

Basic Subcontracting Requirements

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Basic Subcontracting Requirements



OVERVIEW

- **Federal Policy/Background/Definition**
- **Regulatory Requirements**
- **Types of Subcontracting Plans**
- **Elements of Subcontracting Plan**
- **Responsibilities of the Prime Contractor**
- **Negotiation of Subcontracting Plan/Goals**
- **Things to Remember**
- **Subcontracting Resources**

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FEDERAL POLICY

- **Small business concerns (SBC) (Note 1) must have maximum practicable opportunities to participate in the performance of federal contracts.**
- **Contractors must agree to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of the contract.**

Note 1):

***Includes: Small Disadvantaged Businesses (SDB)
Women-Owned Small Businesses (WOSB)
HUBZone Small Businesses (HUBZone SB)
Service-Disabled Veteran-Owned Small Businesses (SDVOSB)***

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BACKGROUND

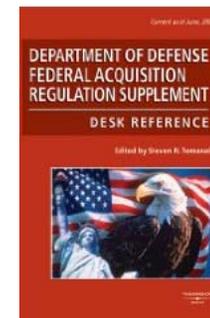
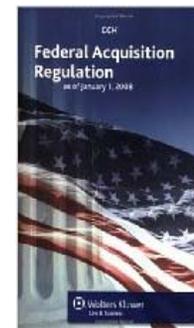
Statutory Authority:

- Section 8(d) – 15 USC 637(d)
- Section 15(g) – 15 USC 644(g)



Regulations/Directives:

- FAR 19.7/DFARS 219.7
- FAR Clause 52.219-8, Utilization of Small Business Concerns
- FAR Clause 52.219-9, Small Business Subcontracting Plan



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DEFINITIONS

SUBCONTRACTS:

Any agreement (other than one involving an employer–employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, or contract modification, or subcontract.

FAR 19.701

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DEFINITIONS (continued)

SMALL BUSINESS CONCERNS:

Means a concern, including its affiliates that is:

- Independently owned and operated
- Not dominant in the field of operations in which it is proposing on Government contracts
- Qualified as a small business under the criteria and size standards in 13 CFR Part 121

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REGULATORY REQUIREMENTS

- FAR Clause 52.219-8, Utilization of Small Business Concerns, implements Federal Government Small Business Policy.
- **APPLIES TO:**
 - Contracts > Simplified Acquisition Threshold AND subcontracting opportunities exist
 - All business concerns, including small businesses
- **DOES NOT APPLY:**
 - When performance is entirely outside the US and outlying areas

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REGULATORY REQUIREMENTS

- FAR Clause 52.219-9, Small Business Subcontracting Plan, implements Federal Government Small Business Policy.
- APPLIES TO:
 - Contracts >\$650K (\$1.5M construction) AND subcontracting opportunities exist
 - Modifications >\$650K with new work AND subcontracting opportunities exist
 - For large businesses, state/local govt., educational institutions, foreign owned firms. Basically, all except small business concerns

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REGULATORY REQUIREMENTS

- **DOES NOT APPLY TO:**
 - Small business (SB) set asides under HUBZone SB, 8(a), WOSB or SDVOSB Programs
 - When performance is entirely outside the U.S. and outlying areas
- **NOTE:** When it is determined that there are no subcontracting possibilities, the determination must be approved at a level above the contracting officer and placed in the contract file

FAR 19.705-2(c)

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TYPES OF SUBCONTRACTING PLANS

Individual:

- Plan for a specific contract – (1 contract = 1 plan)
- Covers entire contract period, including options
- Contains required elements (FAR 19.704)
- Must submit Individual Summary Report (ISR) semiannually
- Must submit Summary Subcontract Report (SSR) semiannually for NAVFAC contracts

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TYPES OF SUBCONTRACTING PLANS

Master Plan:

- Boiler plate Plan
- Corporate, plant, or division basis
- Effective for 3 years after approved
- Contains required elements (FAR 19.704) except goals
- Goals negotiated for each contract that incorporates the master plan
- When incorporated into contract, must submit ISR and SSR

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TYPES OF SUBCONTRACTING PLANS

Commercial:

- Preferred for commercial items
- Annual plan
- Contractor's fiscal year
- Corporate, plant, or division basis
- Contains required elements (FAR 19.704)
- Must submit SSR annually

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MANDATORY ELEMENTS OF PLANS

Per FAR 19.7 and 52.219-9 subcontracting plans must include:

- **Goals based on planned total subcontracting dollars expressed as Percentages and Dollars**
- **Total dollars to be subcontracted**
- **Types of supplies/services to be subcontracted**
- **Method used to develop goals**
- **Method used to identify potential SB**
- **Indirect costs included/not included**

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MANDATORY ELEMENTS OF PLANS

Per FAR 19.7 and 52.219-9 subcontracting plans must include (cont.):

- Name of individual administering the plan
- Efforts to ensure SB have equitable opportunity to compete
- Assurances that required clauses and provisions will flow down to subcontractors
- Assurances that reporting will be done
- Recordkeeping procedures

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SUBCONTRACTING GOALS

FY15 NAVFAC Subcontracting Targets

- SB Concerns: 66.80%
- SDB Concerns: 17.27%
- WOSB Concerns: 15.30%
- HUBZone SB Concerns: 8.94%
- SDVOSB Concerns: 3.03%

** Percentage of total \$ value of all subcontracts*

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RESPONSIBILITIES OF THE PRIME CONTRACTOR

Effort to provide maximum practicable opportunities include:

- **Breaking out contract work items into economically feasible units**
- **Conducting market research to identify sources**
- **Soliciting SBC's early in the acquisition process**
- **Providing interested SBC's adequate and timely info, plans and specs for the requirement**
- **Negotiating in good faith with interested SBC's**
- **Directing SBC's that need additional assistance to SBA**
- **Assisting SBC's in obtaining bonding, line of credit, etc.**
- **Participating in a formal mentor-protégé program**
- **Submitting timely and accurate subcontracting reports to the contracting officer**

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NEGOTIATIONS OF SUBCONTRACTING PLAN/GOALS

TIPS and POINTERS

- Use the Subcontracting Plan Template provided in the RFP
- Address all 11 elements of the Plan
- Option contracts require individual goals for each option – Use the summary format to record option goals
- When proposed plan does not meet the percentage goals and/or NAVFAC targets, provide an explanation
- Past performance helps in answering reasonableness of plan and goals

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NEGOTIATIONS OF SUBCONTRACTING PLAN/GOALS

TIPS and POINTERS (continued)

- Conduct market survey to identify qualified sources
- Address company's make or buy policies
- Zero is not a goal
- Ensure numbers are correct and percentages are calculated correctly – a proposed subcontractor may fall under more than one category of SB

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THINGS TO REMEMBER

- A subcontracting plan that is acceptable to the Contracting Officer is a requirement for award
- The negotiated Subcontracting Plan is made a part of the contract
- Non-Compliance with the negotiated Subcontracting Plan is a material breach of the contract
- Liquidated Damages are assessed where non-compliance is based on lack of good faith (FAR 52.219-16)
 - What actions lead up to this
 - Subject to the Dispute Clause of the contract
 - Liquidated damages shall be in addition to any other remedies that the Government may have

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THINGS TO REMEMBER

- **Contractors are required to submit semi-annually**
 - (1) Individual Subcontracting Reports (ISRs) and**
 - (2) Summary subcontracting Reports (SSRs) thru e-SRS**
- **Contracting Officer is responsible for monitoring contractor's compliance with Subcontracting Plan**
- **Contractor's past performance in complying with subcontracting plan and meeting goals is an evaluation factor in best value source selection solicitations**
- **Contractor is responsible for obtaining and accepting subcontracting plans from their tier subcontractors when applicable**
- **Upon completion of the contract, the contractor is evaluated for implementation of the contract Subcontracting Plan**

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WRAP-UP

Why is Subcontracting so important?

- Required by statute and regulation
- Expands the industrial base
- Good for the economy

“Small business is good business!”

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SUBCONTRACTING RESOURCES

- FedBizOpps “Vendor Notification Service” and “Vendor’s Guide for Federal Procurements”:
<https://www.fbo.gov/>
- DefenseLink >\$6.5 million award notices:
<http://www.defense.gov/contracts/>
- SBA Subcontracting Opportunities Directory (SUB-Net):
<http://www.sba.gov/subnet>
- Procurement Technical Assistance Centers (PTAC):
<http://www.dla.mil/smallbusiness/pages/ptac.aspx>
- NAVFAC Portal: www.navfac.navy.mil
- DoD Office of Small Business Programs: <http://www.acq.osd.mil/osbp/>