

# **Federal Acquisition Regulation: Small Business Subcontracting Improvements**

**FAC 2005-89, FAR Case 2014-003**

**Implementation Under Multiple Award Schedules**

## **FAR rule (FAC 2005-89/FAR case 2014-003): Subcontracting Changes**

Changes being implemented include:

- Requiring prime contractors to make good faith efforts to utilize their proposed small business subcontractors during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal
- Authorizing contracting officers to calculate subcontracting goals in terms of total contract dollars in addition to the required goals in terms of total subcontracted dollars. 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.
- **Providing contracting officers with the discretion to require a subcontracting plan in instances where a small business re-represents its size as an other than small business**  
\*(Re-representation and new sub-k plan requirements will be addressed in more detail below)
- Requiring subcontracting plans even for modifications under the subcontracting plan threshold if said modifications would cause the contract to exceed the plan threshold.
- Requiring prime contractors to assign North American Industry Classification System (NAICS) codes to subcontracts

## **FAR rule (FAC 2005-89/FAR case 2014-003): Subcontracting Changes**

- Restricting prime contractors from prohibiting a subcontractor from discussing payment or utilization matters with the contracting officer.
- Requiring prime contractors to resubmit a corrected subcontracting report within 30 days of receiving the contracting officer's notice of report rejection
- Requiring prime contractors to provide the socioeconomic status of the subcontractor in the notification to unsuccessful offerors for subcontracts.
- Requiring prime contracts with subcontracting plans on task and delivery order contracts to report order level subcontracting information after November 2017.
- Funding agencies receiving small business subcontracting credit
- On indefinite-delivery, indefinite-quantity contracts, the contracting officer may establish subcontracting goals at the order level (but not a new subcontracting plan).

## New Subcontracting Plan Requirements

**When a contractor re-represents from a small to other than small business, GSA will require a sub-k plan, and:**

- when greater than 210 days prior to Option, the plan will be incorporated into the contract (via modification) immediately.
- when 210 days or less prior to Option, the plan will be incorporated into the contract and will be effective at the start of the Option period.

This is consistent with 19.705-2(f)-- If a subcontracting plan has been added to the contract due to a modification (see [19.702\(a\)\(3\)](#)) or a size re-representation (see [19.301-2\(e\)](#)), the subcontracting goals apply from the date of incorporation of the subcontracting plan into the contract and the contractor's achievements must be reported on the ISR (or the SF-294, if applicable) on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

## New Subcontracting Plan Requirements

**A contractor re-representing from an other than small to small business, may only re-represent under one of the following three conditions (see FAR 19.301-2):**

- within 30 days of a novation agreement
- within 30 days after a merger or acquisition
- within 60-120 days prior to the exercise of an option

When the re-representation is 60-120 prior to option (within 210 days), the plan will be removed from the contract, effective at the start of the option period.

When the re-representation is greater than 210 days prior to option the plan will be removed from the contract, effective immediately.

## Changes to FAR Clause 52.219-9 Small Business Subcontracting Plan

**The Model Subcontracting Plan has been updated to include the following additional requirements:**

- Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. Instead of goals expressed in terms of percentages of total planned subcontracting dollars
- Assurances that 'After November 30, 2017', include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts intended for use by multiple agencies
- Assurances that Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal.

## Changes to FAR Clause 52.219-9 Small Business Subcontracting Plan

- Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.
- Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.
- Indirect Costs: the subcontracting plan must include a statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred. **Note:** when a subcontracting plan includes indirect costs in the goals, these costs must be included in this report; **Regardless**, the contractor **must** include indirect costs **prorated to that agency** in its individual plan **SSR** per 52.219-9.

[https://www.sba.gov/sites/default/files/articles/Small\\_Business7\\_Liaison\\_Officer\\_\(SBLO\)\\_Handbook\\_6\\_2010.pdf](https://www.sba.gov/sites/default/files/articles/Small_Business7_Liaison_Officer_(SBLO)_Handbook_6_2010.pdf)

## Order Level Changes

- Required order-level reporting on single-award, indefinite delivery, indefinite quantity contracts intended for use by multiple agencies in addition to multiple-award contracts in use by multiple agencies
  - Order-level reporting will be required after November 2017, which is when Electronic Subcontracting Reporting System (eSRS) will be ready to accommodate the requirement
- On indefinite-delivery, indefinite-quantity contracts, the contracting officer may establish subcontracting goals at the order level
  - Only subcontracting goals may be established at the order level, not subcontracting plans

## Resources:

FAC 2005-89, FAR Case 2014-003- [Final Rule](#)

[Model Subcontracting Plan](#)

## Questions?