 2005 to identify potential offerors for a contract that combines the two services. As relevant here, the agency identified two potential offerors for dry dock services in the Alameda area: Bay Ship and Yacht, a small business, and San Francisco Dry-Dock, a large business. AR, Tab 15, Contractor Survey Responses. The agency concluded that it was not likely to receive two or more proposals from responsible small businesses for the consolidated services, and therefore there was no basis to set aside the procurement. AR, Tab 16, Small Business Review Form.

The Coast Guard initiated discussions with the Small Business Administration (SBA) regarding the determination not to set aside the procurement for small businesses, and regarding whether the consolidation of the dry dock and dockside services constituted an impermissible bundling. Although the Coast Guard initially took the position that the solicitation did not constitute bundling because the procurement was for a new requirement, it nonetheless prepared a justification for bundling on the basis that the consolidation of the dry dock and dockside services would provide measurably substantial benefits to the government.

The Coast Guard's bundling analysis relied primarily on data prepared by the Department of the Navy to justify bundling maintenance and repair work for its DDG 51 class destroyers. Id.; AR, Tab 22, Navy Small Business Justification. The Navy's justification addressed the consolidation of maintenance and repair services for destroyers at Norfolk, VA and Mayport Basin, FL, and relied on earlier data from similar consolidations that took place at the San Diego and Puget Sound repair centers. The Navy data showed that the consolidation of services through use of a single contractor as a lead integrator for all services required for all ships, instead of

multiple contractors for each ship, lead to cost savings based on increased flexibility with maintenance operations, advanced planning and scheduling, leveraging of costs over larger work volumes, and learning curve efficiencies gained on repetitive tasks. Id. at 17.

The Coast Guard's bundling analysis concluded that the agency could also capture the benefits experienced by the Navy in consolidating its maintenance and repair operations. AR, Tab 27, Bundling Analysis, at 7. Specifically, the agency's analysis relied on two key findings in the Navy's justification for its destroyer maintenance and repair procurement. First, the Navy identified a potential cost savings equal to 5.29 percent of the estimated cost of its destroyer maintenance and repair contract that could be achieved through use of the phased maintenance approach. AR, Tab 22, Navy Small Business Justification, at 5-6, 17. Second, the Navy estimated a component of the 5.29 percent cost savings was derived from a decrease in the length of maintenance availabilities from 11 to 9 weeks—an estimated 18 percent reduction. The Navy's analysis concluded that this reduction would lead to reduced maintenance costs because of fewer days during which maintenance and repair costs are incurred. Id. at 16-17. The Coast Guard analysis applied the estimated 18 percent reduction in maintenance time in a different manner, however, reasoning that the reduced duration of a maintenance availability would translate into increased operational time for the WHEC cutters.² AR, Tab 27, Bundling Analysis, at 7.

In calculating the benefit of the increased operational time, the Coast Guard's analysis relied on Commandant Instruction (COMDTIST) 7310.1I, which sets forth standard rates for assets such as cutters to be used in reimbursement agreements with other agencies. The COMDTIST stated that the "reimbursable" rate for a WHEC cutter is \$7,437 per hour, or \$178,488 per day. AR, Tab 27, COMDTIST 7310.1I, encl. 1. The analysis also noted that the Coast Guard published a separate rate for "variable and foreseeable costs" for these cutters of \$1,641 per hour, or \$39,384 per day. AR, Tab 27, Bundling Analysis, at 4; Coast Guard Variable Rate FY 06 Cost Tables, encl. 1. The variable costs consist of expenses not incurred during a maintenance availability such as fuel or other consumables. CO Statement ¶ 48; AR, Tab 27, Coast Guard Variable Rate FY 06 Cost Tables, encl. 1.

Using these two rates, the Coast Guard calculated the benefit to the government of increased operational time. Based on the Navy's data, the Coast Guard assumed that the 333 days of maintenance and repair currently scheduled for the WHEC cutters could be reduced under the proposed contract by 18 percent, or 60 days—translating into 60 more days of operation for the cutters. AR, Tab 27, Bundling Analysis, at 4.

² As discussed below, and noted by the protester, the Navy chose not to attempt to quantify the value of increased operational time gained from reduced maintenance and repair time. AR, Tab 22, Navy Small Business Justification, at 17.

At the reimbursable rate, the benefit to the government from the increased use of the cutters would be \$10.7 million; at the variable rate, the benefit would be \$2.3 million. Id. The Coast Guard's bundling analysis acknowledged a potential margin of error in adopting the Navy's approach, but concluded that regardless of the rate used, the proposed bundling would provide the statutorily-required "measurably substantial benefits."³ Id.

The SBA procurement center representative (PCR) assigned to review the small business plan and bundling analysis agreed with the Coast Guard's justification for its procurement approach. Although the PCR stated that the SBA believed that the proposed procurement constituted bundling, the SBA nonetheless agreed that the bundling was properly justified, and that there was no basis to set aside the procurement for small businesses. In this regard, the SBA stated:

SBA concurs with your proposed full and open procurement, subject to no new countervailing information surfacing resulting from your actions seeking industry reaction. The justification for changing MLCPAC's procurement approach appears adequate by FAR 7.107 standards. A small business set-aside does not appear viable.

AR, Tab 26, SBA Letter, Dec. 7, 2005, at 3.

On November 23, 2005, the Coast Guard issued a "sources sought notice," which advised potential offerors that the agency intended to issue a contract for a single maintenance integrator to perform services, including dry dock and dockside, on all WHEC cutters based in Alameda. AR, Tab 25, Sources Sought Notice. The agency requested that potential sources submit comments by December 8, 2005. Eventually, the agency received two comments from potential offerors in response to the notice. Puglia Engineering expressed concern that the consolidation of the dry dock and dockside work, combined with the geographic limits, might reduce competition; Tecnico Corp. requested an opportunity to address the issue but then did not provide further comments. AR, Tab 37, Email from Puglia to CO, Feb. 16, 2007, Tab 38, Email from Tecnico to CO, Feb. 16, 2007.

On February 14, 2007, the Coast Guard issued a pre-solicitation notice for a "phased maintenance" contract for the three WHEC cutters. On May 24, 2007, the Coast Guard issued the RFP, which anticipated award of a fixed-price, indefinite-quantity/indefinite-delivery (ID/IQ) contract for planning, dry dock and dockside maintenance and repair of the three cutters. The RFP anticipated the award of a

³ In addition to the two categories of substantial benefits discussed above, the Coast Guard's analysis also concluded that the agency would benefit from increased "quality and effectiveness" in ship repair. AR, Tab 27, Bundling Analysis, at 4. The agency did not attempt to quantify this benefit.

contract with a base period of 1 year, followed by four 1-year options. The RFP requires the successful offeror to establish and maintain mentoring or partnership agreements with at least two small business firms, and to subcontract not less than 25 percent of all repairs ordered annually to small businesses, with not less than 20 percent of the work given to the small business partners, and not less than 5 percent to the HUBZone business partners. RFP at 23.

NEI filed an agency-level protest on July 17, arguing that the solicitation improperly bundled the requirements. AR, Tab 40, NEI Agency-Level Protest. On August 2, NEI filed a protest with our Office; in light of this protest, the Coast Guard dismissed the agency-level protest.

DISCUSSION

NEI argues that the solicitation improperly bundles the dry dock and dockside maintenance and repair requirements in violation of the Small Business Act, and that the agency justification for the bundling is unreasonable. The protester also argues that the consolidation of these two requirements violates the Competition in Contracting Act (CICA), 41 U.S.C. § 253a(a) (2000), which prohibits unnecessary consolidation of an agency's requirements. The protester contends that as a result of the consolidation, small business offerors such as NEI who can provide dockside services but who do not have dry dock facilities will be excluded from competing for the contract. For the reasons discussed below, we conclude that both of the protester's arguments lack merit.⁴

A. Bundling in Violation of the Small Business Act

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) (2000). 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;

⁴ Our Office provided the SBA an opportunity to submit comments on the protest and the Coast Guard's agency report. The SBA advised our Office that it did not wish to submit comments.

- (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 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 FAR states that these benefits may be identified as follows:

Measurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to ten percent of the estimated contract or order value (including options) if the value is \$86 million or less.

FAR § 7.107(b).

The agency argues that, as a threshold matter, the consolidation of the dry dock and dockside services does not constitute bundling for two reasons: (1) the solicitation represents a new requirement not subject to the bundling rules because of the addition of planning services to the consolidated requirements, and (2) the agency's market research shows that at least one small business offeror has a dry dock, and therefore the procurement is suitable for award to "a small business." With regard to the latter argument, the agency contends that the Small Business Act should be interpreted to mean that if a single small business offeror is capable of performing the consolidated requirements, the solicitation is, by definition, not "unsuitable for

award to a small-business concern.” The protester argues that the agency is incorrect with regard to both arguments.⁵

We need not resolve whether the Coast Guard is correct as to the interpretation of the term “a small business concern” because we conclude that the Coast Guard reasonably decided that the government will receive measurably substantial benefits that justify bundling of the requirements in any event.

1. Measurably Substantial Benefits

NEI argues that the Coast Guard’s bundling analysis is flawed in several respects. The protester first argues that the Coast Guard’s reliance on the Navy’s bundling justification is not reasonable because the Coast Guard did not adequately explain why it can expect the same efficiencies for the WHEC cutters the Navy claimed for its destroyers. The protester further argues that the Coast Guard unreasonably assumes that it will experience the same level of savings as the Navy, and thus the assumption of a similar 5.29 percent savings is not reasonable.

Our review of the Coast Guard analysis shows that the agency does not directly compare the details of its maintenance and repair operations to the Navy’s operations. Instead, the analysis focuses on the benefits of adopting the phased maintenance model to address inefficiencies in the current practice of making single-contract awards. See AR, Tab 27, Bundling Analysis, at 3-4. Based on our review, we think the Coast Guard’s approach of identifying similar problems and adopting similar solutions to those identified and adopted by the Navy, was reasonable. Furthermore, the Coast Guard’s analysis did not assume, as the protester argues, that the same precise savings will result. Rather, the analysis relied on the combination of the projected cost savings as well as other benefits, discussed below, to conclude that the overall benefit to the government would exceed 10 percent of the value of the contract. See id. at 4. On this record, we believe that the Coast Guard’s reliance on the Navy data was reasonable.⁶

⁵ In particular, the protester contends that the agency’s interpretation of the phrase “a small business concern” could lead to the conclusion that, for example, a consolidation of requirements that precludes 99 out of 100 small business offerors from submitting proposals is not bundling in violation of the Small Business Act.

⁶ The protester also argues that the Coast Guard’s reliance on the data cited in the Navy’s justification was unreasonable because the record does not indicate whether the SBA approved the Navy’s bundling justification for its destroyer maintenance and repair solicitation. We believe that this argument is unavailing: the Coast Guard’s bundling analysis relied upon the underlying data cited in the Navy’s justification, and not whether the SBA actually approved the Navy’s use of that data in its own justification. In any event, as relevant here, the SBA approved the Coast Guard’s bundling justification for this procurement.

Next, NEI argues that the Coast Guard's use of the Navy's data resulted in a double counting of "savings" by relying on both the 5.29 percent cost savings and the 18 percent reduction in the length of maintenance availabilities. The protester correctly notes that the Navy's justification relied on the 18 percent reduction in the length of maintenance availabilities as a contributing factor to the overall 5.29 percent cost savings, and argues that it would not be appropriate to conclude that a transition by the Coast Guard to the phased maintenance model would result in both a 5.29 percent cost savings plus an additional 18 percent cost savings. The Coast Guard's justification did not, however, rely on the Navy's data in this way. Instead, as discussed below, while the 18 percent reduction in maintenance time was a component of the 5.29 percent cost savings for the Navy, it was also separately relied upon by the Coast Guard as a basis to conclude that the WHEC cutters would be available for more operational time.

The Navy's bundling justification for the destroyers did not attempt to quantify the benefit to the government from having additional operational time for the ships as a result of the decreased length of maintenance availabilities. Instead, the 18 percent savings in the Navy's analysis represented costs saved by avoiding 2 weeks of maintenance costs; these savings were thus a component of the overall 5.29 percent savings anticipated by the Navy. See AR, Tab 22, Navy Small Business Justification, at 17.

The Coast Guard, however, chose to use the Navy's data to quantify an additional benefit to the government from the increased operational time for the WHEC cutters. The Coast Guard's analysis notes that although the Navy was "reluctant to quantify the benefits of returning a ship to operational status sooner," the agency believed that "the benefits to [the] Coast Guard of increasing the available operational time for WHEC's can be quantified." CO Statement ¶ 46. In this regard, the intention of the new acquisition strategy was based on the "central goal of reducing the period of time for performance of maintenance tasks," and thereby increasing "the number of days that the WHEC's are available to perform national defense and homeland security missions." Id. Thus, this benefit, although quantified, was not a calculation of "cost savings." Put differently, the Coast Guard's justification relied on two different benefits to the government: decreased maintenance and repair costs (quantified as a savings of 5.29 percent), and increased time that the WHEC cutters will be performing their duties (18 percent more time).

The Coast Guard's identification of two benefits is consistent with the FAR, which states that measurably substantial benefits "may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits." FAR § 7.107(b). NEI's argument thus incorrectly characterizes the Coast Guard's identification of benefits as a double-counting of "anticipated savings." Protester's Comments on AR at 22. The two benefits identified by the Coast Guard are,

however, distinct, and each is an appropriate measure under the FAR. We find no basis on this record to challenge the reasonableness of the Coast Guard's determination.

Finally, NEI argues that the agency inappropriately relied on the "reimbursable" rate of \$178,488 per day to quantify the benefit to the government from increased operational time of the WHEC cutters. COMDIST 7310.1I states that the components of the reimbursable rate "should not be used to calculate reimbursement for [the Federal Emergency Management Agency] and foreseeable costs related to contracting actions," because the rate contains "both fixed and variable components." AR, Tab 27, COMDIST 7310.1I, at 2. Instead, the COMDIST states that "[r]ates for these purposes shall be promulgated separately." *Id.* As noted in the facts above, the agency did separately promulgate rates for "variable and foreseeable costs" for the cutters of \$39,384 per day. *See* AR, Tab 27, Coast Guard Variable Rate FY 06 Cost Tables, encl. 1.

The Coast Guard's bundling analysis calculated the benefit to the government of increased operational time for the cutters based on the full reimbursable rate of \$178,488 per day. AR, Tab 27, Bundling Analysis at 4. However, the analysis also noted that using the lower variable rate still results in measurably substantial benefits to the government that justifies bundling. AR, Tab 27, Bundling Analysis, at 3. Thus, the analysis concludes, that even the rate of \$39,384 per day yields a benefit to the government of \$2,363,040--approximately 20 percent of the estimated contract value.

Although the protester only challenges the agency's reliance on the \$178,488 per day rate, rather than the \$39,384 rate, we think that neither of these rates on their own is a reasonable measure of the benefit to the government for 1 day of use of a WHEC cutter. In this regard, the variable rate represents costs that the government will avoid during a maintenance availability, such as fuel. *See* CO Statement ¶ 48; AR, Tab 27, Coast Guard Variable Rate FY 06 Cost Tables, encl. 1. Thus, the variable rate of \$39,384 per day represents costs avoided, rather than the increased benefit to the government from an additional day of operation for a cutter.

During the course of this protest, the CO conceded a better calculation of the benefit to the government is achieved by subtracting the variable rate from the full reimbursable rate. CO Statement ¶ 48. Thus, in the CO's view, the benefit to the government of an increased day of use for a cutter is \$178,488 per day, less the variable costs of \$39,384. *Id.* We think that this approach appears reasonable because it captures the quantifiable benefit to the government from the operation of ship, less the costs of operation. Further, this approach is consistent with COMDIST 7310.1I, which states that the reimbursable rate should not be used to calculate foreseeable costs relating to contracting actions because of its inclusion of both fixed and variable costs. AR, Tab 27, COMDIST 7310.1I, at 2. This calculation of a benefit to the government falls between the two calculations cited in the Coast

Guard's bundling analysis, but in any event well exceeds 10 percent of the value of the contract. Id.

In sum, we conclude that even if the consolidation of the dry dock and dockside requirements constituted bundling under the Small Business Act, the Coast Guard reasonably justified any such bundling by identifying measurably substantial benefits to the government from the consolidation. Even allowing for some margin of error in adopting the Navy's estimates, the record supports the Coast Guard's determination that the consolidation of the requirements will result in measurably substantial benefits to the government equal to at least 10 percent of the anticipated contract value.⁷

2. Procedural Issues with Bundling Justification and Approval

NEI also alleges that the agency's bundling justification contained several procedural errors. First, the protester argues that the agency failed to advise the SBA of negative responses from small business offerors, and that this failure voided the SBA's approval of the proposed bundling. As quoted above, the SBA's letter approving the Coast Guard's procurement approach stated that the SBA concurred with the bundling analysis "subject to no new countervailing information surfacing resulting from your actions seeking industry reaction." AR, Tab 26, SBA Letter, Dec. 7, 2005, at 3.

NEI argues that at least two potential small business offerors expressed a negative reaction to the Coast Guard's proposed procurement approach. As discussed above, Puglia expressed concern that the consolidation of the dry dock and dockside work, combined with the geographic limits, might reduce competition; Tecnico also expressed a desire to comment on the procurement, but did not submit substantive comments. AR, Tab 37, Email from Puglia to CO, Feb. 16, 2007, Tab 38, Email from Tecnico to CO, Feb. 16, 2007. NEI contends that receipt of these comments obligated the Coast Guard to seek a new approval from the SBA.

⁷ Although the protester did not address the role of the WHEC cutter Munroe in the Coast Guard's bundling analysis, we note that the agency's justification assumes that this ship would be part of the procurement. The Munro accounted for one of the eight scheduled maintenance availabilities, but was subsequently removed from the procurement based on its change of home ports. CO Statement ¶ 26; AR, Tab 34, Acquisition Plan, at 3. Although the agency's bundling analysis was not redone after the deletion of the Munro, the record shows that this change would not have affected the Coast Guard's conclusion that the phased maintenance approach would result in measurably substantial benefits to the government in excess of 10 percent of the anticipated contract value.

A review of the context of the comments leads us to conclude that these comments do not provide any new information regarding the bundling analysis. The Coast Guard's bundling analysis and the SBA's approval, both noted that the consolidation of the services could preclude small business offerors without a dry dock in the Alameda area from submitting proposals as prime contractors. AR, Tab 27, Bundling Analysis, at 8; Tab 26, SBA Letter, Dec. 7, 2005, at 2-3. Thus, the substance of the comments by Puglia and Tecnico do not raise any concerns regarding the assumptions or analyses in the Coast Guard's bundling justification, or provide new information for the SBA to consider. On this record, we do not believe that the Coast Guard's failure to provide this information to the SBA provides a basis to sustain the protest.

Next, NEI argues that the Coast Guard was required to obtain approval for its bundling justification from the DHS deputy secretary.⁸ The Coast Guard Small and Disadvantaged Business Utilization Specialist (SADBUS) assigned to the procurement recommended that approval for the bundling should be obtained from the DHS Deputy Secretary, in accordance with FAR § 7.107(c) and Homeland Security Acquisition Manual (HSAM) § 3007-107(b). AR, Tab 28, E-mail from SADBUS to CO, Feb. 6, 2006. In this regard, FAR § 7.107(c)(1) states that a civilian agency must obtain approval at the deputy secretary level for any proposed bundling where "[t]he expected benefits do not meet the thresholds in paragraphs (b)(1) and (b)(2) of this section but are critical to the agency's mission success." The CO disagreed with the SADBUS's recommendation because the relevant regulations require such approval only where the bundling is not justified by the requisite savings identified in FAR § 7.107(b). AR, Tab 31, CO Memorandum, Feb. 16, 2006. We agree with the CO's conclusion that, because the Coast Guard's analysis reasonably determined that any bundling would result in measurably substantial benefits to the government in excess of 10 percent of the anticipated contract value, referral to the DHS Deputy Secretary for approval was not required.

⁸ NEI also contends that certain internal Coast Guard forms approving the procurement, including small business plan, did not have the proper signatures. The balance of the record shows that the small business plan and justifications were adequately documented by the CO, and that the SBA agreed with the Coast Guard's proposed procurement. To the extent any individual form lacked a signature, we view this as a procedural defect that was not prejudicial to NEI. See Military Agency Servs. Pty., Ltd., B-290414 et. al., Aug. 1, 2002, 2002 CPD ¶ 130, at 8. In this regard, our Office will not sustain a protest absent a showing of competitive prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1681 (Fed. Cir. 1996).

Finally, NEI argues that the Coast Guard failed to provide adequate notice to small businesses of the agency's intention to bundle the maintenance and repair requirements. Agencies contemplating issuance of a solicitation containing bundling must provide at least 30 days notice to affected incumbent small business concerns before release of the solicitation. FAR § 10.001(c). The Coast Guard argues that potential offerors, including NEI, were placed on notice of the agency's intention to consolidate the requirements by the sources sought and pre-solicitation notices. We agree. The sources sought notice, issued on November 23, 2005, stated that the agency intended to issue a solicitation for a phased maintenance contract in support of the WHEC cutters. AR, Tab 25, Sources Sought Notice. The notice advised potential offerors that the agency anticipated that the solicitation will create a "complete paradigm shift" by replacing the agency's current "single ship contracting program in favor of [a] multi-ship, multi-option" type of contract, and that successful offerors would "need to either possess their own USCG certified dry dock facility or have access to a USCG certified dry dock facility in the Bay Area." *Id.* at 1-2. The pre-solicitation notice, issued on Feb. 14, 2007, also provided this information. AR, Tab 36, Pre-Solicitation Notice. These two notices were issued well in advance of the solicitation on May 24, 2007. On this record, we believe that the agency met its obligation to inform offerors of its intended procurement approach.⁹

B. Bundling in Violation of CICA

NEI argues that even if the Coast Guard's approach of consolidating the maintenance and repair services does not violate the Small Business Act's prohibitions on bundling, the solicitation violates CICA's prohibition on improperly consolidating requirements. 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 executive agency." 41 U.S.C. § 253a(a)(2)(B). Since bundled or consolidated procurements may 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. In interpreting CICA, we have looked to see whether an agency has a reasonable basis for its contention that bundling is required, and we have sustained protests only where no reasonable basis is demonstrated. Phoenix Scientific Corp., B-286817, Feb. 22, 2001, 2001 CPD ¶ 24 at 10.

⁹ Even if we were to conclude that the pre-solicitation notice did not meet the agency's requirement to provide the 30-day notice to potentially affected small business firms, the protester has not demonstrated any potential prejudice here. McDonald-Bradley, *supra*; see Statistica, Inc., *supra*. In this regard, NEI was able to file a timely protest challenging the terms of the solicitation.

Here, the agency concluded that the combination of the dockside and shipside maintenance and repair work will result in measurably substantial benefits to the government. As discussed above, we conclude that these benefits, including maintenance and repair cost savings and increased operational time for the WHEC cutters based on reduced duration of maintenance availabilities, justified bundling under the Small Business Act. In our view, these benefits also provide a reasonable basis to justify the consolidation of the two requirements for purposes of CICA. See Teximara, Inc., B-293221.2, July 9, 2004, 2004 CPD ¶ 151 at 8-9.

The protest is denied.¹⁰

Gary L. Kepplinger
General Counsel

¹⁰ In pursuing this protest, NEI has raised various collateral issues. For example, as an alternative to its primary grounds of protest, the protester argues that even if the bundling was justified, the RFP should have been set aside for small businesses. NEI contends that the agency's market research shows that at least two small business offerors exist who could meet the agency's requirements: (1) Bay Ship & Yacht, which possesses a dry dock, and (2) NEI, which can perform the dockside work. NEI Comments on AR at 27, n.13. NEI misstates, however, the so-called "rule of two," which requires an agency to set aside procurements over \$100,000 when it has a reasonable expectation of receiving proposals from at least two responsible small business offerors and that award will be made at fair market prices. FAR § 19.502-2(b). The set-aside requirement clearly does not apply here because there was no reasonable expectation that two or more responsible small businesses offerors would submit responsible proposals in response to the solicitation, *i.e.* proposals for both the dry dock and dockside work. We have reviewed all of the protester's arguments, and conclude that none provides a basis for sustaining the protest.