



USAID SENIOR PROCUREMENT EXECUTIVE

USAID PROCUREMENT EXECUTIVE BULLETIN NO. 2017-01

SUBJECT: Subcontracting Plan Requirements, Evaluation, and Reporting/Monitoring

- 1. Scope:** This Bulletin applies to all Contracting Officers/Contract Specialists responsible for procurements subject to the small business subcontracting plan requirements of Part 19 of the Federal Acquisition Regulations (FAR). This bulletin replaces PEB 2014-05 in its entirety.
- 2. Purpose:** The purpose of this PEB is to clarify when subcontracting plans are required; the process for obtaining OSDBU clearance on the plans; the evaluation of subcontracting plans; and key roles and responsibilities for monitoring their use.
- 3. Background:** FAR Subpart 19.7 contains the regulatory requirements governing the small business subcontracting program. Pursuant to FAR 19.702, Statutory Requirements, “any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance.”
- 4. When Are Subcontracting Plans Required:** In accordance with FAR Subpart 19.7, Contracting Officers (COs) must obtain an acceptable subcontracting plan from the apparently successful offeror for negotiated contracts or contract modifications that are individually expected to exceed the subcontracting plan threshold found in FAR 19.702 (currently \$700,000 (\$1.5 million for construction)), and that have subcontracting possibilities. If the offeror does not submit an acceptable subcontracting plan, the offeror will be ineligible for the award.

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

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

- (1) From small business concerns;
- (2) For personal services contracts;

- (3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or
- (4) For modifications to contracts within the general scope of the contract that do not contain the clause at 52.219-8, Utilization of Small Business Concerns.

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

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

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

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

7. Establishing Small Business Goals: When a small business subcontracting plan is required the CO must consult with OSDDBU before establishing the small business subcontracting goals for a particular procurement. Following this consultation, the CO must provide specific goals for the solicitation based on market research and consultation with OSDDBU or include the Agency’s subcontracting goals in the solicitation.

8. Required Elements of a Subcontracting Plan: FAR 19.704 Subcontracting Plan Requirements contains the required elements of the subcontracting plan. OSDDBU has posted a subcontracting plan template on its subcontracting web page at http://www.usaid.gov/business/small_business/subcontracting-program. Offerors/ contractors may use this template to ensure compliance with FAR 19.704.

9. Evaluation of Small Business Subcontracting Plans: Small business subcontracting plans are usually reviewed by the Agency as a matter of responsibility. However, decisions of the Government Accountability Office (GAO) clarify that it is permissible to evaluate small business

subcontracting plans as a matter of responsibility **or** as a weighted technical evaluation factor. COs should be aware that these are both viable options for the evaluation of small business subcontracting plans. **There are important differences between the two.**

- **Option 1: Matter of Responsibility**

If the small business subcontracting plan is examined as a matter of responsibility then the CO must only find the apparently successful offeror's plan acceptable prior to award. Negotiations with the apparently successful offeror on its small business subcontracting plan are considered "clarifications" and do not open "discussions."

In this scenario OSDDBU reviews the plans of the apparently successful offeror prior to award. COs should e-mail a copy of the apparently successful offeror's subcontracting plan to OSDDBU at PlanReview@usaid.gov for advice and recommendations. OSDDBU will review the plan for compliance with FAR 19.705-4 and meeting the solicitation's subcontracting goals and will e-mail its comments/recommendations to the CO.

- **Option 2: Weighted Technical Evaluation**

If the small business subcontracting plan is evaluated as a weighted evaluation factor, or subfactor, then the subcontracting plans of all offerors must be evaluated before the CO makes a competitive range determination or an award. If the CO makes a competitive range determination and opens discussions, the CO must inform all offerors within the competitive range of any deficiencies or significant weaknesses in the small business subcontracting plan. Revisions required for the subcontracting plan are not a "clarification," but are rather considered a "discussion." If the CO plans to make an award without discussions, then an award cannot be made to an offeror that has submitted a small business subcontracting plan that, at a minimum, does not meet FAR Part 19 requirements.

In this scenario the Technical Evaluation Committee (TEC) is ultimately responsible for the evaluation of all subcontracting plans and OSDDBU's role is advisory. The TEC must review the subcontracting plans of all offerors for compliance with FAR 19.705-4 requirements and for meeting the solicitation's subcontracting goals. The TEC must also document strengths, weaknesses, etc. of each proposed plan and score the plans as required by the solicitation. It is recommended that the CO and TEC consult with OSDDBU during the evaluation process. As the OSDDBU representative will be reviewing source selection documents, he/she must sign the non-disclosure and conflict of interest forms.

The differences between the two evaluation approaches outlined above are critical. In the event of a bid protest, GAO will not consider the terminology used by the Agency (e.g. "evaluation factor," "evaluation criteria," "responsibility factor," "discussions," or "clarifications"), but will examine the record to determine what actually occurred during the course of the procurement process with respect to the subcontracting plans. The CO must document in the solicitation the method by which small business subcontracting plans will be evaluated—either as a matter of responsibility or as a weighted technical evaluation factor and then adhere to that method throughout the evaluation process.

10. Final Plan: Once a final award decision is made, the CO must send a copy of the final subcontracting plan to the OSDDBU Subcontracting Program Manager and to the Small Business Administration (SBA) Area Director, per the instructions in the Agency Secure Image and Storage Tracking System (ASIST) File Standardization Guide, available on the ASIST webpage. The final plan should include the signature of the prime contractor's submitting official and the cognizant CO. As the approved subcontracting plan is a material contract requirement, it must be incorporated into the contract and a copy maintained in the contract file.

11. Reporting and Monitoring Under IDIQ Contracts: Per FAR 19.705, a contract may not have more than one subcontracting plan. Task orders issued under IDIQ contracts are part of the base award. All subcontracting utilization reporting is accomplished at the IDIQ base contract level, not at the task order level. The eSRS system does not allow prime contractors to submit subcontracting reports at the task order level. Therefore, prime contractors report subcontracting utilization for task orders under the master IDIQ contract number for the base award. The CO for the IDIQ has the responsibility for monitoring the prime contractor's small business utilization against the subcontracting plan under the IDIQ base award and all task orders.

12. Responsibilities of the Contracting Officer With Regard to the Subcontracting Program: As prescribed in FAR 19.708, COs must insert the clause at FAR 52.219-9 (Small Business Subcontracting Plan) as applicable in solicitations. This clause specifies the information that prime contractors must include in subcontracting plans, to include assurances that they will utilize the eSRS system to report their subcontracting reports.

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

- Assuring that a subcontracting plan is submitted when required and that it is incorporated into and made a material part of the contract;
- Reviewing the subcontracting plan for adequacy per FAR 19.704;
- Evaluating the offeror's past performance in awarding subcontracts for the same or similar products or services to small business;
- Advising the offeror of available sources of information on potential small businesses, as well as any specific concerns known to be potential subcontractors;
- Including the applicable contract clauses in solicitations and contracts as prescribed in FAR 19.708;
- Acknowledging receipt of or rejecting the ISR and SSR in the eSRS. The CO's acknowledgement of receipt does not mean acceptance or approval of the report. The CO will reject the report if it is not adequately completed; for instance, if there are errors, omissions, or incomplete data. The CO must not reject the report due to failure to meet the goals of the subcontracting plan;

