



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACTION MEMO

February 27, 2013, 9:00 am

FOR: UNDER SECRETARY OF DEFENSE (AT&L)

FROM: André J. Gudger, Director, OSBP *YBO for AJG*

SUBJECT: Department of Defense Subcontracting Accounting Procedures Report to Congress

- Report 112-78, the House Armed Services Committee report accompanying H.R. 1540, the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 111-383) requested the Secretary of Defense to submit a report detailing the Department's procedures for accounting for small-business subcontracting at all tiers, and to propose any new regulations as may be necessary to fully account for such subcontracting activity. This report was to have been submitted by March 30, 2012.
- Contrary to the Committee's assertion, the Department does account for small-business subcontracting at all tiers on a contract—by flowing-down the subcontracting plan requirements to subsequent subcontracts with further subcontracting opportunities—even though the prime contractor does not receive credit for this activity.
- The Department has no recommendations for the Committee. The electronic reporting systems used to track subcontracting activity are used across the Federal Government. Any changes to the Department's procedures would require either a change to the accounting systems used by all federal agencies, or that the Department implement a unique system separate from other agencies.

RECOMMENDATION: Sign transmittal letters attached at TAB A.

COORDINATION: TAB E

Attachments:

As stated

TAB

A



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUN 17 2013

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

House Report 112-78, page 168, accompanying H.R. 1540, the National Defense Authorization Act for Fiscal Year 2012, requested that the Department report to the House and Senate Committees on Armed Services regarding its procedures for accounting for small-business subcontracting at all tiers of a contract and provide recommendations for new regulations to ensure that the Department accounts for all such subcontracting activity.

I am pleased to report that the Department's existing procedures, outlined in the enclosed report, do account for small business subcontracting at all tiers of a contract, even though that activity is not reported by the prime contractor and the prime contractor does not get "credit" for the small business efforts of its subcontractors. The Department follows the procedures specified in Federal Acquisition Regulation 52.219-9, "Small Business Subcontracting Plan," the full text of which is attached to the report as Appendix A.

Due to the nature of the existing Government-wide electronic reporting systems, also discussed in detail in the report, the Department is unable to recommend any regulatory changes which would improve the current procedures.

A similar letter has been sent to the House Committee on Armed Services.

Sincerely,



Frank Kendall

Enclosure:
As stated

cc:
The Honorable James M. Inhofe
Ranking Member



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUN 17 2013

The Honorable Howard P. McKeon
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

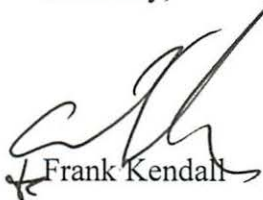
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I am pleased to report that the Department's existing procedures, outlined in the enclosed report, do account for small business subcontracting at all tiers of a contract, even though that activity is not reported by the prime contractor and the prime contractor does not get "credit" for the small business efforts of its subcontractors. The Department follows the procedures specified in Federal Acquisition Regulation 52.219-9, "Small Business Subcontracting Plan," the full text of which is attached to the report as Appendix A.

Due to the nature of the existing Government-wide electronic reporting systems, also discussed in detail in the report, the Department is unable to recommend any regulatory changes which would improve the current procedures.

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Sincerely,



Frank Kendall

Enclosure:
As stated

cc:
The Honorable Adam Smith
Ranking Member

TAB

B

Department of Defense

Subcontracting Accounting Procedures



Office of Small Business Programs

**Office of the Under Secretary of Defense for
Acquisitions, Technology and Logistics**

Preparation of this report/study cost the Department of Defense
a total of approximately \$12,000 for the 2012 Fiscal Year.

Cost estimate generated on September 28, 2012 RefID: 8-3524396

I. Overview

This report on Department of Defense Subcontracting Accounting Procedures responds to the request on page 168 of Report 112-78, the House Armed Services Committee report accompanying H.R. 1540, the National Defense Authorization Act for Fiscal Year 2012. The committee requested that the Department “develop procedures for fully accounting for small business participation at all tiers on a Department of Defense contract, and to publish such procedures in the Defense Federal Acquisition Regulation if the Secretary determines that to be necessary to fully implement such procedures.”

The Committee also requested that the Secretary provide the Department’s subcontracting accounting procedures and any proposed regulations by March 30, 2012.

The Department shares the goal of ensuring the accurate reporting of small business subcontracting and welcomes the opportunity to describe its subcontracting accounting procedures in greater detail.

The Committee wrote:

...while current statutes and regulations require set-asides for small business subcontracts, prime contractors are prohibited from accounting for the total dollar amount flowing to small businesses. Currently, if a contractor that is not a small business is identified as the primary first-tier subcontractor, a prime contractor is prevented from reporting any of the other subcontract dollars that may flow to small businesses; this occurs regardless of whether small business subcontractors comprise either the remainder of the first tier or all other subcontracting tiers.

Current reporting systems do not allow prime contractors to report small business subcontract awards below the first tier of subcontractors; however, subcontractors (at any tier) can and must report the dollars that they subsequently subcontract to small businesses. As a result, the Department does—within certain limitations discussed below—account for small business subcontracting dollars on a contract or a company basis.

Allowing prime contractors to count all reported activity towards their goals would require a change to the processes for negotiating subcontracting goals and accounting for subcontracting activity across the entire Federal Government, not just the Department of Defense. At a minimum, this would require changes not only to regulations but also to the Government-wide automated systems used to report subcontracting dollars. These changes would still not guarantee improvement in subcontracting opportunities for small businesses.

Federal Acquisition Regulation (FAR) 52.219-9, “Small Business Subcontracting Plan,” (attached as Appendix A) requires “Assurances that the offeror will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that

complies with the requirements of this clause.” This process, often called “flow-down,” ensures that appropriate subcontracting plans are included in subcontracts at all tiers.

Two key elements of all subcontracting plans at both the prime and subcontractor levels are subcontracting goals and the reporting requirements that are used to monitor the level of small business subcontracting achievement against those goals. The principle of flow-down requires a subcontractor to enforce the same requirements with its subsequent subcontractors (other than small business concerns). Therefore, for any prime contract with a small business subcontracting plan, all subsequent subcontracts at any tier require the inclusion of an appropriate subcontracting plan (with appropriate goals and reporting requirements) when:

1. the subcontract includes further subcontracting possibilities,
2. the subcontract is in excess of \$650,000 (\$1.5 million for construction of any public facility, and
3. the contractor awarded the subcontract is not a small business concern.

The FAR establishes the requirement for small business subcontracting goals per contract and requires that these goals be based on the prime contractor’s first tier subcontracts, following the requirements stated above. This Government-wide practice does not permit prime contractors to report subcontracting below the first tier for purposes of demonstrating the achievement of small business subcontracting goals for specific reasons. Each entity with contracts containing a subcontracting plan gets credit towards its subcontracting goals based on the appropriate reporting of its own subcontracting achievements. This system is fair to all contractors, prohibits double counting, and prohibits duplicate reporting.

The Department recognizes that small business participation occurs at lower levels; however, allowing these dollars to be counted towards subcontracting goals for prime contractors, without substantially increasing the current goals, will essentially diminish the incentive for prime contractors to award subcontracts to small businesses. In addition, if only the prime contractor gets credit for all subsequent small business subcontracting at any tier, it may be a disincentive for large business subcontractors to reach out to small businesses.

The Department’s only direct contractual relationship is with the prime contractor, and it can only influence subcontracting at that level. A subcontractor’s relationship is with the entity with which it has signed its individual contract. A prime contractor has the most influence on its own subcontractors when it 1) ensures that its subcontracts include appropriate subcontracting plans with goals and reporting requirements and 2) requires assurances that subcontracting plan requirements will be flowed down to lower subcontracting tiers.

II. Types of Subcontracting Plans and Reports

All prime contracts – with five exceptions – require one of three subcontracting plans:

1. **Individual Subcontracting Plan (ISP):** An ISP covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract (FAR 52.219-9(b)). An ISP requires the contractor to report the dollars subcontracted for the entire

contract period through the submission of Individual Subcontracting Reports (ISRs).

2. **Commercial Subcontracting Plan (“Commercial Plan”):** A Commercial Plan is the preferred type of subcontracting plan for contractors furnishing commercial items (FAR 52.219-9(g)) and includes subcontracting in general, for both commercial and Government business, rather than solely to the Government contract. A Commercial Subcontracting Plan requires the contractor to report annually on the dollars subcontracted for the entire product line or service, based on the negotiated plan.
3. **Department of Defense Comprehensive Subcontracting Plan (DoD CSP):** The DoD CSP, currently a test program, is authorized by Public Law 101-189, Section 834, through December 31, 2014, and implemented under DFARS 252.219-7004. Presently, eleven of the largest defense contractors participate in the test program under corporate, sector, or division DoD CSPs. *Participation in the DoD CSP exempts a contractor from maintaining ISPs for individual contracts covered by the DoD CSP.* The DoD CSP requires the participants to report subcontracting dollars for the entire Department of Defense and may include further breakdowns for the DoD departments /agencies and programs based on the negotiated plan.

The five exemptions to the subcontracting plan requirements are:

1. Awards to Small Business Concerns;
2. Awards of less than \$650,000 (less than \$1.5 million for construction of a public facility);
3. Contracts to be performed entirely outside the United States;
4. Contracts for personal services; and
5. Contracts where no opportunities for subcontracting exist.

A. Individual Subcontracting Report (ISR) (FAR 52.219-9(l)(1))

For contracts requiring ISPs, the prime contractor *and all subcontractors required to maintain a subcontracting plan* must file a semi-annual Individual Subcontracting Report (ISR) using the Federal Electronic Subcontract Reporting System (eSRS) managed by General Services Administration (GSA). This report details the total dollars subcontracted, as well as the dollars subcontracted to small businesses and businesses falling under the various socioeconomic categories.

These reports are due during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

The entities awarding subcontracts (regardless of tier) are responsible for accepting or rejecting the ISR submissions of their subcontractors, and the contracting officer that awarded the contract is responsible for accepting or rejecting the prime contractor's ISR.

This report is not required for Commercial Plans or for the DoD CSP Test Program.

Enforcing compliance with this requirement is the responsibility of the contractor issuing the plan. The contractual relationship exists only between adjacent tiers. The Department has no contractual authority with a first-tier subcontractor to enforce the reporting requirement. That authority rests with the prime contractor. Similarly, the prime contractor has no contractual relationship with a second-tier subcontractor; that relationship is between the first- and second-tier firms.

B. Summary Subcontracting Report (SSR) (FAR 52.219-9(l)(2))

All contractors, regardless of the type of subcontracting plan required, must file an annual SSR for each agency with which they have a contract containing a subcontracting plan – with the exception of DoD and NASA, which require SSRs semi-annually. This report, which may be submitted on a corporate, company, or subdivision basis, encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of their dollar value.

Each prime contractor and subcontractor (with subcontracting plans) must submit its own SSR with each Federal department or agency, as required, except for the Department of Defense, where contracts for construction and related maintenance and repair require a separate report for each DoD department or agency which awarded such contracts.

In the case of contracts requiring a Commercial Plan, the SSR includes all subcontracting for all contracts covered by its commercial subcontract plan with a percentage of the reported dollars attributable to each agency from which contracts for commercial items were received.

In the case of the DoD CSP, each participant files an SSR detailing their overall subcontracting under DoD prime contracts and subcontracts. Some, but not all, program participants are required to detail subcontracting under DoD departments/agencies and programs, based on their negotiated DoD CSP.

III. Current Reporting Systems: Weaknesses and Gaps in Data

Within the Integrated Acquisition Environment, managed by the General Services Administration and used for all Federal Government acquisition, there are several methods by which contractors report their subcontracting activity. Each has its own strengths and weaknesses, but regardless of the system used to report subcontracts, the data the Government receives is incomplete, is insufficient to conduct significant analysis, and lacks a method for verification. However, making the current reporting systems function in a manner that fully supports current reporting requirements would require significant modifications to the existing electronic reporting systems, or the creation of an entirely new system that would incorporate all of the functionality necessary to capture subcontracting data with the desired level of detail—something that is beyond the Department's purview.

A. Electronic Subcontract Reporting System (eSRS)

The eSRS was developed in 2005 for the sole purpose of converting subcontract reporting from a paper version (Standard Forms (SF) 294 and 295) to an electronic version (ISR and SSR). However, DoD did not begin implementation of the system until 2008 (with full implementation in 2009) due to the inability of earlier versions of the system to meet the Department's requirements. Specifically, early versions of eSRS:

1. Did not account for DoD's seven-level contracting office hierarchy, as contained in the Federal Procurement Data System (FPDS);
2. Did not include the subcontracting plan specific to DoD (CSP); and
3. Did not include the reporting functionality necessary to produce specific DoD reports based on subcontracting data.

As contractors have submitted more data in eSRS, the Department has identified further deficiencies. Presently, eSRS does not support submitting ISRs for:

1. Federal contracts that, through other authority (i.e., classified contracts), are not required to be reported in the FPDS;
2. Orders placed against basic ordering agreements (BOAs);
3. Orders placed against blanket purchase agreements (BPAs).

DoD issued a deviation (2008-O0009, February 12 and May 6, 2009) to allow DoD contractors with BOAs, BPAs, or other contracts not required to be reported in FPDS to submit a paper copy of the SF 294 in lieu of the ISR. The SF 294 from the prime contractor is maintained in the contract file of the awarding agency, while the SF 294 from the subcontractor is submitted and kept by the contractor that awarded the subcontract.

In addition, the reporting functionality contained in eSRS does not enable DoD to produce specific reports or determine subcontracting achievements of the departments/agencies based on the contracts they award. Furthermore, issues with the process for reviewing ISRs submitted by prime contractors and subcontractors mean that appropriate parties are not always able to see or review the submissions, resulting in an inordinate number of ISRs in a "pending" status.

B. Federal Procurement Data System (FPDS).

Presently, contract data contained in the FPDS only indicates that a subcontract plan is "required" or "not required." The system does not specify the type of subcontract plan (ISP, Commercial Plan, or DoD CSP) required. As a result, it is difficult to determine if contractors have satisfied the reporting requirements for contracts with an ISP (ISRs in eSRS or SF 294s in the contract files).

C. Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)

Recently, GSA introduced FSRS to collect sub-award information per the FFATA. Prime contractors awarded a Federal contract or order that is subject to FAR 52.204-10 (Reporting Executive Compensation and First-Tier Subcontract Awards) are required to file a FFATA sub-award report by the end of the month following the month in which the prime contractor awards any subcontract greater than \$25,000.

In many respects, FSRS represents an improvement over eSRS because it collects details about the sub-award, but, unlike eSRS, it will only collect information about first-tier subcontracts. Furthermore, FSRS does not capture business size, socioeconomic category, or the North American Industry Classification System code of the subcontract itself.

IV. Conclusion

The Department believes that simply changing the current reporting requirements would not improve subcontracting opportunities for small businesses.

The primary purpose of small business subcontracting requirements is to expand the industrial base and take advantage of small business innovation. To that end, DoD acquisition personnel attempt to increase opportunities for small businesses to perform a variety of complex and meaningful work at the first tier, through the prime contractor's subcontracting plan. Removing the emphasis from the first tier by allowing the prime contractor to count subcontracting at lower tiers could, over time, push small business participation down to third- or fourth-tier levels and beyond.

The further the work is removed from the first tier, the less direct the relationship is to the contract performance objective. Work at these lower levels tends to be less complex and does not prepare small businesses to perform significant work for DoD at the prime contractor or first-tier levels. Thus, small business participation would not be optimized to expand the industrial base.

There are policy and system limitations beyond the purview of the Department to remedy that limit the ability to fully determine subcontracting dollars awarded to small businesses at all tiers, and the Department does not believe that new regulations alone would correct these deficiencies. However, with useful, meaningful data, the Department could better manage and oversee its subcontracting program, ensure compliance and report achievements with a reasonable level of confidence.

Appendix A

Federal Acquisition Regulations

Part 52—Solicitation Provisions and Contract Clauses

Section 52.219-9 Small Business Subcontracting Plan.

As prescribed in [19.708\(b\)](#), insert the following clause:

Small Business Subcontracting Plan (Jan 2011)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

“Commercial plan” means 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 (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except

that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror’s subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use 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 as subcontractors. 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. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) 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 with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes);
and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone

small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (1) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in

the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities 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 all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at [52.244-6](#), Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled “Utilization Of Small Business Concerns;” or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$650,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

TAB

C

Pilot Programs for Rapid Acquisition of Information Technology

The committee is encouraged by Department of Defense efforts to develop a rapid acquisition process for information technology (IT) as required by section 804 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84). The committee understands that creating and implementing the processes and structures to manage complex IT systems is a deliberate process, but should nonetheless allow for the flexibility to experiment with various options before codifying the result. The committee is concerned that the current development process has limited the ability to conduct pilot projects that would provide real-world experience with different management options and has unnecessarily slowed down IT acquisition reform.

Therefore, the committee encourages the Department to expand the number and types of pilot projects it conducts to inform the current acquisition reform process. For example, pilot projects should be expanded beyond business systems to include other existing programs, such as the Joint Space Operations Center Mission System or the Navy's Next Generation Enterprise Network. The committee believes that this could provide information to show how rapid IT acquisition could function for command and control systems or enterprise data services.

Small Business Subcontracting Goals

The committee notes that while current statutes and regulations require set-asides for small business subcontracts, prime contractors are prohibited from accounting for the total dollar amount flowing to small businesses. Currently, if a contractor that is not a small business is identified as the primary first-tier subcontractor, a prime contractor is prevented from reporting any of the other subcontract dollars that may flow to small businesses; this occurs regardless of whether small business subcontractors comprise either the remainder of the first tier or all other subcontracting tiers. The committee believes that allowing prime contractors to report small business subcontracting at all tiers would demonstrate the full extent of small business participation on Department of Defense contracts. Therefore, the committee directs the Secretary of Defense to develop procedures for fully accounting for small business participation at all tiers on a Department of Defense contract, and to publish such procedures in the Defense Federal Acquisition Regulation if the Secretary determines that to be necessary to fully implement such procedures. The Department shall ensure that the procedures fully account for small business participation, but do not permit duplicate reporting of small business participation. The Department shall provide to the Senate Committee on Armed Services and the House Committee on Armed Services a copy of the subcontracting accounting procedures and any proposed regulation by March 30, 2012.

TAB

D

Compliance Matrix

Report to Congress – Subcontracting Accounting Procedures

<i>Requirement</i>	<i>Report Contents</i>
DUE DATE:	MARCH 30, 2012
Develop procedures for fully accounting for small business participation at all tiers on a Department of Defense contract	<p>“Current reporting systems do not allow prime contractors to report small business subcontract awards below the first tier of subcontractors; however, subcontractors (at any tier) can and must report the dollars they subsequently subcontract to small businesses. As a result, the Department does—within certain limitations discussed below—account for small business subcontracting dollars on a contract or a company basis.”</p> <p>“There are weaknesses in the current procedures... but the Department does not believe that new regulations would correct these deficiencies. Any modification of the current procedures would first require significant modifications to the existing electronic reporting systems, or the creation of an entirely new system that would incorporate all of the functionality necessary to capture subcontracting data with the desired level of detail—something that is beyond the department’s purview.”</p>
Publish such procedures in the Defense Federal Acquisition Regulation if the Secretary determines that to be necessary to fully implement such procedures	“...the Department does not believe that new regulations would correct these deficiencies.”
Ensure that the procedures fully account for small business participation, but do not permit duplicate reporting of small business participation	“This system is fair to all contractors, prohibits double counting, and prohibits duplicate reporting.”
Provide to the Senate Committee on Armed Services and the House Committee on Armed Services a copy of the subcontracting accounting procedures and any proposed regulation	“The Department shares the goal of ensuring the accurate reporting of small business subcontracting, and welcomes the opportunity to describe its subcontracting accounting procedures in greater detail.”
Does the report meet the reporting requirement?	Report answers all the committee’s questions.
Did anyone provide a non-concur?	No

TAB

E

COORDINATION SHEET

SUBJECT: Subcontracting Accounting Procedures Report to Congress

Organization	Name	Comment	Date
OGC	Mr. Gurden Drake	No legal objection	2 October 12
LA	Mr. Edward Devinney, LA- DIR/SA (Senate)	Concurs w/edits	4 Oct 12
DPAP	Ms. Susan Hildner	Concur w/edits	19 Oct 12
D, ARA	<u>N. Spruill</u> Dr. Nancy L. Spruill	<u>Concur w/edits</u>	<u>10/24/12.</u>

SACCP: USA005926-12

Meyer, Richard M CDR OSD ATL

From: McCuin, Thomas CTR OSD ATL
Sent: Tuesday, March 05, 2013 3:33 PM
To: Meyer, Richard M CDR OSD ATL
Cc: Oliver, Linda, SES, OSD-ATL
Subject: Subcontracting Accounting Procedures
Signed By: THOMAS.MCCUIN.CTR@OSD.MIL

Col Morris,
This answers the
"why is it so late"
Question. ✓/R, Mike.

CDR Meyer:

Thanks for your call. After reviewing my notes and emails, here's my summary of events:

Our Deputy Director, Ms. Linda Oliver, and the OSBP employee responsible for the subcontracting program went to the Hill and gave the HASC staff a briefing on subcontracting accounting procedures on 27 Jun 11. They thought, incorrectly, that they had satisfied the reporting requirement at that time.

OSBP had no one dedicated to managing or tracking submission of Congressional Reports prior to my arrival on the job late last spring. This requirement first came to my attention on 19 Jun 12, when COL Brendan Lewis of OSD-LA sent Ms. Oliver a note that the HASC was inquiring about it.

We began drafting a formal written report at that time, which I initially staffed through OGC and OSD-LA for their initial reaction. We reworked the report based on their input, and it cleared all our internal approvals by 28 Sep 12, when I entered it into SACCP for staffing.

In the meantime, during other discussions about small business provisions in the NDAA over the course of the summer, Ms. Lynne Williams of the HASC staff was shown (but not provided) a copy of the draft, which satisfied her that we were working the issue.

After coordination was complete in October, I simply dropped the ball and the packet was buried on my desk. So while the report was already late when I got here, it is now severely late because of my foul-up.

Please call or write if you need more information, but this is a pretty concise summary.

V/R,
--McC.

Tom McCuin | BRTRC
Congressional Liaison
Office of Small Business Programs
4800 Mark Center Drive | Suite 15G13 | Alexandria, VA 22350
Direct: 571-372-6326

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LATE
 ★ REPORT TO CONGRESS ★
 UNCLASSIFIED SYSTEM



OUSD(AT&L) Correspondence Cover Sheet

Tasked Org: **Action Type:** **Action Number:** **Suspense Date:**

OSBP USD Signature USA005926-12

Subject:

Subcontracting Accounting Procedures Report to Congress

	Initials	Date	Comments
<input checked="" type="checkbox"/> USD:	—	—	
<input checked="" type="checkbox"/> ASD(LMR) USD DA:	A	6/16	
<input checked="" type="checkbox"/> USD SA:	D	6/10	✓ 3/12 TAGS A
<input checked="" type="checkbox"/> USD MA:	R	3/5	✓ 3/5 minor edits → 10/10 from STAL NEEDED (4/7)
<input checked="" type="checkbox"/> ASD(LMR) USD DA MA:	[Signature]	3/13	✓ 3/12
<input checked="" type="checkbox"/> DDES:	[Signature]	MAR 01 2013	
<input checked="" type="checkbox"/> Editor:	[Signature]	3/1	
Notes:			
Disposition Instructions:			
THIS TASK RESIDES ON THE NIPRNET VERSION OF SACCP.			
UNCLASSIFIED SYSTEM			