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#### **OVERVIEW**

- Federal Policy/Background/Definition
- Regulatory Requirements
- Types of Subcontracting Plans
- Elements of Subcontracting Plan
- Responsibilities of the Prime Contractor
- Negotiation of Subcontracting Plan/Goals
- Things to Remember
- Subcontracting Resources



#### FEDERAL POLICY

- Small business concerns (SBC) (Note 1) must have maximum practicable opportunities to participate in the performance of federal contracts.
- Contractors must agree to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of the contract.

#### Note 1:

Includes: Small Disadvantaged Businesses (SDB)

Women-Owned Small Businesses (WOSB) HUBZone Small Businesses (HUBZone SB)

Service-Disabled Veteran-Owned Small Businesses (SDVOSB)



#### **BACKGROUND**

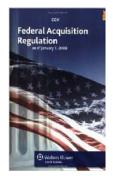
### **Statutory Authority:**

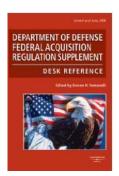
- Section 8(d) 15 USC 637(d)
- Section 15(g) 15 USC 644(g)

### Regulations/Directives:

- FAR 19.7/DFARS 219.7
- FAR Clause 52.219-8, Utilization of Small Business Concerns
- FAR Clause 52.219-9, Small Business Subcontracting Plan









### **DEFINITIONS**

### **SUBCONTRACT:**

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 performance of the contract, or contract modification, or subcontract.

**FAR 19.701** 



### **DEFINITIONS** (continued)

#### **SMALL BUSINESS CONCERN:**

Means a concern, including its affiliates that is:

- Independently owned and operated
- Not dominant in the field of operations in which it is proposing on Government contracts
- Qualified as a small business under the criteria and size standards in 13 CFR Part 121



### REGULATORY REQUIREMENTS

• FAR Clause 52.219-8, Utilization of Small Business Concerns, implements Federal Government Small Business Policy.

#### • APPLIES TO:

- —Contracts > Simplified Acquisition Threshold AND subcontracting opportunities exist
- -All business concerns, including small businesses

### • DOES NOT APPLY:

When performance is entirely outside the US and outlying areas



### REGULATORY REQUIREMENTS

• FAR Clause 52.219-9, Small Business Subcontracting Plan, implements Federal Government Small Business Policy.

#### • APPLIES TO:

- —Contracts >\$700K (\$1.5M construction) AND subcontracting opportunities exist
- —Modifications >\$700K with new work AND subcontracting opportunities exist
- -For large businesses, state/local government, educational institutions, foreign owned firms. Basically, all except small business concerns



### REGULATORY REQUIREMENTS

- DOES NOT APPLY TO:
  - -Small business (SB) set asides under HUBZone SB, 8(a), WOSB or SDVOSB Programs
  - -When performance is entirely outside the U.S. and outlying areas
- NOTE: When it is determined that there are no subcontracting possibilities, the determination must be approved at a level above the contracting officer and placed in the contract file

FAR 19.705-2(c)



### TYPES OF SUBCONTRACTING PLANS

#### **Individual:**

- Plan for a specific contract (1 contract = 1 plan)
- Covers entire contract period, including options
- Contains required elements (FAR 19.704)
- Must submit Individual Summary Report (ISR) semiannually
- Must submit Summary Subcontract Report (SSR) annually for NAVFAC contracts



### TYPES OF SUBCONTRACTING PLANS

### **Master Plan:**

- Boiler plate Plan
- Corporate, plant, or division basis
- Effective for 3 years after approved
- Contains required elements (FAR 19.704) except goals
- Goals negotiated for each contract that incorporates the master plan
- When incorporated into contract, must submit ISR and SSR



### TYPES OF SUBCONTRACTING PLANS

### **Commercial:**

- Preferred for commercial items
- Annual plan
- Contractor's fiscal year
- Corporate, plant, or division basis
- Contains required elements (FAR 19.704)
- Must submit SSR annually



#### MANDATORY ELEMENTS OF PLANS

Per FAR 19.704 and 52.219-9 subcontracting plans must include:

- Goals based on planned total subcontracting dollars expressed as percentages and dollars
- Total dollars to be subcontracted
- Types of supplies/services to be subcontracted
- Method used to develop goals
- Method used to identify potential SB
- Indirect costs included/not included
- Name of individual administering the plan
- Efforts to ensure small businesses have equitable opportunity to compete



### **MANDATORY ELEMENTS OF PLANS**

Per FAR 19.704 and 52.219-9 subcontracting plans must include (cont.):

- Assurances that required clauses and provisions flow down to subcontractors
- Assurances that reporting will be done
- Recordkeeping procedures
- Good faith effort to acquire supplies or services from SBs
- Assurances that written explanation is provided to the contracting officer if contractors fails to acquire supplies or services from SBs
- Assurances that subcontractor is allowed to discuss with the contracting officer on payment issues
- Assurances that subcontractors are paid on time in accordance with terms and conditions of the subcontract



### SUBCONTRACING GOALS

### FY17 NAVFAC Subcontracting Targets\*

•SB Concerns: 65%

•SDB Concerns: 15%

•WOSB Concerns: 15%

HUBZone SB Concerns: 6%

SDVOSB Concerns: 5%

<sup>\*</sup> Percentage of total \$ value of all subcontracts



### RESPONSIBILITIES OF THE PRIME CONTRACTOR

Effort to provide maximum practicable opportunities include:

- Breaking out contract work items into economically feasible units
- Conducting market research to identify sources
- Soliciting SBC's early in the acquisition process
- Providing interested SBC's adequate and timely info, plans and specs for the requirement
- Negotiating in good faith with interested SBC's
- Directing SBC's that need additional assistance to SBA
- Assisting SBC's in obtaining bonding, line of credit, etc.
- Participating in a formal mentor-protégé program
- Submitting timely and accurate subcontracting reports to the contracting officer



### **NEGOTIATIONS OF SUBCONTRACTING PLAN/GOALS**

### **TIPS and POINTERS**

- Use the Subcontracting Plan Template provided in the RFP
- Address all 15 elements of the Plan
- Option contracts require individual goals for each option Use the summary format to record option goals
- When proposed plan does not meet the percentage goals and/or NAVFAC targets, provide an explanation
- Past performance helps in answering reasonableness of plan and goals



### **NEGOTIATIONS OF SUBCONTRACTING PLAN/GOALS**

### **TIPS and POINTERS (continued)**

- Conduct market survey to identify qualified sources
- Address company's make or buy policies
- Zero is not a goal
- Ensure numbers are correct and percentages are calculated correctly – a proposed subcontractor may fall under more than one category of SB



#### THINGS TO REMEMBER

- A subcontracting plan that is acceptable to the Contracting Officer is a requirement for award
- The negotiated Subcontracting Plan is made a part of the contract
- Non-Compliance with the negotiated Subcontracting Plan is a material breach of the contract
- Liquidated Damages are assessed where non-compliance is based on lack of good faith (FAR 52.219-16)
  - What actions lead up to this
  - Subject to the Dispute Clause of the contract
  - Liquidated damages shall be in addition to any other remedies that the Government may have



### THINGS TO REMEMBER

- Contractors are required to submit semi-annually
  - (1) Individual Subcontracting Reports (ISRs) and
  - (2) Summary subcontracting Reports (SSRs) through eSRS
- Contracting Officer is responsible for monitoring contractor's compliance with Subcontracting Plan
- Contractor's past performance in complying with subcontracting plan and meeting goals is an evaluation factor in best value source selection solicitations
- Contractor is responsible for obtaining and accepting subcontracting plans from their tier subcontractors when applicable
- Upon completion of the contract, the contractor is evaluated for implementation of the contract Subcontracting Plan



### **WRAP-UP**

### Why is Subcontracting so important?

- Required by statute and regulation
- Expands the industrial base
- Good for the economy

"Small business is good business!"



#### SUBCONTRACTING RESOURCES

 FedBizOpps "Vendor Notification Service" and "Vendor's Guide for Federal Procurements":

https://www.fbo.gov/

- DefenseLink >\$7 million award notices: http://www.defense.gov/contracts/
- SBA Subcontracting Opportunities Directory (SUB-Net): <u>http://www.sba.gov/subnet</u>
- Procurement Technical Assistance Centers (PTAC): http://www.aptac-us.org/
- NAVFAC Portal: <u>www.navfac.navy.mil</u>
- DoD Office of Small Business Programs: <a href="http://business.defense.gov/">http://business.defense.gov/</a>