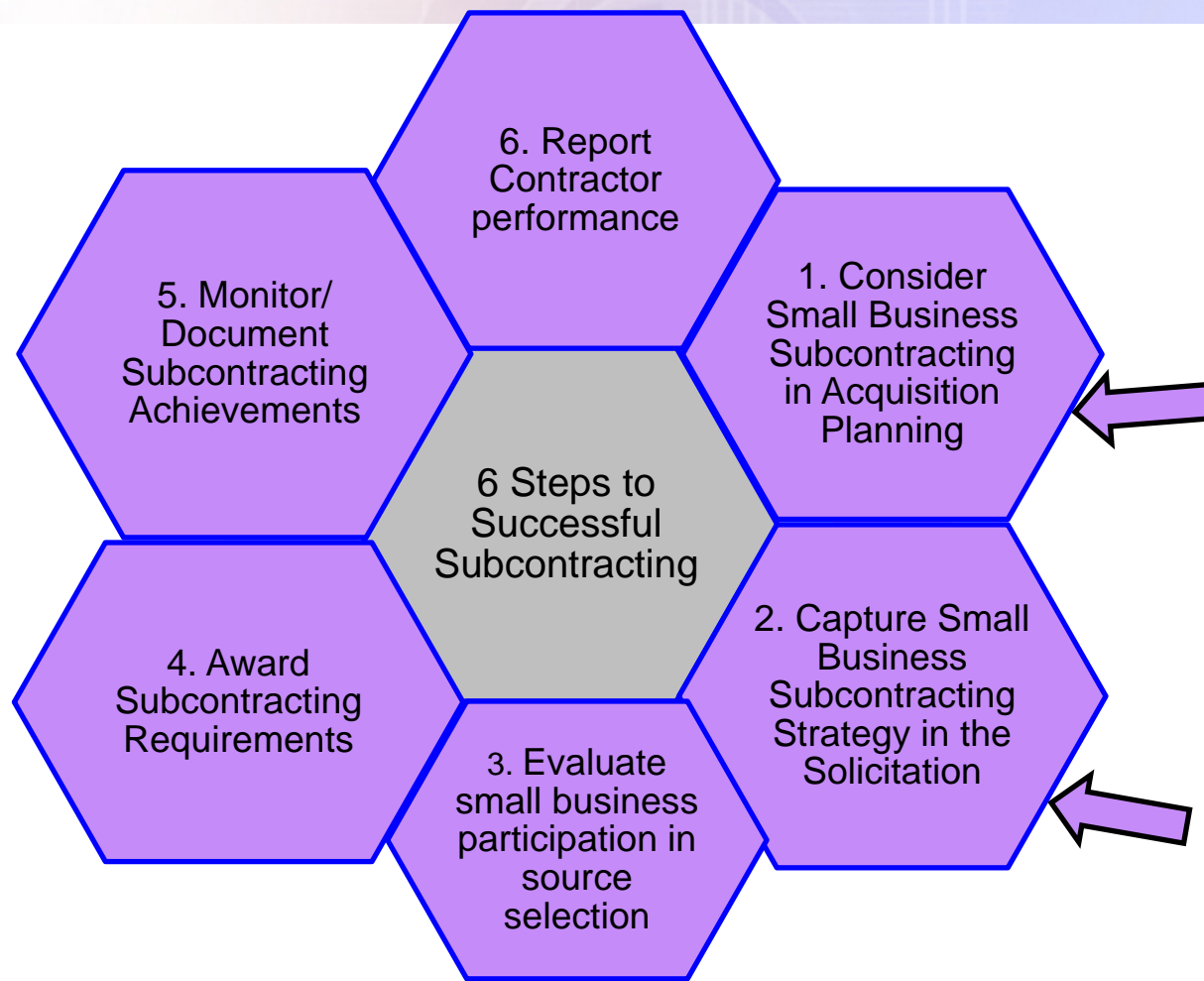




ASSESSING SUBCONTRACTING PLANS VS. EVALUATING SMALL BUSINESS PARTICIPATION WHAT'S THE DIFFERENCE?



SMALL BUSINESS AND SUBCONTRACTING





ACQUISITIONS AND SMALL BUSINESS PROFESSIONALS

Regulatory Guidance

- 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 need to be involved in acquisition planning early!



SMALL BUSINESS AND SUBCONTRACTING

FAR 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



SMALL BUSINESS CONSIDERATION

- When should small business be considered in acquisition planning?
 - As soon as need is identified and market research begins - FAR 10.001(a)(2)
 - 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

FAR 19.702(a) requires that all negotiated and sealed bid acquisitions that are expected to exceed \$700,000 (\$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) within the time limit prescribed by the contracting officer.

Note: one exception is subcontracting plans are not required to be submitted by small businesses



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Subcontracting Plan Considerations

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

Note: It is customary for the Contracting Officer 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 contracting officer before contract award.

2. Determining (based on market research), desired acceptable subcontracting goals
3. Determining (based on market research), anticipated areas suitable for subcontracting



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Evaluation of Small Business Participation Requirement

1. FAR 15.304(c)(4) requires evaluation of small business participation for solicitations involving consolidation or bundling.
2. DFARS 215.304(c) requires evaluation of small business participation in other than lowest priced technically acceptable (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)



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Evaluation of Small Business Participation Considerations

1. Evaluation criteria

1. DFARS PGI 215.304 for example factors/subfactors

2. Ways to evaluate

1. Department of Defense Source Selection Procedures (section 2.3.4.2.3)

3. Options for rating

1. Department of Defense Source Selection Procedures (section 3.1.4.1)

4. Reporting



Subcontracting Implemented

ASSESSING SUBCONTRACTING PLANS AND EVALUATING SMALL BUSINESS PARTICIPATION THE DIFFERENCES

Assessment of a Small Business Subcontracting Plan and **evaluation** of small business participation are two separate yet related areas. They are treated differently in solicitations, during source selection, and in contract awards

DFARS 215.304 (c)(i)(B) states that proposals addressing the extent of small business performance **shall be separate** from Small Business 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**



Divorce the Cousins!



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Assessing Subcontracting Plans and Evaluating Small Business Participation the differences

SB Subcontracting Plan (Requirements/Assessment)	SB Participation Evaluation (Requirements/Evaluation)
FAR 19.704	FAR 15.304, DFARS 215.304
Must be assessed to be determined acceptable by the Contracting Officer	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 procurements	Required only for bundled or consolidated contracts or certain DoD negotiated acquisitions
Does not apply to small businesses	Applies to <u>all</u> businesses
Based on total planned subcontracting dollars Note :Contracting Officers now have discretion to require goals also be based on total contract value/dollars (TCV)	DoD best practice: Minimum Quantitative Requirement (MQR%) (if appropriate) based on total contract value (dollars) (TCV)



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Separation Achieved

Small Business Subcontracting Plan

Elements IAW
FAR 19.704
and
FAR 52.219-9

Small Business Participation Commitment Document

(formerly called Small Business Participation Plan, 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

A point to ponder – Using the phrase “Small Business Participation Commitment Document” vs. “Plan” helps to not confuse it with the Subcontracting Plan.



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Small Business Subcontracting Plan and Small Business Participation Commitment Document (SBPCD)

The similarities

- Should compliment each other
 - in general, provisions of the subcontracting plan that coincide with the SBPCD should be consistent
 - small business subcontracting plan dollars should be equal to or greater than the dollars in the SBPCD
 - Subcontracting percentages may be different if SBPCD proposal based on total value of acquisition (total contract dollars)
 - Type of products/services to be subcontracted should be the same
- Both should be contractually binding



SB PARTICIPATION MINIMUM QUANTITATIVE REQUIREMENT (MQR) vs. PLANNED SUBCONTRACTING GOALS

SBPCD MQR 30% Denominator: Proposed Total Contract \$ (TCV)	Subcontracting Plan Goals % Denominator: Planned Subcontracted \$
\$160,000,000	Total Contract Value (Dollars):
Offeror proposed MQR commitment based on TCV \$	Offeror proposed total planned subcontracting \$: \$80,000,000
Offeror proposed MQR: 30% of TCV to small businesses	Offeror proposal: 60% planned Subcontract \$ to small businesses
Do the Math: SBs get \$48,000,000 (30% TCV \$: \$160,000,000)	Do the Math: SBs get \$48,000,000 (60% planned subcontracted \$: \$80,000,000)

Consistency at the dollars



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Evaluation of Small Business Participation Demystified

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
3. Complexity and variety of work
4. Realism of the proposal
5. Past performance of complying with subcontracting requirements
6. Extent of participation of SB firms in terms of the value of the total acquisition

Other criteria may be used as appropriate



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Evaluation of Small Business Participation

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:

1. Establish 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

2. Establish 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

3. Consider small business participation within the evaluation of a technical subfactor

Example:

Section M – Evaluation Factors

Factor 1 Technical

Subfactor a. Management Approach

i. Consideration of Small Business Participation



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

A point to ponder - 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.



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Consideration # 3 – Select an appropriate option for rating small business participation

(Department of Defense Source Selection Procedures section 3.1.4.1)

The appropriate options for rating small business participation is dependent upon the way it is evaluated.

1. Small business participation is evaluated as a ***separate evaluation factor***

Utilize all ratings in Table 6 of DoD Source Selection Procedures

-or-

Use the acceptable/unacceptable ratings as defined in table 6 only

2. Small business participation is evaluated as a ***subfactor under the technical factor***

Utilize all ratings in Table 6 of DoD Source Selection Procedures

-or-

Use the acceptable/unacceptable ratings as defined in table 6

3. Small business participation is evaluated ***within the evaluation of a technical subfactor***

A separate small business rating is not applied. However, small business participation shall be considered in determining the appropriate technical rating applied



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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
 - Reporting IAW subcontracting plans
- Why require other than eSRS reporting?
 - Enhances enforceability of the small business participation requirements
 - Obtain information not required by eSRS reporting
 - Ability to monitor small business performance of ALL contractors (small businesses do not report to eSRS)
 - Aids determination of good faith effort
 - Supports assessing liquidated damages
- The other than eSRS reporting requirements
 - Tailor to what is appropriate for the acquisition
 - Include in the solicitation
 - Make contractual



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Small Business Participation and Source Selection

To underscore the significance of small business participation, a good solicitation and source selection evaluation will:

- (a) Emphasize how the *assessment* of the subcontracting plan IAW FAR 19.704/52.219-9 is different from the *evaluation* of small business participation
- (b) Explain how offers from small business prime offeror's must be structured and how they will be evaluated (if different from OTSB offerors)
- (c) State that evaluation of small business participation applies to Commercial Subcontracting Plan holders and Comprehensive Subcontracting Plan participants
- (d) If appropriate for the acquisition, state a baseline small business minimum quantitative requirement (MQR) (not a "goal") for small business (and socioeconomic categories as well if appropriate) based on market research



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- (e) State if small business participation is based on total contract value (dollars) (TCV). Explain how percentages and dollars should be stated in the subcontracting plan (if a plan is required)
- (f) Explain how offers will be rated
- (g) Evaluate small business past performance (compliance with FAR 52.219-8 and/or 52.219-9)
- (h) Determine the realism of the proposed utilization of small businesses
- (i) Require all offerors to submit periodic reports (monthly, quarterly, whatever is appropriate for the acquisition) on their small business utilization for the contract.



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About Evaluating Small Business Past Performance

Evaluation of Past Performance Requirement

- FAR 15.304 (c)(3)(i) - past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold
- 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.



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About Evaluating Small Business Past Performance

A past performance evaluation is required for acquisitions meeting the thresholds established in accordance with Director of Defense Procurement and Policy Class Deviation Past Performance Evaluation Thresholds and Reporting 2013-O0018 dated September 24, 2013.

When Past Performance Evaluation is required based on Thresholds

- May evaluate as part of the overall Past Performance evaluation, or
- May evaluate as part of Small Business Participation Evaluation Factor/Subfactor

When Past Performance Evaluation is NOT required based on Thresholds

- Evaluate Past Performance of Small Business Participation as part of the Small Business Participation Evaluation Factor/Subfactor



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Small Business Past Performance - What to evaluate

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

- 1) Actual prior use of small businesses
- 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.



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Small Business Past Performance - What to evaluate

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
- 3) Timely eSRS reporting
- 4) Compliance with requirements of FAR 42.1502(g) Reduced or Untimely Payments



SMALL BUSINESS AND SUBCONTRACTING SUMMARY

Successful Subcontracting Starts with Acquisition Planning

Market Research

Acquisition Strategy

Solicitation Development

Source Selection

Contract Award

Monitoring of Performance



SMALL BUSINESS AND SUBCONTRACTING SUMMARY

Successful Subcontracting

1 - Market Research Strategy

- Ask industry what is your interest in this requirement?
 - To be the prime contractor, a subcontractor, joint venture partner
 - Industry tell even if not asked!

2 - Acquisition Strategy

- Understand the requirement
 - Types of work to be performed
 - Appropriate for subcontracting
 - Quantitative level of small business participation
 - Establish evaluation criteria



SMALL BUSINESS AND SUBCONTRACTING SUMMARY

3 - Solicitation Development

- Small Business elements in Sections:
 - Special Contract Requirements (H)
 - Clauses (I)
 - Instructions and Notices (L)
 - Evaluation for Award (M)

4 - Source Selection

- Evaluation of Small Business Participation (Requirements)
 - Small Business Participation Commitment Document
 - Evaluate IAW solicitation evaluation criteria
- Evaluation of Past Performance
 - Contribution to overall Past Performance or Small Business Participation rating
- Assess Small Business Subcontracting Plan



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5 - Contract Award

- Make small business requirements (proposed commitments) contractual
 - Incorporate small business subcontracting plan
 - Incorporate small business participation requirements by:
 - Incorporate SBPCD or
 - Include in a special contract requirement (section H) clause or
 - Include in the PWS/SOW
 - Include an other than eSRS reporting requirement
 - Include in the SBPCD or
 - Include in the special contract requirement or
 - Include in the PWS/SOW or
 - Include in a Contract Data Requirements List (CDRL)

6 - Monitor/Document/Report Performance

- eSRS
- Other required (contractual) reporting



SMALL BUSINESS AND SUBCONTRACTING CONCLUSION

- Small Business Professionals (including SBA Procurement Center Representatives) are to be involved early in acquisition planning
- Development of the subcontracting strategy for an acquisition is a team effort
- Small Business **Subcontracting Plans are assessed** and determined acceptable/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 & 9) is required to be evaluated when past performance is required to be evaluated and may be evaluated otherwise



RESOURCE

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