

# SMALL BUSINESS PARTICIPATION AND SMALL BUSINESS SUBCONTRACTING PLANS: WHAT'S THE DIFFERENCE?

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# DISCUSSION TOPICS



- General subcontracting overview
- Broad differences between small business participation/commitment proposals and small business subcontracting plans
- Detailed information on both, including compliance
- Other subcontracting requirements
- Best practices and items of note



# FEDERAL SMALL BUSINESS SUBCONTRACTING



- Does not apply to state/local procurements
- Similar to corporate diversity plans
  
- Small Business Act
- Need to understand Federal Small Business regulations-
  - ✓ Statutory Goals from DoD
  - ✓ Filtered down to agencies
  - ✓ Filtered down to supporting districts
  
- Agencies share this responsibility with “Other than Small” companies- Ensure these businesses do their share for small businesses by requiring a plan to be in place
  
- All efforts provide maximum utilization of small businesses. Required but also drives economy.



# SMALL BUSINESS SUBCONTRACTING PLAN VS. SMALL BUSINESS PARTICIPATION PLAN



Small Business Participation Plan /Commitment Document <u>EVALUATION</u>	Subcontracting Plan <u>ASSESSMENT</u>
FAR 15.304, DFARS 215.304	FAR 19.704
Solicitation establishes requirements and evaluation criteria for SB participation	Must be assessed and determined acceptable by the Contracting Officer
Evaluation conducted IAW solicitation evaluation criteria	Must have 15 items defined in FAR 52.219-9
Required only for certain DoD-negotiated acquisitions	Required for all Federal contracts with applicable dollar values (subject to limitations and exceptions) and includes both negotiated and sealed bidding
Applies to all businesses	Does NOT apply to Small Businesses
Can be based on anticipated subcontracting dollars or Total contract value (Total contract value preferred method)	Based on total planned <b>subcontracting</b> dollars

NOTE: Both are contractually binding.



# SMALL BUSINESS PARTICIPATION PLAN/COMMITMENT DOCUMENT



FAR 15.304 Evaluation of small business participation for consolidation or bundling  
DFARS 215.304 © requires evaluation of small business participation in other than LPTA source selections whenever a subcontracting plan is required

What do we evaluate? -Army Source Selection Supplement

- Extent to which small business firms are specifically identified in proposals
- Extent of commitment to use such firms
- Complexity and variety of work for the SB firms
- Past performance of compliance with FAR 52.219-9
- Past performance of compliance with FAR 52.219-8
- Extent of participation of small business firms in terms of total contract value (TCV)
- Ratings from Outstanding to Unacceptable -Evaluation of all elements roll up to best overall rating.
  - Separate evaluation factor/volume (Unacceptable means ineligible for award)
  - Small businesses have to provide proposal- gives small business credit for their self performance (higher percentage of commitment)



# NOTES FOR PROPOSALS-GOALS



Small Business Category	Goals (Based on TCV) Examples
Small Business	30%
Small Disadvantaged Business	3%
Woman Owned Small Business	3%
Service Disabled Veteran Owned Small Business	5%
HUBZone Small Business	5%

- Goals:
  - May be mandatory. If propose a goal lower than solicitation, this is a deficiency.
  - Should always be based on market research by the Government (past similar procurements, known subcontractor base etc.)
  - If not mandatory, proposing goals less than the solicitation may result in a weakness, goals higher than the solicitation may result in a strength.
  - Should be consistent with goals you include in your subcontracting plan.
  - What about HBCU/MI?
  - Small businesses count their own self-performance towards their small business participation proposal



# NOTES FOR PROPOSALS-PAST PERFORMANCE




- Optional to have these factors included in Past Performance Volume (exception).
- Reviewing compliance with BOTH 52.219-8 and 52.219-9. Small businesses will only have past performance of compliance with 52.219-8 Utilization of Small Business Concerns
- What types of things do we look at to evaluate past performance?
  - Actual prior use of small businesses
  - Company policies for small business utilization and tracking
  - Types/complexity of work performed by small business subcontractors
  - Reporting of small business performance in Contractor Performance Assessment Reporting System (CPARS) –even Small Businesses
  - History of prompt payments to small businesses
  - Previous subcontracting plan reporting:
    - Actual goal achievement
    - Timely reporting
    - Good Faith Efforts



# SMALL BUSINESS SUBCONTRACTING PLAN



- Only “Other than Small Businesses” Submit plan
- Requirement included for procurements >\$700K or \$1.5M for construction
- Goal are not dictated to the contractor- the contractor proposes, however:
  - Should be consistent with small business participation proposal/commitment, when applicable
- What if there are no subcontracting opportunities?
  - Contractor provides information stating this (ex: the particular industry customarily has little subcontracting opportunities, the prime contractor has sufficient in house capabilities...)
  - The contracting officer makes final determination and documents the file- no subcontracting plan required.
- Use FAR 52.219-9 for elements that the plan must include (can see differences from commitment document)...There is no required template, but your submission must include all elements.
- Small Business Office reviews using DoD checklist and provides recommendations to contracting officer.
- What are the elements? 





# SMALL BUSINESS SUBCONTRACTING PLAN ELEMENTS FAR 52.219-9



1. Separate Goals, in terms of total dollars subcontracted, and as a percentage of total subcontracted dollars, for all small business categories.
2. Statement of total dollars to be subcontracted for all small business categories
3. Description of the principal types of supplies/services to be subcontracted
4. Description of the method used to develop subcontracting goals
5. Description of method used to identify potential sources for solicitation purposes
6. Statement as to whether or not the contractor included indirect costs in establishing subcontracting goals
7. Name of the individual employed by the contractor that will administer the subcontracting program and description of duties



# SUBCONTRACTING ELEMENTS CONT.



8. Description of the efforts the contractor will make to assure all small businesses have equitable opportunity to compete for subcontracts
9. Assurances that contractor will include clause 52.219-8 in all subcontracts and the contractor will require all subcontractors with subcontracts values over \$700K or \$1.5M to also adopt a subcontracting plan that complies with the requirements of the clause
10. Various assurances regarding submitting reports and cooperating in studies
11. Description of the types of records maintained concerning procedures that have been adopted to comply with requirements and goals in the plan
12. Assurances that the contractor will make a good faith effort to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work from the small business concerns used in preparing the bid or proposal (What?)
13. Assurances that the contractor will provide the contracting officer with a written explanation if the contractor fails to obtain everything above-must be submitted to contracting officer within 30 days of contract completion.
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 contractor will pay its small business subcontractors on time in accordance with T&C of subcontract, notify contracting officer of reduced or untimely payments to SB subcontractors



# COMPLIANCE FACTORS FOR BOTH



## Small Business Subcontracting Plan (Only Large Businesses):

- Electronic Subcontracting Reporting System (eSRS)
  - Good Faith Efforts
- Potential studies/reviews of subcontracting program
- CPARS Rating and Liquidated Damages

## Small Business Participation/Commitment Proposals (All businesses):

- It depends 😊
- Could be other than eSRS
- CPARS Rating and other remedies



# NOTE ON OTHER SMALL BUSINESS REQUIREMENTS



## FAR 52.219-8 Utilization of Small Business Concerns

- Past performance compliance is evaluated when part of Small Business Participation/Commitment Proposal but also.....
- All contracts estimated >\$250K will contain the clause
- ✓ Provide small business concerns with maximum opportunity to participate
- ✓ Agreement to participate in studies or surveys to determine the extent
- ✓ What processes in place for all subcontracting opportunities
- ✓ Part of CPARS

## FAR 52.219-14 Limitations on Subcontracting

- Only applicable to SMALL BUSINESSES on “set-aside” contracts
- ✓ Monitors self-performance requirements (or combined with “similar” entities)
- ✓ Subcontracts with “Other than Small” contractors could be scrutinized
- ✓ Compliance is monitored
- ✓ Part of CPARS



# BEST PRACTICES/ITEMS OF NOTE FOR CONTRACTORS



## Large Businesses:

- Do not mix the two (Small Business Subcontracting Plan and Small Business Participation/Commitment Proposal)- Keep separate and distinct!
- Take time to understand the differences between the two submissions
- Understand the definition of “Good Faith Efforts”
  - Willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan
  - Communication important
- Understand “consistent failure” to meet subcontracting goals (GAO Cases)

## Small Businesses:

- Understand you are being evaluated and rated just like the Large Businesses when there is a small business participation element
- Know/Understand your other small business contract requirements for subcontracting
  - FAR 52.219-8 and 52.219-14

## All Businesses:

- Each agency will be different with solicitation requirements and compliance processes
- High visibility at Rock Island District
- Educate your program managers/business development/buyers and keep good records
- Utilize opportunities for outreach/networking
- Use your resources (Small Business Programs Office, SBA, PTAC etc...)



# CONCLUSION



Most companies and many agency personnel get these confused, so ask questions!!

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What questions do you have??