



USAID SENIOR PROCUREMENT EXECUTIVE

USAID PROCUREMENT EXECUTIVE BULLETIN NO. 2014-05

SUBJECT: Subcontracting Plan Requirements and Reporting/Monitoring

1. Scope: This Bulletin applies to all Contracting Officers/Contracts Specialists responsible for procurements subject to the small business subcontracting plan requirements of Part 19 of the Federal Acquisition Regulations (FAR).

2. Purpose: The purpose of this PEB is to clarify when subcontracting plans are required; the process for obtaining OSDBU clearance on the plans; and key roles and responsibilities for monitoring their use.

3. Background: FAR 19.7 contains the regulatory requirements governing the small business subcontracting program. Pursuant to FAR 19.702, “any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance.”

4. When Are Subcontracting Plans Required: In accordance with FAR 19.702(a)(1), with regard to negotiated acquisitions for contacts or contract modifications that are individually expected to exceed \$650,000 (\$1.5 million for construction), and that have subcontracting possibilities, Contracting Officers must obtain an acceptable subcontracting plan from the apparently successful offeror. If the offeror does not submit an acceptable subcontracting plan, the offeror will be ineligible for the award.

The Contracting Officer must take the actions specified in FAR 19.705-2 to determine whether a proposed contractual action requires a subcontracting plan. The Contracting Officer/Specialist may contact the Office of Small and Disadvantaged Utilization (OSDBU) for assistance in making such a determination.

5. When Subcontracting Plans Are Not Required: Contracting Officers are reminded that FAR 19.702 (b) provides that subcontracting plans are not required -

- (1) From small business concerns;
- (2) For personal services contracts;
- (3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at 52.219-8, Utilization of Small Business Concerns (or equivalent prior clauses; e.g., contracts awarded before the enactment of Public Law 95-507).

With respect to the exception provided for in item (3) above, Contracting Officers are reminded that the place of award of the contract is not the determining factor for whether a subcontracting plan is or is not required.

The requirement for a subcontracting plan is based on the place of performance of the contract. The question of whether a contract or contract modification, wherever awarded, will or will not be performed entirely outside of the United States and its outlying areas requires the CO to make a reasonable professional judgment based on the facts and circumstances known to the CO at the time. The CO should document the basis for the decision in the award file.

For example, if the CO reasonably anticipates that significant direct charges are likely to be incurred in the performance of the contract or contract modification in the United States or its outlying areas, the CO should require the apparently successful offeror to submit an acceptable subcontracting plan in accordance with FAR 19.702 (a). The probable incurrence of significant direct charges in the United States or its outlying areas indicates that performance will not occur entirely outside of the United States and its outlying areas.

6. FPDS-NG: When a subcontracting plan is required, it is imperative that the Contracting Officer process appropriate Federal Procurement Data System (FPDS-NG) data to properly indicate that a subcontracting plan is required by selecting the “Plan Required” option from the drop-down box. Contractors are required to submit their subcontracting reports [Individual Subcontract Report (ISR) and Summary Subcontract Report (SSR)] electronically, using the <http://www.esrs.gov> website. Failure to properly document FPDS-NG will prevent prime contractors from being able to report their subcontracting accomplishments in the eSRS.

7. Required Elements of a Subcontracting Plan: FAR 19.704 provides guidance concerning the 11 required elements of the subcontracting plan. OSDBU has posted a subcontracting plan model on its subcontracting web page at (http://www.usaid.gov/business/small_business/subcontracting-program) that prime contractors may download and utilize to ensure compliance with FAR 19.704.

8. OSDBU Review: Prior to award, Contracting Officers/Specialists should e-mail a copy of the apparently successful offeror’s subcontracting plan to OSDBU at PlanReview@usaid.gov, for advice and recommendations. If the Contracting Officer requires the submission of subcontracting plans from offerors prior to or during the competitive range, subcontracting plans from offerors in the competitive range should also be provided to OSDBU for review. OSDBU will review the plans for compliance with FAR 19.705-4 and USAID’s subcontracting goals and will e-mail its comments/recommendations to the CO/Specialist.

Once a final award decision is made, the Contracting Officer must send a copy of the final subcontracting plan to the OSDBU Subcontracting Program Manager and to the Small

Business Administration (SBA) Area Director, per the instructions in the ASIST File Standardization Guide, available on the ASIST webpage.) The final plan should include the signature of the prime contractor's submitting official and the cognizant Contracting Officer. As the approved subcontracting plan is a material contract requirement, it must be incorporated into the contract and a copy maintained in the contract file.

9. IDIQ/Task Order Contracts: Per FAR 19.705-2(e), a contract may have no more than one subcontracting plan. Task orders issued against IDIQ contracts are part of the base award. All subcontracting utilization reporting is accomplished at the IDIQ base contract level, not at the task order level. The eSRS system does not allow prime contractors to submit subcontracting reports at the task order level. Therefore, prime contractors report subcontracting utilization for task orders under the master IDIQ contract number for the base award. The Administrative Contracting Officer for the IDIQ has the responsibility for monitoring the prime contractor's small business utilization against the subcontracting plan under the IDIQ base award and all task orders.

10. Responsibilities of the Contracting Officer With Regard to the Subcontracting Program:

As prescribed in FAR 19.708(b)(1), Contracting Officers must insert the clause at FAR 52.219-9 (Small Business Subcontracting Plan) as applicable in contract solicitations. This clause specifies the information that prime contractors must include in subcontracting plans, to include assurances that they will utilize the eSRS system to report their subcontracting reports.

Contracting Officers must familiarize themselves and comply with ALL applicable requirements in FAR 19.7 with regard to the subcontracting program, especially FAR 19.705 "Responsibilities of the Contracting Officer Under the Subcontracting Assistance Program"; 19.706 "Responsibilities of the Cognizant Administrative Contracting Officer"; and FAR 19.708 "Contract Clauses". A few (but not all-inclusive) areas that are of particular note include the Contracting Officer's responsibility for:

- Assuring that a subcontracting plan is submitted when required and that it is incorporated into and made a material part of the contract;
- Reviewing the subcontracting plan for adequacy per FAR 19.704;
- Evaluating the offeror's past performance in awarding subcontracts for the same or similar products or services to small business;
- Advising the offeror of available sources of information on potential small businesses, as well as any specific concerns known to be potential subcontractors;
- Including the applicable contract clauses described in FAR 19.708;
- Acknowledging receipt of or rejecting the ISR and SSR in the eSRS. Acknowledging receipt does not mean acceptance or approval of the report. The report shall be rejected if it is not adequately completed; for instance, if there are errors, omissions, or incomplete data. Failure to meet the goals of the subcontracting plan is not a valid reason for rejecting the report;
- Determining whether a contractor made a good faith effort towards meeting the subcontracting goals established in the final subcontracting plan;

- Initiating action to assess liquidated damages in accordance with FAR 19.705-7 whenever such action is warranted (after consulting with OSDBU and GC);
- Monitoring, evaluating, and documenting contractor performance with regard to the subcontracting plan; and
- Providing immediate notice to the contractor, if during performance, the contractor is failing to meet its commitments under the subcontracting clause and/or subcontracting plan.

Date: _____

_____/s/_____
Senior Procurement Executive