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# Small Business Subcontracting Plans vs. an Evaluation Factor (or Subfactor) for Small Business Participation

Sharon R. Morrow

DOD/Defense Threat Reduction Agency (DTRA)

Small Business Director

[Sharon.r.morrow.civ@mail.mil](mailto:Sharon.r.morrow.civ@mail.mil)

Phone: (571)616-5041

Cell: (571)835-0311



Stephanie Lewis

U.S. Small Business Administration (SBA)

Office of Government Contracting

Subcontracting Program Manager

[Stephanie.Lewis@sba.gov](mailto:Stephanie.Lewis@sba.gov)

Phone: (817) 684-5303

Cell: (817) 774-1380

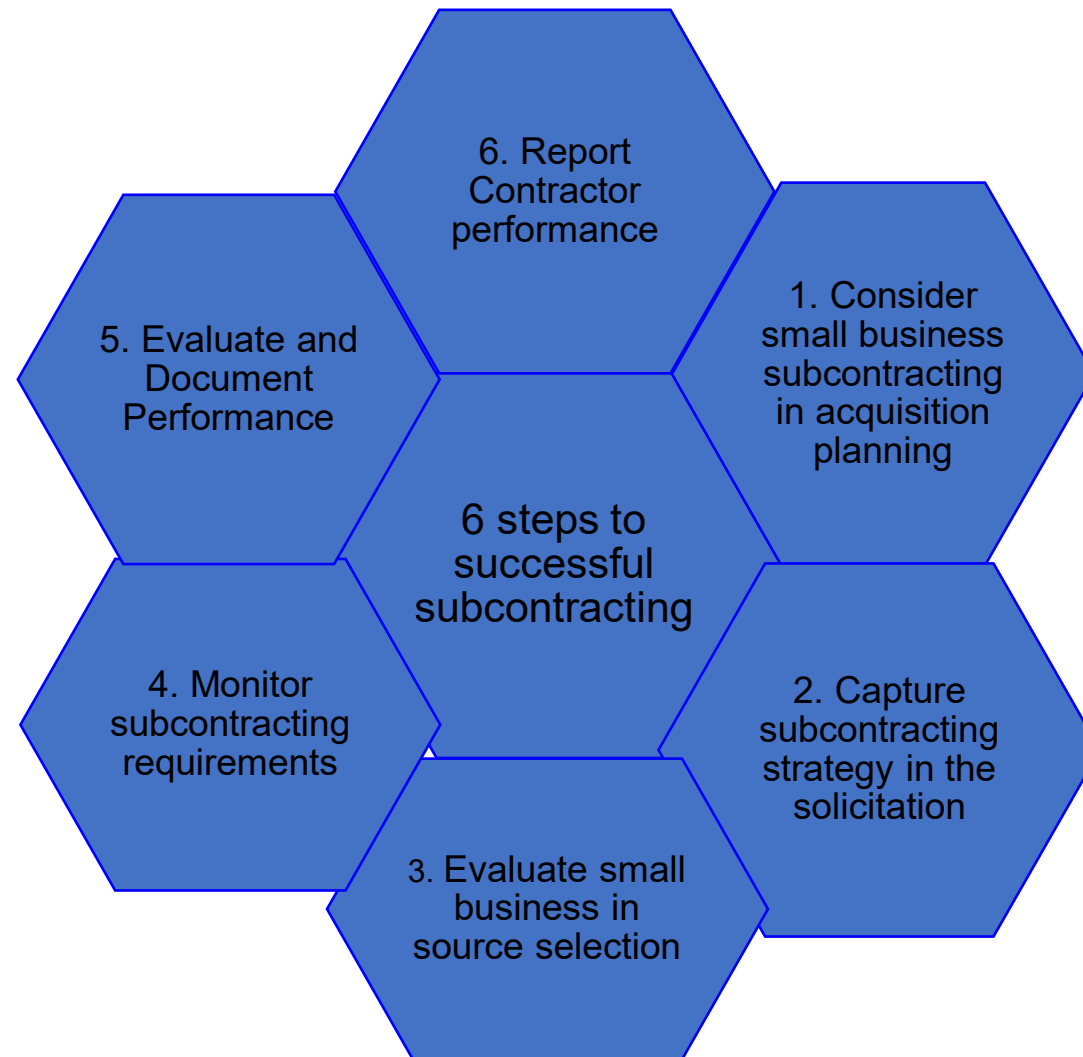


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# Subcontracting For Small Business



# Acquisition and Small Business Professionals Regulatory Guidance

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DoD Directive (DoDD) 5000.01, The Defense Acquisition System

DoDI 5000.02, Operation of the Defense Acquisition System

DoDD 4205.01, DoD Small Business Programs

Federal Acquisition Regulation

*Small Business Professionals are integral members of the acquisition team and should be involved in acquisition planning early!*



# Small Business Consideration

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When should small businesses be considered in acquisition planning?

**As soon as need is identified and market research begins**

**Market research is conducted to determine if:**

- **Commercial items are available**
- **Extent of competition**
- **Small businesses are capable of performing as prime contractors or subcontractors**



# Subcontracting Plan Requirement

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FAR 19.702(a) requires that all negotiated and sealed bid acquisitions that are expected to exceed \$750,000 (\$1.5 million for construction) and that has subcontracting possibilities, **shall require the apparently successful offeror/ bidder selected for award to submit an acceptable subcontracting plan** (see FAR 19.702(b) for exceptions).





# Subcontracting Plan Considerations

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1. Require submission of the subcontracting plan with the bids, quotes or proposals (vice any other time before contract award)

***Note: It is customary for the Contracting Officer (KO) to require offerors/bidders to submit a subcontracting plan with its offer/bid, though FAR permits its submission within the (any) time limit prescribed by the KO before contract award.***

2. Determine (based on the market research) desired acceptable subcontracting goals and SB Participation Proposal
3. Determine (based on the market research) anticipated areas suitable for subcontracting



# Evaluation of Small Business Participation Requirement

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1. FAR 15.304(c)(4) requires evaluation of small business participation for solicitations involving *bundling*.
2. DFARS 215.304(c) requires *evaluation of* small business participation in other than LPTA source selections whenever a subcontracting plan is required.

Note: Though evaluation of small business participation is not required for LPTA source selections, it is permissible. See the Source Selection Procedures Appendix C (C.4)





# Evaluation of Small Business Participation - Considerations

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## 1. Evaluation criteria

- DFARS PGI 215.304 for example factors/subfactors

## 2. Ways to evaluate

- Department of Defense Source Selection Procedures (section 2.3.4.2.3)

## 3. Options for rating

- Department of Defense Source Selection Procedures (section 3.1.4.1)

## 4. Reporting



# Differences between Assessing Subcontracting Plans & Evaluating Small Business Participation

SB Subcontracting Plan (Requirements/Assessment)	SB Participation Evaluation (Requirements/Evaluation)
FAR 19.7	FAR 15.304, DFARS 215.304
Must be negotiated and determined acceptable by the KO	Solicitation establishes requirements and evaluation criteria for SB participation
Must have 15 elements defined in FAR 52.219-9	Evaluation conducted IAW solicitation evaluation criteria
Required for all Federal contracts (subject to dollar limitations and exceptions) and includes both negotiated and sealed bidding	Required only for bundled contracts or certain DoD negotiated acquisitions
Does not apply to small businesses	Applies to all businesses
Based on total planned subcontracting dollars	DoD best practice MQR% (Targets) based on total contract value (TCV) (dollars)



# Differences between Assessing Subcontracting Plans & Evaluating Small Business Participation

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Assessment of a subcontracting plan and evaluation of small business participation are two separate yet related areas; they are treated differently in the solicitation, during source selection, and in award.

DFARS 215.304(c)(i)(B) states that proposals addressing the extent of small business performance **shall be separate** from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and shall be structured to allow for consideration of offers from small businesses.



# Subcontracting Plans & Small Business Participation Commitment Document (SBPCD)

## Subcontracting Plan

Elements IAW

FAR 19.704

and

FAR 52.219-9

*By using the term “Small Business Participation Commitment Document” vs. “plan” assists in not confusing it with the subcontracting plan.*

## Small Business Participation Commitment Document

(formerly called Small Business Participation PROPOSAL, Small Business Utilization Plan, or Enhanced Subcontracting Plan)

### Example contents

- Names of subcontractors to be utilized and the products/services they are to provide
- Describe type and complexity of products/services to be provided
- State extent of utilization quantitatively
- Other as necessary



# Similarities between Subcontracting Plans & SBPCD

- **Should compliment each other**

- In general, provisions of the subcontracting plan that coincide with the SBPCD should be consistent

- planned small business subcontracting dollars of the subcontracting plan should be the same as the extent of utilization quantitatively in the SBPCD

- Subcontracting percentages may be different if SBPCD proposal based on total value of acquisition (total contract value)

- Type of products/services to be subcontracted should be the same

- **Both should be contractually binding**



# Small Business and Subcontracting

## 52.219-8 -- Utilization of Small Business Concerns

(b) It is the policy of the United States that small business concerns, (including socioeconomic concerns) shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance.

Note: This policy applies to other than small businesses and small businesses





# Evaluation of Small Business Participation

## Consideration # 1 – Determine the evaluation criteria

(DFARS PGI 215.304 (c)(i)(A) Example Factors and Substantial Subfactors)

1. Extent to which SB firms are specifically identified in proposals
2. Extent of commitment to use such firms (i.e. enforceable teaming agreements or Mentor-Protégé Agreements)
3. Complexity and variety of work
4. Realism of the proposal
5. Past performance of complying with subcontracting requirements (i.e. FAR 52.219-8 Utilization of SB and FAR 52.219-9 SB Subcontracting)
6. Extent of participation of SB firms in terms of the value of the total acquisition

Other criteria may be used as appropriate



# Evaluation of Small Business Participation (continued)

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## **Consideration # 2 – Determine which way small business participation will be evaluated**

(Department of Defense Source Selection Procedures section 2.3.4.2.3 & 3.1.4.2)

Evaluation of small business participation may be accomplished in one of three ways:

**One** - By establishing a separate small business participation **evaluation factor**

Example:

Section M – Evaluation Factors

Factor 1 Technical

Factor 2 Past Performance

**Factor 3 Small Business Participation**

Factor 4 Cost



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# Evaluation of Small Business Participation (continued)

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**Two** - By establishing a small business participation subfactor under the technical factor

Example:

Section M – Evaluation Factors

Factor 1 Technical

Subfactor a. Management Approach

Subfactor b. Small Business Participation

**Three** - By considering small business participation within the evaluation of a technical subfactor

Example:

Section M – Evaluation Factors

Factor 1 Technical

Subfactor a. Management Approach

i. small business participation



# Evaluation of Small Business Participation (continued)

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## **Consideration #2 - Determining which way small business participation will be evaluated**

Though it is permissible to evaluate small business participation at a subfactor or lower level, to be the most meaningful, the greater the opportunity for utilization of small businesses, small business participation should be evaluated at the factor level.



# Evaluation of Small Business Participation (continued)

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## **Consideration # 3- Select an appropriate option for rating SB Participation** (DoD Source Selection Procedures section 3.1.4.1)

The appropriate options for rating SB Participation is dependent upon the way it is evaluated.

1. When evaluating SB participation as a ***separate evaluation factor***
  - Use the ratings “ACCEPTABLE” or “UNACCEPTABLE” only, **OR**
  - Utilize the ratings outlined in the DoD Source Selection Procedures Table 6.



# Evaluation of Small Business Participation (continued)

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2. Evaluating small business participation as a **subfactor under the technical factor**

Use the ratings acceptable and unacceptable only, or  
Utilize all ratings outlined in Table 6 of the source selection procedures.

3. Evaluating small business participation **within the evaluation of one of the technical subfactors**

When small business participation is evaluated within the evaluation of one of the technical subfactors, **a separate small business rating is not applied**. However, the small business participation shall be considered in determining the appropriate technical rating to be applied.





# Evaluation of Small Business Participation (continued)

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## Consideration # 4 – Establish Small Business Participation (Utilization) Reporting Requirements

**No regulatory requirement to require contractor to report subcontracting performance other than through eSRS (for more information regarding eSRS, see: [www.esrs.gov](http://www.esrs.gov).)**

- Reporting IAW subcontracting plans

### **Why require other than eSRS reporting?**

- Enhances enforceability of the SB Participation Proposal (in other words, hold ALL offerors accountable for what they said they planned to do in their proposal)
- Obtain information not required by eSRS reporting
  - May help us to determine compliance with Limitation on Subcontracting
- Aids determination of good faith effort
  - Supports assessing liquidated damages



# Evaluation of Small Business Participation (continued)

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## **Consideration # 4 – Establish Small Business Participation (Utilization) Reporting Requirements (continued)**

### **The other than eSRS reporting requirements**

- Tailor to what is appropriate for the acquisition
- Include the reporting requirement in the solicitation
- Make contractual (i.e. require submission of a CDRL)



# Evaluation of Small Business Participation and Source Selection

To understand the significance of SB Participation, a good solicitation and source selection evaluation will:

- Emphasize how the assessment of the subcontracting plan IAW FAR 19.7 is different from the evaluation of SB Participation;
- Explain how offers from SB prime offerors must be structured and how they will be evaluated (i.e. SB can include their performance in the proposal). The SB Participation answers the question “How will SBs participate in this requirement?”);
- State that evaluation of SB participation applies to Comprehensive Subcontracting Plan participants; and
- Provide SB goals (often call “targets” and, in DAU SBP 210 “Minimum Quantitative Requirement” [MQR]) for SB and socioeconomic categories based upon market research.



# Evaluation of Small Business Participation and Source Selection

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**(Continued) To understand the significance of SB Participation, a good solicitation and source selection evaluation will:**

- State that SB Participation is based upon Total Contract Value (TCV). Define TCV in the solicitation.
- Explain how Offerors will be rated, including that higher ratings may be assigned for exceeding goals, targets or MQR; submitting signed enforceable teaming agreements (vice non-enforceable ones);
- Evaluate SB Subcontracting Past Performance as it relates to SB utilization on previous contracts. Also, reserve the right to use additional information from eSRS CPARS, and DCMA Subcontracting audits that was not submitted with the proposal.



# Evaluation of SB Subcontracting Past Performance

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- [FAR 15.304 \(c\)\(i\)](#) - past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold
- Per [FAR 15.304\(c\)\(iii\)](#), past performance, except when the KO documents the reason that past performance is not an appropriate evaluation factor for the particular acquisition, shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the SAT.
- [DFARS 215.305\(a\)\(2\)](#) requires that in DoD solicitations that require past performance evaluation and include the clauses at [FAR 52.219-8 Utilization of Small Business Concerns](#) and [FAR 52.219-9 Small Business Subcontracting Plan](#), the past performance of offerors in complying with the requirements of those clauses shall be evaluated.



# Evaluation of SB Subcontracting Past Performance

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FAR 52.219-9(d)(12)&(13) require contractors 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. If it does not, it must provide the KO a written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

FAR 52.219-9(d)(15) requires prime contractors with subcontracting plans to notify their KO if they made an untimely or reduced to a small business subcontractor.

If the prime contractor's actions are not justified, the KO must enter this information into the Federal Awardee Performance and Integrity Information System (FAPIIS).

This could negatively affect the prime contractor's past performance rating.





# Evaluation of SB Subcontracting Past Performance (continued)

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SB Subcontracting Past Performance - complying with clauses at FAR 52.219-8, *Utilization of Small Business Concerns*, and FAR 52.219-9, *Small Business Subcontracting Plan* - can be evaluated as part of a Past Performance Evaluation Factor or Small Business Participation Evaluation Factor.



# Evaluation of Small Business Past Performance – What to Evaluate

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Examples of elements of small business utilization past performance (compliance with FAR 52.219-8) to evaluate include:

- 1) Actual prior use of small businesses (i.e. goal achievement)
- 2) Use of small businesses in the socioeconomic categories
- 3) Types of work performed by small businesses
- 4) Complexity of the work performed by small businesses
- 5) Reporting of small business performance in the Contractor Performance Assessment Reporting System (CPARS)
- 6) History of prompt payments to small businesses

*Note: Evaluation of small business past performance is not limited to evaluation of performance of other-than-small businesses only, but it includes the evaluation of small businesses' past performance of utilizing fellow small businesses as well.*



# Evaluation of SB Subcontracting Past Performance – What to Evaluate

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Additionally, when a subcontracting plan was required, evaluation of small business past performance (compliance with FAR 52.219-9) should include an evaluation of:

- 1) Performance against subcontracting goals.
- 2) Compliance with the subcontracting plan in general.



# SUBCONTRACTING TAKEAWAYS

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- Small Business Professionals (including SBA PCRs) need to be involved early in acquisition planning
- Development of the subcontracting strategy for an acquisition is a team effort
- Subcontracting Plans are assessed and negotiated as a basis for contract award
- Small Business Participation is evaluated IAW criteria for source selection
- Small Business Past Performance (compliance with FAR 52.219-8, *Utilization of Small Business Concerns*, and FAR 52.219-9, *Small Business Subcontracting Plan*), is required to be evaluated when past performance is required to be evaluated.



# KEY TAKEAWAYS

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- DoD agencies are required to evaluate SB Participation if our basis of award is “Best Value, Tradeoff” and the resulting contract requires a subcontracting plan.
- We are required to evaluate SB Past Performance (i.e. compliance with FAR 52.219-8, Utilization of Small Business Concerns, and FAR 52.219-9, Small Business Subcontracting Plan) when past performance is required to be evaluated. It can be evaluated as part of the SB Participation evaluation factor or included as part of the Past Performance evaluation factor.
- Contracting plans are assessed (not evaluated); SB Participation Proposals are evaluated IAW criteria for source selection identified in the solicitation. There are several option for how to evaluate the factor/subfactor.



# KEY TAKEAWAYS (continued)

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- SB Participation evaluation applies to ALL Offerors, even Small Businesses, but SBs can include their performance in the SB Participation Proposal.
- Subcontracting Plans are assessed and negotiated as a basis for eligibility of contract award. The subcontracting plan must contain all 15 required elements of a subcontracting plan and be consistent with the commitment made to SB in the SB Participation Proposal. Offerors are not eligible for award until they have an acceptable subcontracting plan.





# KEY TAKEAWAYS (continued)

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- Subcontracting Plans are expressed in terms of total subcontracted dollars;
- SB Participation Proposals are expressed in terms of Total Contract Value (TCV). NOTE: KOs can require the contractor to submit a subcontracting plan and report on that subcontracting plan based upon total contract value too.
- The dollars promised to SBs in the SB Participation Proposal must match the dollars to be subcontracted to SBs in the Subcontracting Plan.
- FAR Part 19 stipulates the requirement of a subcontracting plan. FAR Part 15 addresses EVALUATION of SB Participation.



# Resources

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Department of Defense (DoD) Source  
Selection Procedures

Federal Acquisition Regulation (FAR)

Defense Federal Acquisition Regulation  
Supplement (DFARS)



**Thank you.**



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