

SOAR WITH SBA ON SUBCONTRACTING ORIENTATION AND ASSISTANCE REVIEWS

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U.S. Small Business
Administration



U.S. Small Business
Administration

Subcontracting Orientation and Assistance Review

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Overview

1. Statutes and Regulations

- Statutory basis for the subcontracting program
- Regulations for the subcontracting program

2. Small Business Subcontracting Plan

- Reporting Requirement

3. SBA's Monitoring of Prime Contractors

- Types of SBA review

Statutes and Regulations

The Statutory Basis for the Subcontracting Program

Public Law 95-507

- Passed in 1978
- This legislation amended Section 8(d) of the Small Business Act and created the foundation for the Subcontracting Assistance Program.
- It changed the participation of large contractors in the program from “voluntary” to “mandatory,” and changed the language of the law from “best efforts” to “maximum practicable opportunities.”
- As amended, all Federal contracts in excess of the simplified acquisition threshold, as defined in FAR 2.101, must provide maximum practicable opportunity for small , small disadvantaged, women-owned, HUBZone, veteran-owned, and service-disabled veteran-owned small business to participate.
- As amended, all Federal contracts in excess of \$750,000, or more than \$1,500,000 in construction contracts for public facilities, be accompanied by a formal subcontracting plan containing separate goals for small business and each socio-economic category.

Important Regulations for the Subcontracting Program

- **SBA's regulation at 13 CFR 125.3**
 - Clarifies the role of CMR
 - Introduces the concept of Subcontracting Orientation and Assistance Review
 - Provides specific examples of what the Government means by “maximum practicable opportunities”

- **SBA's regulations at 13 CFR 121.404, 121.410, and 121.411**
 - Size standards and procedures for subcontracting

- **The Federal Acquisition Regulation (FAR) at subpart 19.7 and the clauses at 52.219-8 and 52.219-9**
 - Defines small business and socio-economic categories
 - Subcontracting Plan
 - Flow-down
 - Liquidated damages

Small Business Subcontracting Plan

Four Types of Subcontracting Plans

➤ Individual Subcontracting Plan (one contract = one plan)

Applies to a specific contract and covers the entire period of the contract, even if it crosses fiscal years.

➤ Master Plan

- Contains all of the elements of an Individual Contract Plan except goals
- Effective for 3 years after approved
- Master plan + goals are married and become an individual plan effective for the life of the contract

➤ Commercial Subcontracting Plan

- Annual plan based on the contractor's fiscal year
- Applies to all commercial items sold by either the entire company or a portion of it, such a division
- Approved by the agency awarding the first federal prime contract
- Subsequently approved annually by the CO with the contract that has the furthest completion date

➤ Comprehensive Small Business Subcontracting Plan (Comp Plan)

Similar to a commercial plan; available only to DoD contractors under a Test Program with a fixed expiration date.

Elements of a Subcontracting Plan

A subcontracting plan must include:

1. Dollar & Percentage Goals (% of total subcontracting)
 - Options expressed separately
2. Total dollars planned to be subcontracted
3. Types of supplies/services to be subcontracted
4. Method used to develop goals
5. Method used to identify potential SBs
6. Whether Indirect costs are included or not (must be included in Commercial Plans)
7. The name of the individual administering the plan
8. Efforts to ensure SBs have equitable opportunity to compete
9. Assurances that required clauses and provisions will flow down to subcontractors
10. Assurances that reporting will be done
11. Recordkeeping procedures

FAR 19.704 & 52.219-9(d)

Elements of a Subcontracting Plan (continued)

A subcontracting plan must include:

12. Assurances that the offeror will make a good-faith effort to acquire the articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal.
13. Assurances that the contractor will provide the Contracting Officer with a written explanation if it fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) above. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion. (Bait & Switch)
14. Assurances that the contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment or utilization of a subcontractor.
15. Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor.

FAR 19.704 & 52.219-9(d)

Elements of a Subcontracting Plan (continued)

Under Recordkeeping Procedures, the FAR requires that the contractor maintain records on each subcontract solicitation resulting in an award of more than Simplified Acquisition Threshold indicating:

- Whether small businesses were solicited and, if not, why not
- Ditto for each socio-economic subset (if not, why not)
- If applicable, why the award was not made to a small business

FAR 19.704 & 52.219-9(d)

Reporting Requirements (FAR 52.219-9(I))

➤ Individual Subcontracting Report (ISR)

- Submitted twice a year (March 31 and September 30)
- Capture cumulative subcontracting dollars from contract inception
- Reports are required regardless of subcontracting activity
- Final reports are due within 30 days after contract completion
- **Not required for companies with a commercial plan**

➤ Summary Subcontracting Report (SSR)

- Submitted once a year (September 30)
 - Exception: SSR is due twice a year for Comprehensive Plan holders
- Captures actual subcontracting dollars for the reporting period

SBA's Monitoring of Prime Contractors

SBA's Role in Subcontracting Type of Reviews

➤ Pre-Award Subcontracting Plan Reviews

- SBA's PCRs review subcontracting plans prior to contract awarded (advisory)

➤ Post-Award Compliance Reviews

- SBA's CMRs monitor subcontracting goal achievement after contract award

Types of SBA Reviews

- Performance Review
- Subcontracting Program Compliance Review
- Follow-up Review

Performance Review

- Involves the Individual Subcontracting Reports (ISRs) and Summary Subcontract Reports (SSRs) submitted by OTSBs in eSRS
- Focuses on subcontracting achievements on a contract-by-contract basis through the ISR (SF-294, if applicable) and on overall performance through the SSR
- Assesses on-time submission of ISRs and SSRs
- Offers CMR assistance in locating tools to locate small business sources
- Gives the prime contractor feedback on how it is progressing on accomplishing its subcontracting plan goals and identifies shortfalls/weaknesses so that it can make adjustments to ensure goal achievement and maximum practicable utilization of small business subcontractors

Subcontracting Program Compliance Review (SPCR)

- Performance is evaluated by means of on-site or virtual compliance reviews and follow-up reviews.
- A compliance review determines a contractor's achievements in meeting the goals and other elements in its subcontracting plan for both open contracts and contracts completed during the previous twelve months.



Subcontracting Program Compliance Reviews- continued

➤ Compliance review includes:

- Evaluating whether the prime contractor assigned the proper NAICS code and corresponding size standard to a subcontract and whether small business subcontractors' claim for the size or socio-economic status claimed are supported;
- Validating the prime contractor's methodology for completing its subcontracting reports;
- Validating whether the prime contractor is monitoring its “other-than-small subcontractors” with regard to their flow down subcontracting plans and reporting;
- Determining achievement of the negotiated subcontracting goals; and
- Identifying the prime contractor's plan of action to achieve the subcontracting goals.

Follow-up Review

- Assesses the contractor's progress towards correcting deficiencies and implementing SBA's recommendations identified in the SPCR Report

Liquidated Damages

- Any contractor that fails to comply with 13 CFR 125.3, *Prime Contractors Responsibilities and Additional Prime Contractors Responsibilities*, may be considered for liquidated damages (FAR 19.705-7 and 52.219-16)
- Imposing Liquidate Damages is considered by the contracting officer upon receipt of a written recommendation from the DCMA Representative, the ACO, or SBA CMR

Good Faith Efforts (13 CFR 125.3(b)(3))

- Efforts to provide the maximum practicable subcontracting opportunities for small business concern
 - Break out contract work items into economically feasible units
 - Conduct market research to identify small business subcontractors and suppliers through all reasonable means:
 - Search on the SAM/Dynamic Small Business Search
 - Post notices on SBA's SUB-Net
 - Participate in business matchmaking events and attending pre-bid conference
 - Solicit small business concerns as early in the acquisition process as practicable to allow them sufficient time to submit a timely offer
 - Provide interested small businesses with adequate and timely information about the plans, specifications, and requirements
 - Negotiate in good faith with interested small businesses
 - Direct small businesses that need additional assistance to SBA

Good Faith Efforts (13 CFR 125.3(b)(3))-continued

- Assist interested small businesses in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services
- Utilize the available services of small business associations; local, state, and Federal small business assistance offices; and other organizations
- Participate in a formal mentor-protégé program with one or more small-business protégés that results in developmental assistance to the protégés

Failure to Make a Good Faith Effort (13 CFR125.3(d)(3)(ii))

Examples of activities reflective of a failure to make a good faith effort:

1. Failure to attempt through market research to identify, contact, solicit, or consider for contract award small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns, through all reasonable means including outreach, industry days, or the use of Federal systems such as SBA's Dynamic Small Business Search or SUBNet systems.
2. Failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan.
3. Failure to submit an acceptable ISR, or the SSR, using the eSRS, or as provided in agency regulations, by the report due dates specified in 52.219-9, Small Business Subcontracting Plan.
4. Failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan including subcontracting flowdown requirements.
5. Adoption of company policies or documented procedures that have as their objectives the frustration of the objectives of the plan.
6. Failure to pay small business subcontractors in accordance with the terms of the contract with the prime contractor;
7. Failure to correct substantiated findings from Federal subcontracting compliance reviews or participate in subcontracting plan management training offered by the Government;
8. Failure to provide the contracting officer with a written explanation if the contractor fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in 19.704(a)(12).
9. Falsifying records of subcontract awards to small business concerns.

Key Websites

- [SBA Office of Government Contracting \(GC\)](http://www.sba.gov/about-offices-content/1/2467)
(<http://www.sba.gov/about-offices-content/1/2467>)
- [SUB-Net](https://eweb1.sba.gov/subnet/client/dsp_Landing.cfm)
(https://eweb1.sba.gov/subnet/client/dsp_Landing.cfm)
- [SBA - Dynamic Small Business Search](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)
(http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)
- [eSRS](https://www.esrs.gov/) (<https://www.esrs.gov/>)
- [eCFR](https://www.ecfr.gov/cgi-bin/ECFR?page=browse)
(<https://www.ecfr.gov/cgi-bin/ECFR?page=browse>)



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