

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).

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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.

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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

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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).

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- 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."