



U.S. Small Business
Administration



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SBA's Small Business Subcontracting Program

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What is the Federal SB Subcontracting Plans?

Prime contracting

- Prime contractors work directly with the government
- Manage any subcontractors and are responsible for ensuring that the work is completed as defined in the contract.
- Prime contractors must require all OTSB subcontractors who receive subcontracts in excess of \$750,000 (\$1.5 million for construction of a public facility), and which offer further subcontracting possibilities, to adopt a subcontracting plan.

Subcontracting

- Subcontractors work for other contractors
 - allows contractors that are not prepared to work directly with a federal agency to still participate in Federal procurements.
- Some government contracts require “other than small” businesses, including large businesses, to subcontract with a small business
 - creates more opportunities for small businesses to get involved in federal contracting

SBA's Role in Subcontracting Type of Reviews

Pre-Award Subcontracting Plan Activities

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

Post-Award Subcontracting Plan Activities

- SBA's Commercial Market Representatives (CMRs) monitor subcontracting goal achievement after contract award

In addition, SBA maintains the Federal Score card for small business contracting goals.

Small Business Subcontracting Goals

Federal contracts awarded to “other than small” businesses over a certain dollar threshold must contain a small business subcontracting plan. In this plan, which follows the requirements of FAR 52.219-9, the prime contractor sets goals for what it plans to subcontract to small businesses, small disadvantaged businesses, women-owned small businesses, HUBZone small businesses, veteran-owned small businesses, and service-disabled veteran-owned small businesses.

What Happens if Plan/Goals not met?

- Upon reviews:
 - Termination
 - Liquidation damages
 - Negative rating in Prime Contractor award tracking system (CPARS)
 - [FAR 52.219-16](#).
- It is important to communicate consistency across the University of Rochester regarding demonstration of efforts towards meeting subcontracting plans and goals.

Types of SBA Sub-Contracting Compliance Reviews

- Performance Review
 - Provides feedback on progress towards accomplishing 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
 - Determines a contractor's achievements in meeting goals and other elements in its subcontracting plan for both open contracts and contracts completed during the previous twelve months.
- Follow-up Review
 - Assesses the contractor's progress towards correcting deficiencies and implementing SBA's recommendations



Some of the items covered

- Evaluates 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
- Validates the prime contractor's methodology for completing its subcontracting reports
- Validates whether the prime contractor is monitoring its “other-than-small subcontractors” with regards to flowing down subcontracting plans and reporting
- Determines achievement of the negotiated subcontracting goals
- Identifies the prime contractor's plan of action to achieve the subcontracting goals

“Good Faith Effort” FAR 19.705-7(e)

(e) *Payment of liquidated damages.*

(1) If, after consideration of all the pertinent data, the contracting officer finds that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall issue a final decision to the contractor to that effect and require the payment of liquidated damages in an amount stated. The contracting officer's final decision shall state that the contractor has the right to appeal under the clause in the contract entitled Disputes. Calculations and procedures shall be in accordance with [52.219-16](#), Liquidated Damages—Subcontracting Plan.

(2) The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal. For calculations for commercial plans see paragraph (f) of this section.

(3) Liquidated damages shall be in addition to any other remedies that the Government may have.

Evidence of Good Faith Efforts

- Breaking out contract work items;
- Conducting market research to identify SBs subcontractors;
- Soliciting SBs as early in the acquisition process as practicable;
- Providing SBs with adequate and timely information;
- Negotiating in good faith with interested SBs;
- Directing SBs that need additional assistance to SBA;
- Assisting SBs in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services;
- Utilizing available services of SB associations; local, state, and Federal small business assistance offices; and other organizations; and
- Participating in a formal mentor-protégé program with one or more small-business protégés that results in developmental assistance to the protégés. **13 CFR 125.3(b)**

Examples of **Failure** to Make Good Faith Efforts (include but not limited to)

- Failure to:
 - pay small business concern subcontractors in accordance with the terms of the contract with the prime;
 - designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan;
 - maintain records or otherwise demonstrate procedures adopted to comply with the plan including subcontracting flow-down requirements;
 - correct substantiated findings from federal subcontracting compliance reviews or participate in subcontracting plan management training offered by the government;
 - conduct market research identifying potential small business concern subcontractors through all reasonable means including outreach, industry days, or the use of federal database marketing systems;
 - comply with regulations requiring submission of a written explanation to the contracting officer to change small business concern subcontractors that were used in preparing offers; or
- Falsifying records of subcontracting awards to SBCs.

13 CFR 125.3(d)(3)(ii)

Most Common Findings

- Subcontracting plan goals do not match goals on ISR
- Failure to include indirect costs on the SSR
- Failure to include credit card & online purchases in reports
- Size representation is not current/accurate
 - Solicitation/subcontract does not contain NAICS/size standard
 - HUBZone Firms are not SBA-certified
- Confuse other supplier diversity program definitions with the Federal size classification definitions
- Failure to document “if not, why not” justification
- Failure to flow-down **FAR 52.219-8**

Sample of the “If-not-why-not” Requirement

Purchase Order/Subcontract Awarded To: _____

Purchase Order/Subcontract #: _____

Date: _____

SIZE CATEGORY	NUMBER SOLICITED	REASON NOT SOLICITED (use key below)	REASON NOT SELECTED (use key below)
Small Businesses (including ANCs and Indian tribes)	2		A, B
Small Disadvantaged Businesses (including ANCs and Indian tribes)	1		E
Women-owned Small Businesses	0	5	
HUBZone Small Businesses	0	5	
Veteran-Owned Small Businesses	1		D
Service-Disabled Veteran Owned Small Businesses	0	5	

Instructions for completing above table:

Key:

1. Government/Customer Directed Sources
2. Follow-up work to previous P.O./contract (awarded to same supplier)
3. Company-wide Purchasing Agreement exists for this product/service
4. Sole Source (only approved supplier, proprietary item)
5. No known Small Businesses (checked SAM, DSBS, or other sources)
6. Category not solicited for another reason (explain below)

A - Company did not offer the lowest price

B - Company was found to be not qualified (explain below)

C - Company was not the best offer for reasons other than price (explain below)

D - Company did not respond to the solicitation

E - Company stated it was not interested in the work

F - OTHER – EXPLANATION REQUIRED BELOW

Comments: _____

Flow-down Requirement

Non-compliance issues:

- *Not obtaining flow down plans/no exemption clause in contract*
- *Subcontractor's ISRs were not monitored accordingly*
- **FAR clause 52.219-8** must be flow-downed to every subcontract.
- Prime contractors will monitor their subcontractors' compliance with their approved subcontracting plans.

QUESTIONS?

The University's Supplier Diversity Office manages the communication regarding the totality of supplier diversity efforts across all purchasing offices.

<https://www.rochester.edu/adminfinance/urprocurement/suppliers/supplier-diversity/federal-and-new-york-state-grants/>

