

SubCon

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Understanding and Writing Small Business Subcontracting Plans

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Topics Covered

- Why is Small Business Subcontracting Important?
- Legislation and Recent FAR Changes
- Types of Small Business Subcontracting plans
- How to Craft/Review a Small Business Subcontracting Plan
- How a Contracting Officer Reviews a Subcontracting Plan
- Post Award Reporting Considerations When Preparing a Subcontracting Plan

Why is Small Business Important?

Impact on U.S. economy and job creation!

*“Any contractor receiving a contract for more than the Simplified Acquisition Threshold (SAT) **must** agree in the contract that SBs, SDBs, WOSBs, VOSBs, SDVOSBs and HUBZone small businesses will have the **maximum practicable opportunity to participate in contract performance** consistent with its efficient performance.”*

AND

*“If the apparent successful offeror fails to negotiate a subcontracting plan **acceptable** to the contracting officer within the time limit.... the **offeror will be ineligible for award.**”*

(FAR 19.702, Statutory requirements)

Consequences

- Failure to comply in **good faith** with the requirements of a subcontracting plan...
 - Results in a material breach of contract (FAR 19.702)
 - Directs a contractor's failure to make a good faith effort to comply with the requirements **shall result in the imposition of liquidated damages** (15 U.S.C.637(d)(4)(F))

Legislation and Recent FAR Changes

- Public Law 95-507
 - Requires that all small businesses have the **maximum practicable opportunity** to participate in the performance of Federal agency contracts and **subcontracts**
 - Amended Section 8(d) of the Small Business Act
- Small Business Jobs Act of 2010
- Fiscal Year 2016 National Defense Authorization Act
- FAR subpart 19.7
- Recent FAR changes per FAC 2005-89

Contract Terms and Conditions

- Read the terms and conditions in the solicitation and contract:
 - FAR 52.219-8, *Utilization of Small Business Concerns*
 - FAR 52.219-9, *Small Business Subcontracting Plan*
 - FAR 52.219-16, *Liquidated damages – Subcontracting Plan*

Types of Small Business Subcontracting Plans

Commercial Plan

- Most preferred
- Company-wide subcontracting
- 1 year only
- Must include indirects
- 1 report a year (SSR)
 - Due October 30
 - All subcontract spend:
 - Federal contracts
 - Commercial contracts

Individual Plan

- Most used
- Contract-specific
- Covers all periods of the contract, such as options
- May include indirects
- 3 reports a year:
 - ISR due April 30
 - ISR due October 30
 - SSR due October 30 (agency-specific)

Types of Small Business Subcontracting Plans

Master Plan

- Streamlines repetitive individual plan elements
- Contains all of the elements of an individual plan, except goals
- Must first be approved by a government CO prior to use
- Becomes an individual plan when goals are added for a specific acquisition
- Must be kept up to date (every 3 years)

How to Craft/Review a Small business Subcontracting Plan?

- 1) Choose the type of plan - Commercial products or services?
- 2) What will be subcontracted? What will be in-house?
- 3) Are there small businesses, WOSBs, SDBs, SDVOSBs or HUBZones who can supply?
- 4) Are greater opportunities possible?
 - a) Past performance in meeting statutory goals for WOSBs, SDBs, SDVOSBs and HUBZones
 - b) Break out elements of “large” subcontracts?
 - c) Subcontracts with “large” and small for the same products/services
 - d) Market research, market research, market research

Credit for Socio-economic Categories

A small business can meet more than one category

For example: a WOSB, SDVOSB company receiving a \$100,000 contract

- Credit this way:
 - \$100,000 to **WOSB**
 - \$100,000 to **SDVOSB**
 - \$100,000 to **VOSB** since by definition a SDVOSB is a also a VOSB
 - \$100,000 to **SB** since by definition a WOSB/SDVOSB is also a SB

Best subcontractor to have is a SDB, WOSB, SDVOSB, HUBZone!!

How to Set Goals?

Consider:

- Goals should be set at a level that the parties **reasonably** expect the prime from making **good faith effort** to use small businesses to the **maximum extent**
 - Be sure goals are not unreasonably low to minimize exposure to liquidated damages
- Conversely:
 - No goals should be negotiated upward if a higher goal will:
 - Significantly increase the Government's cost; or
 - Impede the attainment of acquisition objectives

(FAR 19.705-4)

Setting goals (continued)

- Are the goals reasonable while providing a “stretch” to foster small business participation to the **maximum extent practicable**?
- Proper crediting small business dollars across all applicable socio-economic categories**, recognizing that a small business can meet more than one socio-economic category
- “0” goals??

**Common mistake before award in preparing plans and after award in reporting actual subcontracted dollars

Hot Tip!

Be sure to calculate the percentages correctly!

Use **total** subcontracting dollars as the denominator

How to Craft/Review a Small business Subcontracting Plan?

Description of Subcontracted Supplies and Services

Supplies or Services	OTSB	SB	WOSB	SDB	SDVOS	VOSB	HUBZ
Janitorial		X		X	X		
Painting							X
Transportation	X		X				
Office Supplies		X		X			
Graphic Services					X	X	
Temporary Admin Services			X				
Food Services		X		X			
Training	X		X				

How to Craft/Review a Small business Subcontracting Plan?

- Indirect costs: Include or not to include?

Commercial Plan

- Must include indirect costs in a commercial plan

Individual Plan

- Contractor choice whether or not to include indirect costs in an individual plan

If included, add a description of the method used to determine proportionate share of indirects with SBs, SDBs, WOSBs, SDVOSBs, VOSBs, and HUBZ

How to Craft/Review a Small business Subcontracting Plan?

- Other statutory elements of a subcontracting plan
 - Description of methods
 - Used to develop goals
 - Used to identify potential sources for solicitation purposes
 - Identification of company individual who will administer the Subcontracting program and their specific duties
 - Description of efforts to ensure SBs, SDBs, WOSBs, VOSBs, SDVOSBs, HUBZone have equitable opportunity to compete
 - Timely reporting in eSRS, including subcontractors

How to Craft/Review a Small business Subcontracting Plan?

- Other elements of a subcontracting plan
 - Record keeping
 - Source lists
 - Organizations contacted
 - Records on each subcontract solicitation >\$150,000
 - Outreach efforts
 - Internal guidance and encouragement to company buyers
 - Workshops, training, incentive awards
 - Monitoring compliance
 - Subcontract award data

How to Craft/Review a Small business Subcontracting Plan?

- Other elements of a subcontracting plan – (continued)
 - Assurances
 - Include clauses 52.219-8 and 52.219-9 in subcontracts
 - Cooperate in any studies/surveys as may be required



Effective November 1, 2016



1. Good faith effort to utilize small business subcontractors to same extent the prime relied upon in preparing the proposal
2. Assurance a written explanation will be provided to CO if failed to make good faith effort to utilize the small businesses used in proposal preparation
3. Will not prevent a subcontractor to discuss utilization or payment issues directly with the CO
4. Will pay subcontractor timely in accordance with terms of the subcontract and notify CO if reduced or untimely payments made

Reminders

Ensure your subcontracting plan meets ALL of the statutory requirements and tell the story

Remember:

A Subcontracting plan
is more than goals!!

How a Contracting Officer Reviews the Subcontracting Plan

- Did the contractor address ALL** statutory requirements?
- How does the estimated subcontracted dollars compare with agency's subcontracting goals?
 - What is a "0" goal?
 - If the goals are less, is more aggressive action needed to be added to the other elements of the subcontracting plan?

Bottom Line:

- Does the subcontracting plan **tell the story** of how the prime will **maximize** practicable opportunities for small business to perform under the contract?

*** Increased from 11 as of November 1, 2016 (FAC 2005-89)*

FAR Requires....

Before awarding a contract with a subcontracting plan, a CO must.....

- Negotiate an acceptable subcontracting plan with the contractor within the time limit **otherwise the contractor is ineligible for award**
- Consider **recommendations** by the agency small business technical advisors and the SBA Procurement Center Representatives (FAR 19.705-4)
 - Note: the agency technical advisor is not the SBA PCR!!
- Consider the contractor's past performance in meeting subcontracting goals and address as part of the **responsibility determination** (FAR 19.705-5)

Best Practice

- GSA's Model Subcontracting Plan
 - Cover pages
 - Reminders on how to estimate subcontracting goals
 - Reminders on types of plans
 - Other required elements of a plan, such as:
 - How contractor will maximize opportunities
 - Assurances
 - Reporting reminders – Make sure you understand the differences:
 - Individual plan
 - Semi-annual ISRs
 - Annual SSR
 - Commercial plan
 - Annual SSR only

EXERCISE

- You are the contracting officer
 - Is this an acceptable subcontracting plan?
 - Why or why not?
 - What would your next steps be?

The Contracting Officer is ready to Award, now what?

- Incorporates plan as a **material part of the contract** (FAR 19.705-5)
 - What does “material part of the contract” mean?
- Notify the SBA Area Director within 5 days of contract award:
 - SBA Area Director is not the SBA PCR who reviewed the plan
 - Why notify? Area Director assigns a Commercial Marketing Representative who may assist the prime
 - Where can the CO find the Area Director?
 - For commercial plans: corporate office
 - For individual plans: place of performance

<https://www.sba.gov/contracting/resources-small-businesses/pcr-directory/area-directors>

Resources Available to Find Small Businesses

- [SBA Commercial Marketing Representative \(CMR\) Directory](#)
- [Procurement Technical Assistance Centers](#)
- Trade and professional organizations and conferences
- [Department of Commerce, Minority Business Development Agencies \(MBDAs\)](#)
- Federal agencies' small business offices
- State, county, and city government minority business offices
- Small, minority, women-owned, and veteran business associations
- Local chambers of commerce
- [Department of Veterans Affairs \(SDVOSBs and VOSBs\)](#)
- [Dynamic Small Business Search \(DSBS\)](#)

What Happens after Award?

- Did the government receive what it contracted for?
- Reports filed in [Electronic Subcontracting Reporting system](#) (eSRS) (FAR 52.219-9)
 - Timely? Accurate?
 - If rejected, submit revised report within 30 days of rejection
 - Commercial plans
 - Either met the goals or didn't
 - Individual plans
 - On track to meet the contract goals? If not, what corrective action will be taken? Identify in the report
- Contract's performance evaluations
 - Used in future responsibility determinations for subcontracting
 - Used to negotiate future subcontracting plans
- SBA compliance reviews

Takeaways

- Appreciate the role small business plays in the U.S. economy
- Understand the terms and conditions in the contract
- **Maximize** practicable opportunities for all socio-economic small businesses to perform under the contract
- Re-examine what you are subcontracting for and to whom
- Prepare a plan that addresses all statutory requirements
- Estimate goals that are realistic, yet provide a “stretch”
- Seek new sources from the small business community
- Keep adequate records and submit reports timely
- Make a good faith effort to utilize small businesses as proposed
- Tell the story!

EXERCISE

“On my honor I will make a good faith effort to maximize opportunities for small businesses at all levels to perform under government contracts, to benefit the U.S. economy and to meet the requirements of the terms and conditions of the contract.”

Questions?

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