

## Contract Formation

# Activity 23: Subcontracting Requirements

*Procedures for establishing subcontracting requirements so small businesses will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance.*

**Related Flow Charts:** [Flow Chart 23](#)

**Related Courses:** [CON 200](#)

### Part A: Establish Subcontracting Requirements

Tasks	FAR Reference(s)	Additional Information
1. Determine whether to incorporate a requirement for a small business subcontracting plan in the solicitation and resulting contract.	<p>FAR 19.702 Statutory requirements [the small business subcontracting program].</p> <p>FAR 19.704 Subcontracting plan requirements [the small business subcontracting program].</p> <p>FAR 19.705-2 Determining the need for a subcontracting plan [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>Subcontracting plans required:</p> <ul style="list-style-type: none"><li>In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification that individually is expected to exceed \$650,000 (\$1.5 million for construction) and that has subcontracting possibilities must require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate an acceptable subcontracting plan within the prescribed time frame, the offeror will be ineligible for award.</li><li>In sealed bidding acquisitions, each invitation for bids (IFB) to perform a contract or contract modification that individually is expected to exceed \$650,000 (\$1.5 million for construction) and that has subcontracting possibilities must require the bidder selected for award to submit a subcontracting plan. If the bidder fails to submit a plan within the prescribed time limit, the bidder will be ineligible for award.</li></ul> <p>Subcontracting plans are not required:</p> <ul style="list-style-type: none"><li>From small business concerns;</li></ul>

Tasks	FAR Reference(s)	Additional Information
		<ul style="list-style-type: none"> <li>• For personal services contracts;</li> <li>• For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or</li> <li>• 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 (or equivalent prior clauses).</li> </ul> <p>On November 1, 2016, the FAR will be amended to implement SBA's final rule aimed at improving subcontracting regulations to increase small business opportunities. Relevant content will be updated with changes at that time.</p>
<p>2. Determine whether to incorporate a requirement for the use of Indian organizations and Indian-owned economic enterprises as subcontractors.</p>	<p>FAR Subpart 26.1 Indian incentive program [other socioeconomic programs].</p>	<p>Indian organizations and Indian-owned economic enterprises must have the maximum practicable opportunity to participate in performing contracts awarded by federal agencies. In fulfilling this requirement, the Indian Incentive Program allows an incentive payment equal to five percent of the amount paid to a subcontractor in performing the contract, if the contract so authorizes and the subcontractor is an Indian organization or Indian-owned economic enterprise.</p>

Tasks	FAR Reference(s)	Additional Information
<p>3. Determine whether to incorporate a make-or-buy program requirement in the solicitation and resulting contract.</p>	<p>FAR 2.101 Make-or-buy program [definitions].  FAR 15.407-2 Make-or-buy programs [special cost or pricing areas].</p>	<p>“Make-or-buy program” means that part of a contractor’s written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor’s facilities and those to be subcontracted.</p> <p>Contracting officers may require prospective contractors to submit make-or-buy program plans for negotiated acquisitions requiring certified cost or pricing data whose estimated value is \$12.5 million or more, except when the proposed contract is for research or development and, if prototypes or hard-ware are involved, no significant follow-on production is anticipated.</p> <p>Contracting officers may require prospective contractors to submit make-or-buy programs for negotiated acquisitions whose estimated value is under \$12.5 million only if the contracting officer:</p> <ul style="list-style-type: none"> <li>• Determines that the information is necessary; and</li> <li>• Documents the reasons in the contract file.</li> </ul>

Tasks	FAR Reference(s)	Additional Information
<p>4. Prepare a solicitation provision requiring a submission of a make-or-buy program.</p>	<p>FAR 15.407-2(d) Solicitation requirements [make-or-buy programs].  FAR 15.407-2(e) Program requirements [make-or-buy programs].</p>	<p>When prospective contractors are required to submit proposed make-or-buy programs, the solicitation must include:</p> <ul style="list-style-type: none"> <li>• A statement that the program and required supporting information must accompany the offer; and</li> <li>• A description of factors to be used in evaluating the proposed program.</li> </ul> <p>Confine the items and work that must be covered by the make-or-buy program to those major items or work efforts that normally would require company management make-or-buy review.</p> <p>The offeror’s program should include or be supported by the following information:</p> <ul style="list-style-type: none"> <li>• A description of each major item or work effort.</li> <li>• Categorization of each major item or work effort as “must make,” “must buy,” or “can either make-or-buy.”</li> <li>• For each item or work effort categorized as “can either make-or-buy,” a proposal either to “make” or to “buy.”</li> <li>• Reasons for categorizing items and work efforts as “must make” or “must buy,” and proposing to “make” or to “buy” those categorized as “can either make-or-buy.”</li> <li>• Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.</li> <li>• Identification of proposed subcontractors, if known, and their location and size status.</li> <li>• Any recommendations to defer make-or-buy decisions.</li> <li>• Any other information the contracting officer requires in order to evaluate the program</li> </ul>

Tasks	FAR Reference(s)	Additional Information
<p>5. Determine whether to establish a monetary incentive for exceeding small business subcontracting goals.</p>	<p>FAR 19.705-1 General support of the program [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>The contracting officer may encourage the development of increased subcontracting opportunities in negotiated acquisition by providing monetary incentives such as payments based on actual subcontracting achievement or award-fee contracting. When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the contracting officer must ensure that:</p> <ul style="list-style-type: none"> <li>• The goals are realistic; and</li> <li>• Any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended.</li> </ul> <p>Incentive provisions should normally be negotiated after reaching final agreement with the contractor on the subcontracting plan.</p>

## Part B: Evaluate Subcontracting Plans

Tasks	FAR Reference(s)	Additional Information
<p>1. Obtain the small business subcontracting plan from the offeror.</p>	<p>FAR 19.702(a)(1) Statutory requirements [the small business subcontracting program].</p> <p>FAR 19.702(a)(2) Statutory requirements [the small business subcontracting program].</p> <p>FAR 19.704 Subcontracting plan requirements [the small business subcontracting program].</p> <p>FAR 19.705-2(d) Determining the need for a subcontracting plan [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>Obtain the subcontracting plan within the timeframe required by the solicitation (e.g., with initial offers or at any time prior to contract award).</p> <p>Contractors may establish, on a plant or division-wide basis, a master plan that contains all the required subcontracting plan elements, except goals.</p> <ul style="list-style-type: none"> <li>• A master plan must be effective for a three-year period after contracting officer approval; however, it is incumbent upon contractors to maintain and update master plans.</li> <li>• Changes required to update a master plan are not effective until approved by the contracting officer. When incorporated in an individual plan, a master plan applies to that contract throughout its life.</li> </ul> <p>A commercial plan is a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof. It is the preferred type of plan for contractors furnishing commercial items. The contractor must:</p> <ul style="list-style-type: none"> <li>• Submit the commercial plan to either: <ul style="list-style-type: none"> <li>○ The first contracting officer awarding a contract subject to the plan during the contractor's fiscal year, or</li> <li>○ The contracting officer responsible for the ongoing contract with a commercial plan that has the latest completion date;</li> </ul> </li> <li>• Submit a new commercial plan, 30 working days before the end of the fiscal year, to the contracting officer responsible for the uncompleted government contract with the latest completion date; and</li> <li>• Provide a copy of each approved new commercial plan to each contracting officer responsible for a contract subject to the plan.</li> </ul>

Tasks	FAR Reference(s)	Additional Information
<p>2. Notify the Small Business Administration (SBA) Resident Procurement Center Representative of the opportunity to review the proposed contract, subcontracting plan, and supporting documentation.</p>	<p>FAR 19.705-3 Preparing the solicitation [responsibilities of the contracting officer under the subcontracting assistance program].</p> <p>FAR 19.705-5 Awards involving subcontracting plans [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>Issue the notice in sufficient time to provide the representative a reasonable time to review the material and submit advisory recommendations.</p> <p>Provide a copy of the contract to the SBA Resident Procurement Center Representative, including the subcontracting plan and supporting documentation.</p> <p>Failure of the representative to respond in a reasonable period of time shall not delay contract award.</p>
<p>3. With assistance from the SBA Resident Procurement Center Representative and/or the Small Business Specialists, conduct fact-finding on the subcontracting plan.</p>	<p>FAR 19.705-4 Reviewing the subcontracting plan [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>Obtain available information such as:</p> <ul style="list-style-type: none"> <li>• The offeror's past performance in awarding subcontracts for the same or similar products or services to small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;</li> <li>• The performance of other contractors on similar efforts;</li> <li>• The offeror's make-or-buy program, in terms of identifying potential conflicts with the proposed subcontracting plan;</li> <li>• Subcontracting potential, given the offeror's make-or-buy policies and programs, nature of the items to be subcontracted, the known availability of small business, veteran-owned small business, service disabled veteran owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in the area where the work is to be performed; and</li> <li>• The offeror's longstanding contractual relationships with suppliers.</li> </ul>

Tasks	FAR Reference(s)	Additional Information
<p>4. With assistance from the SBA Resident Procurement Center Representative and/or the Small Business Specialists, determine whether the plan is adequate.</p>	<p>FAR 19.705-4 Reviewing the subcontracting plan [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>In addition to ensuring that the information, goals, and assurances required by FAR 19.704 are included, consider the following circumstances:</p> <ul style="list-style-type: none"> <li>• Previous involvement of small business concerns as prime contractors or subcontractors in similar acquisitions;</li> <li>• Proven methods of involving small business concerns as subcontractors in similar acquisitions; and</li> <li>• The relative success of methods the contractor intends to use to meet the goals and requirements of the plan, as evidenced by records maintained by the contractor.</li> </ul> <p>In determining the acceptability of a proposed subcontracting plan, the contracting officer should ensure that the goals offered are attainable in relation to:</p> <ul style="list-style-type: none"> <li>• The subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;</li> <li>• The pool of eligible subcontractors available to fulfill the subcontracting opportunities; and</li> </ul> <p>The actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.</p>
<p>5. Advise the contractor of any inadequacies in the subcontracting plan.</p>	<p>FAR 19.705-4(b) Reviewing the subcontracting plan [responsibilities of the contracting officer under the subcontracting assistance program].</p> <p>FAR 19.705-4(c) Reviewing the subcontracting plan [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>In sealed bidding, advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan that incorporates the required elements within the time allotted, the bidder is ineligible for award. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations, the contracting officer may find the bidder nonresponsible.</p> <p>When using negotiation procedures, improvements in the plan may be negotiated during discussions. Never negotiate a goal upwards if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives.</p>

Tasks	FAR Reference(s)	Additional Information
<p>6. Consider the subcontracting plan in making award decisions.</p>	<p>FAR 19.705-4 Reviewing the subcontracting plans [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>In making an award that requires a subcontracting plan, the contracting officer is responsible for the following:</p> <ul style="list-style-type: none"> <li>• Considering the contractor’s compliance with the subcontracting plans submitted on previous contracts as a factor in determining contractor responsibility;</li> <li>• Assuring that a subcontracting plan was submitted when required;</li> <li>• Notifying the SBA procurement center representative of the opportunity to review the proposed contract (including the plan and supporting documentation).</li> <li>• Determining any fee that may be payable if an incentive is used in conjunction with the subcontracting plan.</li> <li>• Ensuring that an acceptable plan is incorporated into and made a material part of the contract.</li> </ul> <p>In sealed bidding, find the bidder:</p> <ul style="list-style-type: none"> <li>• Nonresponsive if the firm does not submit a plan incorporating the required elements within the time allotted.</li> <li>• Nonresponsive if its subcontracting plan provides evidence that the firm does not intend to comply with its obligations under the Utilization of Small Business Concerns clause (FAR 52.219-8).</li> </ul>

Tasks	FAR Reference(s)	Additional Information
7. Notify the affected government organizations of contract award.	FAR 19.705-6 Postaward responsibilities of the contracting officer [responsibilities of the contracting officer under the subcontracting assistance program].	<p>After a contract or contract modification containing a subcontracting plan is awarded:</p> <ul style="list-style-type: none"> <li>• Notify the SBA of the award by sending a copy of the award document to the Area Director, Office of Government Contracting, in the SBA Area Office for the area where the contract will be performed;</li> <li>• Forward a copy of each commercial plan and any associated approvals to the Area Director, Office of Government Contracting, in the SBA area office where the contractor's headquarters is located;</li> <li>• Give to the assigned SBA procurement center representative (if any) a copy of: <ul style="list-style-type: none"> <li>○ Any subcontracting plan submitted in response to a sealed bid solicitation; and</li> <li>○ The final negotiated subcontracting plan that was incorporated into a negotiated contract or contract modification.</li> </ul> </li> </ul>

### Part C: Make-or-Buy Programs

Tasks	FAR Reference(s)	Additional Information
1. Prepare a prenegotiation position on the proposed make-or-buy program.	FAR 15.407-2(f) Evaluation, negotiation, and agreement [make-or-buy programs].	<p>Normally do not agree to proposed "make items":</p> <ul style="list-style-type: none"> <li>• When the products or services are available—quality, quantity, delivery, and other essential factors considered—from another firm at equal or lower prices;</li> <li>• Unless: <ul style="list-style-type: none"> <li>○ An overall lower governmentwide cost would result or it is otherwise in the best interest of the Government.</li> <li>○ If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee, the contract must specify these items and state that they are subject to paragraph (d) of the clause at FAR 52.215-9, Changes or Additions to Make-or-Buy Program.</li> </ul> </li> </ul>

Tasks	FAR Reference(s)	Additional Information
2. Negotiate an agreement on the make-or-buy program.	FAR 15.407-2(f) Evaluation, negotiation, and agreement [make-or-buy programs].	Contracting officers must evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award.
3. Determine whether to incorporate an agreement on a make-or-buy program in the resultant contract.	<p>FAR 15.407-2(g) Incorporating make-or-buy programs in contracts [make-or-buy programs].</p> <p>FAR 15.408 (a) Solicitations or Additions to Make-or-Buy Program {solicitation provisions and contract clauses}.</p>	<p>Incorporate the make-or-buy program in negotiated contracts for:</p> <ul style="list-style-type: none"> <li>• Major systems or their subsystems or components, regardless of contract type; or</li> <li>• Other supplies and services if: <ul style="list-style-type: none"> <li>○ The contract is a cost-reimbursable contract, or a cost-sharing contract in which the contractor's share of the cost is less than 25 percent; and</li> <li>○ The contracting officer determines that technical or cost risks justify government review and approval of changes or additions to the make-or-buy program.</li> </ul> </li> </ul>