

U.S. Small Business Administration



Your Small Business Resource

U.S. Small Business Administration

Office of Government Contracting

A Handbook

for

Small Business Liaison Officers

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Chapter 1

Small Business Administration's (SBA) Role in Pre-Award Subcontracting Plan Reviews

The Law, the Rules and the Regulations

Passed in 1978, Public Law 95-507 amended § 8(d) of the Small Business Act of 1953 (15 U.S.C. § 637(d)) and created the foundation for the Subcontracting Assistance Program as it is known today. It changed the participation of large contractors in the program from voluntary to mandatory, and it changed the language of the law from “best efforts” to “maximum practicable opportunities.” Other key features of § 8(d) of the Small Business Act, as amended, include requirements that all federal contracts in excess of \$150,000 provide maximum practicable opportunity for small and small disadvantaged business to participate and that all those in excess of \$650,000 (\$1,500,000 in the case of construction contracts for public facilities) be accompanied by a formal subcontracting plan containing separate goals for small business and small disadvantaged business.

(See Appendix A, Legislation Affecting Federal Prime and Subcontracts.)

Why Does the Government Require Subcontracting Plans?

It is the policy of the United States that small business (SB), small disadvantaged business (SDB), women owned small business (WOSB), veteran-owned small business (VOSB), service-disabled veteran-owned small business (SD/VOSB), and Historically Underutilized Business Zone small business concerns (HUBZone SB) shall have the maximum practicable opportunity to participate in the performance of contracts awarded by any federal agency. Other-than-small business (OTSB) contractors are legally obligated to carry out this policy when awarding subcontracts to the fullest extent consistent with the efficient performance of their contracts. The term "other-than-small" business refers to any entity that is not classified as a small business.¹ This includes: large businesses, state and local governments, and non-profit organizations including all Ability One (formerly Javits-Wagner-O'Day or JWOD) entities as well as Federal Prison Industries, Inc. (also known as UNICOR) as these entities are not on the exceptions listed in Federal Acquisition Regulations (FAR) 19.702(b) (48 Code of Federal Regulations (CFR) 19.702(b)). In most cases, it also includes public utilities, educational institutions, and foreign-owned firms. However, there may be certain instances where a public utility, educational institution, or foreign-owned firm could be considered a small business. When in doubt, you should contact your local SBA Area office. Note: foreign-owned firms that receive Federal contracts over the applicable dollar threshold are normally required to have subcontracting plans if any portion of their contract is to be performed in the United States. However, a foreign-owned firm can sometimes meet SBA's criteria for small business status, in which they would be

¹ The terms “other-than-small business” or “OTSB” and “large business” tend to be used interchangeably. In most cases, “other-than-small business” or “OTSB” is considered preferable; however, for the sake of simplicity, we have used “large business” in some of the chapters and appendixes in this Handbook.

exempt from the requirement to submit a subcontracting plan. See Title 13 CFR Part 121, especially § 121.105(a) for additional information.

OTSB contractors must further agree to cooperate in any studies or surveys that may be conducted by the SBA or the awarding agency of the United States that may be necessary to determine the extent of the contractor's compliance with this legal requirement.

When public monies are involved, the federal government has an obligation to promote socio-economic policies and objectives.

Federal Acquisition Regulations (FAR) Part 19 (48 CFR)

FAR Part 19 implements the procurement sections of the Small Business Act. Federal contracting agencies must conduct their acquisitions in compliance with these regulations. OTSB contractors are required to comply with certain clauses and provisions referenced in the FAR.

- Subpart 19.1 prescribes policies and procedures for Size Standards. (Also in Title 13 of the U.S. Code of Federal Regulations. See Chapter 5 for more detailed information.)
- Subpart 19.7 prescribes policies and procedures for subcontracting with SB, SDB, WOSB, VOSB, SD/VOSB, and HUBZone SB concerns.
- Subpart 19.12 prescribes policies and procedures for the SDB Participation Program, including incentive subcontracting with SDB concerns.
- Subpart 19.13 prescribes policies and procedures for the HUBZone SB Program.

Assistance Available from SBA

Through its network of Procurement Center Representatives (PCRs) and Commercial Market Representatives (CMRs), SBA can provide assistance to SBs as well as to federal agencies and OTSBs. PCRs help federal agencies with solicitations and subcontracting requirements, and evaluate proposed Subcontracting Plans submitted by OTSBs.

CMRs can counsel OTSBs on how to prepare Subcontracting Plans and meet the other requirements of the law, and they can counsel SBs on how to market their products and services to prime contractors. (See Appendix B, Subcontracting Assistance Program Fact Sheet.)

Complete lists of both PCRs and CMRs are available at <http://www.sba.gov/GC/contacts.html>.

Chapter 2

The Subcontracting Plan

A Subcontracting Plan is a document setting forth how a contractor will provide SB, SDB, WOSB, VOSB, SD/VOSB, and HUBZone SB concerns with the maximum practicable opportunity to participate in the performance of a contract or subcontract. Subcontracting Plans are required from all OTSB contractors that are awarded Federal contracts or subcontracts for goods and services exceeding \$650,000 or \$1,500,000 for construction of a public facility.

The Subcontracting Plan, which is a material part of the contract, should be given serious consideration prior to proposal submission in order to provide such maximum practicable opportunity. A Subcontracting Plan should **not** be an afterthought.

SBA PCRs review Subcontracting Plans prior to contract award and issue advisory comments to the Contracting Officer. The PCR review encompasses all the required elements of the Subcontracting Plan.

(See Appendix C, Subcontracting Plan Format.)

What are the Required Elements of a Subcontracting Plan?

There are eleven elements of a subcontracting plan identified in FAR 19.704 and in FAR Clause 52.219-9. The subcontracting plan must include:

1. Separate percentage goals for using SB (including Alaska Native Corporations (ANCs) and Indian tribes), SDB, WOSB, HUBZone small businesses certified by SBA, VOSB, and SD/VOSB concerns. The percentages must be expressed as percentages of the total subcontract dollars. Goals for option years must be broken out separately*;

(Some solicitations will require that goals be expressed as a percentage of the total contract value rather than as a percentage of total subcontracting. In this instance, SBA prefers that the plan express goals both as a percentage of contract value and as a percentage of total subcontracting.)

2. A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to SB (including ANCs and Indian tribes), SDB (including ANCs and Indian tribes), WOSB, HUBZone small business, VOSB, and SD/VOSB concerns;

3. A list of the principal types of supplies and services to be subcontracted and an identification of types planned for subcontracting to each group, including OTSB subcontractors.

Illustrative example:

COMMODITY	LB	SB	SDB	VOSB	SD/VOSB	WOSB	HUBZone
Misc. Tooling	X	X	X				X
Computer Hardware/Software		X	X	X			
Construction Services	X	X	X	X	X	X	
Metal Parts		X		X		X	

4. A description of the method used to develop each of the goals;
5. A description of the method used to identify potential sources;
6. A statement as to whether or not indirect costs were included in the subcontracting goals, and if so, a description of the method used to determine the proportionate share of indirect costs to be incurred with each group;
7. The name of the Administrator of the Subcontracting Plan and a description of his/her duties;
8. A description of the efforts the offeror will make to ensure that SB (including ANCs and Indian tribes), SDB (including ANCs and Indian tribes), WOSB, VOSB, SD/VOSB, and HUBZone SB concerns will have an equitable opportunity to compete for subcontracts;
9. Assurances that the offeror will include the clause at FAR 52.219-8, Utilization of Small Business Concerns, in all subcontracts that offer further subcontracting opportunities, and that the offeror will “flow-down” the subcontracting requirements to its subcontractors unless the plan is a Commercial Subcontracting Plan (see pages 11 – 12);
10. Assurances that the offeror will cooperate in any studies or surveys as may be required and will submit periodic reports in order to allow the government to determine the extent of compliance by the company with the Subcontracting Plan, and that its subcontractors agree to submit required reports; and
11. A description of the types of records the offeror will maintain to demonstrate its compliance with the Subcontracting Plan. (See Appendix D, Sample Documentation Form for Purchases/Subcontracts Over \$150,000.)

What are the Types of Subcontracting Plans?

An OTSB prime contractor has several options in developing a Small Business Subcontracting Plan. These options are:

- Individual Subcontracting Plan is a plan that covers the entire contract period (including options) applicable to a specific contract and includes goals that are based on the offeror’s planned subcontracting in support of the contract.

- Master Subcontracting Plan contains all the required elements of an individual plan, except goals. As the company receives government contracts requiring subcontracting plans, it develops goals specific for each plan. A Master Plan is in effect for three years; however, when incorporated into an individual plan, it applies to that contract throughout the life of the contract.
- Commercial Subcontracting Plan is a plan, including goals that covers the contractor's fiscal year and relates to the company's production in general, for commercial and noncommercial products or services, rather than solely to the government contract. It applies to either the entire company or a portion of the company (such as a division or product line). This type of plan may be used by an OTSB that is selling a "commercial item" to the government (see definition at FAR 52.202-1). The contractor is not required to submit an Individual Subcontract Report (ISR) via the electronic subcontracting reporting system (replaces the Standard Form 294).
- Department of Defense (DOD) Test Program for Comprehensive Small Business Subcontracting Plan for selected contractors. Active participants can be found at <http://www.acq.osd.mil/osbp/programs/csp/participants.html>. This program, limited to a few DOD OTSB contractors, authorizes the negotiation, administration, and reporting of Subcontracting Plans on a plant, division, or company-wide basis for all defense contracts, rather than individual Subcontracting Plans for every contract over \$650,000. Additionally, it waives the requirement for the semi-annual Individual Subcontract Report at www.esrs.gov (replaces Standard Form 294). The purpose of the test is to determine whether Comprehensive Subcontracting Plans will result in increased subcontracting opportunities for SB and SDB while reducing the administrative burdens on contractors.

What is Maximum Practicable Opportunity (MPO)?

MPO means that an OTSB contractor or subcontractor must offer **real** opportunities, to the maximum extent possible, to SB, SDB, WOSB, VOSB, SD/VOSB, and HUBZone SB concerns to participate as subcontractors. If maximum opportunities are extended, then subcontracts to these concerns usually result.

MPO does not mean that an OTSB contractor or subcontractor should give away subcontracts to SB, SDB, WOSB, VOSB, SD/VOSB, and HUBZone SB concerns. MPO does mean that an OTSB contractor or subcontractor should extend maximum opportunities to SB, SDB, WOSB, VOSB, SD/VOSB, and HUBZone SB concerns to bid on subcontracts, and, if appropriate, to award subcontracts to them. Meeting a numerical goal does not, by itself, mean that an OTSB contractor or subcontractor has provided MPO. Likewise, not meeting a goal does not necessarily mean that an OTSB contractor or subcontractor has not provided MPO.

What Actions Should Other-Than-Small Business Contractors Take to Enhance MPO?

Efforts to provide the maximum practicable subcontracting opportunities for small business concerns may include, as appropriate for the procurement, one or more of the following actions:

- Breaking out contract work requirements into economically feasible units, as appropriate, to facilitate small business participation;
- Conducting market research to identify small business subcontractors and suppliers through all reasonable means, such as performing on-line searches on the Central Contractor Registration, posting Notices of Sources Sought and/or Requests for Proposal on SBA's SUB-Net, participating in business Matchmaking events, and attending pre-bid conferences;
- Soliciting small business concerns as early in the acquisition process as practicable to allow them sufficient time to submit a timely offer for the subcontract;
- Providing interested small businesses with adequate and timely information about the plans, specifications, and requirements for performance of the prime contract to assist them in submitting a timely offer for the subcontract;
- Negotiating in good faith with interested small businesses;
- Directing small businesses that need additional assistance to SBA;
- Assisting interested small businesses in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services;
- Utilizing the available services of small business associations; local, state, and Federal small business assistance offices; and other organizations; and
- Participating in the formal mentor-protégé program with one or more small business protégés that results in developmental assistance to the protégé(s).

Additional actions may include:

- Advertising subcontracting opportunities in FedBizOpps;
- Encouraging joint ventures;
- Providing technical, management and financial training and counseling;
- Keeping the playing field level, allowing all bidders equal time to respond; providing the same information to all prospective subcontractors at the same time;

- Notifying SB, SDB, WOSB, VOSB, SD/VOSB, and HUBZone SB firms that trade union membership is not a FAR (contract) requirement but that payment of the Davis-Bacon prevailing wage rates is a FAR (contract) requirement; and
- Providing debriefings to unsuccessful small business offerors.

All contractors with subcontracting plans should review SBA's regulation at 13 CFR 125.3, *Subcontracting Assistance*, which is available at <http://www.sba.gov/tools/resourcelibrary/index.html>. This regulation provides specific examples of actions a contractor can take, including many of those listed above, to demonstrate a good-faith effort to meet the goals in its subcontracting plan.

* Effective September 17, 2007, per FAR 19.703(c)(1)(i):

“Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size of SBA certification status of the ANC or Indian tribe. (ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantage business subcontracting goals.

(A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one contractor to count the subcontract towards its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the contracting officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the contracting officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

(2) A contractor acting in good faith may rely on the written representation of an ANC or an Indian tribe as to the status of the ANC or Indian tribe unless an interested party challenges its status or the contracting officer has an independent reason to question its status. In the event of a challenge of a representation of an ANC or Indian tribe, the interested parties shall follow the procedures at FAR 26.103(b) through (e).”

Chapter 3

Subcontracting Plan Flow-Down Requirements: Who Flows Down Plans and To Whom?

What is a First-Tier Subcontractor?

A prime contractor's subcontractor is referred to as the first-tier subcontractor. The OTSB prime contractor must flow-down the Subcontracting Plan requirements to all subcontractors (except small businesses) who receive a single order or subcontract in excess of \$650,000 for goods and services, or \$1.5 million for construction of a public facility. An OTSB prime contractor with a subcontracting plan must require all OTSB subcontractors to implement a plan that complies with the requirements of FAR 52.219-9. The OTSB prime contractor is responsible for obtaining, approving, and monitoring the Subcontracting Plans of its OTSB subcontractors.

There is an exemption when the subcontract is for a commercial item or a commercial component, per FAR 52.212-5(e) and 52.244-6(c). (See Appendix L, Frequently Asked Question 20.)

What are Second-Tier, Third-Tier, Fourth-Tier Subcontractors, etc.?

If the first-tier subcontractor is an OTSB and it subcontracts to another OTSB over the dollar threshold, it must require that firm (the second-tier subcontractor) to adopt a Subcontracting Plan similar to its own. If the second-tier OTSB subcontractor then subcontracts to another OTSB (the third-tier subcontractor) over the threshold, the third-tier subcontractor must adopt a Subcontracting Plan as well.

How Far Does the Flow-down Go?

As long as an OTSB subcontractor is awarded a subcontract in excess of \$650,000, (\$1.5 million for construction of a public facility), the requirement to submit a Subcontracting Plan is flowed-down. Once a subcontract is awarded to a SB, SDB, WOSB, VOSB, SD/VOSB or HUBZone SB concern, the flow-down ends. However, FAR Clause 52.219-8, "Utilization of Small Business Concerns," is always flowed-down to OTSB, SB, SDB, WOSB, VOSB, SD/VOSB, and HUBZone SB concerns for all subcontracts over \$150,000 that offer further subcontracting opportunities. It also requires that contractors and subcontractors provide maximum practicable opportunities for small business concerns to participate in federal contracts, establish procedures to ensure timely payments to small business subcontractors, and cooperate in any studies or surveys by the SBA or the awarding agency.

Under the flow-down provision, OTSB subcontractors with Subcontracting Plans must submit their subcontracting achievements via the electronic subcontracting reporting system (eSRS), which replaced the Standard Forms 294 and 295 reports, as applicable (explained on pages 19-24), just as the prime contractors do. The prime contractor will review the Individual

Subcontract Report (ISR) of its first-tier subcontractors and the first-tier subcontractors will likewise review the reports of the second-tier subcontractors, and so forth. This is done for monitoring purposes, and continues in this manner for all tiers. The OTSB subcontractor must also complete a Summary Subcontract Report (SSR) that will be reviewed by the government. This enables the government to collect subcontracting statistics from all of the subcontracting tiers.

The flow-down process is intended to ensure that all small businesses receive maximum practicable opportunities to perform on government contracts and subcontracts, regardless of the subcontracting tier.

(See Appendix E, Sample Flow-Down Letters.)

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Chapter 4

How to Review a Subcontracting Plan

What are the Pre-award Responsibilities of an Other-than-Small Business Prime Contractor or Subcontractor?

During the solicitation process, OTSB prime contractors should discuss the Subcontracting Plan requirements with all potential OTSB subcontractors bidding on subcontracts over \$650,000, or \$1.5 million for construction of a public facility, at individual meetings and pre-bid conferences in order to:

- Ensure that they understand that the Subcontracting Plan is a contractual requirement;
- Encourage the use of the Central Contractor Registration (CCR) at www.ccr.gov and the Dynamic Small Business Search button on the CCR home page to locate potential small business subcontractors;
- Provide sample Subcontracting Plan formats (see Appendix C) to all potential OTSB subcontractors;
- Require potential OTSB subcontractors to submit Subcontracting Plans with their bids/proposals;
- Advise potential OTSB subcontractors up front if Subcontracting Plans are a part of the evaluation process; and
- Reinforce the mind-set that efforts should be taken by all potential OTSB subcontractors to enhance MPO to SB, SDB, WOSB, VOSB, SD/VOSB, and HUBZone SB concerns.

Subcontracting Plans must be reviewed prior to award of the subcontract. All procedures required by the higher tier subcontractors should be followed by the lower tier subcontractors.

Who Reviews the Subcontracting Plan?

As stated above, the Contracting Officer reviews Subcontracting Plans submitted to the government by prime contractors and the SBA PCR provides advisory comments to the Contracting Officer.

Under the flow-down provision, the prime contractor's Small Business Liaison Officer (SBLO) reviews Subcontracting Plans submitted by first-tier OTSB subcontractors. The first-tier subcontractors' SBLOs review Subcontracting Plans submitted by second-tier OTSB subcontractors; the second-tier subcontractors' SBLOs review Subcontracting Plans submitted by third-tier OTSB subcontractors; and so on.

How Should the Prime Contractor Review the Subcontracting Plan?

The Subcontracting Plan submitted by the potential subcontractor should be compared to the sample Subcontracting Plan Review Sheet to assure that all elements are properly addressed. (See Appendix F, Subcontracting Plan Review Sheets (regular and quick versions).)

The prime contractor should ask the questions, “Does the Subcontracting Plan comport with the technical and price proposal? Is it compatible? Are maximum practicable opportunities really being provided to the small business community? Are there any supplies or services proposed to be subcontracted to OTSB firms that can be subcontracted to SB, SDB, WOSB, VOSB, SD/VOSB, HUBZone SB firms?”

What is an Acceptable Subcontracting Plan?

The Subcontracting Plan must include all of the required elements per FAR 52.219-9. It must provide maximum practicable opportunities. It must contain realistic and challenging goals that reflect the contractor’s best efforts for each specific industry.

The goals must not be inflated in order to create a favorable but false impression. The goals must not be understated in order to easily accomplish goal achievement without providing maximum practicable opportunities. The achievement of numerical goals does not necessarily mean compliance with the public law. Likewise, not meeting numerical goals does not necessarily mean non-compliance with the public law.

In general, the Subcontracting Plan should include specific, concrete actions that the OTSB subcontractors will take to create opportunities and to enhance maximum practicable opportunities. The Subcontracting Plan should **not** consist of non-specific promises and platitudes, e.g., “We’re going to do everything possible to do as much as we can to achieve everything in the Plan, to the best of our ability.”

What Should the Prime Contractor Do with an Unacceptable Plan?

If a Subcontracting Plan is unacceptable, the contractor should not award the subcontract, should provide training and guidance, and should require that an acceptable plan be submitted prior to award.

Chapter 5

What are NAICS Codes, Size Standards and Certifications?

The following discussion provides the background information necessary for the development and implementation of a prime contractor's Small Business Program. It also corresponds to some of the data that is analyzed by the CMR when conducting various Subcontracting Reviews.

What is a NAICS Code?

The North American Industry Classification System (NAICS) manual classifies establishments based on the type of business activity in which they are engaged. Each solicitation for a federal procurement, i.e. prime contract or subcontract, is assigned a NAICS code which best describes the goods or services being acquired and the principal purpose of the procurement. Generally, a requirement is classified according to the component that represents the greatest dollar value. For example, when considering a "furnish and install" procurement, the NAICS code is determined by the dollar value of the material to be supplied versus the cost of the service that is required to install the material; the NAICS code is determined by whichever cost is greater. Also, procurements for supplies must be classified under the appropriate manufacturing NAICS code, not under the wholesale or retail trade NAICS codes.

What are Size Standards?

Each NAICS code has a corresponding size standard. See <http://www.sba.gov/size/>. The SBA establishes small business size standards on an industry-by-industry basis. They correlate to the NAICS codes published in the NAICS manual and apply to all federal prime contracts and subcontracts.

The size standards are set forth in 13 CFR Part 121 and the FAR 19.102 (48 CFR 19.102). Size standards that are preceded by a dollar sign (\$) are expressed in millions of dollars and represent average gross annual receipts over the firm's last three (3) completed fiscal years. Generally, size standards not expressed in dollars represent the average number of full-time employees. Employee-based standards are used for manufacturing/wholesaling industries. Also, the size standard includes the concern's affiliates' employees/revenue.

What is a Small Business?

In order to qualify for benefits as a small business, a concern must first meet the definition of "business concern" under 13 CFR 121.105. In essence, it must be a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U. S. economy through payment of taxes or use of American products, materials, or labor. The business concern qualifies as a small business if its receipts or employees (whichever standard is applicable) are

under the applicable size standard (see 13 CFR 121) (FAR 19.1). In determining a business' size, the receipts or revenues of all affiliates are counted (see 13 CFR 121.103).

What is Affiliation?

Business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors, including common management, common ownership, and contractual relationships. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located inside the United States. (See 13 CFR 121.103).

How Do NAICS Codes Affect Size Status Self Certifications?

In conjunction with the Small Business size representation, the NAICS code and corresponding size standard must be designated in the solicitation. In this manner, offerors are properly notified of the applicable qualifying criteria. When determining the NAICS code/size standard of a subcontractor, find the NAICS code which best describes the product or service being purchased. Do not use the same NAICS code as the one in your prime contract with the government, unless the subcontract is for the same item/service. Some companies may qualify as small under one NAICS code but exceed the size standard for another.

What Certifications Apply to Subcontractors?

What is Self-Certification?

A small business must qualify and self-certify as a small business at the time it submits its offer as a Section 8(d) subcontractor (see 13 C.F.R. §121.411). An OTSB contractor acting in good faith may rely on the written representation of its subcontractor regarding its status as a SB (including ANCs and Indian tribes), SDB, WOSB, VOSB or SD/VOSB firm. Acting in good faith could be considered the reasonable judgment of a prudent business person. OTSB contractors must verify HUBZone SB status in the Central Contractor Registration (CCR) at www.ccr.gov. (See Appendix G, Small Business Federal Definitions.)

A typical self-certification that must be maintained by the OTSB contractor includes the following information:

- The full-text definitions (or FAR reference thereto) of a SB, ANC, Indian tribe, SDB, HUBZone SB, WOSB, VOSB and SD/VOSB.
- The NAICS code and corresponding size criteria applicable to the effort being solicited.
- Space for indicating whether or not the firm represents and certifies itself to be a SB, ANC, Indian tribe, WOSB, SDB, VOSB, SD/VOSB and/or HUBZone SB concern.
- Notification concerning penalties and remedies for misrepresentation of business status as an SB, ANC, Indian tribe, SDB, HUBZone SB, WOSB, VOSB, or SD/VOSB concern for the purpose of obtaining a subcontract.

- Appropriate space for the typed name and signature of the corporate official and the date.

The prime contractor is required to have a size self-certification for every subcontractor it is counting as small on its subcontracting reports. If there is no size self-certification, then the award to the subcontractor must be counted as an “other than small business” award. The prime contractor obtains a size certification in connection with each subcontract. No third party certifications are accepted unless written self-certifications are obtained and can be produced for reviews or obtained any time by the contractor. For example, the Central Contractor Registration (CCR) or the Online Representations and Certifications Application (ORCA) cannot be used in place of obtaining a written size self-certification from subcontractors. (FAR 4.1201(a)) For purposes of maintaining a small business source list, prime contractors may rely on the information contained in the CCR or equivalent database maintained or sanctioned by SBA, as an accurate representation of a concern’s size and ownership characteristics.

(See Appendix H, Sample Size Self-Certification Form.)

What are Federal Certifications?

In order to be considered a HUBZone SB, the firm must be certified by SBA and listed in the CCR at www.ccr.gov. Statements regarding the size status of a firm from state, county or local governments, or from purchasing councils or any other party are unacceptable for either federal or self-certification purposes.

OTSB contractors are required to provide notice to subcontractors concerning penalties and remedies for the misrepresentation of business status. Per 15 U.S.C. 645(d), punishment includes imposition of a fine, imprisonment, or both, and possible administrative remedies include suspension and debarment.

Who Can Challenge/Protest the Size Status of a Subcontractor?

The prime contractor, the Contracting Officer, other potential subcontractors, the SBA, or other interested parties, may challenge a subcontractor’s size status representation by initiating a protest to the Contracting Officer. Size protests are handled in accordance with sections 13 CFR 121.1001 to 121.1103.

Who Can Challenge/Protest the Disadvantaged Status of a Subcontractor?

Only the procuring agency Contracting Officer or the SBA may protest the disadvantaged status of a proposed subcontractor. Other small business subcontractors and the prime contractor may submit information to the Contracting Officer in an effort to persuade the Contracting Officer to initiate a protest. Such protests, in order to be considered timely, must be received by the Contracting Officer prior to the completion of performance by the intended subcontractor.

Protests challenging a subcontractor’s disadvantaged status representation shall be filed in accordance with Subpart B of 13 CFR 124.

Chapter 6

Post-Award Subcontracting Responsibilities

Who is Responsible for Enforcing the Subcontracting Rules?

The SBA, through the Small Business Act as amended, is designated as the principal government agency responsible for enforcing the provisions of the law pertaining to subcontracting. The authority to carry out these responsibilities is incorporated into government contracts by clauses required by the FAR. (Section 8(d) 15 USC 637(d))

Oversight of the Subcontracting Plan by the contracting agency is administered by the Administrative Contracting Officer (ACO), who is responsible for assisting in the evaluation of Subcontracting Plans, and for monitoring, evaluating and documenting contractor performance on behalf of the awarding agency. The ACO's responsibility is separate and distinct from SBA's responsibility. (FAR 19.705-4)

The SBA CMR monitors goal achievement after contract award and conducts various types of reviews, including Subcontracting Program Compliance Reviews and Subcontracting Orientation and Assistance Reviews. These reviews will be discussed later in greater detail. The following information and instruction discuss the reporting requirements for OTSB contractors and subcontractors. (13 CFR 125.3(e))

WHAT IS THE ELECTRONIC SUBCONTRACTING REPORTING SYSTEM (eSRS)?

This is the OFFICIAL site for post-award reporting requirements. This Internet-based tool will streamline the process of reporting on subcontracting plans and subcontracting plan performance. The eSRS eliminates the need for paper submissions of the Standard Forms 294 and 295 and replaces these with an easy-to-use password protected electronic process to collect the data. OTSB contractors and subcontractors must access www.esrs.gov to register their business and to review the contractor training manual, power point presentations, and FAQs. The system will guide you through the reporting process.

The eSRS is part of the Integrated Acquisition Environment with critical system linkages to the CCR, Federal Procurement Data System – Next Generation, and the DUNS number for prime contractors and subcontractors. The system will provide an application interface so that contractors with electronic systems of their own can upload their data into the eSRS.

The following sections address the post-award reporting requirements via the online system.

Who Submits Reports? (Reporting Requirements for 1st Tier Goals)

All OTSBs that have one or more prime contract(s) and/or subcontract(s) in excess of \$650,000 (\$1.5 million for construction of a public facility) with the federal government, and have

Subcontracting Plans must submit an online Individual Subcontract Report (ISR) (formerly the SF 294 report) unless the contractor is operating under an approved Commercial Subcontracting Plan or is currently in the DOD Test Program for Negotiation of Comprehensive Subcontracting Plans. A separate ISR is required for each federal contract and/or subcontract. (13 CFR 125.3(c)(1)(iii); FAR 19.704)

Contracting Officers and the Offices of Small and Disadvantaged Business Utilization (OSDBUs) will no longer receive paper SF-294s and SF-295s. Instead, they will log on to the eSRS to view their contractors' achievements. The system will provide a variety of standard reports, including Analysis of Subcontracting Plan Goal Attainment (SBA Form 1907), the DOD P-14, a Five-Year Trend Analysis, and a number of other reports - as well as an ad hoc reporting tool for users who wish to design their own reports. The agency OSDBUs will no longer need to input the SF 295 data into a Government database, as they have done in recent years, nor will they have to develop a special report for SBA; everyone will have access to the data at the same time. Also, the eSRS will provide automatic reminder notices to contractors when reports are due and generate delinquent notices when contractors fail to submit reports by the due date. SBA CMRs will also be able to access the information from the eSRS in order to conduct compliance reviews.

The clause at FAR 52.219-9 will be modified to include general instructions and require that the OTSB contractor provide the prime contract number to all OTSB subcontractors with subcontracting plans under the flow-down requirement. This change will allow subcontractors to enter the prime contract number when they enter their reports for individual contracts. Use of the prime contract number will enable the eSRS system to portray subcontracts at lower-tiers on a contract-by-contract basis and users will know how much small business receives in the aggregate by rolling up all the tiers. It will be useful for agencies such as SBA and the Defense Contract Management Agency (DCMA) that perform compliance reviews.

How Often is the ISR Report Submitted?

The ISR is submitted semi-annually during contract performance and at the completion of the contract. In other words, it is due by April 30th and October 30th and at the completion of the contract. The first ISR should be submitted during the first reporting period, even if no subcontracting has taken place.

What is Reported on the ISR?

The ISR report collects subcontract data, including:

- The dollar amount and percent of the total planned subcontracting awards and planned SB (including ANCs and Indian tribes), SDB (including ANCs and Indian tribes), WOSB, HUBZone SB, VOSB, and SD/VOSB goals. Additionally, the report requires breakdown of ANC and Indian tribe awards. These goals are a material part of the prime contract or subcontract, or, if revised through a contract modification, the revised goals.

- The cumulative dollars awarded in each category to reflect the progress made toward the SB (including ANCs and Indian tribes), SDB (including ANCs and Indian tribes), WOSB, HUBZone SB, VOSB, and SD/VOSB goals. Additionally, the report requires further breakdown of ANC and Indian tribe awards.
- The DUNS number as it appears on the federal contract
- Product/Service Lines
- NAICS Code
- Email addresses of government reviewing officials
- For lower-tier subcontractors: include the prime contract number AND higher-tier subcontractor DUNS numbers

The system calculates the achievements by two methods:

- percent of total contract values
- percent of total subcontracting

It is very important that all areas on the report form are completed; the system requires the form to be complete and accurate or it may be rejected. For Blocks 2 – 8, the goals from the subcontracting plan will be entered and the actual cumulative columns will be calculated automatically.

Who Submits Summary Subcontract Report (SSR) (formerly the SF 295 report)?

All OTSB contractors that have one or more prime contract(s) and/or subcontract(s) in excess of \$650,000 (\$1.5 million for construction of a public facility) with the federal government, and have Subcontracting Plans. OTSB contractors/subcontractors must access the online reporting system at www.esrs.gov to complete this report. (13 CFR 125.3(c)(1)(iii); FAR 19.704)

To Whom is the SSR Submitted?

A separate SSR must be submitted to each federal agency for which the OTSB is performing work, covering only that federal agency's contracts. For example, if an OTSB is performing on contracts or subcontracts for GSA only, then the SSR that includes all GSA work is submitted online to the agency office selected from the drop down menu. If an OTSB is performing on contracts or subcontracts in excess of \$650,000 (\$1.5 million for construction of a public facility) and has Subcontracting Plans with one or more federal agencies in addition to GSA, then a separate SSR, excluding GSA subcontract data, must be submitted to each appropriate federal agency selected from the drop down menu.

DOD awards are consolidated except for construction and related work (e.g., contracts with the Army Corps of Engineers). You should contact your DOD contracting officer if you have any questions about special DOD reporting requirements.

How often is the SSR Submitted?

For work performed for civilian agencies using an Individual or Master Subcontracting Plan, the SSR is submitted once a year, thirty (30) days after the close of the fiscal year, i.e. due by October 30th. For work performed for DOD activities, the SSR is submitted semi-annually, by the 30th day of the month following the close of the reporting period, i.e., due by April 30th and October 30th.

In the case of a commercial subcontracting plan, this report is due within 30 days after the close of the government's fiscal year (October 30th for the year ending September 30th).

What is reported on the SSR?

Prime and subcontractors who have subcontracting plans will report subcontracting data from these plans on the SSR. Prime and subcontractors will also report data from contracts that don't require subcontracting plans on the SSR.

All subcontract awards to OTSB and SB (including ANCs and Indian tribes), SDB (including ANCs and Indian tribes) WOSB, HUBZone SB, VOSB, and SD/VOSB firms regardless of the dollar value, under all federal prime contracts and/or subcontracts awarded by the specific federal agency (GSA or DOT, etc.) are included on the SSR. Additionally, the report requires further breakdown of ANC and Indian tribe awards.

For Individual and Master Subcontracting Plans, in Blocks 2 through 7 of the SSR, all subcontracting awards issued are included for each agency from which a contract or subcontract were received, regardless of the dollar amount. A prorated indirect portion must be included. Commercial business is not included. Subcontracting dollars are reported for the period indicated, either 6 months or 12 months.

For Commercial Plans, in Block 8, the type of Subcontracting Plan and the percentage of dollars attributable to the agency to which the report is submitted must be identified. In Blocks 2 through 7, all subcontracting activity (both government and commercial) in effect during the year is included. **All** indirect dollars must be included. The subcontracting dollars are reported for a 12 month period.

All data reported on the SSR must be accurate. Records must be available to support the data.

The ISR and SSR are intended to document the dollars awarded to SB (including ANCs and Indian tribes), SDB (including ANCs and Indian tribes), HUBZone SB, WOSB, VOSB, and SD/VOSB. It is important to note that prime contractors may take credit for only their own

subcontracting dollars, not for the dollars awarded by subcontractors at lower tiers. See the eSRS website and FAR clause 52.219-9 for instructions.

The Government will review: Prime Contractors' ISRs
ALL SSRs

The Prime Contractor will review: 1st tier Subcontractors' ISRs

Higher-tiered Subcontractors will review: Lower-tiered Subcontractors' ISRs

Contractors must print a hard copy of the SSR, have it signed by the Chief Executive Officer and keep the signature copy on file for 4 years.

Acceptance of reports means that the Government has reviewed the report and that it appears to be complete. Since a future on-site compliance review could identify flaws in the preparation of the report, the government always has the right to reject a report that has previously been accepted.

The Full Operating Capability (FOC) of eSRS also includes the following features:

- Interfaces with capable vendors' back-office applications;
- Robust reporting for SBA and other Government users (includes both pre-defined reports and a versatile ad hoc reporting tool);
- Adding the Year-End Supplementary Report for Small Disadvantaged Business and the Small Disadvantaged Business Participation Report (formerly the Optional Form 312) to the reports menu; and
- Break-down of dollars attributable to the appropriate Federal agencies resulting from commercial plans

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Chapter 7

How SBA Monitors Other-Than-Small Business Contractors

As stated previously, the SBA, through the Small Business Act as amended, is designated as the principal government agency responsible for enforcing the provisions of the law pertaining to subcontracting. The authority to carry out these responsibilities is incorporated into government contracts via the Utilization Clause (FAR 52.219-8) and the Subcontracting Plan Clause (FAR 52.219-9), which provide SBA with the access and legal authority to monitor any subcontracting activity at any tier. SBA accomplishes this responsibility through periodic reviews, which may be major or minor in scope (13 CFR 125.3(f)). However, in accordance with FAR 42.302 (a)(51,52,53,54 and 55), the Defense Contract Management Agency (DCMA) performs similar program reviews on DOD contractors, with some exceptions, over which it has cognizant administrative authority. It reviews prime contractors only since it has no privity of contract with subcontractors. (See Appendix I, SBA/DCMA Memorandum of Understanding.)

Subcontracting Program Compliance Reviews

Subcontracting Program Compliance Reviews deal with all aspects of a firm's Small Business Program. The purpose of this comprehensive review is to evaluate the overall effectiveness of a firm's Small Business Program. There are seven mandatory elements of this review which can have a significant impact on the way an OTSB contractor administers its Small Business Program.

- Validation of the contractor's methodology for preparing reports of subcontracts awarded to all categories of SB and OTSB, involving examination of the purchase order journal or computerized process and verification of a sampling of purchase orders to small businesses in all categories, including the supporting certifications.
- Five-year trend analysis of the contractor's utilization of all categories of small businesses.
- Overall evaluation of the contractor's Small Business Program which determines the contractor's internal dedication and commitment to its program.
- Sampling of contracts containing subcontracting goals to determine the actual achievements against the goals for small businesses in all categories and to ensure that the contractor has implemented specific provisions contained in the other elements of the Subcontracting Plan.
- Purchase order analysis of awards made to OTSB to identify possible opportunities for small business; to make certain that small businesses are being solicited in every instance possible for purchases over \$150K, to assure adequate documentation exists in cases where small businesses are not solicited, and to determine if flow-down Subcontracting Plans have been required when subcontracts over \$650,000 (\$1.5 million for construction of a public facility) were issued to these subcontractors.
- Follow-up on sourcing efforts to determine the status of small business sources in all categories referred to the contractor by the CMR since the last review.

- Follow-up on prior recommendations made by the CMR to improve the contractor's Small Business Program.

A rating is issued to the OTSB based on the criteria listed above.

(SBA Standard Operating Procedure Number 60 03, Subcontracting Assistance Program; and also see Appendix J, SBA Small Business Program Compliance Review Preparation Checklist.)

Performance Reviews

This review focuses on subcontracting achievement on a contract-by-contract basis via the ISR and overall performance via the SSR as accessed through the online reporting system. In some cases, the previously submitted SF 294 and/or SF295 reports may also be reviewed for trends. A Performance Review usually does not include a physical visit to the contractor's facility, or a rating assigned by SBA.

Subcontracting Orientation and Assistance Reviews (SOAR)

SOAR usually includes a physical visit to the contractor's facility with the purpose of providing advice or tools so that the contractor can elevate its small business program. The SOAR visit can be used to conduct orientation for a new SBLO, discuss a problem with the standard reports detected during a Performance Review, discuss capabilities of small business sources, etc. (13 CFR 125.3)

Follow-up Reviews

This review focuses on the company's implementation of previous SBA recommendations and on its utilization of referred sources.

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Chapter 8

Subcontracting Program Awards

The SBA Subcontracting Program Awards recognize an OTSB contractor that has gone above and beyond in the management of its Small Business Subcontracting Program and in creating an awareness of small business socio-economic programs that is pervasive throughout the company. This is reflected in its outreach activities, management support of the program, effectiveness of the SBLO, and in meeting and exceeding its small business subcontracting goals. The awards are as follows:

Award of Distinction

OTSB prime contractors that received an “Outstanding” program review rating may be nominated by the SBA CMR. If the nomination is approved, the Award of Distinction is presented by the SBA in an appropriate ceremony.

Dwight D. Eisenhower Award for Excellence

One of SBA’s most prestigious awards, the annual Dwight D. Eisenhower Award program recognizes prime contractors that have demonstrated superior accomplishments in awarding subcontracts to small firms. There are five categories: construction, manufacturing, research and development, service, and utilities. If the nomination is approved, the Dwight D. Eisenhower Award for Excellence is presented by the SBA in an appropriate ceremony. This is a self-nominating award program.

Francis Perkins Vanguard Award

This award honors government agencies, government officials, and corporations in the private sector for exemplary utilization of women-owned small businesses as prime contractors, subcontractors, and suppliers. This is a self-nominating award program.

Each year, SBA also asks OTSB prime contractors to nominate its outstanding small business subcontractor(s) to compete for the *Small Business Subcontractor of the Year*. Nominees are first competed on a regional basis, and then the ten regional winners compete for the national title. Nominations are generally due in December each year. Every small business that is nominated receives SBA’s *Award of Excellence*.

For more information on these award programs, contact your CMR.

APPENDIX A

LEGISLATION AFFECTING FEDERAL PRIME AND SUBCONTRACTS

1. **Public Law 85-536**. Passed in 1958, this legislation amended the Small Business Act of 1953 and authorized a voluntary subcontracting program. Prior to 1978, this statute was implemented most effectively in the Armed Services Procurement Regulations (ASPR), a predecessor to the Federal Acquisition Regulations. It required large contractors receiving contracts over \$500,000 with substantial subcontracting opportunities to establish a program which would enable minority business concerns to be considered fairly as subcontractors or suppliers.
2. **Public Law 95-507**. Passed in 1978, this legislation amended Section 8(d) of the Small Business Act and created the foundation for the Subcontracting Assistance Program, as it is known today. It changed the participation of large contractors in the program from voluntary to mandatory, and it changed the language of the law from "best efforts" to "maximum practicable opportunities." Other key features include the following:
 - a. A requirement that all Federal contracts in excess of \$100,000 (now tied to the Simplified Acquisition Threshold, currently \$150,000 – adjusted for inflation in 2010) provide maximum practicable opportunity for small and small disadvantaged business to participate; and
 - b. A requirement that all Federal contracts in excess of \$500,000 (adjusted in 2010 to \$650,000 to account for inflation) or more than \$1,000,000 (adjusted in 2010 to \$1.5 million to account for inflation) in the case of construction contracts for public facilities, is accompanied by a formal subcontracting plan containing separate goals for small business and small disadvantaged business.
3. **Public Law 98-577 (The Small Business and Federal Procurement Enhancement Act of 1984)**. This legislation amended the Small Business Act as follows:
 - a. By providing that small and small disadvantaged businesses be given the maximum practicable opportunity to participate in contracts and subcontracts for subsystems, assemblies, components, and related services for major systems; and
 - b. By requiring Federal agencies to establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small and small disadvantaged businesses.
4. **Public Law 99-661 (The National Defense Authorization Act of 1987)**. Section 1207 of this statute required the Department of Defense to establish as its objective a goal of 5 percent of the total combined amount obligated for contracts and subcontracts entered

into with small and small disadvantaged businesses in each of fiscal years 1987, 1988, and 1989. Also, the use of SDB set-asides was authorized. (Subsequent legislation extended this period through the year 2000; however, the set-aside aspect of the program was suspended in fiscal year 1996.)

5. **Public Law 100-180 (The National Defense Authorization Act of 1988 and 1989).**

Section 806 required the Secretary of Defense to increase awards to small and small disadvantaged business.

6. **Public Law 100-656 (The Business Opportunity Reform Act of 1988).** The principal focus of this legislation was the 8(a) Program, but it contained a number of other provisions which affected the Subcontracting Assistance Program. These other provisions included the following:

- a. Section 304 requires that the Federal Acquisition Regulations be amended to include a requirement for a contract clause authorizing the Government to assess liquidated damages against large contractors which fail to perform according to the terms of their subcontracting plans and cannot demonstrate that they have made a good faith effort to do so;
- b. Section 502, now codified at 15 U.S.C. Section 644(g)(1), requires the President to establish annual goals for procurement contracts of not less than 23 percent for small business prime contract awards and not less than 5 percent for small disadvantaged business prime contract and subcontract awards for each fiscal year [emphasis added]; and
- c. Section 503 requires the SBA to compile and analyze reports each year submitted by individual agencies to assess their success in attaining Government-wide goals for small and small disadvantaged businesses, and to submit the report to the President.

7. **Public Law 101-189 (Defense Authorization Act).** Section 834 established the Test Program for the Negotiation of Comprehensive Subcontracting Plans. This statute authorized a pilot program limited to a few Department of Defense large business large contractors approved by the Office of Small Business Programs (OSBP) in the Office of the Secretary of Defense (OSD). The program allows participants to have one company-wide subcontracting plan for all defense contracts, rather than individual subcontracting plans for every contract over \$550,000, and it waives the requirement for the semi-annual SF 294 *Subcontracting Report for Individual Contracts*. The large contractor is still required to submit the SF 295 semi-annually, and it is required to have individual subcontracting plans and to submit SF 294s on any contracts with other Government agencies. Public Law 103-355, Section 7103, extended this test program through September 30, 1998. Note: In FY 2006, an electronic subcontracting reporting

system replaced the SF 294/295 reports.

8. **Public Law 101-510 (The National Defense Authorization Act for Fiscal Year 1991).** Section 831 established the Pilot Mentor Protégé Program. This program encourages assistance to small disadvantaged businesses by providing special incentives to companies approved as mentors. The Government reimburses the mentor for the cost of assistance to its protégés, or, as an alternative, it allows the mentor credit (a multiple of the dollars in assistance) toward its subcontracting goals. The program is managed by the OSDBU at the Pentagon in Washington. Prior to receiving reimbursement or credit, mentors must submit formal applications, including the names of proposed protégés.
9. **Public Law 102-366 (The Small Business Credit and Business Opportunity Enhancement Act of 1992).** Section 232(a)(6) removes the requirement from SBA to do the Annual Report to Congress on Unacceptable Subcontracting Plans, which had been found in Section 8(d) of the Small Business Act.
10. **Public Law 103-355 (The Federal Acquisition Streamlining Act of 1994 (FASA)).** Section 7106 of FASA revised Sections 8 and 15 of the Small Business Act to establish a Government-wide goal of 5 percent participation by women-owned small businesses, in both prime and subcontracts. Women-owned small businesses are to be given equal standing with small and small disadvantaged business in subcontracting plans. In practical terms, this means that all subcontracting plans after October 1, 1995, must contain goals for women-owned small businesses and that all FAR references to small and small disadvantaged business have been changed to small, small disadvantaged and women-owned small business.
11. **HUBZone Empowerment (Public Law 105-135).** The HUBZone Empowerment Contracting Program, which is included in the Small Business Reauthorization Act of 1997, stimulates economic development and creates jobs in urban and rural communities by providing contracting preferences to small businesses that are located in HUBZones and hire employees who live in HUBZones.
12. **The Veteran's Entrepreneurship and Small Business Development Act of 1999 (Public Law 106-50).** This statute established a goal for subcontracts awarded by prime contractors to service-disabled veteran-owned small business concerns of 3%. A best effort goal will be established for veteran-owned small businesses. Subcontracting plans must incorporate these goals.

APPENDIX B

U.S. Small Business Administration
Office of Government Contracting
October 2010

FACT SHEET

Subcontracting Assistance Program

Section 8(d) of the Small Business Act (15 USC 637(d)) requires that small businesses, small disadvantaged businesses, HUBZone small businesses, women-owned small businesses, veteran-owned small businesses, and service disabled veteran-owned small businesses have maximum practicable opportunity to participate as subcontractors on Federal contracts, to the extent that such opportunity is consistent with efficient contract performance. Under this statute, the U.S. Small Business Administration (SBA) is authorized to assist Federal agencies and businesses in complying with their statutory obligations and to evaluate the compliance of other-than-small businesses with their subcontracting plans.

The term "other-than-small" business refers to any entity that is not classified as a small business. This includes large businesses, state and local governments, and non-profit organizations. In most cases, it also includes public utilities, educational institutions, and foreign-owned firms. However, there may be certain instances where a public utility, educational institution, or foreign-owned firm could be considered a small business. When in doubt, you should contact your local SBA office.

Note: foreign-owned firms that receive Federal contracts over the applicable dollar threshold are normally required to have subcontracting plans if any portion of their contract is to be performed in the United States. However, a foreign-owned firm can sometimes meet SBA's criteria for small business status, in which case they would be exempt from the requirement to submit a subcontracting plan. See 13 CFR Part 121, especially section 121.105(a) for additional information.

SBA employs Commercial Market Representatives (CMRs) throughout the Nation to provide assistance to small businesses in obtaining subcontracts and to help other-than-small businesses meet their subcontracting goals. The CMRs perform reviews of other-than-small Federal contractors to identify opportunities for small business and to ensure that subcontracting plan requirements are met. The CMRs also counsel small businesses on how to market their products and services.

Assistance to Federal agencies in evaluating proposed subcontracting plans is provided by Procurement Center Representatives (PCRs), who are stationed at Federal buying activities throughout the country. PCRs advise Federal contracting officers whether the goals for small business, small disadvantaged business, HUBZone small business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business are adequate and realistic and whether the proposed plan contains all of the other elements required by the Federal Acquisition Regulations (FAR).

Subcontracting Requirements

Any other-than-small business that receives a Federal contract or subcontract over \$650,000 (over \$1.5 million for construction of a public facility) must adopt a subcontracting plan with separate and distinct goals for small, (including ANCs and Indian tribes) small disadvantaged, (including ANCs and Indian tribes), small HUBZone, women-owned small, veteran-owned small, and service-disabled veteran-owned small businesses. The proposed subcontracting plan must be accepted and approved by the contracting officer before the contract can be awarded. Once approved, the subcontracting plan is incorporated into the resultant contract. This is significant because an other-than-small contractor that fails to make a good faith effort to achieve the goals in its subcontracting plan may be found in material breach of contract and terminated for default, or liquidated damages may be imposed.

The other-than-small contractor or subcontractor is required to submit periodic reports to the Government showing its achievements against the goals in each of its subcontracting plans, along with a summary report showing its aggregate subcontracting achievements on all Federal contracts. (See "Reporting Requirements for Other-Than-Small Businesses" on pages 4 and 5.)

Any company that receives a Federal contract over the simplified acquisition threshold must agree to provide maximum practicable opportunity to small, small disadvantaged, small HUBZone, women-owned small, veteran-owned small, and service disabled veteran-owned small businesses consistent with the efficient performance of the contract. This requirement is sometimes referred to as the "best effort" clause. It applies to small businesses as well as to other-than-small businesses.

It is important to emphasize that small businesses are never required to adopt subcontracting plans for themselves or to submit such plans to the Government to obtain Federal contracts.

The Required Elements of a Subcontracting Plan

A subcontracting plan is required to contain eleven elements, and FAR 52.219-9(d) provides a detailed outline of these elements. They are: (1) separate percentage goals, expressed in terms of percentages of total planned subcontracting, for the use of small business (including ANCs and Indian tribes), small disadvantaged business (including ANCs and Indian tribes), small HUBZone business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business; (2) total dollars planned to be subcontracted to each group; (3) a description of the types of supplies and services to be subcontracted to each group; (4) a description of the method used to develop each of the goals; (5) a description of the method used to identify potential sources; (6) a statement as to whether or not indirect costs were included in the subcontracting goals; (7) the name of the subcontracting plan's administrator and a description of his or her duties; (8) a description of the efforts that the company will make to ensure that all small businesses will have an equitable opportunity to compete for subcontracts; (9) assurances that the company will "flow down" the subcontracting requirements to its subcontractors (see page 3); (10) assurances that the company will cooperate in any studies or surveys and submit periodic reports to the Government, including the Individual Subcontract Report (ISR) (formerly the Standard Form 294) and the Summary Subcontract Report (SSR) (formerly the Standard Form 295); and (11) a recitation of the types of records the company will maintain to demonstrate its compliance with the plan.

The Flow-Down Process

The requirement for a subcontracting plan flows down to all other-than-small business subcontractors with subcontracts over \$650,000 (over \$1.5 million for construction of a public facility). According to the statute, an other-than-small prime contractor with a subcontracting plan must require all other-than-small subcontractors to adopt a plan similar to its own. The prime contractor is responsible for obtaining, approving, and monitoring the subcontracting plans of its other-than-small subcontractors.

A prime contractor's subcontractor is referred to as the first-tier subcontractor. If the first-tier subcontractor is an other-than-small business and it subcontracts to another other-than-small business, it must require that firm (the second-tier subcontractor) to adopt a subcontracting plan similar to its own. If the second-tier subcontractor subcontracts to yet another other-than-small business (the third-tier subcontractor), it would have to require that company to adopt a subcontracting plan as well. This process continues indefinitely, as long as the subcontractors

are not small businesses and their subcontracts are over \$650,000 (over \$1.5 million for construction of a public facility).

Under the flow-down provision, other-than-small business subcontractors with subcontracting plans must submit the ISR and the SSR (explained on pages 4 and 5) just as the prime contractors do via the Electronic Subcontracting Reporting System at www.esrs.gov. The prime contractor will review the ISRs submitted by its subcontractors. This is done for monitoring purposes, and continues in this manner for all tiers. The SSR data submitted by subcontractors enable the Government to collect subcontracting statistics from all of the subcontracting tiers.

The flow-down process is intended to ensure that all small businesses receive "maximum practicable opportunity" to perform on Government contracts and subcontracts in accordance with Section 8(d), regardless of the subcontracting tier.

Commercial Plan (formerly called Commercial Products Plan)

If an other-than-small business is selling a product or service to the Government which differs just slightly from what it is selling to the general public, it may be eligible for a Commercial Plan. Such a plan is company-wide or division-wide and relates to the company's production generally, for both commercial and noncommercial products or services, rather than solely to the Government contract. It must be approved by the first Federal agency awarding the company a contract requiring a subcontracting plan during the fiscal year. Once approved, the plan remains in effect during the company's fiscal year and covers all of its commercial products or services.

A Commercial Plan has several advantages over individual subcontracting plans. Paperwork and record keeping are vastly reduced, since there is only one plan for the entire company or division. Perhaps even more attractive is the fact that the company is required to submit one annual Summary Subcontract Report at www.esrs.gov; no Individual Subcontract Reports are required.

Master Subcontracting Plans

A Master Subcontracting Plan is a subcontracting plan which contains all of the elements required by the Federal Acquisition Regulations 52.219-9 except goals for small business, small disadvantaged business, HUBZone small business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business. Thereafter, as the company receives Government contracts requiring subcontracting plans; it simply develops specific goals for each plan. This process avoids a redundant effort and allows more time and effort for the substantive task of developing goals.

As in the case of a Commercial Products Plan, a Master Plan must be approved by the first Federal agency awarding the company a contract requiring a subcontracting plan during the fiscal year. A Master Plan is effective for three years; however, when incorporated into an individual plan, a master plan applies to that contract throughout the life of the contract.

Specific Goal Requirements

Section 15(g) of the Small Business Act (15 USC 644(g)) requires the President to establish annual subcontract goals of not less than 5% of the total value of all subcontract awards each fiscal year for both small disadvantaged businesses and women-owned small businesses and not less than 3% for service disabled veteran-owned small business. These are the only categories where the Small Business Act specifies a minimum percentage for subcontracting.

While there is no established minimum percentage subcontracting goal for small business itself, the Government-wide achievements have generally ranged from 34% to 39%. The small business goal in any given subcontracting plan should reflect maximum practicable opportunity for small business consistent with the efficient performance of the contract.

Subcontracting plans must also include a goal for veteran-owned small business. The statute does not specify a minimum percentage for this category; however, since service disabled veteran-owned small business are included

here, the goal must be greater than 3% to ensure that the *non-service disabled* veteran-owned small business receive maximum practicable opportunity to participate as subcontractors.

The Small Business Act specifies a 3% goal for HUBZone small business concerns in *prime contracts*, and this percentage has generally been adopted as a benchmark for subcontracting plans as well. As in the case of other socio-economic goals, the percentage that is negotiated in a subcontracting plan should represent maximum practicable opportunity for small business consistent with the efficient performance of the contract.

Reporting Requirements for Other-Than-Small Businesses

- Individual Subcontract Report (formerly Standard Form 294) : Other-than-small business (OTSB) prime contractors must register their businesses and submit an online report via the Electronic Subcontract Reporting System at www.esrs.gov. The prime contractor submits the report to appropriate procuring agencies semi-annually during the performance of the contract and also upon each contract's completion. OTSB subcontractors will use the online reporting system which will then be accessed by the prime contractor or immediate higher-tier subcontractor. The ISR is not required if the company is operating under a Commercial Products Plan or participating in the Department of Defense Test Program for Negotiation of Comprehensive Subcontracting Plans.
- Summary Subcontract Report (formerly Standard Form 295): OTSB prime contractors and subcontractors must periodically submit a Summary Subcontract Report via the Electronic Subcontracting Reporting System at www.esrs.gov. If the procuring agency is a civilian agency, the SSR is required annually (by October 30th for the previous fiscal year ended September 30th); if the procuring agency is the Department of Defense, the SSR is required semi-annually (by April 30 for the first six months of the fiscal year and by October 30 for the entire fiscal year).
- In the case of a *commercial plan*, the SSR is required only once a year (within 30 days after the close of the government's fiscal year).

The ISR and SSR are intended to document the dollars awarded to small, small disadvantaged, small HUBZone, women-owned small businesses, veteran-owned small businesses, and service-disabled veteran-owned small businesses. Prime contractors may take credit for only their own subcontracting dollars, not for the dollars awarded by subcontractors at lower tiers.

Assistance Available from SBA

Through its network of PCRs and CMRs, SBA can provide assistance to small businesses as well as to Federal agencies and large businesses. PCRs can help Federal agencies with solicitations and subcontracting requirements, and they can evaluate proposed subcontracting plans submitted by bidders and offerors. CMRs can counsel other-than-small businesses on how to prepare subcontracting plans and meet the other requirements of the law, and they can counsel small businesses on how to market their products and services to prime contractors.

For additional information on PCRs, CMRs, and other resources available to small businesses, please visit <http://www.sba.gov/GC>. For current listings of the PCRs and CMRs, click on the button labeled "Contacts and Representatives."

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APPENDIX C

SMALL BUSINESS SUBCONTRACTING PLAN (Model OUTLINE *)

Name of Contractor:

Contractor's Address:

Solicitation or Contract Number: _____

Item/Service: _____

Total Amount or Contract (Including options) \$ _____

Period of Contract Performance (DAY, MO. & YR.) _____

* Federal Acquisition Regulation (FAR), paragraph 19.708(b)(1) prescribes the use of the clause at FAR 52.219-9 entitled "Small Business Subcontracting Plan." The following is a suggested model for use when formulating such subcontracting plan. While this model plan has been designed to be consistent with FAR 52.219-9, other formats of a subcontracting plan may be acceptable. However, failure to include the essential information as exemplified in this model may be cause for either a delay in acceptance or the rejection of a bid or offer where the clause is applicable. Further, the use of this model is not intended to waive other requirements that may be applicable under FAR 52.219-9 or that may appear in the Government's solicitation. "SUBCONTRACT," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a federal government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

1. TYPE OF PLAN (check one)

- Individual Plan (All elements developed specifically for this contract and applicable for the full term of this contract, including any option periods.)
- Master Plan (Goals developed for this contract; all other elements standard; must be renewed every three years)
- Commercial Plan Commercial products/service plan, including goals, covers the offeror's fiscal year and applies to the entire production of commercial items or delivery of services sold by either the entire company or a portion thereof (e.g., division, plant, or product line); this includes planned subcontracting for both commercial and Government business. In accordance with FAR 19.704(d), "A commercial plan (as defined in FAR 19.701) is the preferred type of subcontracting plan for contractors furnishing commercial items." (Contractor sells large quantities of off-the-shelf commodities to many Government agencies. Plans/goals negotiated by a lead agency on a company-wide basis rather than for individual contracts. Plan effective only during the year for which it is approved. The contractor must provide a copy of the lead agency approval.)

Version: 01/2009

2. GOALS

State separate dollar and percentage goals, expressed in terms of percentages of total subcontracting dollars, for the use of small business (including Alaska Native Corporations (ANCs) and Indian tribes), veteran-owned small

business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs in the following format. **(For a contract with options, provide a separate statement for the basic contract and individual statements for each option year.)**

a. Total estimated dollar value and percent of planned subcontracting with small businesses (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns): (% of "c")
 \$ _____ and _____ %

b. Total estimated dollar value and percent of planned subcontracting with large businesses (all business concerns classified as "other than small"): (% of "c")
 \$ _____ and _____ %

c. Total estimated dollar value of all planned subcontracting for an individual contract plan; or the offerors total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan; i.e., the sum of a and b above: \$ (100 Percent)
 \$ _____ and _____ %

d. Total estimated dollar value and percent of planned subcontracting with veteran-owned small businesses: (% of "c")
 \$ _____ and _____ %

e. Total estimated dollar value and percent of planned subcontracting with service-disabled veteran-owned small businesses: (% of "c")
 \$ _____ and _____ %

f. Total estimated dollar value and percent of planned subcontracting with HUBZone small businesses: (% of "c")
 \$ _____ and _____ %

g. Total estimated dollar value and percent of planned subcontracting with small disadvantaged businesses: (% of "c")
 \$ _____ and _____ %

h. Total estimated dollar value and percent of planned subcontracting with women-owned small businesses: (% of "c")
 \$ _____ and _____ %

3. DESCRIPTION OF PRODUCTS AND/OR SERVICES TO BE SUBCONTRACTED:

Provide a description of all the products and/or services to be subcontracted under this contract, and indicate the types of businesses supplying them: i.e., OTHER THAN SMALL BUSINESS (OTHER, e.g., LARGE BUSINESS), SMALL BUSINESS (SB)(including ANCs and Indian tribes), VETERAN-OWNED SMALL BUSINESS (VOSB), SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (SD/VOSB), HUBZONE SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS (SDB) (including ANCs and Indian tribes), AND WOMEN-OWNED SMALL BUSINESS (WOSB):

(Check all that apply)

Subcontracted OTSB SB VOSB SDVOSB HUBZone SDB WOSB

(List Products and /Services to be subcontracted under "Subcontracted" in the first column)

(Attach additional sheets if necessary.)

4. A description of the method used to develop the subcontracting **GOALS**:

5. A description of the method used to identify potential **SOURCES** for solicitation purposes (e.g., whether you used existing company source lists, the Central Contractor Registration (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small business trade associations. A firm may rely on the information contained in the CCR at www.ccr.gov and select Dynamic Small Business Search as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small business source list. Use of the Dynamic Small Business Search as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(Attach additional sheets if necessary.)

6. Indirect costs have _____ have not _____ been included in the dollar and percentage subcontracting goals stated above. (Check one.)

NOTE: COMMERCIAL PLANS MUST INCLUDE INDIRECT COSTS.

If indirect costs have been included, explain the method used to determine the proportionate share of such costs to be allocated as subcontracts to small, veteran-owned small business, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business concerns.

7. PROGRAM ADMINISTRATOR

Name, title, position within the corporate structure, and duties and responsibilities of the employee who will administer the contractor's subcontracting program.

Name:

Title:

ADDRESS:

Telephone:

Facsimile:

E-mail:

Duties: Has general overall responsibility for the contractor's subcontracting program, i.e., developing, preparing, and executing individual subcontracting plans and monitoring performance relative to the requirements of this particular plan. These duties include, but are not limited to, the following activities:

- a. Developing and promoting company-wide policy initiatives that demonstrate the company's support for awarding contracts and subcontracts to small (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business; and assure that small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small businesses are included on the source lists for solicitations for products and services they are capable of providing;
- b. Developing and maintaining bidder's lists of small (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns from all possible sources;
- c. Ensuring periodic rotation of potential subcontractors on bidders lists;
- d. Ensuring that procurement "packages" are designed to permit the maximum possible participation of small (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small businesses;
- e. Make arrangements to identify small, veteran-owned small (including ANCs and Indian tribes), service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small businesses through multiple sources such as SBA's SUB-Net (<http://web.sba.gov/subnet/>), the CCR Dynamic Small Business Search (http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm), the National Minority Purchasing Council Vendor Information Service, the Office of Minority Business Data Center in the Department of Commerce, the facilities of local small business, minority associations, and contact with federal agencies' Small Business Specialists;
- f. Overseeing the establishment and maintenance of contract and subcontract award records;
- g. Attending or arranging for the attendance of company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, Procurement Conferences, etc.;
- h. Ensure that small (including ANCs and Indian tribes), veteran owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns are made aware of subcontracting opportunities and how to prepare responsive bids to the company;
- i. Conducting or arranging for the conduct of training for purchasing personnel regarding the intent and impact of Section 8(d) of the Small Business Act on purchasing procedures;
- j. Monitoring the company's performance and making any adjustments necessary to achieve the subcontract plan goals;
- k. Preparing, and submitting timely, required subcontract reports;
- l. Coordinating the company's activities during the conduct of compliance reviews by federal agencies;
- m. Providing technical assistance; e.g., engineering, quality control, and managerial assistance to small (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small businesses.
- n. Other duties:

8. EQUITABLE OPPORTUNITY

Describe efforts the offeror will make to ensure that small (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes),

and women-owned small business concerns will have an equitable opportunity to compete for subcontracts. These efforts include, but are not limited to, the following activities:

- a. Outreach efforts to obtain sources:
 - 1. Contacting minority, women's, and small business trade associations;
 - 2. Contacting business development organizations;
 - 3. Attending small, veteran's, minority, and women's business procurement conferences and trade fairs;
 - 4. Locating sources from the Central Contractor Registration (CCR) Dynamic Small Business Search;
 - 5. Utilizing newspaper and magazine ads to encourage new sources.
 - 6. Posting Notices of Sources Sought and/or Requests for Proposals or Requests for Quotations on SBA's SUB-Net.

- b. Internal efforts to guide and encourage purchasing personnel:
 - 1. Presenting workshops, seminars, and training programs;
 - 2. Establishing, maintaining, and using small, veteran-owned small (including ANCs and Indian tribes), service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business source lists, guides, and other data for soliciting subcontracts; and 3. Monitoring activities to evaluate compliance with the subcontracting plan.

c. Additional efforts:

9. FLOW-DOWN CLAUSE

The contractor agrees to include the provisions under FAR 52.219-8, "Utilization of Small Business Concerns," in all subcontracts over \$150,000 that offer further subcontracting opportunities. All subcontractors, except small business concerns, that receive subcontracts in excess of \$650,000 (\$1.5 million for construction) must adopt and comply with a plan similar to the plan required by FAR 52.219-9, "Small Business Subcontracting Plan." (Flow-down of the subcontracting plan requirement is not applicable to subcontracts for commercial items in contracts that contain either FAR 52.212-5(e) or FAR 52.244-6(c).)

10. REPORTING AND COOPERATION

The contractor gives assurance of: (1) cooperation in any studies or surveys that may be required; (2) submission of periodic reports which show compliance with the subcontracting plan; (3) submission of the Individual Subcontract Report (formerly Standard Form 294) and Summary Subcontract Report (formerly Standard Form 295) via the Electronic Subcontracting Reporting System at www.esrs.gov. Ensure that large business subcontractors with subcontracting plans agree to submit the ISR and SSR.

Reporting Period Report Due Dates

Oct 1 - March 31 ISR 4/30 (all agencies)
Oct 1 - Sept 30 ISR 10/30 (all agencies)
ISR due 30 days after contract completion
Oct 1 - March 31 SSR 4/30 (for contracts with DOD and NASA)
Oct 1 - Sept 30 SSR 10/30 (all agencies)

Oct 1 - Sept 30 SSR 10/30 (commercial subcontracting plans)

11. RECORDKEEPING

The following is a recitation of the type of records the contractor will maintain to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan. These records will include, but not be limited to, the following:

- a. If the prime contractor is not using Central Contractor Registration Dynamic Small Business Search as its source for small (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns, list the names of guides and other data identifying such vendors;
- b. Organizations contacted in an attempt to locate small (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business sources;
- c. On a contract-by-contract basis, records on each subcontract solicitation resulting in an award of more than \$150,000 indicating: (1) whether small business (including ANCs and Indian tribes) concerns were solicited, and if not, why not; (2) whether veteran-owned small business concerns were solicited, and if not, why not; (3) whether service-disabled veteran-owned small business concerns were solicited, and if not, why not; (4) whether HUBZone small business concerns were solicited, and if not, why not; (5) whether small disadvantaged business (including ANCs and Indian tribes) concerns were solicited, and if not, why not; (6) whether women-owned small business concerns were solicited, and if not, why not; and (7) if applicable, the reason that the award was not made to a small business concern;
- d. Records to support other outreach efforts, e. g., trade associations, business development organizations; conferences and trade fairs to locate small (including ANCs and Indian tribes), HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business sources; and veterans service organizations;
- e. Records to support internal guidance and encouragement provided to buyers through (1) workshops, seminars, training programs, incentive awards, and (2) monitoring of activities to evaluate compliance; and
- f. On a contract-by-contract basis, records to support subcontract award data including the name, address, and business size of each subcontractor. (This item is not required on a contract-by-contract basis for company or division-wide commercial plans.)
- g. Additional records:

In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

- (1) Assist small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
- (2) Provide adequate and timely consideration of the potentialities of small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns in all "make-or-buy" decisions.
- (3) Counsel and discuss subcontracting opportunities with representatives of small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business firms.
- (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

This subcontracting plan was submitted by:

Signature: _____
Typed Name: _____
Title: _____
Date Prepared: _____
Phone Number: _____
Facsimile Number: _____

SADBUS Recommendation: _____/Date_____

SBA Review/advisory comments²

Agency: U.S. Small Business Administration
Signature: _____
Typed Name: _____
Title: SBA Procurement Center Representative
Date Reviewed: _____
Phone Number: _____
Facsimile Number: _____

Contracting Officer Approval: _____/Date_____

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² By statute, SBA does not approve or disapprove a subcontracting plan; rather, SBA's comments are advisory, and the contracting officer approves or disapproves the plan.

APPENDIX D

SAMPLE DOCUMENTATION OF PURCHASES/SUBCONTRACTS OVER \$150,000

Purchase Order/Subcontract Awarded To: _____

Date: _____

SIZE CATEGORY	NUMBER SOLICITED	REASON NOT SOLICITED (use key below)	REASON NOT SELECTED (use key below)
<i>Other-Than-Small Businesses</i>		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
Small Businesses (including ANCs and Indian tribes)			
Small Disadvantaged Businesses (including ANCs and Indian tribes)			
Women-owned Small Businesses			
HUBZone Small Businesses			
Veteran-Owned Small Businesses			
Service-Disabled Veteran Owned Small Businesses			

Instructions for completing above table:

1. Write the number of suppliers solicited from each category in the second column (even if zero).
2. For all categories not solicited, explain why in the second column using key 1-6 below.
3. For the categories solicited but not selected, put the reason in the fourth column using the key A-F below.
4. The table must be filled out completely.

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 Central Contractor Registration Dynamic Small Business Search www.ccr.gov & 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:

Buyer Signature

APPENDIX E

SAMPLE LETTERS TO OTHER-THAN-SMALL BUSINESS CONTRACTORS WITH ORDERS OF \$650K FOR GOODS OR SERVICES OR \$1.5 MILLION FOR PUBLIC CONSTRUCTION

Dear Supplier:

As you may know, our company is a prime contractor to the Federal Government and, as such, we must comply with specific laws and regulations. Under the Federal Acquisition Regulation (FAR) clause at 52.219-9, we are required to flow down certain requirements to our subcontractors and suppliers to ensure utilization of small businesses in all subcontracts that offer further subcontracting opportunities. The purpose of this letter is to inform you that you must provide us with a formal subcontracting plan under the flow-down provision set forth in FAR 52.219-9(d)(9).

The provision at FAR 52.219-9(d)(9) requires all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of 52.219-9. Currently, our records indicate that your company has been awarded a contract/order in excess of \$650,000 for goods and/or services; therefore, the requirement referenced above is being flowed down to your company at this time.

Please forward a copy of your company's small business subcontracting plan to the undersigned. Upon its receipt, I will review it and approve it if the goals represent maximum practicable opportunity for small business and it meets the other requirements set forth in FAR 52.219-9. During the lifetime of your contract or order, you will be required to use an electronic subcontracting reporting system to submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR) via www.esrs.gov. (*Reference: FAR Clause 52.219-9(d)10(iv)*).

I am enclosing a Subcontracting Fact Sheet published by the SBA, which explains the subcontracting regulations, flow-down provision, and reporting requirements in layman's language. If you have any questions pertaining to this Fact Sheet or the FAR requirements mentioned above, please contact your Commercial Marketing Representative (CMR).

Sincerely,

Director of Purchasing
(or other official authorized to sign for the company)

Enclosure

Date

Large Business Subcontractor
Address

Dear :

You will find the Federal Acquisition Regulation (FAR) clauses 52.219-8 and 52.219-9 included in the Terms and Conditions of your pending subcontract/purchase order since it is tied to a federal contract. You can readily look up FAR references at www.acqnet.gov/far.

FAR 52.219-8 is titled "Utilization of Small Business Concerns." If you plan to subcontract any further, the clause requires you to offer small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns with the maximum practicable opportunity to participate in performing subcontracts awarded by your company. It also requires that you establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns. The clause also contains the definition for each small business category.

FAR 52.219-9 requires large business subcontractors receiving an award over \$650,000 (\$1.5 M for construction) to prepare and submit a subcontracting plan. The types of subcontracting plans and minimum requirements of the plan can be found at FAR 52.219-9. If you have any questions about preparing a subcontracting plan, you may contact your local Commercial Market Representative (CMR) at the Small Business Administration, Office of Government Contracting (see <http://www.sba.gov/GC/indexcontacts-cmrs.html>). We cannot award the pending subcontract to your company until we have received and approved your Subcontracting Plan. If you are participating in the DoD Test Pilot for Comprehensive Subcontracting Plans, please let me know. If you already have an approved annual Commercial Subcontracting Plan, please supply me with a signed copy. Once approved, we will be mailing a copy of your subcontracting plan to the Small Business Administration (SBA). The SBA may conduct periodic Small Business Compliance Reviews of your company.

If you are supplying us with a "Commercial Item" that meets the definition of FAR 52.202-1(c), you do not have to submit a subcontracting plan (in accordance with FAR 52.212-5(b) or 52.244-6(c)). In this case, please submit a letter to my attention that you are supplying us with a commercial item that meets the definition of FAR 52.202-1(c).

During the lifetime of your subcontract or order, you will be required to use an electronic subcontracting reporting system to submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR) via www.esrs.gov. (*Reference: FAR Clause 52.219-9(d)10(iv)*).

You are also required to flow down both of these clauses to any of your large business subcontractors under this contract with awards over \$650,000 (\$1.5 M for construction).

If you have any questions, please feel free to call me at XXX-XXX-XXXX.

Sincerely,

Large Business Prime Contractor

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APPENDIX F

Format for Letter from SBA to Contracting Officer Providing Advisory Comments on Subcontracting Plan

Note: This format may also be used by prime contractors to evaluate subcontracting plans received from large business subcontractors under the flow-down requirement.

Subject: Advisory Comments on Subcontracting Plan for _____

Dear _____:

The subcontracting plan submitted by _____, is considered **acceptable/unacceptable** *{as applicable}*. The following checklist was used to determine compliance with applicable requirements:

Acceptable/Unacceptable

1. Offeror's plan **did/did not** *{as applicable}* include separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for planned subcontracting to small business concerns (including ANCs and Indian tribes), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes), and women-owned small business concerns. (The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect or overhead costs.)

As part of its establishment of percentage goals, the offeror shall include in its subcontracting plan:

(a) A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business concerns (including ANCs and Indian tribes); (iii) total dollars planned to be subcontracted to veteran-owned small business concerns, (iv) service-disabled veteran-owned small business concerns; (v) total dollars planned to be subcontracted to HUBZone small business concerns; and (vi) total dollars planned to small disadvantaged business concerns (including ANCs and Indian tribes); and (vii) total dollars planned to be subcontracted women-owned small business concerns. (Note: A subcontract awarded to a small disadvantaged business concern which is also women-owned and a HUBZone small business concern would be included in (i),(ii), (v) and (vi) and (vii), above.)

Acceptable/Unacceptable

(b) Offeror's plan **did/did not** *{as applicable}* contain a description of **all** (including planned subcontracting to large business concerns) the principal supplies and services to be subcontracted, identifying those supplies and services where it is planned to use: (i) small business subcontractors (including ANCs and Indian tribes); (ii)veteran – owned small business, (iii) service-disabled veteran-owned small business) (iv) HUBZone small business subcontractors; (v) small disadvantaged business subcontractors (including ANCs and Indian tribes), and (vi) women-owned small business subcontractors.

Acceptable/Unacceptable

(c) Offeror's plan **did/did not** *{as applicable}* describe the method used to develop the subcontracting goals for: (i) small business concerns (including ANCs and Indian tribes); (ii) veteran-owned small business, (iii) service-disabled veteran-owned small business (iv) HUBZone small business concerns; (v) small disadvantaged business concerns (including ANCs and Indian tribes); and (vi) women-owned small business concerns.

Acceptable/Unacceptable/Not Applicable

(d) If the offeror includes indirect costs in establishing subcontracting goals, the offeror **did/did not** *{as applicable}* describe the method used to allocate the proportionate share applicable to this plan.

Acceptable/Unacceptable

2. Offeror's plan **did/did not** *{as applicable}* include the name of the employee responsible for administering its subcontracting plan, and furnish a description of his/her duties.

Acceptable/Unacceptable

3. Offeror's plan **did/did not** *{as applicable}* furnish a description of the efforts the offeror will take to assure that small (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns will have an equitable opportunity to compete for subcontracts.

Acceptable/Unacceptable

4. Offeror's plan **did/did not** *{as applicable}* contain assurances that it will include the clause entitled "Utilization of Small Business Concerns" (FAR 52.219-8) in **all** subcontracts which offer further subcontracting opportunities. Additionally, the offeror's plan shall contain assurances that it will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$650,000 (\$1.5 million if it a subcontract for construction services) to adopt a plan similar to the plan agreed to by the offeror. Such assurances shall describe the offeror's procedures for the review, approval and monitoring for compliance with such subcontracting plans.

Acceptable/Unacceptable

5. Offeror's plan **did/did not** *{as applicable}* contain assurances that it will: (i) cooperate in any studies or surveys as may be required; (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan; (iii) submit the Individual Subcontract Report (formerly SF 294) and/or the Summary Subcontract Report (formerly SF 295) via the Electronic Subcontracting Reporting System at www.esrs.gov; and (iv) ensure that its subcontractors agree to submit reports per (iii) above.

Acceptable/Unacceptable

6. Offeror's plan **did/did not** *{as applicable}* include a recitation of the types of records it will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists, and a description of its efforts to locate small (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns, and award subcontracts to them. The records shall include at least the following:

(i) Source lists (e.g., Central Contractor Registration Dynamic Small Business Source), guides and other data that identify small (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns.

Acceptable/Unacceptable

(ii) Organizations contacted in an attempt to locate sources that are small (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small, small disadvantaged (including ANCs and Indian tribes) and women-owned small business concerns.

Acceptable/Unacceptable

(iii) Records on each subcontract solicitation over \$100,000, indicating: (a) whether small business concerns (including ANCs and Indian tribes) were solicited, and if not, why not; (b) whether veteran-owned small business were solicited, and if not, why not; (c) whether service-disabled veteran-owned small business concerns were solicited, and if not, why not; (d) whether HUBZone small business concerns were solicited, and if not, why not; (e) whether small disadvantaged business concerns (including ANCs and Indian tribes) were solicited, and if not, why not; (f) whether women-owned small business concerns were solicited, and if not, why not; and (g) if applicable, the reason award was not made to a small business concern.

Acceptable/Unacceptable

(iv) Records of any outreach efforts to contact trade associations and business development organizations, or participate in conferences and trade fairs, to locate small (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small, small disadvantaged (including ANCs and Indian tribes) and women-owned small business sources.

Acceptable/Unacceptable

(v) Records of internal guidance and encouragement provided to buyers through: (a) workshops, seminars, training, etc., and (b) monitoring performance to evaluate compliance with the program's requirements.

Acceptable/Unacceptable

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. (Companies with company or division-wide annual plans need not comply with this requirement.)

Summary Paragraph

{Add comments as appropriate}

In accordance with FAR 19.705-5(a)(5) and 19.705-6(a) and (e), the contracting officer shall ensure that an acceptable subcontracting plan is incorporated into and made a material part of the contract.

If there are any questions, please contact me at _____.

QUICK VERSION

DATE:

TO:

FROM:

SUBJECT:

Subcontracting Plan for _____

Name of Bidder or Offeror: _____

Period (if applicable): _____

Goals: Acceptable / Unacceptable

- Goals include all socio-economic categories Yes / No
(SB (including ANCs and Indian tribes), SDB (including ANCs and Indian tribes), WOSB, HUBZone SB, Veterans (VOSB), and SD/VOSB):
- Arithmetic is correct (should mirror the ISR): Yes / No
- Goals represent “maximum practicable opportunity” in accordance with applicable laws and regulations:³
Yes / No

Matrix:⁴ Acceptable / Unacceptable

SBLO named: Acceptable / Unacceptable

ISR and SSR Submission: Acceptable / Unacceptable

CCR Dynamic Small Business Search mentioned: Acceptable / Unacceptable

Other Elements of Plan (see FAR 52.219-9 (d)): Acceptable / Unacceptable

Based on the factors listed above, this subcontracting plan is: Acceptable / Unacceptable

By: _____ Date Reviewed: _____

Title: _____

SBLO Handbook: 06//15/2010

³ Section 8(d) of the Small Business Act and 48 CFR (Federal Acquisition Regulation 19.7, 52.219-8, and 52.219-9).

⁴ Description of the principal products and/or services to be subcontracted and the types of businesses supplying them (see FAR 52.219-9(d)(3)).

APPENDIX G

Small Business Federal Definitions for Section 8(d) Prime Contractors

Small Business – FAR 52.219-8, 13 CFR Part 121, 13 CFR 121.410 SELF-CERTIFICATION CATEGORY

A small business concern as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. A “Small Business Concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualifies as a small business under the criteria and size standards in 13 CFR 121 (see FAR 19.1). The size of your subcontractors and suppliers is determined by the NAICS code of their subcontract. Refer to the Code of Federal Regulations (CFR), Title 13, subparts 121.410 and 121.411, for guidance on size standards and procedures regarding the Subcontracting Program.

Small Disadvantaged Business – FAR 52.219-8, 13 CFR 124 SELF-CERTIFICATION CATEGORY

A firm may represent that it qualifies as an SDB for any Federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals.

Women-Owned Small Business – FAR 52.219-8 SELF-CERTIFICATION CATEGORY

A small business concern that is at least 51% owned by one or more women, or, in the case of any publicly owned business, at least 51% of the stock is owned by one or more women. In addition, one or more women must control the management and daily business operations.

HUBZone Small Business – FAR 52.219-8, 13 CFR 126 MUST BE CERTIFIED BY SBA AS A HUBZone Small Business

A concern that has been certified by SBA as a HUBZone Small Business.

If a concern self-certifies with you that it has received SBA’s HUBZone certification, you must verify this in the Central Contractor Registration at www.ccr.gov.

Veteran-Owned Small Business – FAR 52.219-9, 38 USC 101(2)
SELF-CERTIFICATION CATEGORY

A small business concern that is at least 51% owned by one or more veterans (as defined in 38 USC 101(2)), or, in the case of any publicly owned business, at least 51% of the stock is owned by one or more veterans. In addition, one or more veterans must control the management and daily business operations.

Service Disabled Veteran-Owned Small Business – FAR 52.219-8, 38 USC 101(16)
SELF-CERTIFICATION CATEGORY

A small business concern that is at least 51% owned by one or more service disabled veterans (as defined in 38 USC 101(16)), or, in the case of any publicly owned business, at least 51% of the stock is owned by one or more service disabled veterans. In addition, the management and daily business operations must be controlled by one or more service disabled veterans. In the case of a permanent or severe disability, the spouse or caregiver of such a service-disabled veteran may control the management and daily operations.

Historically Black Colleges – DFARS 252.219-7003
(Required in DoD, NASA & Coast Guard ONLY)

Institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority Institutions – DFARS 252.219-7003
(Required in DoD, NASA & Coast Guard ONLY)

Institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

APPENDIX H

SAMPLE SIZE SELF-CERTIFICATION FORM

The size of your subcontractors and suppliers is determined by the NAICS code of their subcontract, which may or may not be the same NAICS code as the one for your contract with the Government.

Please refer to the Code of Federal Regulations (CFR), Title 13, subparts 121.410 and 121.411, for guidance on size standards and procedures regarding the Subcontracting Program. These regulations may be obtained on the Internet at <http://www.sba.gov/library/lawroom.html>.

Please refer to the Federal Acquisition Regulation (FAR) clause at 52.219-9(l)(2)(iii) for annual reporting of contracts or subcontracts awarded to Small Disadvantaged Businesses. Per FAR clause 52.219-9(l)(2)(iii) “All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor’s format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.”

Please see the next page for a sample certification form.

Company Name: _____
Address: _____
City, State, Zip _____
Contact Person _____
Phone & Fax Number _____

SIZE: _____ Small Business
_____ Small Disadvantaged Business
_____ Certified by SBA as a HUBZone Small Business
_____ Women Owned Small Business
_____ Veteran Owned Small Business
_____ Service Disabled Veteran Owned Small Business
_____ Historically Black College/University or Minority Institution
_____ Large Business (including non-profit)
_____ Alaskan Native Corporation
_____ Indian Tribe
_____ Other: Specify _____

If you are self certifying as a Small Business, fill out the information below for the work you have been contracted to perform:

NAICS Code (for work being contracted) _____

If you are self-certifying as a Small Disadvantaged Business fill out the information below:

Primary NAICS Code _____⁵

You may wish to review the definitions for the above categories in the Federal Acquisition Regulation 19.7 or 52.219-8 (www.arnet.gov/far). If you have difficulty ascertaining your size status, please refer to SBA’s website at www.sba.gov/size or contact your local SBA office.

Under 15 U.S.C. 645(d), any person who misrepresents its size status shall (1) be punished by a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act.

Signature and Title

Date

*****INTERNAL USE ONLY*****

_____ HUBZone Status have been verified in the Central Contractor Registration (CCR) Dynamic Small Business Search Database as of ___/___/___.

⁵ NAICS codes are needed for the **Summary Subcontract Report** breakout report (by 3-digit NAICS subsector) that the prime contractor is required to submit to the Government annually pursuant to the Federal Acquisition Regulation (FAR) clause at 52.219-9(1)(2)(iii)

Appendix I

MEMORANDUM OF UNDERSTANDING

between

DEFENSE CONTRACT MANAGEMENT AGENCY

and the

THE U.S. SMALL BUSINESS ADMINISTRATION

November 12, 2009

WHEREAS the Defense Contract Management Agency (DCMA) and the Small Business Administration (SBA) both perform compliance reviews as a joint collaborative effort to evaluate prime contractor subcontracting programs supporting specific Department of Defense (DOD) Contracts administered by DCMA and all other Federal contracts with subcontracting plans under the oversight of SBA, including those of civilian agencies and DOD agencies not under the cognizance of DCMA, to determine an overall performance rating;

WHEREAS DCMA and SBA strongly support the Administration's efforts to streamline Government and to eliminate duplication in evaluation procedures;

THEREFORE DCMA and SBA agree to the following:

SUMMARY:

By means of this Memorandum of Understanding (MOU), DCMA and SBA agree to work as cooperative and collaborative partners to strengthen their respective roles jointly in administering and enforcing Section 8(d) of the Small Business Act.

BACKGROUND:

SBA derives its authority for the subcontracting program from Section 8(d) of the Small Business Act (15 U.S.C. 637(d)). This statutory authority is implemented in the Code of Federal Regulations (CFR) for SBA (13 CFR 125.3) and the Federal Acquisition Regulation (FAR) (48 CFR, Subpart 19.7 and clauses 52.219-8 and 52.219-9). Additional guidance is provided to SBA's field staff in the Standard Operating Procedures (SOP) for the subcontracting assistance

program (SOP 60 03 6) and in various checklists and forms contained in the Appendices to this SOP, including those mentioned below under “Details of the Agreement.”

Pursuant to C.F.R. § 125.3(e), SBA performs three types of compliance reviews of other-than-small businesses, which include foreign and non-profit prime contractors and subcontractors: Small Business Program Compliance Reviews (SBPCR), which include Follow-up Reviews and Performance Reviews (also known as Desk Reviews); Subcontracting Orientation and Assistance Reviews (SOAR); which allows prime contractors, under certain circumstances, to submit self-assessments; and Joint Reviews, whereby SBA is authorized to enter into agreements with other Federal agencies or entities to conduct compliance reviews. SBA reviews contractors of both DOD and civilian agencies, including both prime contractors and large business subcontractors (the latter under the flow-down requirement). SBA’s compliance reviews consist of the following elements:

- (A) Sourcing and Assistance;
- (B) Validation of the prime contractor’s methodology for preparing and submitting the Individual Subcontract Report (ISR) and Summary Subcontract Report (SSR) in the Electronic Subcontracting Reporting System (eSRS). This to include formal validation (Hard copy Self-certification) of Small Businesses being utilized by the Other-than-Small Business;⁶
- (C) Five-year trend analysis;
- (D) Overall evaluation of the prime contractor’s small business Programs;
- (E) Analysis of Subcontracting Plan Goal Attainment (sampling);
- (F) Sampling of purchase orders to large business;
- (G) Follow-up on previous recommendations

Reviews performed by DCMA include the elements performed by SBA, except for the Sourcing area and the follow-up on prior SBA recommendations.

In accordance with FAR 42.302 (a)(51),(52),(53),(54) and (55), DCMA performs reviews on DoD prime contractor compliance with their subcontracting plan requirements over which it has delegated contract administration authority. DCMA reviews prime contractors only since it has no privity of contract with subcontractors.

DETAILS OF THE AGREEMENT:

1. DCMA and SBA agree to continue using, respectively, the *DCMA Review of Contractor Subcontracting Program Report* and the *SBA Subcontracting Program Compliance Review Checklist*, along with any supplemental forms as needed.-
2. DCMA and SBA agree to expand all checklists and worksheets as may be needed to include all socioeconomic categories (the current categories include: Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business, Veteran-Owned

⁶ In accordance with the rules set forth in 13 CFR 121.404(e), 121.410, and 121.411.

Small Business (VOSB), and Service-Disabled Veteran-Owned Small Business (SDVOSB). In accordance with current FAR and eSRS requirements, the worksheets must also include columns or fields for (a) Alaska Native Corporations (ANC) and Indian tribes that have not been certified by SBA as small disadvantaged businesses; and (b) Alaska Native Corporations and Indian tribes that are not small businesses. DCMA and SBA also agree to continue strengthening their review procedures (checklist and forms) by validating the dollars and percentages reported on the latest ISR and SSR reports. This will be accomplished by utilizing the contractors' purchase list to perform a random sample and ask the contractor to provide self-certifications on each Small Business they are reporting in their numbers. A sample self-certification format may be obtained from the SBA Small Business Liaison Officer (SBLO) handbook.

3. In cases where a contractor has contracts with both DOD and civilian agencies, if either agency finds the contractor is not complying with the requirements of its subcontracting plans and has a compelling reason to believe that the company is not making a good-faith effort, they will immediately bring it to the attention of the other agency and discuss a plan of action.
4. DCMA and SBA agree to enforce the flow-down requirement (FAR 19.704(a)(9) and 52.219-9(d)(9)) as follows: (a) If the subcontractor is a participant in DOD's *Test Program for Comprehensive Subcontracting Plans*, the prime contractor may satisfy this requirement by verifying that the subcontractor is a current participant and documenting the file accordingly;⁷ (b) if the subcontractor has a *Commercial Plan* approved by a Government agency for the current year, the prime contractor may satisfy this requirement by obtaining a hard copy of the *Commercial Plan* with the signature of the approving official; or (c) if the subcontractor is not a participant in DOD's *Test Program for Comprehensive Subcontracting Plans* and does not have a *Commercial Plan*, the prime contractor must obtain an *individual subcontracting plan* (FAR 19.701) for the instant subcontract and obtain assurances from the subcontractor that the subcontractor will submit required ISRs and SSRs in eSRS.
5. In cases where a prime contractor has active contracts containing subcontracting plans with both DOD and civilian agencies, the DCMA and SBA field personnel shall attempt to do a joint review whenever possible. However, either agency may decline to participate in the review, but the declining agency would not normally conduct another review during the remainder of the fiscal year unless there is a compelling reason to do so.
6. Other guidelines that apply to joint reviews are as follows:
 - a. Such reviews may be scheduled by either DCMA or SBA, but adequate notice (at least 35 calendar days) must be provided to the other agency.
 - b. DCMA and SBA may use their own forms and procedures for the review.

⁷ A list of participants may be found on the Internet at <http://www.acq.osd.mil/osbp/programs/csp/participants.html> or by contacting the Program Manager in the DOD OSD OSBP at (703) 604-0157.

- c. DCMA shall limit its sampling of contracts and subcontracting plans to those over which it has delegated contract administration authority. DCMA shall focus on DOD contracts and the SBA shall focus on the remaining Federal contracts. However this does not preclude SBA from assisting DCMA in reviewing DOD contracts.
 - d. In order to gain greater insight into the contractor's purchasing cycles and socio-economic trends, SBA and DCMA may analyze the contractor's Five-Year Trend data. This data is available in eSRS but until data covering five years is available in eSRS, SBA and DCMA will request this information from the contractor. Accordingly, the contractors may be asked to provide separate data, to the extent possible, to accommodate each reviewer's requirements. DCMA will examine the trend for DOD contracts, and SBA will do the same for all Federal contracts.
 - e. In accordance with 13 C.F.R. § 125.3(f)(7), SBA is the lead agency on all joint compliance reviews with other agencies.
 - f. Where practical, DCMA and SBA should try to agree on the contractor's rating. However, if DCMA and SBA cannot reach agreement on the overall rating, either reviewer may request a ruling from its headquarters, or, alternatively, the two agencies may issue separate ratings.
 - g. For joint reviews, in most cases, each agency will generate their own separate letter addressing individual contracts they are responsible for or have reviewed; however, if agreed upon by the reviewers, one letter can be generated from both agencies. Each letter should demonstrate that it was a joint review between the two agencies, DCMA and SBA. DCMA will provide a copy of its final report of DOD contracts to the SBA Commercial Marketing Representative (CMR). The SBA CMR will provide a copy of its report to its DCMA counterpart whenever the prime contractor has contracts with DOD. Each agency will be responsible for distributing final reports to the respective contracting officers and small business officials having a vested interest within their agencies.
7. SBA has sole authority to perform compliance reviews of prime contractors of civilian agencies. When DCMA is tasked by a civilian agency to perform a compliance review, the civilian agency should be redirected to SBA headquarters. DCMA will not enter into any formal or informal agreements with civilian agencies to perform compliance reviews of civilian contractors.

RATINGS:

DCMA and SBA agree to use standard criteria for determining the contractors' ratings for all reviews (see Attachment 1).

CONTACTS:

SBA contact information for their CMRs is set forth at www.sba.gov/gc, click on “Contacts and Representatives” and open up the “GC Field Staff Directory” to get the listing of all the CMR’s nationwide. DCMA Small Business Center contact information is provided at Attachment 2.

DURATION OF THE AGREEMENT:

This agreement is intended to be permanent; however, it should be treated as a living document. The parties agree that it will be beneficial to review this agreement periodically to consider possible improvements. Such a review may be initiated by either party.

This agreement may be canceled by either party at any time upon written notification to the other party.

RESPONSIBLE PARTIES:

Each of the parties to this agreement has designated the following officials to be responsible for its implementation:

SBA:
Name: Diane Heal
Title: Assistant Director
for Contract Assistance

DCMA
Name: Mary A. Seabolt
Title: Acting Director, Small Business Division

SIGNATURES:

SBA: _____ DCMA: _____
Name: Joseph G. Jordan Name: David E. Ricci
Title: Associate Administrator Title: Executive Director, Contracts
for Government Contracting
and Business Development

Date: _____ Date: _____

Attachment 1: Rating Criteria
Attachment 2: DCMA Organization chart

(SBA CMR contacts: www.sba.gov/gc under “Contacts and Representatives” and “GC Field Staff Directory”)

APPENDIX J



SMALL BUSINESS PROGRAM COMPLIANCE REVIEW

PREPARATION CHECKLIST

Please have the following information and documentation in a binder in the same order it appears on this checklist ready on the date of my review.

General Information (please complete this sheet and use as a cover page in your binder)

Name of Company: _____

Division of/dba: _____

Mailing Address: _____

Physical Address (if different): _____

City, State, Zip: _____

DUNS #: _____ (numerical – 9 digits)

Company Website: _____

Small Business Link: _____

CEO/President: _____

Small Business Liaison Officer (SBLO): _____

Phone: _____

Email: _____

Alternate SBLO (optional) _____

Phone: _____

Email: _____

How many prime contracts with subcontracting plans does your company have? _____

List agencies:

How many subcontracts with subcontracting plans does your company have? _____

List the prime contractors:

Does your company have any other division(s) that submits subcontracting reports?

If you have a Master Plan / Commercial Plan / Comprehensive Plan, please provide the current year's properly approved copy.

A. Sourcing

- Do you have any contracts for which you are not meeting subcontracting plan goals? If so, please provide a listing of product or services areas in which the SBA can assist you in locating SB, SDB, WOSB, HUBZone SB, VOSB, and SD/VOSBs?
- Do you have any contracts you are currently considering bidding on that SBA can help you to locate SB, SDB, WOSB, HUBZone SB, VOSB, and SD/VOSBs in the proposal stages?
- Explain how your company locates small businesses to use as subcontractors/vendors for future jobs.

B. Validation of the Individual Subcontract Report (ISR) and Summary Subcontract Report (SSR)

- Prior to the review date, provide SBA with a listing of subcontracts⁸ to any SB (including ANCs and Indian tribes), SDB (including ANCs and Indian tribes), WOSB, HUBZone SB, VOSB, and SD-VOSBs that you have awarded over the past year. Include the company name, size classification of company, and dollar value (either per subcontract or aggregate for the year). From this list, SBA will select a random sampling prior to the review date. Please have each selected firm's size self-certification available on the review date.
- Provide a sample of a blank size self-certification.
- If you are excluding any costs from your ISR or SSR please provide a listing of these items.
- Explain how a size self-certification is received, tied to a subcontract, and tracked all the way to your ISR/SSR reports. You may include your tabulation/print outs that you used to prepare your most recent ISR/SSR reports.
- Provide an explanation of how a proportionate share of your indirect costs is applied to your ISR/SSR (if applicable). Not applicable for companies with commercial Subcontracting Plans (applied at 100%).

C. Five Year Trend Analysis

⁸ "Subcontracts" is defined in FAR Part 19.701 as "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 the performance of the contract, contract modification, or subcontract."

An analysis of the last five year's SSR (and SF 295, if applicable) data reveals a trend. Ideally, this trend should be increasing slightly each year. However, the number of contracts, buying trends, and other factors often impact the trend.

- If your awards to SB, SDB, WOSB, HUBZone SB, VOSB, or SD-VOSB have been decreasing or remained stagnant over the past five years, provide an explanation.
- Are there any current practices in your company that are adverse for small business (ie. reducing supplier base, consolidating requirements)? If so, what measures are you taking to make sure that small businesses are not affected?

D. Overall Evaluation of the Subcontracting Program

D1. Management's Support of the Program.

- Provide Policy Letter from CEO supporting the program.
- Provide an Organizational Chart (explain the access it provides the SBLO to administer the small business program and to obtain the cooperation of department heads and program managers).
- Explain how often and under what circumstances you meet with management regarding small business program goal accomplishment and other issues.
- Provide copies of your written Policies and Procedures providing guidance on small business utilization.

D2. Training.

- What small business training is provided to individuals at your company with purchasing authority (including those in off-site locations)? Include agendas/rosters, etc.
- Does your company have an incentive program to recognize buyers and other staff for outstanding utilization of small businesses? If so, explain.

D3. Outreach.

- Provide a listing of trade fairs and conferences for small business that you have attended or sponsored in the past year.
- Provide a list of local small business organizations and councils that you participate in.
- Describe any small businesses that you have found and utilized as a result of your outreach efforts.
- Describe your Mentor Protégé Program (DOD, 8(a) or other).
- Describe how a small business is counseled when it contacts your company.
- Describe any workshops/symposiums that you have hosted for small businesses interested in doing business with your company.

D4. Assistance Provided to Small Businesses

- Provide examples of assistance you have extended to small businesses over the past year. Please examine the list in SBA's regulation at 13 CFR 125.3(b) *Responsibilities of prime contractors*, (3)(i) through (ix) and cite examples from this list. You may also wish to cite (c) *Additional responsibilities of large prime contractors*, (vi) "As a best practice..." if you are doing this, to demonstrate that you go above and beyond the requirements of the regulation. You may also cite other examples of assistance to small business not mentioned in the SBA regulation. The 13 CFR regulations cited above may be found on the Internet at <http://www.sba.gov/library/lawroom.html>.

D5. Success Stories:

- **Provide documentation of success stories such as those resulting in an award of a contract to a firm you met at an outreach activity, award of a contract to a company SBA referred (8a firm), removing an obstacle so a small business could participate on a bid, redirecting a subcontract from a large business supplier to a small business supplier, etc.**

E. Subcontracting Plan Goal Analysis

- If you have not previously provided SBA a copy of all ISR and/or SF 294 reports, you should provide copies to SBA at least one week before the date of the review. You should also have a copy of each subcontracting plan available during the review.
- Explain who formulates the goals in your subcontracting plan(s), your involvement, and how these goals are formulated.
- If any of your contracts are not meeting their goals, document the reasons why. Do you have a corrective action plan for any goals that you are not currently meeting?
- Provide a list of Administrative Contracting Officers (name and addresses) for all of your contracts with subcontracting plans (not just those in the random sampling).

F. Subcontracts to Large Business

- Prior to the review date, send SBA a list of subcontracts over \$150,000 awarded to large businesses, issued over the last year. The list should include the date of the subcontract, subcontract number, large business that received the subcontract, and dollar value. From this listing, SBA will randomly select some files to review. On the review date, please have the actual subcontract file available.

- Prior to the review date, send SBA a list of any blanket purchasing agreements, corporate-wide purchasing agreements, or similar agreements that were established during the past year by this company/division. Any agreement that requires a particular large business to be used for repetitive purchases should be included in the listing (For example, a corporate purchasing agreement for office supplies).
- Provide a sample of your blank subcontract justification sheet (FAR 52.219-9(d)(11) requires each subcontract awarded to a large business over \$150,000 to explain whether SB/SDB/WOSB/HUBZone SB/VOSB/SD-VOSB was solicited and it not why not – and the reason award was not made to a SB).
- Enclose the document your company uses to flow-down FAR 52.219-8 in every subcontract with subcontracting opportunities (N/A for companies with a Commercial Subcontracting Plan).
- Describe how your company requires subcontracting plans from your subcontractors with subcontracts over \$650,000 or \$1.5 million for construction. Explain how this plan is reviewed and monitored. A random sampling of subcontracting plans and ISR reports will also be conducted during the review. (N/A for companies with a Commercial Subcontracting Plan).

G. Follow-Up on SBA's Prior Recommendations

- If there were any recommendations made during SBA's last review, explain what action your company has taken to implement these recommendations.

H. Rating (For informational purposes only – no documentation required)

A summary of SBA’s review findings, including recommendations, will be prepared and sent to your CEO/President and each federal agency with which you have an active or recently completed contract containing a subcontracting plan. You will be assigned a rating based on the following⁹:

Outstanding – **Exceeded** all negotiated goals or exceeded at least one goal and met all of the others.¹⁰ Has exceptional success with initiatives to assist, promote and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), HUBZone small business, veteran-owned small business (VOSB), and service-disabled VOSB (SD/VOSB).¹¹ An outstanding rating signifies that the company has an exemplary program that could be used as a model by other contractors in similar industries.

Highly Successful – **Met** all of its negotiated goals in the traditional socio-economic categories (SB, SDB, and WOSB) and met at least one of the newer socio-economic goals (HUBZone small business, VOSB, and SD/VOSB) for each contract that contains two or more of those goals. Has significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, HUBZone small business, VOSB, and SD/VOSB. Makes an effort to go above and beyond the required elements of the program and can provide documentation and success stories to support such efforts.

Acceptable – **Demonstrated a good-faith effort** to meet **all** of its goals, but has not met the rigorous criteria for a *Highly Successful* or *Outstanding* rating. Fulfills the requirements of its subcontracting plan and the regulations. ISR/SSR reports are complete and accurate.

Marginal – **Deficient** in meeting key subcontracting plan elements, the ISR/SSR reports are not correct, or the contractor has failed to satisfy one or more requirements of a corrective action plan currently in place. However, contractor’s management does show an interest in bringing its program to an acceptable level and has demonstrated a commitment to apply the necessary resources to do so. A corrective action plan is required, and the Administrative Contracting Officer(s) must be notified.

Unsatisfactory – **Noncompliant** with the contractual requirements of DFARS and FAR 52.219-8 and 52.219-9. Contractor’s management shows little interest in bringing its program to an

⁹ For rating purposes, the sample should include all contracts completed during the past 12 months, or, for companies with a Commercial Plan or in the DOD *Test Program for Comprehensive Subcontracting Plans*, it should include the results of the most recent fiscal year ended September 30th (or other period ending date, if so authorized). Note: If a contractor with individual plans has no contracts that were completed during the past 12 months, the rating will be determined by contracts that are active, giving greater weight to those that are nearest to completion.

¹⁰ “Negotiated goals” refers to the dollar and percentage goals in the approved subcontracting plan. (For rating purposes, the reviewer will compare the percentage goals to the percentage achievements.)

¹¹ Examples of such initiatives include, but are not limited to, participating in a Mentor-Protégé program, performing compliance reviews at subcontractors’ sites, administering a buyer incentive program, participating in trade fairs, promoting registration in the CCR, and contacting suppliers to encourage HUBZone certification.

acceptable level or is generally uncooperative.¹² A corrective action plan is required, and the Administrative Contracting Officer(s) must be notified.

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¹² For example, recommendations made by SBA or DCMA on previous reviews have never been implemented.

APPENDIX K

SUBCONTRACTING PLAN RELATED WEBSITES

Electronic Subcontracting Reporting System	http://www.esrs.gov
SBA Form 883 (Subcontractor of the Year nomination form)	www.sba.gov/sbaforms/sba883.pdf
NAICS codes	https://eweb1.sba.gov/naics/dsp_naicssearch2.cfm
Small Business Size Standards	http://www.sba.gov/size
Central Contractor Registration	http://www.ccr.gov
SUB-Net	http://web.sba.gov/subnet
Federal Acquisition Regulation (FAR)	http://acquisition.gov
FAR Supplements (DFAR, AFAR, NASA)	http://acquisition.gov
Code of Federal Regulations (CFR)	http://www.gpoaccess.gov/cfr/index.html
HBCU/MI	http://www.acq.osd.mil/osbp/programs/index.htm#hbcu
Women-Owned Small Business	www.womenbiz.gov http://www.acq.osd.mil/osbp/programs/index.htm#wosb www.nwbc.gov (National Women's Business Council) www.wbenc.org (Women's Business Enterprise National Council) www.nwboc.org (National Women's Business Owners Corporation) www.nawic.org (Nat'l Assoc. of Women in Construction)
DoD Mentor Protégé	http://www.acq.osd.mil/osbp/programs/index.htm#mpp
National Center for American Indian Enterprise Development	http://www.ncaied.org
Veteran-Owned Small Businesses	www.vetbiz.gov www.asdv.org (Association for Service Disabled Veterans)
Alaskan Native Corporations	www.lbbllawyers.com/anca.htm#corpx
NIB/NIH	www.nish.org and www.nib.org www.jwod.com
DUNS Numbers	www.dnb.com
General Small Business Statistics	www.sba.gov/advo/research
- DoD Indian Incentive Program	http://www.acq.osd.mil/osbp/programs/index.htm#iip

DCMA Small Business Website

<http://www.dema.mil/DCMAHQ/dema-sb/index.htm>

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APPENDIX L

Frequently Asked Questions

These questions and answers provide guidance to prime contractors but are not intended to replace regulations. All prime contractors that do business with the Federal Government should be familiar with SBA's regulations (Title 13 Code of Federal Regulations) and the Federal Acquisition Regulation (FAR)(Title 48 Code of Federal Regulations). Since SBA's policies and regulations are periodically revised, the answers below are subject to change.

Electronic Subcontracting Reporting System (eSRS) Requirements

1. Q. Shouldn't we exclude from our Individual Subcontract Report (ISR) and Summary Subcontract Report (SSR) (formerly SF 294/295, respectively) reporting any purchases to customer-directed subcontractors or those subcontracts that must be awarded to approved and regulated sources? We have also excluded some purchases to some not-for-profit organizations. Our assigned Commercial Market Representative said that these transactions should be included in our reports.

A. You may not exclude any of the above subcontracts. With few exceptions, you must include all subcontracts, including those to customer-directed subcontractors and not-for-profit organizations. Pursuant to FAR §19.701, "Subcontract means 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 the performance of the contract, contract modification, or subcontract." Please review the instructions for completion of both the ISR and SSR at the eSRS website as well as in FAR clause 52.219-9.

The exceptions are: (a) You should not include subcontracts performed entirely outside of the United States or its outlining areas; (b) you should not include purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor; and (c) you should not include lower-tier subcontracts (i.e., subcontracts awarded by your subcontractors). Public utilities that hold contracts with the General Services Administration (GSA) have some additional exceptions, a list of which may be obtained from GSA.

2. Q. What if we issue a subcontract to an educational institution or some other organization that is neither a large nor small business concerns– under which category should it be reported?

- A. Strictly speaking, the line on the ISR and SSR that reads “large business concerns” should read “other-than-small” business concerns, which refers to any entity that is not classified as a small business. This includes large businesses, state and local governments, and non-profit organizations. In most cases, it also includes public utilities, educational institutions, and foreign-owned firms. However, there may be certain instances where a public utility, educational institution, or foreign-owned firm could be considered a small business concern. When in doubt, you should contact your local SBA District office.

Note: Foreign-owned firms that receive Federal contracts over the applicable dollar threshold are normally required to have subcontracting plans if any portion of their contract is to be performed in the United States. However, a foreign-owned firm can sometimes meet SBA’s criteria for small business status in which they would be exempt from the requirement to submit a subcontracting plan. See Title 13 Code of Federal Regulations (CFR) Part 121, especially § 121.105(a) for additional information.

3. Q. Are purchases that are made from the General Services Administration (GSA) Supply Schedules excluded from the ISR/SSR reporting?

- A. No. All transactions conducted using Federal Supply Schedule contracts should be reported on the ISR and SSR. Transactions should also include the appropriate socio-economic category. If a purchase is made from an “other-than-small business” concern on a GSA schedule, then it should be included in the “Large Business” category on the reports.

4. Q. Our company has a GSA schedule and we recently received a large order from an ordering agency. Do I submit the SSR report to the ordering agency or to the GSA contracting officer?

- A. Since your schedule contract and subcontracting plan are with GSA, you must submit the report to GSA.

5. Q. Are there any transactions that should be excluded from the reporting?

- A. In general, if a transaction meets the subcontract definition in the FAR, it should be reported. (FAR § 19.701). Company taxes, salaries, employee benefits and royalties/commissions, and charitable donations should be excluded from the ISR/SSR. Utilities, an indirect item, should be reported on the ISR only if it was included in the subcontracting plan goals. However, all indirect and overhead items should be reported on the SSR, regardless of whether they were included or excluded from the goals in the subcontracting plan(s). It would be prudent to check the definition of “indirect” and “direct” at the eSRS website, follow the instructions for the ISR/SSR and check the general instructions at FAR clause 52.219-9 to determine reportable items. In most cases, companies with company-wide commercial plans must include 100% of their indirect costs on a single SSR at the end of the year; companies with individual contract plans, on the other hand, must prorate their indirect costs among the SSRs submitted to each agency if

they are reporting to more than one agency. Examples of indirect costs: janitorial services/supplies, office supplies, window washing, etc.

6. Q. Should subcontract dollars awarded, as reported on the ISR and SSR, be the total value of the subcontracts awarded to subcontractors, or should it be the amount that has been invoiced by subcontractors?

A. Contractors may use any method to capture the transactions that is consistent and follows the Generally Accepted Accounting Principles. Contractors must treat transactions with large business the same way that they treat transactions with small business, and the same method must be used for the duration of the reporting period. The same methodology is used for reporting that was used to develop the subcontracting goals. Consistency ensures that the Commercial Market Representative will be comparing the appropriate numbers when performing the Subcontracting Program Reviews.

7. Q. Should the “Goal” column on the ISR include the goals for the entire contract including option years, or should the option years be rolled in as they are exercised?

A. The option years are rolled in as they are exercised. See FAR 52-219-9(I)(1)(ii).

8. Q. What is the definition of “subcontract”? Right now, our company only includes purchase orders on the reports.

A. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract (FAR 19.701). This definition also includes purchase card spend and Internet purchases.

9. Q. We are in the process of updating our vendor database by requiring new written self-certification forms. Some of our subcontractors refuse to complete and return them back to us. Should I exclude these subcontractors from the report until we receive the completed forms?

A. Contractors should report such transactions on the large business line (10b) of the ISR and SSR. If a self-certification from a vendor is subsequently received, revised report(s) can then be filed.

10. Q. How should a large prime contractor account for travel agency expenditures?

A. As a general rule, if the prime contractor’s check is issued to, or an electronic funds transfer (EFT) is paid to, the airline, then the entire amount should be reported as a subcontract to large business if the airline is a large business. If the check or EFT is paid to the travel agency, then the entire amount can be attributed to the travel agency and reported in the appropriate size category. However, it has become standard practice that when a travel agency is used, the prime contractor is required to cut the check directly to

the airline. This shows no “reward” for a prime contractor having used a small business travel agency. Therefore, if the contractor keeps detailed records of the transaction, it may count the travel agency’s fee separately from the cost of the ticket. For instance, \$20 could be reported as a subcontract to a small business travel agency and \$225 as a subcontract to a large business airline.

11. Q. Does subcontracting with a non-profit agency that employs people with disabilities such as a Community Rehabilitation Program count towards a prime contractor’s or subcontractor’s small business performance goal?

A. Normally subcontracts to non-profits would be counted on the “large business concerns” line of the reports which really means other-than-small business. However, there is a provision in the statute that allows DOD contractors to count subcontracts to workshops for the blind or severely disabled (Javits-Wagner-O’Day Act entities) towards their small business goal (but not the small disadvantaged business goal). See DFARS 219.703. Civilian agencies do not have this provision so this exception is limited to DOD contracts.

12. Q. I am using an “agent.” Can I count what my agent spends since he/she is spending on my behalf?

A. No, at this time, only first tier spending can be counted. What the agent spends is considered second tier and cannot be counted.

13. Q. My company has received an award from a multiple award IDIQ contract. All of the federal customers are requesting subcontracting plans and reports for each task order over \$650,000. I just learned that the eSRS system can only accept one ISR per contract. What should I do?

A. There is no authority in either SBA’s regulations or the FAR for an agency to require a subcontracting plan for a task order and, therefore, no reporting related to a specific task order is required. On IDIQ contracts, SBA recommends that the contracting officer obtain a subcontracting plan upfront (at the time of contract award) with dollar and percentage goals based on estimates. The contractor would then submit a single report to the agency that awarded the IDIQ contract covering all task orders. While other agencies may receive a courtesy copy of the reports, the contractor is NOT required to break out the subcontracting by task order.

Foreign Businesses and Affiliations

14. Q. The instructions for the ISR and SSR reports state that subcontracts for services with a place of performance outside the United States should not be included. How does this apply to subcontracts for products manufactured outside the U.S.?

- A. Subcontracts for products manufactured outside the U.S. must be included. If a foreign company has a plant in the U. S. and makes a significant contribution to the U.S. economy through the payment of taxes or use of American products, materials, or labor, and if it meets SBA’s size standard for being a small business, it may be counted as a small business for reporting purposes. Otherwise, you must report it as a large business.

15. Q. If the prime contractor is a U. S. firm, but the contract requirements will be performed in its foreign plant, is a subcontracting plan required?

- A. No, but only if ALL of the work is performed outside of the U.S. If any portion of the work is performed in the U.S., or its outlying areas (see FAR Subpart 2.1), then a subcontracting plan is required.

16. Q. We are a large, diverse, international business headquartered in the United States. We have numerous business units in the United States with some wholly-owned subsidiaries as well as interests in a number of joint ventures with other large business concerns. Can we create one small business subcontracting plan to cover all of the above legal entities?

- A. Joint ventures, unlike wholly-owned subsidiaries, are considered to be separate legal entities and cannot be included in a commercial company-wide plan.

17. Q. Are transactions with affiliates considered subcontracts that must be reported?

- A. Transactions between affiliates are not considered subcontracts and should not be reported as subcontracts to large businesses. (In this context, “affiliate” means a sister division or a subsidiary.) These transactions should be excluded entirely from the “total amount estimated to be subcontracted” in both the subcontracting plan goals and the ISR and SSR. In this circumstance, affiliates are viewed as part of the prime contractor. However, any subcontracts that your affiliate might place to fulfill the requirements of this Federal contract should be included. Since your sister division is seen as part of your company, its expenditures/subcontracts are still considered your first-tier subcontracts. This methodology prevents a company’s sister division or subsidiary from placing orders to large business subcontractors and excluding these expenditures from the subcontracting plan goals and reports. See 13 CFR 121.103 for more information on affiliates.

Subcontracting Plans/Requirements

18. Q. What unique requirements apply to companies with a Commercial Plan (formerly called a “Commercial Products Plan”)?

- A. Commercial Plans include all subcontracts issued by the entire company (or a portion thereof that can be segregated, such as a division or product line) for a one-year period. Commercial Plans are unique in that:

- The plan is based on the offeror’s fiscal year instead of the Government’s fiscal year.
- The plan is used for all Federal contracts (new or existing) that require a Subcontracting Plan during that year, provided that they are for commercial items.
- ISRs are not required.
- The SSR is due annually, thirty days after the close of the government’s fiscal year. The Commercial Plan must include the full amount of indirect costs in its goals.
- A new Commercial Plan is negotiated each year. The plan is due thirty working days prior to the expiration of the current plan.
- The first Federal awarding activity approves the Commercial Plan on behalf of all future awarding activities for that year. In future years, the approving activity should be the one responsible for the contract with the latest completion date. Once the plan is approved, the contractor should supply a copy of the approved plan to each contracting officer with ongoing contracts.

19. Q. What is meant by the term “flow-down”?

- A. The term refers to requirements in the prime contract that must be passed on (“flowed down”) to the subcontractors. In contracts where there is more than one level of subcontractors – that is, subcontractors who subcontract some of their work to other subcontractors – the flow-down can also apply to the subcontractors at the lower tiers. [In the context of small business, the most important issue is which of the two key FAR clauses must be flowed down: 52.219-8 (the best effort clause, which applies to both small and other-than-small businesses) and/or 52.219-9 (the clause that requires a formal subcontracting plan, which applies only to other-than-small businesses).] The questions that follow discuss this issue in special situations, such as contracts for Commercial Items and contracts awarded to companies participating in the Department of Defense *Test Program*.

20. Q. Do prime contractors that are buying a Commercial Item in accordance with the definition of a “Commercial Item” (see FAR clause 52.202-1) have to flow down FAR clauses 52.219-8 and FAR 52.219-9?

- A. To answer this question, a prime contractor should check its prime contract for the inclusion of either FAR clause 52.212-5 or 52.244-6. Both of these clauses require a prime contractor to flow down FAR clause 52.219-8 in all subcontracts over \$150,000 that offer further subcontracting opportunities, but they do not require that FAR clause 52.219-9 be flowed down. Since it is the clause at 52.219-9 that requires a subcontracting plan, not the clause at 52.219-8, the contractor does not have to obtain a subcontracting plan from its large business subcontractors if its contract contains either 52.212-5 or 52.244-6. (See FAR clauses 52.212-5(e) and 52.244-6(c) for the full list of clauses that must be flowed down when the subcontract is for a commercial item).

21. Q. Who approves a Commercial Plan if the company is a subcontractor, not a prime contractor?

A. If the subcontractor is offering a Commercial Plan, it is a good indication that the product or service is a commercial item, so a plan is normally not required under the flow-down requirement. (See the answer to Question 19 above.) If for some reason a plan is required (such as the omission of the FAR clauses at 52.212-5 or 52.244-6 in the prime contract), the prime contractor or higher-tier subcontractor may approve a Commercial Plan for its subcontractor. However, the Government reserves the right to require a new Commercial Plan if it awards a prime contract to the subcontractor later in the year. SBA is developing regulatory guidance to address this situation.

22. Q. In the case of a utilities contract, what happens if an OTSB subcontractor is asked for a subcontracting plan under the flow-down requirement and already has a commercial plan approved by General Services Administration (GSA)?

A. Flow-down requirements do apply to utilities that are under contract with the GSA. If you are a utilities subcontractor and have a commercial plan already approved by the GSA (which would be for a prime contract with GSA) you should send a copy of the actual plan and the approval letter from GSA to the prime contractor (utility). The product or service that you are providing to the utility under the subcontract must meet the definition of a commercial item, and the plan must be in effect at the time the subcontract is awarded. If you are submitting SSRs to GSA, you should also provide a “courtesy copy” to the prime contractor so that it can monitor your compliance with the reporting requirement.

23. Q. Are companies under the DOD Test Program for Comprehensive Subcontracting Plans required to obtain flow-down subcontracting plans?

A. Yes. The only exception is that a flow-down plan does not have to be obtained when the subcontractor is another participant in the *DOD Test Program for Comprehensive Subcontracting Plans*. This is specifically addressed in Memorandum of Understanding dated May 9, 2003, between the SBA and Defense Contract Management Agency (DCMA). In this situation, it is acceptable for the large business subcontractor to satisfy the requirement by furnishing a copy of a Comprehensive Subcontracting Plan approved by DCMA.

24. Q. If a company has an approved DOD Comprehensive Subcontracting Plan but also has non-DOD contracts, are they required to submit separate Individual Subcontracting Plans for these non-DOD contracts?

A. Yes, only DOD contracts are covered by the Comprehensive Subcontracting Plan. All non-DOD contracts must contain either Individual Subcontracting Plans or a Commercial Plan, if applicable.

25. Q. Is a Subcontracting Plan required from an HBCU/MI (Historically Black College or University/Minority Institution)?

A. HBCUs and MIs are normally not organized for profit, so they cannot be considered small businesses in accordance with SBA's regulations (13 CFR 121.105). Since they do not qualify as small businesses, they are not eligible for the exemption from the subcontracting plan requirement that is afforded to small businesses (FAR 19.702(b)(1)). Accordingly, a subcontracting plan is required from an HBCU or MI on any Federal contract over \$650,000 (over \$1.5 million for construction of public facility). [However, there is one exception: for contracts with the Department of Defense, NASA, and the Coast Guard, HBCUs and MIs are counted as small disadvantaged businesses (SDBs). Using common sense rationale, a subcontracting plan would not be required from a HBCU/MI under a DOD, NASA, or Coast Guard contract, since they are treated as SDBs, and SDBs are never required to submit a subcontracting plan.]

26. Q. Am I required to flow-down the requirement for a subcontracting plan when an individual subcontract award exceeds \$650,000 (\$1.5 million for construction of a public facility) or when an accumulation of awards (or follow-on awards) to a subcontractor exceeds \$650,000 (\$1.5 million for construction of a public facility)?

A. Large businesses are required to flow down the subcontracting plan requirement only when the original award exceeds (or is expected to exceed) \$650,000 (\$1.5 million for construction of a public facility). This policy is consistent with the current guidance in the FAR for contracting officers (see FAR 19.702(a)).

27. Q. Will the SBA select an appropriate subcontracting plan type for our company?

A. SBA prefers the company to make this decision on its own. Since SBA is a Government agency, it would not be appropriate to make such a business decision for you.

28. Q. The FAR clause at 52.219-9(d)(11)(iii) states that we must maintain records on purchases over \$150,000 indicating whether small business, small women-owned business, SDB, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns were solicited, and if not, why not. Does this \$150,000 threshold refer to individual or cumulative subcontract awards?

A. The clause that is referenced states that you must maintain records on each subcontract solicitation resulting in an award of more than \$150,000. Therefore, if there is one solicitation resulting in an award of more than \$150,000, the requirement applies, regardless of whether the awards are individual or cumulative. However, under Blanket Purchase Agreements and Blanket Purchase Orders, it is the order, not the agreement, that is considered a contract award; accordingly, in that situation an order would have to individually exceed \$150,000 for this requirement to apply.

29. Q. We received an indefinite-quantity, indefinite-delivery type contract with a not-to-exceed amount over \$1 million dollars. We submitted a subcontracting plan that was approved. However, our program manager informed us that we do not have to

submit the ISR/SSR until we receive at least \$650,000 worth of orders. Is that correct?

- A. No. The program manager is misinterpreting the intent of the \$650,000 threshold. In determining the need for a subcontracting plan, the agency must consider the estimated value of the procurement (including options and similar provisions) as to whether it will meet the dollar threshold (\$650,000 or \$1.5 million for construction of a public facility) requiring such a plan. Once the subcontracting plan has been approved and made a material part of the contract, the prime contractor must comply with the plan, which includes submitting the required reports, even if it has not yet received \$650,000 worth of orders.

Small Business Certifications

30. Q. A SDB that was included in my original proposal as a supplier has lost its SDB status and is now a small business only. My contract continues for another three years. How do I report subcontracts to this company?

- A. For clarification purposes, if the subcontract document is a Blanket Order Agreement, Blanket Purchase Order or similar “agreement” the subcontractor’s size is determined at the time of offer including “price.” You are required to determine the subcontractor’s size status each time an order is issued. If the subcontract document includes offer, acceptance, and consideration in the award, and the size is determined at the time the offer is submitted, then you may continue to take credit under the size and socio-economic status to which the subcontractor (including all small business categories) self-certified and which the prime contractor verified in the Central Contractor Registration’s Dynamic Small Business Search at www.ccr.gov (where applicable) when the original offer was submitted. In this case the prime contractor is not expected to amend prior reports, nor is it expected to count the subcontracts to this subcontractor any differently from now until completion of the subcontractor’s current subcontracts. Obviously, the subcontractor’s status will change for any future subcontracts. (See 13 CFR Part 121, especially 121.404, 121.410, and 121.411. Also see FAQ 31.

31. Q. My supplier was SDB-certified but it has expired and it has submitted a request for re-certification. Since it is pending, can’t I continue to count it as a SDB?

- A. A change to the SDB program was posted on the Federal Register on October 3, 2008. This rule allows firms to self-represent their status for subcontracting. A firm may represent that it qualifies as an SDB for any Federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals. Although the October 3, 2008, change to the SDB program is in effect, Prime contractors must continue to only count SBA certified SDBs towards their subcontracting goals in accordance with the SDB contract clause at

FAR 52-219-23(a)(1). The SBA is working with the FAR council to get new clauses implemented that will allow prime contractors to count self-certified SDBs towards their subcontracting goals.

32. Q. Our company was contacted by a SDB concern requesting to do business by providing a service that we perform in-house and have no intention of outsourcing. The SDB concern complained that we were not complying with our subcontracting plan. Even though we are not currently meeting that particular goal, are we required to subcontract with this firm?

A. The statutory requirement for a subcontracting plan may be found in Section 8(d) of the Small Business Act. The regulatory implementation is primarily within the FAR, 48 CFR 19.7 (and related clauses) and in SBA's own regulations (13 CFR 125.3). A review of the statute and regulations should affirm that a prime contractor is not required to subcontract to a particular small business or SDB, even if the subcontractor provides a product or service that the prime contractor can use. Furthermore, SBA is NOT authorized to require a prime contractor to subcontract a specific amount of the contract or to use a particular vendor. SBA's regulation defines good-faith effort and clarifies that a prime contractor can be found to be making a good-faith effort without necessarily meeting every goal in every subcontracting plan.

33. Q. A small business approached our company with an innovative idea. This consulting firm, which received various federal certifications, i.e. HUBZone, etc., has proposed to us that we issue subcontracts to his company and he in turn will forward the procurement to an appropriate member of his consortium for processing. The prime contractor will then be able to take credit for doing business with a certified HUBzone small business.

A. This arrangement is merely a pass-through which adds little or no value to the procurement. It does not comport with the spirit or intent of the subcontracting program.

34. Q. Where should a prime contractor validate that a subcontractor is SBA-certified as a HUBZone small business?

A. A prime contractor must validate that a firm representing itself as HUBZone is in fact certified by SBA. Go to www.ccr.gov, or to http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm. To validate HUBZone certification, the "yes" block in the HUBZone field will be checked.

35. Q. What resources are available to help a supplier determine its size status?

A. To verify that it is a small business, go to <http://www.sba.gov/size> and select "Search NAICS." To review SBA's size regulations, go to <http://www.sba.gov/library/lawroom.html> and scroll down to 13 CFR Part 121. Still have questions? Contact the nearest SBA's Office of Government Contracting at <http://www.sba.gov/aboutsba/sbaprograms/gc/index.html> or call (202) 205-6618.

36. Q. One of our small business suppliers is listed as a small business in the CCR website for a particular NAICS code based on number of employees; however, they are interested in providing us services under a different NAICS code, which is based on total revenue. They are small for the employee-based NAICS code but they far exceed the dollar threshold for the revenue-based NAICS code. How would this issue be handled?

A. A subcontractor's size is based on the NAICS code of the subcontract. Therefore, in the situation described above, the supplier would be considered other-than-small if the subcontract is for a service (or product) under the revenue-based NAICS code.

37. Q. How often do I have to self-certify my subcontractors? Can I accept third party certifications?

A. In accordance with FAR 19.703, the contractor is required to have a written size self-certification for every subcontractor it is counting as small on its reports. If there is no self-certification, then it must be counted as a large business award. Ideally, a prime contractor obtains a size certification in connection with each subcontract. No third party certifications are authorized unless written self-certifications are obtained and can be produced for reviews or obtained any time by the contractor.

38. Q. Can I use CCR and/or ORCA instead of obtaining a written size self-certification?

A. No. Regulations require that the prime contractor obtain a written size self-certification from every subcontractor that is counted as small on its reports. CCR should never be used as a formal size certification. Per FAR 4.12, ORCA can only be used as a certification for size as a **prime** contractor. You may rely on the information contained in the CCR or equivalent database maintained or sanctioned by the SBA, as an accurate representation of a concern's size and ownership characteristics for purposes of maintain a small business source list. Even though a concern is on a small business source list, it must still qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor.

40. Q. New regulations require that small businesses recertify their size status on long-term contracts when a contract option is exercised, when a small business is purchased by or merged with another business, or at the end of the first five years of a contract. Does this new regulation apply to the subcontracting program?

A. No. Recertification of size only pertains to prime contracts. It does not apply to the Small Business Subcontracting Program or to subcontracts. It applies to prime contracts where the small business is the prime contractor. The recertification rule became effective on June 30, 2007 and has to do with the size of a small business concern that is a prime contractor. It applies to prime contracts issued after the effective date and those in existence at the time of the effective date of the rule. Recertification is required prior

to the beginning of the sixth year of the prime contract and continues until contract completion. For prime contracts with option years, recertification is required prior to each option year.

The purpose of the rule is to address the time at which size is determined for small business prime contractors performing long term prime contracts. It applies to Government Wide Acquisition Contracts, Multiple Award Schedules, Federal Supply Schedules, etc. There are no immediate changes to the small business subcontracting program. The recertification rule monitors the growth of a small business prime contractor during the tenure of long term prime contracts. (prime contracts lasting longer than 5 years and prime contracts with options years)

For example, if a small business is awarded a prime contract with option years, then the small business has to recertify prior to each option year of the prime contract. If a small business is awarded a prime contract that last more then 5 years, then the small business prime contractor has to recertify prior to the sixth year of the contract and continue to recertify until the contract ends.

Joint Ventures

41. Q. If two companies form a joint venture (JV) and the JV is required to adopt a subcontracting plan, how does the Government determine which company is responsible for the plan and the subsequent reports?

A. A JV is a new legal entity created to perform a specific Government contract. By SBA's definition, it is never an ongoing concern. The contract will be awarded to the JV; the subcontracting plan will then have the name of the JV; and the JV should submit its reports under the name of the JV.

42. Q. If one of the partners to the JV is a small business and the other is a large business, can work performed by the *small* JV partner be counted towards the small business goal?

A. For purposes of reporting, transactions between affiliates are not considered subcontracts; therefore, the JV cannot take credit for any transactions between the JV and its individual partners. The JV may take credit for whatever it subcontracts to other companies, of course, including small businesses.

43. Q. Is there any way that large businesses forming the JV can take credit for the accomplishments of the JV towards their own subcontracting goals?

A. No, the large businesses cannot take credit for the JV's accomplishments towards their own subcontracting goals; rather, the JV must submit its own reports under its own name.

SB/SDB Subcontracting Goal Credit for ANCs and Indian Tribes

44. Q. Please explain how subcontracts awarded to the Alaska Native Corporations (ANCs) and Indian tribes are reported and if any special certification requirements are needed.

A. Effective September 17, 2007, a new rule changed the small business subcontracting program which incorporates ANCs and Indian tribes in the subcontracting plan requirements. To see the complete language, see FAR 19.7 and FAR clause 52.219-9. Essentially the following procedures apply: subcontracts awarded to an ANC or Indian tribe shall be counted towards subcontracting goals for SB and SDB concerns, regardless of the size of the ANC or Indian tribe and where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its SB and SDB subcontracting goals. In most cases the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe. The ANC or Indian tribe may designate more than one contractor to count the subcontract toward its goals, but the sum of the amounts designated to various contractors cannot exceed the total value of the subcontract. The ANC or Indian tribe shall give a copy of the written designation to the contracting officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award. If this is not accomplished within the 30 day period, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor. Finally, a contractor acting in good faith may rely on the written representation of an ANC or Indian tribe as to its small business size status.

45. Q. Do I need to have my ANC subcontractor recertify their business size as a SDB and a Small Business (SB)?

A. No. ANC subcontractors do not have to recertify their status as a SDB or as a Small Business. A Contractor acting in good faith may rely on the written representation of an ANC or an Indian tribe as to the status or eligibility of the ANC or Indian tribe unless an interested party challenges its status or eligibility or the contracting office has independent reason to question its status or eligibility. In the event of a challenge, the matter must be referred to the Department of Interior in accordance with FAR 26.103 (48 CFR 26.103). See FAR 19.703(c)(2), 48 CFR 19.703(c)(2).

46. Q. Does this new rule include all Native American firms?

A. Yes. The new rule includes all Native American firms. The rule includes any for-profit and not-for-profit entities. Whether or not the Indian tribe or ANC is a not-for-profit entity or a for-profit business does not affect the implementation of section 702 of Public Law 107-117. It applies to direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

47. Q. How will the contractor take SB and SDB credit for subcontracts it places with an ANC, Indian Tribe or Indian-owned economic enterprise?

- A. The prime contractor that issues a subcontract to an ANC or Indian tribe receives credit for the ANC or Indian tribe at the first tier. Where the ANC or tribe is a lower-tier subcontractor, the ANC or Indian tribe must provide written designation to the contracting officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe, regarding which entity will receive credit for its SB or SDB subcontracting goals. The ANC or tribe may designate more than one entity to receive credit, but it may designate only a portion of the subcontract to each selected subcontractor; and the sum of the amounts designated to various contractors cannot exceed the total value of the subcontract. See 48 CFR (FAR), subpart 19.703(c)(1)(ii)(B). If the contracting officer does not receive a letter of designation to the prime contractor from the ANC or Indian tribe within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor. See 48 CFR 19.703(c)(1)(ii)(C) and the related clause at 52.219-9(d)(1)(ii)(D). The Electronic Subcontracting Reporting System (eSRS) have been updated to reflect this regulatory change. Contractors will need to modify their internal reporting processes to capture and report the ANC and Indian-Tribe subcontract dollars in the SB and SDB categories.

48. Q. Where can I find a list of ANCs, Indian Tribes and/or Indian-owned economic enterprises?

- A. The list of ANCs can be found at <http://www.lbblawyers.com/ancsa.htm> under the heading **Native Corporations**. A list of Indian Tribes is found at http://www.ncai.org/Tribal_Directory.3.0.html. In addition, firms owned by ANCs, Indian Tribes and Native Americans are registered in CCR at www.ccr.gov

49. Q. If I already have subcontracts in place with a large ANC or Indian Tribe, do I need to change their status in our supplier profile system (e.g., BEST)?

- A. No. The new ANC and Indian Tribe rules do not require Prime contractors to change the status of their ANC and Indian Tribe suppliers. ANCs and Indian Tribes can be counted towards a contractor's goal for subcontracting with SB and SDB concerns. Credit can be taken even where the ANC or Indian Tribe may be other-than-small under the SBA's regulations.

50. Q. What "proof" is required from firms who claim ANC, Indian Tribe, or Indian-owned economic enterprise?

- A. Per FAR 19.703, a contractor acting in good faith may rely on the written representation of an ANC or an Indian tribe as to the status of the ANC or Indian tribe unless an interested party challenges its status or the contracting officer has independent reason to

question its status. ANC's and Indian Tribes may also be verified by the web links mentioned in question number 48 above.

Miscellaneous

51. Q. How long is a prime contractor required to retain the ISR/SSR reports?

A. FAR Part 4 addresses retention of contract documents. Also, we suggest that you check with each individual agency for any additional requirements. A copy of the SSR, downloaded and signed by the CEO, must be kept on file for four years.

52. Q. Our organization is awarded both grants and contracts from the Federal Government. How do I report grants?

A. Grants do not fall under the FAR; therefore, transactions resulting from grants should not be included within the ISR/SSR. However, universities and research centers should review the contents of their grant awards to determine the extent of other reporting requirements. The awarding agencies may require other reporting or other small business efforts on the part of the grant recipient.

53. Q. Does the Walsh Healy Act affect the subcontracting program?

A. No, it does not because Section 7201(a) of FASA (1994) removed the portions of the Walsh-Healy Act that affect small business. Remaining portions of the Act include Child Labor, Minimum Wage, etc. Any questions about the remaining sections of Walsh-Healy should be directed to the Department of Labor.

54. Q. Is the Labor Surplus designation applicable to the subcontracting program?

A. No.

55. Q. Are electronic self-certifications acceptable?

A. SBA's and FAR regulations have not yet been updated to permit prime contractors to use electronic self-certifications for subcontracting purposes. When SBA's Commercial Market Representatives conduct compliance reviews, prime contractors are expected to have hard copies of all self-certifications on file; moreover, the self-certifications must be signed and dated. A prime contractor that wishes to capture self-certifications electronically should require its subcontractors and suppliers to follow up with a hard copy. Reminder: All subcontractors and suppliers claiming HUBZone status and SDB status must be certified by SBA. (Note: As of October 3, 2008, SBA is not required to certify SDBs)

56. Q. If a large business contractor is being reviewed by SBA as a subcontractor, should the Commercial Market Representative’s review findings be shared with the prime contractor of those subcontracts?

A. The SBA Commercial Market Representative will always use caution in these instances. In some cases, the firms may be competitors and subcontracting review information could be detrimental in a future procurement where past subcontracting performance is an evaluation factor. As a general rule, the Commercial Market Representative’s findings will not be shared with another prime contractor.

57. Q. Does the Non-Manufacturers Rule apply in subcontracting?

A. No. Section 303(h) of Public Law 100-656 and Section 210 of Public Law 101-574 incorporated into the Small Business Act require that agency contracts be directed solely to small business manufacturers under set-aside provisions. This requirement is commonly referred to as the Nonmanufacturer Rule. *The manufacturing requirements and nonmanufacturer rule do not apply to service contracts-service contracts have different performance requirements.* The Small Business Act also contains provisions that allow the Administrator of the U.S. Small Business Administration (SBA) to waive this requirement when there are no known small business manufacturers or processors available to supply the product to the Federal government.

58. Q. Our large business is considering implementing “small business set-asides” in order to increase subcontracting opportunities to small businesses. Please provide information on this program.

A. Guidance on small business set-asides is located in the FAR, subpart 19. Please recognize, however, that this subpart is intended for contracting officers of the Government, not for prime contractors. These regulations neither authorize nor prohibit set-aside subcontracts for small business. If you are going to establish internal procedures for set-asides, we suggest that you consider using the term “managed competition” to avoid confusion with the Federal Government’s small business set-aside program, and stress to your buyers and purchasing agents the importance of conducting market research. You should also take the necessary steps to ensure that your managed competition results in a fair market price. Bear in mind, also, that the type of contract you were awarded may not be amenable to managed competitions. In any case, your buyers and purchasing agents should fully document contract files when conducting purchases in this manner.