Federal Subcontracting Program
How to plan, report & maximize small business utilization in your contract

Presented by:
Shawna Dunning & Kenyon Taylor
Objectives

• Why is subcontracting important?

• Discuss Subcontracting reporting and requirements?

• What are the differences among the types of subcontracting plans?

• Recent FAR changes (FAC 2005-89) (FAC 2005-94)

• Post Award Compliance
Small Business Subcontracting Program

Why is small business subcontracting important?

• Law requires that all small businesses have the **maximum practicable opportunity** to participate in the performance of Federal agency contracts and **subcontracts** (Public Law 95-507 as Amended Section 8(d) of the Small Business Act)

• **Drives the economy**

• **New job creation (2 out of 3 per the SPE Memorandum 2015-03-31)**
Small Business Subcontracting Program

Fair and equitable opportunity to **participate** in contracts awarded by Federal agencies

- Billions of dollars in prime contracts to large or “other than small” businesses
- Subcontracting to account for greater weight in agency scorecard in FY 2017
What are the various categories of small business?

- Small business (SB)
- Veteran-owned Small Business (VOSB)
- Service-disabled Veteran-owned Small Business (SDVOSB)
- Historically Underutilized Business Zone Small Business (HUBZone)
- Small Disadvantaged Business (SDB)
- Woman-owned Small Business (WOSB)
Why “other than small business”? Why not “large business”?

➢ Terms are not the same

➢ OTSBs include:
  • Universities
  • Utilities
  • AbilityOne**
  • Federal Prison Industries
Who are the government players through award?

**GSA**

- **Contracting Officer:**
  - Responsible for material parts of the contract
  - Establishes the acquisition strategy
  - Initial reviewer of the subcontracting plan
  - Advocate of small business
  - Approve/Reject subk reports

- **GSA OSBU SBTA:**
  - Resource to CO
  - Reviewer of Plan
  - Signs the checklist

**SBA**

- **SBA PCR**
  - Reviews subcontracting plan after GSA SBTA
  - Makes recommendations for increased subk
  - Signs the Checklist

- **SBA Area Director**
  - Receives copy of negotiated plan from CO upon award
  - Assigns SBA CMR
Where can I find information on subcontracting?

➢ FAR subpart 19.7 and GSAM subpart 519.7
➢ FAR clause 52.219-9
➢ GSAs Model Subcontracting Plan (in solicitation)
➢ GSA SBTA
What are the statutory requirements?

➢ Any contractor operating under a contract with Subcontract plan requirement receiving a contract > SAT must agree that the following will have **maximum practicable opportunity to participate in contract performance**, consistent with efficient performance:

   SBs, SDBs, VOSBs, SDVOSBs, WOSBs, HUBZones

**-And-**

➢ Timely payment to subcontractors pursuant to terms of their subcontracts

**(FAR 19.702)**
Does my acquisition need a subcontracting plan?

Prior to issuing the solicitation:

▪ Will the prime contractor be “other than small business”?

▪ Will the total contract value, including options, whether exercised or not, exceed $700,000 ($1,500,000 for construction)?

▪ Are there possible subcontracting opportunities?

(FAR 19.702)
Other instances requiring a subcontracting plan

- Modifications that meet subcontracting threshold

- **Annual** update required for (Commercial Plans), 30 days prior to commercial plan expiration date
  - If you do not receive notification from your contracting officer at least 60 days before your subk plan expiration date, you can be proactive and submit the new plan via our e-mod system

- Master Plans expire after 3 years
## Types of Subcontracting Plans

<table>
<thead>
<tr>
<th>Individual Plan</th>
<th>Commercial Plan</th>
<th>Master Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract specific</td>
<td>Applies companywide</td>
<td>Contains all of the elements of an individual plan, except goals.</td>
</tr>
<tr>
<td>Covers all options</td>
<td>Annually submitted</td>
<td>Updated every 3 years</td>
</tr>
<tr>
<td>Used most often for services</td>
<td>Commercial items</td>
<td>Incorporated into an individual plan when goals are added.</td>
</tr>
<tr>
<td></td>
<td>Covers federal &amp; non federal dollars</td>
<td>Must be approved by a government contracting officer, before used.</td>
</tr>
<tr>
<td></td>
<td>Approval: First agency to approve during company’s FY. Applicable to all other contracts.</td>
<td></td>
</tr>
</tbody>
</table>


Did you know?

FAR requires consideration of the contractor’s compliance with subcontracting plans on previous contracts as part of the *responsibility determination* (FAR 19.705-5(a)(1))
Small business subcontracting as an evaluation factor

When small business evaluation factor is used; monitored after award:

- CPARS
- eSRS

**NOTE:** FAC 2005-89 effective November 1, 2016 requires prime contractors to utilize subcontractors to same degree the prime relied upon small business in preparing the proposal.
GSA’s Model Subcontracting Plan Template

Caution!

The Model Subcontracting Plan Template:
- Is NOT a “fill-in-the-blank” form
- Does NOT establish minimum requirements for an acceptable plan
- Does not relinquish the responsibility for understanding the requirements in FAR 52-219-9 and FAR subpart 19.7
- Does not relinquish the contractor of responsibilities in FAR subpart 19.7
Increase in statutory requirements
Effective January, 2017
(FAR clause 52.219-9)

Adds 4 assurances to the 11 statutory requirements of the subcontracting plan:

- Good faith effort to utilize SB Subcontractors to same extent as proposal
- If not, provide written explanation to CO within 30 days of contract completion
- Will not prevent a SB Subcontractor from discussing with CO utilization or payment issues
- Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).
Subcontracting plan requirements summarized

➢ More than goals and $$$
➢ Tells the story:
  • What will be subcontracted and any indirects, if proposed
  • How did they come up with the goals
  • How the company will ensure equitable opportunity for small businesses (all socio-economic categories)
  • Who is responsible for administering the plan
  • What are the administrator’s responsibilities
  • Reports and record-keeping
  • Assurances
  • Signature by company official
First steps in preparing a subcontracting plan

➢ What type of plan:
  • Commercial - what is my purchasing dept anticipating to spend?
  • Individual
  • Is there an approved Master Plan?

➢ What is being subcontracted for?
  • Supplies
  • Services
  • Indirects

➢ Who are my suppliers?

➢ What size and socio-economic category do these suppliers meet under the NAICS?

➢ What does my market research tell me about other small businesses that could help meet my subcontracting goals?
How to correctly account for small business subcontracting dollars

If a potential subcontractor meets more than one socio-economic category (ex. Company A is a SDVOSB, WOSB, HUBZ), ensure the contractor estimates **dollars and percentages** across all categories that apply to that subcontractor:

$100,000 subcontract award to Company A results in:

- $100,000 applied to SDVOSB
- $100,000 applied to VOSB
- $100,000 applied to WOSB
- $100,000 applied to HUBZ and
- $100,000 applied to small business

It is worth $500,000 in subcontracting credit for the prime

**Note:** This is NOT “double counting” !!! Recognize that small businesses meet more than one category
What are GSA’s subcontracting goals?

**FY 2017**

<table>
<thead>
<tr>
<th>Category</th>
<th>Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Business</td>
<td>29%</td>
</tr>
<tr>
<td>Small Disadvantaged Small Business</td>
<td>5%</td>
</tr>
<tr>
<td>Women-owned Small Business (WOSB)</td>
<td>5%</td>
</tr>
<tr>
<td>Historically Underutilized Business Zone (HubZone) Small Business</td>
<td>3%</td>
</tr>
<tr>
<td>Veteran Owned Small Business</td>
<td>3%</td>
</tr>
<tr>
<td>Services Disabled Veteran Owned Small Business (SDVOSB)</td>
<td>3%</td>
</tr>
</tbody>
</table>
Are subcontracting plans negotiable?

ABSOLUTELY!
GSAM 519.705-4(g)

Remember: subcontracting plans are a material part of the contract!

Are greater goals in order?
Are there “0” or low goals? Make sure there is an explanation for the reasons why the goals are low. Recommend utilizing the sources listed at GSAM 519.705-4(g)
Remember, goals should be both reasonable and as well as a “stretch” (FAR 19.705-4)
## Goals: Individual Subcontracting Plans (example)

<table>
<thead>
<tr>
<th>Planned Subcontracting to:</th>
<th>Dollars $</th>
<th>Percent %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Total Dollars to be Subcontracted (2+3=1)</td>
<td>$1,000,000</td>
<td>100%</td>
</tr>
<tr>
<td>2. Large Businesses (other than Small)</td>
<td>$ 600,000</td>
<td>60%</td>
</tr>
<tr>
<td>3. All Small Businesses</td>
<td>$ 400,000</td>
<td>40%</td>
</tr>
<tr>
<td>4. Veteran-Owned Small Businesses (VOSB)</td>
<td>$ 40,000</td>
<td>4%</td>
</tr>
<tr>
<td>5. Service-Disabled Veteran-Owned Small Businesses (SDVOSB)</td>
<td>$ 30,000</td>
<td>3%</td>
</tr>
<tr>
<td>6. HUBZone Small Businesses (HUBZone)</td>
<td>$ 70,000</td>
<td>7%</td>
</tr>
<tr>
<td>7. Small Disadvantaged Businesses (SDB)</td>
<td>$ 60,000</td>
<td>6%</td>
</tr>
<tr>
<td>8. Women-Owned Small Businesses (WOSB)</td>
<td>$ 80,000</td>
<td>8%</td>
</tr>
</tbody>
</table>
Let’s look at crediting another way: First….  

<table>
<thead>
<tr>
<th></th>
<th>Dollars Subcontracted</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>OTSB* Subcontracted</td>
<td>$ 600,000</td>
<td>60%</td>
</tr>
<tr>
<td>Small Business Subcontracted</td>
<td>$ 400,000</td>
<td>40%</td>
</tr>
<tr>
<td>Total Subcontracted</td>
<td>$1,000,000</td>
<td>100%</td>
</tr>
</tbody>
</table>
Then, breakdown by socio-economic category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Dollars Subcontracted</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>SDB</td>
<td>$60,000</td>
<td>6%</td>
</tr>
<tr>
<td>WOSB</td>
<td>$80,000</td>
<td>8%</td>
</tr>
<tr>
<td>VOSB</td>
<td>$40,000</td>
<td>4%</td>
</tr>
<tr>
<td>SDVOSB</td>
<td>$30,000</td>
<td>3%</td>
</tr>
<tr>
<td>HUBZone</td>
<td>$70,000</td>
<td>7%</td>
</tr>
</tbody>
</table>
Goals: Commercial Plans

Estimated TOTAL dollars planned to be subcontracted; i.e. to all types of business concerns: Annual Commercial Expenditures: $12,000 = 100% subcontracted

Planned subcontracting to large business concerns (those classified as other than small): Annual Commercial Expenditures: $8,400 = 70% of TOTAL above

Planned subcontracting to ALL small business concerns (including ANCs & Indian tribes, VOSB, SDVOSB, HUBZone small, SDB (including ANCs & Indian tribes), and WOSB): Annual Commercial Expenditures: $3,600 = 30% of TOTAL

Planned subcontracting to veteran-owned small business concerns (which includes service-disabled veteran-owned small business): Annual Commercial Expenditures: $360 = 3% of TOTAL

Planned subcontracting to service-disabled veteran-owned small business concerns (also a subset of total VOSB and cannot be higher than VOSB above): Annual Commercial Expenditures: $360 = 3% of TOTAL

Planned subcontracting to HUBZone small business concerns: Annual Commercial Expenditures: $360 = 3% of TOTAL

Planned subcontracting to small disadvantaged business concerns (including ANCs & Indian tribes): Annual Commercial Expenditures: $600 = 5% of TOTAL

Planned subcontracting to women-owned small business concerns: Annual Commercial Expenditures: $600 = 5% of TOTAL
Subcontracting plans and goals should:

- Be realistic and achievable
- Provide a challenge (and build upon prior achievements)
- Require positive goals (GSAM 519.705-4 (c) (1))
- Reflect best faith efforts and maximum practicable opportunities
Description of Supplies/Services
FAR 19.704(a)(3)

<table>
<thead>
<tr>
<th>Supplies/Services</th>
<th>OTSB</th>
<th>Small</th>
<th>SDB</th>
<th>WOSB</th>
<th>VOSB</th>
<th>SDVOSB</th>
<th>HUB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Janitorial</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Painting</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Transportation</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office Supplies</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Graphics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Temporary Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food Services</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Who approves commercial plans for the entire Federal Government?

EITHER:
The first CO awarding a contract with that company during the company’s fiscal year (for example, Jan 1 – Dec 31)

OR

If the contractor has ongoing contracts with commercial plans, like the GSA Schedules, the CO responsible for the contract with the latest completion date. (FAR 19.704(d)(1))

The “approver” is then responsible for reviewing/accepting subcontracting reports in eSRS and performance evals. Your efforts are utilized in your performance history-Contractor Performance Assessment Reporting System (CPARS) are issued annually.
What if there are no subcontracting possibilities?

- **NO** subcontracting opportunities (FAR 19.705-2(c))

Example of no subcontracting possibilities:

- All work will be performed in-house
- Data available supporting (or not supporting) “no subcontracting possibilities
- Check past performance in eSRS
- Question the contractor, if there are disconnects
- Suggest inclusion of indirect costs, if it will help
- Suggest contacting their cognizant SBA CMR
- Check with ACO on prior history
Waiver for a subcontracting plan

Prior to award:

- Require supporting documentation from the contractor
- GSAM 519.705-2(d) requirements:
  1. Determination and Findings, include attachments
  2. Requires AA OSBU** approval

Make sure the documentation tells the story

** AAOSBU authority delegated to Subcontracting Program Manager in 2015
FAR and GSAM requirements

Ensure *all 15* Statutory Requirements have been met
*increased as of Nov 1, 2016 and Jan, 2017

Ensure goals and dollar amounts are calculated correctly

Ensure all applicable socio-economic categories are credited

Require the Offeror to justify or explain why their proposed goals are lower than the agency goals or the government-wide goals. Does the plan reflect the contractor’s best faith efforts, identify their challenges are, and present a plan to show due diligence?

Now you are ready to submit your plan via the emod system
How to Submit a Plan eMod Instructions

EOffer/eMod Help Center
Post-Award Requirements
ISRs and SSRs

**ISRs**
- Individual Subcontracting Plans only
- Contract-specific
- Submitted twice a year
  - For period ending March 31
  - For period ending September 30
- Final ISR due at contract completion

**SSRs**
- SSRs for *individual plans* summarize subk under GSA contracts vs.
- SSRs for *commercial plans* summarize subk:
  - GSA contracts
  - Other federal contracts
  - All commercial contracts
Individual Subcontracting Plan Reporting Requirements

Three reports required each year:

- Two ISRs (semi-annual): For period ending March 31 (due by April 30)
- For period ending September 30 (due by October 30)
- 1 SSR required for ALL GSA contracts (due by Oct. 30)

Final ISR due at contract completion

Responsibility Determinations for future Contracting Actions
Dates to Remember
(Individual Plan ISRs)

- For period ending March 31:
  - Contractor submits ISR NLT April 30
  - CO reviews ISR NLT May 30
  - Contractor submits revised report within 30 days of CO rejection
- For period ending September 30:
  - Contractor submits ISR NLT October 30
  - CO reviews ISR NLT November 30
  - Contractor submits revised report within 30 days of CO rejection
- Final ISR- within 30 days of contract completion

(FAR 52.219-9)

Helpful Hint: reports are required when due, regardless of whether or not there has been subcontracting activity.
Individual SSRs
<table>
<thead>
<tr>
<th>** Roland and Minority Institutions (MI)**</th>
<th>0</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5. HUBZone Small Business (HUBZone SB) Concerns</strong></td>
<td>1,721,653</td>
<td>0.8</td>
</tr>
<tr>
<td><strong>6. Veteran-Owned Small Business Concerns</strong></td>
<td>24,014,419</td>
<td>10.7</td>
</tr>
<tr>
<td><strong>7. Service-Disabled Veteran-Owned Small Business Concerns</strong></td>
<td>17,169,909</td>
<td>7.6</td>
</tr>
<tr>
<td><strong>8. Alaska Native Corporations (ANCs) and Indian Tribes that Have Not Been Certified by the Small Business Administration as Small Disadvantaged Businesses</strong></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>9. Alaska Native Corporations (ANCs) and Indian Tribes that Are Not Small Businesses</strong></td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

**10. Remarks:**
If you entered (0) zero in the small business section of this report or failed to meet the dollar or percentage goals in the Commercial Subcontracting Plan, use this section to explain the reason for any shortfalls and your future plan of action. You may also enter explanations and/or comments you think will be helpful to the Government official who reviews this report.

SAIC is committed to the utilization of small businesses. We value the innovation, technical expertise and talent that small businesses bring in support of our government customers. The SAIC Small Business Development and Utilization Office supports our commitment through a robust internal education program which includes: training our Customer Group Small Business Advocates; providing speakers from government small business offices at our SAIC Small Business Community of Practice meetings; and conducting internal sessions across the enterprise functions including business development staff. When requirements change during execution, the SAIC Small Business Development and Utilization Office assists with the identification of qualified small businesses to ensure performance against goals stay on track.

This SSR report reflects activity for the period October 1, 2013 through September 30, 2014 for GS00Q09BGD0048 Alliant; GS-23F-0052K AIMS; GS-23F-0107J PES; GS-23F-8006H MOBIS; GS-23F-0251K FABs; GS00Q14OADU130 OASIS Pool 1; GS00Q14OADU121B OASIS Pool 2; GS00Q14OADU329 OASIS Pool 3; GS00Q14OADU428 OASIS Pool 4; GS00Q14OADU516 OASIS Pool 5a; GS00Q14OADU616 OASIS Pool 5b; GS00Q14OADU728 OASIS Pool 6; and GS-00F-002CA PSS contracts.

**11. Contractors Official Who Administers Subcontracting Program**
Dates to Remember SSRs

Individual & Commercial SSRs

• Contractor submits SSR NLT October 30
• CO reviews SSR NLT November 30
• Contractor submits revised SSR NLT 30 days after CO rejection
• CO “follows up” with contractor if reports not received, delayed

Helpful Hint: Timeframes for reports established in clause 52.219-9.
Is your contractor compliant with the contract’s terms and conditions?
Did your contractor submit the new commercial plan as required?

Commercial plans are only good for one year

Commercial plans based on contractor’s fiscal year

New plan required to be submitted 30 days before expiration of current commercial plan
Commercial Plan Reporting Requirements

• One (1) report required each year = SSR (period ending September 30)
• Report must include **ALL subcontract achievements** for subcontracts under:
  – Federal contracts (GSA + other federal agencies)
  – Commercial contracts, including indirect pools
• Due by **October 30**
• CO review no later than November 30
Past Performance Evaluations

• CPARS:
  – Did the contractor submit reports timely and accurately?
  – Did the contractor demonstrate “good faith effort”?
  – For commercial plans, did the contractor meet his goals?
    Remember, commercial plans forecast for one year!

• Future Responsibility Determinations
Consequences of Lack of Good Faith Effort - Liquidated Damages - FAR 19.702(c) & 19.705-7

Maximum practicable utilization of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d)(4)(F) directs that liquidated damages shall be paid by the contractor.
FAC 2005-89
effective November 1, 2016

For Prime contractors:

• Utilize subcontractors to same degree the prime relied upon small business in preparing proposal
• Requires subplans for mods under the subplan threshold if the mod causes the contract to exceed threshold
• Requires prime to assign NAICS codes to subcontracts
• Prime contractors must provide socio-economic status of the subcontractor to unsuccessful offerors
• Requires resubmission of subcontract reports in eSRS within 30 days of CO’s rejection
• Restricted from prohibiting subcontractors to discuss payment or utilization matters with the CO
FAC 2005-89 (continued)

Effective after November 2017

Requires prime with subplans on task and delivery order contracts to **report order level subcontracting** information after November, 2017
Takeaways

• Administer subcontracting as you would any other material part of the contract
• Ensure SBA Area Director received plan after award
• Ensure reports are filed timely and accurately
• Review reports timely (within 60 days)
• Evaluate subcontracting performance in CPARS evaluations, annually for commercial plans
• Ensure small businesses are used as proposed
• Ensure compliance with Limitations on Subcontracting
• Assess liquidated damages when lack of good faith exists
Thank you

Shawna Dunning
GSA/Federal Acquisition Service
Contracts Operations, Branch D
Office of Professional Services & Human Capital Categories

Kenyon L. Taylor
Program Manager, Office of Small Business Utilization
Northwest/Arctic Region (GSA)