

Subcontracting Policy Directive, 11-2002

(Updated November 2002)

Subcontracting With Small Business, Hubzone Small Business, Small Disadvantaged Business, Disabled Veteran-Owned Small Business, Veteran-Owned Small Business And Women-Owned Small Business Concerns

A. Background

The Small Business Act of 1958 provides that, in addition to ensuring that a fair proportion of Government prime contracts should be awarded to small business, the Small Business Administration (SBA) should take steps **"to encourage the letting of subcontracts by prime contractors to small business concerns."**

In 1961, Congress required all contracts over certain dollar thresholds not awarded to small businesses develop and implement small business subcontracting programs. Congress, in 1978, established more stringent requirements for subcontracting in Section 8(d) of the Small Business Act, through enactment of PL 95-507.

Section 8(d), implemented in FAR Subpart 19.7, requires that:

- Every contractor, in contracts exceeding \$100,000, shall agree to subcontract with small, small disadvantaged (SDB), HUBZone, Veterans (VOSB) and Service Disabled Veterans (SD/VOSB) and women-owned small businesses (WOSB) to the maximum extent practicable consistent with the efficient performance of the contract. This does not apply to contracts which will be performed entirely outside any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or which are for personal services.
- Each contractor other than a small business, on contracts that are expected to exceed \$500,000, or \$1,000,000 for construction, shall have an approved subcontracting plan for the particular contract prior to award.
- Failure of any contractor or subcontractor to comply in good faith with the provisions listed above shall be a material breach of the contract or subcontract.

Prior compliance with such subcontracting plans shall be considered in determining the responsibility of the offeror.

PL 100-656 established liquidated damages requirements for contractors who fail to make a good faith effort to carry out the provisions of their subcontracting plans.

The Historically Underutilized Business Zone (HUBZone) Act of 1997 added subcontract plan requirements for HUBZone small business concerns. The Veterans Entrepreneurship Act of 1999 added a requirement that subcontracting plans add goals for Veteran owned small business. The SBA reauthorization Act of 2001 added a requirement that subcontracting plans contain separate goals for VOSB and SD/VOSB.

Prime contractors must pay their small business and small disadvantaged business subcontractors on time, in a manner consistent with the Prompt Payment Act in accordance with 52.219-8 Utilization of Small Business Concerns. *There are additional prompt payment requirements for construction contracts that are more specific.*

FAR Subpart 19.7 provides regulatory guidance on the proper administration of the Federal Small Business Subcontracting Program. This Chapter seeks to provide the acquisition community direction and clarification on how the program should be administered at HHS. This Chapter applies to all HHS contracts governed by the FAR including those issued under the Medicare program. Where there is a reiteration of FAR language, it is done so for emphasis and clarity.

B. HHS Policy And Responsibility

It is the policy of the Department of Health and Human Services (DHHS) that small business, HUBZone small business, small disadvantaged businesses, women-owned small businesses and, SD/VOSB veteran-owned businesses shall have the maximum practicable opportunity to compete for, and receive, subcontract awards.

On October 30, 2002 President George W. Bush issued a strategy for increasing Federal Contracting Opportunities for Small Business emphasizing his dedication to a Federal process that encouraged small business participation. One specific area within this agenda is to mitigate the effects of contract bundling by strengthening compliance with subcontracting plans. This policy directive is HHS' first step in implementing the President's agenda..

This policy, in accordance with section 8(d) of the Small Business Act (15 U.S.C. 637(d)), requires responsible action by:

- **Contracting Officers**, to request and obtain plans for applicable contracts, to negotiate plans that demonstrate the prime contractor's best efforts to subcontract with small business (SB), HUBZone small business (HUBZone), small disadvantaged business (SDB), SD/VOSB, veteran-owned small business and women-owned small business (WOSB) to the maximum extent practicable, and to actively monitor the prime contractor's progress in carrying out its plan;
- **Small Business Specialists**, to assist the contracting officer in evaluating and negotiating acceptable plans, obtain necessary advice and assistance from the SBA and Defense Contract Management Agency (DCMA) subcontracting specialists, coordinate approvals with the Director, OSDBU (if applicable), and monitor contractors' performance through collection and analysis of required reports;
- **Director, OSDBU**, to develop appropriate subcontracting program policy and ensure its consistent application throughout the DHHS; and
- **Prime Contractors**, to develop and submit subcontracting plans which contain maximum practicable use of small businesses, demonstrate their good faith efforts to award subcontracts to SB, HUBZONE, SDB, SD/VOSB, VOSB and WOSB concerns. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. Prime contractors must submit accurate, timely and complete annual and semi-annual reports of their subcontracting activity.

C. Types Of Subcontracting Plans

In accordance with FAR 19.702(a)(1) Statutory requirements, a subcontracting plan shall be obtained from each apparent successful offeror or bidder selected for award prior to contract award, whether the contract is awarded by sealed bidding or negotiation when applicable. See FAR 19.702(b) for exceptions.

1. Individual Plans

An individual subcontracting plan contains separate dollar and percentage subcontracting goals with all administrative elements developed for that specific contract. Each item of the plan must be negotiated and approved by the contracting officer prior to award. The plan applies to the contract for its entire life and is subject to modification as the contracts requirements change. (See FAR Part 19.704(a) Subcontracting Plan Requirements for further instruction on the development of Individual Plans.) Contractor performance is monitored on a semi-annual and annual basis using the SF 294 and SF 295 respectively.

2. Master Plans with Individual Contract Goals

A master subcontracting plan contains the repetitive policy and administrative information required for subcontracting plans (see FAR 19.704(b)). Contractors may establish master plans

on a plant or division-wide basis but not on a contract basis. *The master plan shall be effective for the life of the contract after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master plans. Master plans are subject to modification as the contract's requirements change.*

The master plan does not include goals; therefore, when a prime contractor presents it, the contracting officer must negotiate separate dollar and percentage goals for SB, SDB VOSB, SD/VOSB, and WOSB participation. A listing of the items and services to be subcontracted under the plan; and descriptions of the method used to develop the goals, to develop subcontracting source lists and to allocate overhead to the subcontracting plan must also be obtained. In accordance with FAR 52.219-9(f), the contracting officer may negotiate any deviations from the master plan that are necessary to tailor it for a specific contract.

When a master plan is accepted, the contracting officer must also obtain a copy of the lead agency contracting officer's approval of the master plan. (A lead agency is the first Federal agency to award a contract to a vendor in a given fiscal year. Contracting Officers should contact the Small Business Administration or the Defense Contract Management Agency to receive the lead C.O.'s approval.) After goals are negotiated and combined with the Master plan to form a total plan, it becomes an "individual" subcontracting plan. Once incorporated into the individual contract, the plan is valid for the life of that contract. The same requirement for semi-annual and annual monitoring are required as are required for individual subcontracting plans.

3. Commercial Plans

Commercial plans may be submitted when a vendor sells products or services in regular production that are sold to the general public and/or industry for non-governmental purposes. This type of plan contains administrative elements and goals developed and approved on a company-wide (*not contract-wide*) basis. This is the preferred subcontract plan for contractors furnishing commercial items. Individual contract goals are not required.

Commercial plans are negotiated and approved by the first Federal Government agency to award a contract to that vendor in a given fiscal year, and apply to all contracts awarded during that year for the products and/or services covered by the plan. A copy of the plan and the lead agency contracting officer's approval of the plan must be obtained and placed in the contract file. The plan must cover the products and services being purchased under the HHS contract. If it does not, an individual plan must be negotiated.

Commercial plans are valid only for the year in which they are approved. Therefore, a current plan must be obtained and approved prior to exercising options to contracts containing commercial plans. See FAR 19.704(d) for additional requirements.

Note: *The Director, OSDBU, encourages innovative approaches to achieving the agency's subcontracting goals. However, any deviation to the above plans not specifically authorized by this manual or FAR, should be reviewed and approved by the Director, OSDBU, prior to implementation*

D. Solicitation Clauses And Attachments

1. Subcontracting Plan Outline

Any contractor receiving a contract for more than the simplified acquisition threshold shall agree in the contract that small business, HUBZone small business, small disadvantaged business, veteran-owned and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract. Every HHS solicitation over the applicable subcontracting plan threshold that is not a small business, HUBZone set-aside or reserved for SBA under the authority of Section 8(a) shall include the "Small, HUBZone, VOSB, SD/VOSB, SDB, and WOSB, Subcontracting Plan Outline" (See FAR Part 19.702). Appendix 6-1 provides a recommended format.

2. Subcontracting Program Evaluation Criteria

For acquisitions where the contracting officer has determined that substantial subcontracting opportunities exist, the offeror's subcontracting plan should be one of the evaluation factors for award. The solicitation should include 52.219-9 with alternate II. OPDIV Small Business Specialists should assist contracting officers in making this determination. When it has been determined that evaluation criteria for the subcontracting plan will be included, the plan evaluation shall be separate from the technical or cost evaluation, and be weighted based on a specified percentage of the total available points. The following is suggested language for a solicitation.

- **Subcontracting Program Performance.** The offeror's proposed small, HUBZone small, small disadvantaged and women-owned small business subcontracting plan will be evaluated to determine whether it represents the maximum practicable opportunity for subcontracting. Because the offeror's record of previous performance in carrying out the intent of the subcontracting program will be considered as a significant sub-factor, each offeror is encouraged to submit subcontracting plans and documentation that demonstrates their prior corporate support for small, HUBZone small, small disadvantaged, and women-owned small business suppliers. If offerors are received from both large businesses and small business, the small business offerors shall receive the maximum possible number of points for this factor.

The contracting officer shall consult with the OPDIV SBS, who shall coordinate with the Director, OSDDBU, prior to incorporating subcontracting plans as an evaluation factor for award.

When subcontracting is an evaluation factor, the OSDDBU review of subcontract plans is required prior to determining the competitive range. The time period for submission is established by the contracting officer, but must allow sufficient time for review, negotiation and approval by the Director, OSDDBU or designee prior to the anticipated contract award date.

E. Publicizing Subcontracting Opportunities

In accordance with FAR 5.206, Prime contractors may use FedBizOpps to publicize subcontracting opportunities stemming from receipt of a Government contract. Contracting officers should encourage large prime contractors and subcontractors to use *FedBizOpps*. *The Director, OSDDBU may also make available to the general public a list of all HHS Prime contractors. This list will identify a point of contact with each company to identify subcontracting opportunities.*

F. Evaluating The Subcontracting Plan

The Plan Evaluation Team

Contract Specialist/Contracting Officer

The contract specialist/contracting officer must:

1. Review the plan to ensure that it is complete and contains all the information described in FAR 19.704;
2. Obtain advice and recommendations about the acceptability of the plan and proposed goals from the OPDIV SBS, the SBA PCR, the SBA and DCMA subcontracting specialists and the Director, OSDDBU or designee when determined appropriate. Appendix 6-3 provides a sample transmittal memorandum for this purpose.
3. Evaluate the potential for SB, HUBZone, SDB, VOSB, SD/VOSB and WOSB small business subcontracting based on all available information, including the apparent successful offeror's previous achievements. Previous involvement of SB, HUBZone, SDB, VOSB, SD/VOSB and WOSB concerns as prime or subcontractors in similar acquisitions should be considered (FAR 19.705-4(a)(1)). The contractor can be requested to provide such data regarding its SB, HUBZone, SDB, WOSB, SD/VOSB and VOSB sub-contracting on similar acquisitions. If a follow-on acquisition is involved, good data can be expected to be available. Any previous data on similar prime contract awards should be considered;

4. Negotiate, in the case of negotiated procurements, subcontract goals which represent good faith, and aggressive and comprehensive effort on the part of the apparent successful offeror;
5. Determine whether the plan provides the maximum practicable opportunity for SB, HUBZone, VOSB, SD/VOSB, SDB, and WOSB concerns to participate in the performance of the contract;
6. Advise the contractor why a subcontracting plan was determined to be unacceptable in negotiated contracts. This should be done as quickly as possible so the contractor can modify the plan within the time limits prescribed. See FAR 19.705-4 for further discussion on deficiencies and weaknesses in subcontracting plans.
7. Determine whether the apparent successful bidder has submitted a plan as specified in the clause at FAR 52.219-9, Alternate I, for sealed bid acquisitions. If the plan does not cover each of the required elements, advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the plan is still incomplete on resubmission, the contractor should be found ineligible for award (FAR 19.705-4(b));
8. In sealed bid acquisitions, if a submitted plan is responsive (that is, complete) but shows the bidder's intention not to comply with its obligations under the "Best Efforts" clause at FAR 52.219-8 (that is, give its best efforts to award subcontracts to SB, HUBZone, SDB, VOSB, SD/VOSB, and WOSB concerns to the fullest extent consistent with the efficient performance of the contract), then the bidder may be found non-responsible by the contracting officer. (FAR 19.705-4(b)).

Operational Division Small Business Specialists (OPDIV SBS)

The contracting activity SBS should assist the contracting officer in his/her evaluation of the subcontracting plan (FAR 19-705-4(d)(7)). If the SBS has delegated authority from the Director, OSDDBU, then the SBS will also concur with the Contracting Officer's approval of the subcontracting plan. The OPDIV SBS will have the benefit of seeing all plans submitted by contractors within their respective OPDIVs, and be aware of the contractor's previous compliance with individual plans. This knowledge is critical in assisting Contracting Officers to fulfill their responsibility to monitor each contractor's compliance with Section 8(d) of the Small Business Act.

Small Business Administration (SBA)

SBA's resident PCR must be provided an opportunity to review all proposed subcontracting plans submitted to OPDIVs. (See Far 19.705-5(a)(3)). The Director, OSDDBU or designee may request the PCR's advice on plans received from locations outside his/her jurisdiction. The SBA PCR may:

1. Assist both Government agencies and contractors in carrying out their responsibilities with regard to subcontracting plans;
2. Review (within 5 working days) any solicitation that meets the dollar threshold in FAR 19.702(a)(1) or (2) before the solicitation is issued; and
3. Review (within 5 working days) before execution any negotiated contractual document requiring a subcontracting plan, including the plan itself, and submit recommendations to the contracting officer, which shall be advisory in nature.

If after 5 working days no response has been received from the SBA on a proposed contract award, the SBA may delegate its responsibility to advise to the SBS. However, SBA will retain its right to challenge subcontracting plans which do not comply with the FAR notwithstanding the SBS concurrence.

Advice on the contractor's compliance with the subcontracting program should also be sought from the SBA cognizant Commercial Market Representative (CMR) located in the geographic area. The CMR specializes in evaluating subcontracting plans and programs. A listing of the CMR offices is available from the SBS or at <http://www.sba.gov/gc>.

Director, Office of Small and Disadvantaged Business Development Utilization (OSDBU)

The Director, OSDBU or designee should periodically review plans and conduct audits of DHHS OPDIV contracts to ensure their conformance with HHS policy and all statutory requirements. It is the Director, OSDBU's and the Procurement Executive's responsibility to ensure that the Department's subcontracting program policy is consistently applied. The Director, OSDBU will have the benefit of seeing plans submitted by contractors to all HHS OPDIVs, and be aware of their previous compliance with individual plans and the subcontracting program in general.

Defense Contract Management Agency

In accordance with a Memorandum of Understanding between the SBA and DOD, the Defense Contract Management Agency (DCMA) is the lead agency and cognizant administrative contracting office for those contractors whose primary customer is the Department of Defense. DCMA has agreed to audit and monitor contractor performance Government-wide for DOD prime contractors. SBA will audit all other prime contractors. The Director OSDBU, may request DCMA district or regional offices, or other contract administration offices, (FAR 19.706(a)) comment on the contractor's past performance and compliance with Master and Commercial subcontracting plans. This information will be provided to Contracting Officers upon request. Such past compliance is a factor in determining the contractor's responsibility (FAR 19-705-5(a)(1)). The DCMA Deputy for Small Business or designated Administrative Contracting Officer will have the benefit of knowledge and experience of a contractor's performance on a wide range of subcontracting plans, and of the contractor's personnel, capabilities and procedures.

Evaluation Factors

The following questions should be answered to provide a basis for evaluating the subcontracting plan:

- Are the elements listed in FAR 52.219-9 included in the plan? (This is the **absolute minimum.**)
- Are affirmative goals included? (Zero goals are not generally acceptable. Contracting officers who receive zero as a goal shall obtain a documented explanation by contractors who state that they cannot locate small business subcontractors.)
- Does the contractor have a "make-or-buy" program applicable to this acquisition?
- Do the plan and the contractor's in-house systems constitute a good faith effort to use SB, HUBZONE, SDB, SD/VOSB, VOSB and WOSB concerns as subcontractors?
- Do the proposed goals reflect the maximum practicable opportunity for SB, HUBZONE, SDB, SD/VOSB, VOSB and WOSB concerns to participate as subcontractors?

Plan Review Procedures

Sealed Bids

The bidder selected for award shall submit a plan. The contracting officer or contract specialist reviews the plan and shall complete a "Subcontracting Plan Review Checklist," Appendix 6-2. The plan and review checklist are submitted to the OPDIV SBS for review. The SBS will provide recommendations on subcontracting opportunities offered under the contract and the acceptability of the subcontracting plan.

The plan is submitted to the SBA PCR for review and concurrence. The PCR may also make recommendations about the acceptability of the plan and its goals. The contracting officer reviews the SBS and PCR recommendations. If the plan does not cover all of the required elements, the contracting officer must advise the contractor of the deficiency(s) and request a revision or a new plan by a specific date.

After receiving the SBS and PCR's concurrence of the plan, **the contracting officer shall make the plan a material part of the contract.** If a complete and responsive plan is not submitted within the established time period, the contracting officer must reject the bid as **non-responsive.**

If the plan, although responsive, show the contractor's intent not to comply with the "Best Efforts" clause, the contracting officer should find the bidder **non-responsible**.

Negotiated Acquisitions

In accordance with FAR 19.705-2, contracting officers may require the submission of subcontracting plans with initial offerors or at any other time prior to award (See D.2 Subcontract Program Evaluation Criteria for additional instruction when evaluation points will be given to the plan.) However, the Director, OSDDBU strongly encourages submission of the subcontracting plan with the initial proposal submission.

The contracting officer or contract specialist reviews the plan(s) and completes a "Subcontracting Plan Review Checklist," Appendix 6-2. The contracting officer shall review the subcontract plan for adequacy, ensuring that the required information, goals and assurances are included (FAR 19.705-4). The plan, review checklist, negotiated cost estimate and proposed contract are submitted to the OPDIV SBS for review. The SBS will provide recommendations on subcontracting opportunities offered under the contract and the acceptability of the subcontracting plan.

The plan, review checklist, negotiated cost estimate, and proposed contract are then submitted to the SBA PCR for review and concurrence. The PCR may also make recommendations about the acceptability of the plan and its goals.

The contracting officer reviews the SBS and PCR recommendations. If the plan does not cover all of the required elements, the contracting officer must advise the contractor of the deficiency and request a revision or a new plan by a specific date.

Adequacy of the subcontracting plan is determined on the basis of negotiation of each of the required elements. An acceptable subcontracting plan must be negotiated prior to award.

For contractors who submit approved master plans, only the individual contract goals must be negotiated. *Other elements of the master plan may be negotiated to conform to the requirements of the HHS contracting officer.* If a commercial plan and associated approvals are submitted, no negotiation is required.

As stated above in F.1.a.2, contracting officers may also seek advice from the SBA PCR or CMR, DCMA subcontracting specialists and the Director OSDDBU for assistance in negotiating subcontract plans.

Other Considerations

Incentives

Section 8(d) of the Small Business Act encourages the use of various incentives to support subcontracting. Various approaches are acceptable, including a fully quantified schedule of payments or award fees. One of the simplest approaches is to include the subcontracting plan as an evaluation factor in the solicitation, and require a plan to be submitted by all offerors except small businesses. (See Section D.2. above, "Subcontracting Program Evaluation Criteria," for suggested wording for this evaluation factor.)

Contracting Officers may also 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. (FAR 19.705-1)

Other types of incentive provisions should be negotiated after agreement on the basic plan. Use of incentives must be governed by assurance that the established goals are realistic, and award fees must be commensurate with contractor effort beyond what would have been achieved under the basic plan.

Contractor Responsibility

In making an award that requires a subcontract plan, the contracting officer shall consider the contractor's compliance and performance under subcontract plans submitted on previous contracts and consider the contractor's submission of subcontracting reports in a timely manner. These considerations should be done before determining the responsibility of an offeror on a

contract requiring a subcontracting plan. The contracting officer should obtain assistance from their respective OPDIV SBS or the resident SBA PCR. If a company failed to make a good faith effort on subcontracting goals on previous contracts, the contracting officer should find them to be a non-responsible bidder or offeror. Failure to submit a plan which shows a good faith effort to use SB, HUBZONE, SDB, VOSB, SD/VOSB and WOSB concerns **must** be a factor in determining responsibility.

Profit or Fee

The C.O. must consider the degree of a contractor's support for the subcontracting program as a factor in determining the amount of profit or fee (see FAR 15.404-5(d)(iii)). SBA, DCMA, and/or a previous administrative contracting officer should be consulted for advice on the contractor's subcontracting program. Some offices assign a standard point value to use as the "other factor" on the basis of their periodic evaluations of the contractor's efforts.

When No Subcontracting Opportunities Exist

In accordance with FAR 19.705-2, the FAR envisions that some contracts will not require a subcontracting plan because there are no subcontracting opportunities. Contracting Officers must obtain approval from a level above the Contracting Officer to waive the requirement for a subcontract plan. A copy of the waiver should be forwarded to the Director, OSD/BU.

When it is determined that sources are not available for a specific socio-economic goal, assistance should be obtained from the SBA PCR and the OPDIV SBS to identify sources. If no sources are available, concurrence from both the SBA PCR and the SBS should be obtained prior to incorporating the plan into the contract.

Awarding the Contract with a Subcontracting Plan

In accordance with FAR 19.705-5, after the contracting officer has made a selection for award, the subcontracting plan shall be made a material part of the contract. It may be incorporated in its entirety or by reference.

All HHS contracts which include subcontracting plans must also include language in each solicitation which clarifies that submission of the SF 294 and/or SF 295 reports, whichever applies, is not a separately priced line item deliverable under the contract. The Contracting Officer should forward a copy of the approved plan to the SBS.

G. Post-Award Action

Subcontract Plan Administration

Contracting Officer Responsibilities -

The contracting officer shall monitor receipt of SF 294 reports for individual contract plans for progress in meeting subcontracting plan goals by comparing the reports with the plan. Upon receipt of the SF 294, the contracting officer shall complete the "Subcontracting Performance Evaluation Report" attached as Appendix 6-5. A copy of the Subcontracting Performance Evaluation Report shall be furnished to the Small Business Specialist with a copy of the SF 294 report not more than 30 days after receipt of the semi-annual 294 report.

If percentage goals are not met, the contractor must be required to explain the shortfall in the "Remarks" block on the subcontracting reports and may be required to submit evidence of its outreach efforts to locate and provide subcontracting opportunities to SB, HUBZONE, SB, SDB, VOSB, SD/VOSB and WOSB concerns. The requirement for compliance with plans is fulfilled by evidence of meeting goals established in the plan. Contracting Officers should use Appendix 6-5 to document the contractor's performance. One copy of this report should be placed in the file and another copy forwarded to the OPDIV SBS. The report should be completed within 30 days of receipt of the SF 294.

After a contract or contract modification containing a subcontracting plan is awarded, the contracting officer who approved the plan is responsible for the following:

1. Notifying 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 where the contract will be performed. Appendix 6-4 provides a sample transmittal letter for this purpose.
2. Forwarding 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.
3. Giving to the assigned SBA resident procurement center representative (if any) a copy of the final negotiated subcontracting plan that was incorporated into a negotiated contract or contract modification.
4. Notifying the SBA resident procurement center representative of the opportunity to review subcontracting plans in connection with contract modifications.
5. Forwarding a copy of each plan, or a determination that there is no requirement for a subcontracting plan, to the cognizant contract administration office when a Master Plan is used. (See Section C.2 Master Plans with Individual Contract Goals.)
6. Initiating action to assess liquidated damages in accordance with FAR 19.705-7 upon a recommendation by the administrative contracting officer or receipt of other reliable evidence to indicate that such action is warranted.
7. Taking action to enforce the terms of the contract upon receipt of a notice that the contractor is failing to comply in good faith with the subcontracting plan (FAR 19.706(f)).
8. Forwarding a copy of each plan to the OPDIV SBS.

SBA Responsibilities -

The Small Business Administration through its resident procurement center representative may evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or, in the case of contractors having multiple contracts, on an aggregate basis. (FAR 19.707)

Small Business Specialist Responsibilities -

1. Assist the Contracting Officer in ensuring timely receipt of SF 294 reports.
2. Compile an annual report for Director OSDDBU of the subcontract activity of each Prime Contractor in their respective OPDIV. The form for the semi-annual report is at Appendix 6-7. This report is due to OSDDBU by 6/30 and 12/30 of each calendar year.
3. Provide advice and assistance to the Contracting Officer in the monitoring of the Agency's Subcontract Program upon request.

Director, OSDDBU Responsibilities -

Contractors shall submit SF 295 Reports to the Director, OSDDBU on an annual basis. OSDDBU will compile an annual report and submit the findings to the Small Business Administration as required in FAR 19.202-5 and Subpart 4.6.

OSDBU will receive semi-annual SF 294 reports from each OPDIV SBS on the subcontract activity in their respective divisions. The Director, OSDDBU, will address any questions or discrepancies to the contractor.

OSDBU will conduct periodic audits of Agency contracts to ensure compliance with policy and regulation. OSDDBU will issue policy and guidance on the execution of the subcontract program as needed for the Department.

OSDBU will function as the Agency's Ombudsman to address the public's inquiries on the Agency's subcontracting program.

Procedures for Delinquent Reports -

Contractors who fail to submit all SF 294 and SF 295 reports within 10 calendar days of the due date must be reminded by the Contracting Officer in writing that the report is past due. Sample delinquency notices are attached at Appendix 6-7. Contractors who do not respond to the first notice must be issued a second written notice that must contain the following information:

A statement that the named report has not been received;

A statement that failure to submit the report is a material breach of the contract;

A statement that if the report is not received within 10 calendar days from the date of the notice, the contracting officer will consider withholding payments as deemed appropriate under the circumstances until the report is received, and may terminate the contract for default; (A sample delinquency notice is available at Appendix 6-6.)

A reminder that failure to submit the report may affect the contractor's ability to receive future awards from DHHS OPDIVs and that willful failure to perform or a history of failure to perform may result in debarment from future contracting with the Government; and, the address of the contracting officer or administrative contracting officer to whom the report must be sent.

Copies of delinquency notices concerning SF 294 reports shall be sent to the Small Business Specialist who must inform Director OSDBU. Contractors who do not respond to the 2nd notice may be subject to FAR Part 49.4 - termination for default proceedings.

Final Performance Assessments -

Effective October 1, 2002 upon contract completion of all HHS contracts, the contracting officer shall prepare a report documenting and evaluating the contractor's performance under the subcontracting plan. The report shall be submitted on the "Final Subcontracting Performance Evaluation Report" attached as Appendix 6-8. A copy of the report shall be forwarded to the OSDBU and the Small Business Specialist.

The report should include (1) the extent to which the goals were met, (2) whether the contractor's efforts were consistent with the effort proposed in the plan, and (3) whether the contractor required its subcontractors to adopt similar subcontract plans (FAR 19.706(d)). If the contractor did not comply in good faith with the subcontracting plan, the contracting officer shall document the noncompliance in writing, include the reasons, and provide a copy of that documentation to the OPDIV Small Business Specialist who will forward a copy to the OSDBU.

Before determining that a contractor's failure to achieve the subcontracting goals was occasioned by bad faith, the contracting officer must analyze the explanations required of the contractor and the criteria set forth in the subcontracting plan to establish what constitutes a "good faith effort."

In all cases of noncompliance, including instances where liquidated damages are assessed, the contracting officer shall notify the OPDIV Small Business Specialist and the Director OSDBU.

Contracting Officer Duties -

The contracting officer determines the fee payable if an incentive is applied. If the contractor fails to implement the plan, which is a material breach of the contract, the contracting officer may:

- Terminate the contract for default;
- Withhold payments;
- Negotiate a reduction in the contract price;
- When a contractor fails to make a good faith effort to comply with its subcontract plan, it is the responsibility of the contracting officer to initiate action to assess liquidated damages against the contractor. Liquidated damages will be equal to 100 percent of the amount by which the contractor failed to meet its goal, and are payable to the procuring agency. See FAR19.705-7 for instructions on how to assess liquidated damages.

The contracting officer should forward copies of all SF 294 reports received from contractor to the OPDIV Small Business Specialist.

APPENDIX 6-1

Small Business Subcontracting Plan

DATE OF PLAN: _____

CONTRACTOR _____

ADDRESS: _____

DUNN & BRADSTREET NUMBER: _____

SOLICITATION OR CONTRACT NUMBER: _____

ITEM/SERVICE (Description): _____

TOTAL CONTRACT AMOUNT: \$ _____ \$ _____

Total contract or	Option #1	
Base-Year, if options	(if applicable)	
\$ _____	\$ _____	\$ _____

Option #2	Option #3	Option #4
(if applicable)	(if applicable)	(if applicable)

TOTAL MODIFICATION AMOUNT, IF APPLICABLE \$ _____

TOTAL TASK ORDER AMOUNT, IF APPLICABLE \$ _____

PERIOD OF CONTRACT PERFORMANCE (Month, Day & Year): _____

The following outline meets the minimum requirements of section 8(d) of the Small Business Act, as amended, and implemented by Federal Acquisition Regulations (FAR) Subpart 19.7. While this outline has been designed to be consistent with statutory and regulatory requirements, other formats of a subcontracting plan may be acceptable. It is not intended to replace any existing corporate plan that is more extensive. Failure to include the essential information of FAR Subpart 19.7 may be cause for either a delay in acceptance or the rejection of a bid or offer when a subcontracting plan is required. "SUBCONTRACT," as used in this clause, 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. **If assistance is needed to locate small business sources, contact the Office of Small and Disadvantage Business Utilization (OSDBU) at (202) 690-7300 or the OPDIV Small Business Specialist at _____.** Sources may also be obtained from SBA's PRONET website. Please note that the Department of Health and Human Services (HHS) has subcontracting goals of _____% for small business (SB), _____% for small disadvantaged business (SDB), _____% for HubZone businesses (HUBZone), _____% for women-owned business (WOSB), _____% for veteran-owned business (VOSB), and service disabled veteran-owned small business (SDVOSB) concerns for fiscal year _____. For this procurement, HHS expects all proposed subcontracting plans to contain the following goals, at a minimum, _____% for small business, _____% small disadvantaged business, _____% for HubZone businesses, _____% for woman owned businesses, and _____% for veteran-owned businesses. These percentages shall be expressed as percentages of the total estimated subcontracting dollars. **The offeror is required to include an explanation for a category that has zero as a goal.**

Note To Contractors: Please provide your CCS number with your Dun & Bradstreet number.

Type of Plan (check one)

_____ **Individual plan** (all elements developed specifically for this contract and applicable for the full term of this contract).

_____ **Master plan** (goals developed for this contract) all other elements standardized and approved by a lead agency Federal Official; must be renewed every three years and contractor must provide copy of lead agency approval.

_____ **Commercial products/service plan** This plan is used when the contractor sells products and services customarily used for non-government purposes. Plan/goals are negotiated with the initial agency on a company-wide basis rather than for individual contracts. The plan is effective only during the year approved. The contractor must provide a copy of the initial agency approval, and must submit an annual SF 295 to HHS with a breakout of subcontracting prorated for HHS (with a OPDIV breakdown, if possible.)

Goals

State separate dollar and percentage goals for Small Business (SB), Small Disadvantaged Business (SDB), Woman-owned Small Business (WOSB), Historically Underutilized Business Zone (HUBZone) Small Business, Veteran-owned (VOSB), Service-Disabled Veteran-owned Small Business (SDVOSB) and "Other than small business" (Other) as subcontractors, for the base year and each option year, as specified in FAR 19.704 (break out and append option year goals, if the contract contains option years) or project annual subcontracting base and goals under commercial plans.

Total estimated dollar value of ALL planned subcontracting, i.e., with ALL types of concerns under this contract is \$ _____ (b + h = a) (Base Year)

FY ___1 st Option	FY ___2 nd Option	FY ___3 rd Option	FY ___4 th Option
\$ _____	\$ _____	\$ _____	\$ _____

Total estimated dollar value and percent of planned subcontracting with SMALL BUSINESSES (including SDB, WOSB, HUBZone, SDVOSB and VOSB): (% of "a") \$ _____ and _____%

(Base Year)

FY ___1 st Option	FY ___2 nd Option	FY ___3 rd Option	FY ___4 th Option
\$ _____	\$ _____	\$ _____	\$ _____

Total estimated dollar value and percent of planned subcontracting with SMALL DISADVANTAGED BUSINESSES: (% of "a") \$ _____ and _____% (Base Year)

FY ___1 st Option	FY ___2 nd Option	FY ___3 rd Option	FY ___4 th Option
\$ _____	\$ _____	\$ _____	\$ _____

Total estimated dollar value and percent of planned subcontracting with WOMAN-OWNED SMALL BUSINESSES: (% of "a") \$ _____ and _____% (Base Year)

FY ___1 st Option	FY ___2 nd Option	FY ___3 rd Option	FY ___4 th Option
\$ _____	\$ _____	\$ _____	\$ _____

Total estimated dollar and percent of planned subcontracting with HUBZone SMALL BUSINESSES:

(% of "a") \$ _____ and _____% (Base Year)

FY ___1 st Option	FY ___2 nd Option	FY ___3 rd Option	FY ___4 th Option
\$ _____	\$ _____	\$ _____	\$ _____

Provide a description of the method used to develop the subcontracting goals for SB, SDB, WOSB, HUBZone, and VOSB concerns. Address efforts made to ensure that maximum practicable subcontracting opportunities have been made available for those concerns and explain the method used to identify potential sources for solicitation purposes. Explain the method and state the quantitative basis (in dollars) used to establish the percentage goals. Also, explain how the areas to be subcontracted to SB, SDB, WOSB, HUBZone, and VOSB concerns were determined, how the capabilities of these concerns were considered contract opportunities and how such data comports with the cost proposal. Identify any source lists or other resources used in the determination process. (Attach additional sheets, if necessary.)

Indirect costs have ____ have not ____ been included in the dollar and percentage subcontracting goals above (check one).

If indirect costs have been included, explain the method used to determine the proportionate share of such costs to be allocated as subcontracts to SB, SDB, WOSB, HUBZone, SDVOSB and VOSB concerns.

Program Administrator:

NAME/TITLE:

ADDRESS:

TELEPHONE/E-MAIL:

Duties: Does the individual named above have general overall responsibility for the company's subcontracting program, i.e., developing, preparing, and executing subcontracting plans and monitoring performance relative to the requirements of those subcontracting plans and perform the following duties? (If NO is checked, please indicate who in the company performs those duties, or indicate why the duties are not performed in your company.)

Developing and promoting company-wide policy initiatives that demonstrate the company's support for awarding contracts and subcontracts to SB, SDB, WOSB, HUBZone, SDVOSB and VOSB concerns; and for assuring that these concerns are included on the source lists for solicitations for products and services they are capable of providing. _____ yes _____ no

Developing and maintaining bidder source lists of SB, SDB, WOSB, HUBZone, SDVOSB and VOSB concerns from all possible sources; _____ yes _____ no

1. Ensuring periodic rotation of potential subcontractors on bidder's lists; _____ yes
_____ no
2. Assuring that SB, SDB, WOSB, HUBZONE, SDVOSB and VOSB businesses are included on the bidders' list for every subcontract solicitation for products and services that they are capable of providing. _____ yes _____ no
3. Ensuring that requests for proposals (RFPs) are designed to permit the maximum practicable participation of SB, SDB, WOSB, HUBZone, SDVOSB and VOSB concerns. _____ yes _____ no
4. Reviewing subcontract solicitations to remove statements, clauses, etc., which might tend to restrict or prohibit small, HubZone small, small disadvantaged, and women-owned small business participation. _____ yes _____ no
5. Accessing various sources for the identification of SB, SDB, WOSB, HUBZone, SDVOSB and VOSB concerns to include the SBA's PRO-Net and SUB-Net Systems, (<http://www.sba.gov>), the National Minority Purchasing Council Vendor Information Service, the Office of Minority Business Data Center in the Department of Commerce, local small business and minority associations, contact with local chambers of commerce and Federal agencies' Small Business Offices; _____ yes _____ no
6. Establishing and maintaining contract and subcontract award records; _____ yes
_____ no
7. Participating in Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, Procurement Conferences, etc;
8. Ensuring that SB, SDB, WOSB, HUBZone, and VOSB concerns are made aware of subcontracting opportunities and assisting concerns in preparing responsive bids to the company;
9. Conducting or arranging for the conduct of training for purchasing personnel regarding the intent and impact of Section 8(d) of the Small Business Act, as amended;
10. Monitoring the company's subcontracting program performance and making any adjustments necessary to achieve the subcontract plan goals;
11. Preparing, and submitting timely, required subcontract reports;
12. Conducting or arranging training for purchasing personnel regarding the intent and impact of 8(d) of the Small Business Act on purchasing procedures.
13. Coordinating the company's activities during the conduct of compliance reviews by Federal agencies; and
14. Other duties:

Equitable Opportunity

Describe efforts the offeror will Describe efforts Describe efforts the offeror will make to ensure that SB, SDB, WOSB, HUBZone, and VOSB concerns will have an equitable opportunity to compete for subcontracts. These efforts include, but are not limited to, the following activities:

Outreach efforts to obtain sources:

1. Contacting minority and small business trade associations; 2) contacting business development organizations and local chambers of commerce; 3) attending SB, SDB, WOSB, HUBZone, and VOSB procurement conferences and trade fairs; 4) requesting sources from the Small Business Administrations (SBA) PRO-Net and SUB-Net Systems, (<http://www.sba.gov/>) and other SBA and Federal agency resources. Contractors may also conduct market surveys to identify new sources, to include, accessing the NIH e-Portals in Commerce, (e-PIC), (<http://epic.od.nih.gov/>). The NIH e-Portals in Commerce is not a mandatory source and may be used at the offeror's discretion.

Internal efforts to guide and encourage purchasing personnel:

1. Conducting workshops, seminars, and training programs;
2. Establishing, maintaining, and utilizing SB, SDB, WOSB, HUBZone, and VOSB source lists, guides, and other data for soliciting subcontractors; and
3. Monitoring activities to evaluate compliance with the subcontracting plan.

Additional efforts:

Flow Down Clause

The contractor agrees to include the provisions under FAR 52.219-8, "Utilization of Small Business Concerns," in all acquisitions exceeding the simplified acquisition threshold that offers further subcontracting opportunities. All subcontractors, except small business concerns, that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) must adopt and comply with a plan similar to the plan required by FAR 52.219-9, "Small Business Subcontracting Plan." (Flow down is not applicable for commercial items/services as described in 52.212-5(e) and 52.244-6(c).)

Reporting and Cooperation

The contractor gives assurance of (1) cooperation in any studies or surveys that may be required; (2) submission of periodic reports which show compliance with the subcontracting plan; (3) submission of Standard Form (SF) 294, "Subcontracting Report for Individual Contracts," and attendant Optional Form 312, SDB Participation Report, if applicable, (required only for contracts containing the clause 52.219-25) and SF 295, "Summary Subcontract Report," in accordance with the instructions on the forms; and (4) ensuring that subcontractors agree to submit Standard Forms 294 and 295.

Reporting Period	Report Due	Due Date
Oct 1 - Mar 31	SF 294	4/30
Apr 1 - Sept 30	SF 294	10/30
Oct 1 - Sept 30	SF 295	10/30
Contract Completion	OF 312	30 days after completion

Special instructions for commercial plan: SF 295 Report is due on 10/30 each year for the previous fiscal year ending 9/30.

1. Submit SF 294 to cognizant Awarding Contracting Officer.
2. Submit Optional Form 312, (OF-312), if applicable, to cognizant Awarding Contracting Officer.
3. Submit SF 295 to cognizant Awarding Contracting Officer and to the:

Office of Small and Disadvantaged Business Utilization
Department of Health and Human Services
200 Independence Avenue, SW
Humphrey H. Building, Room 517-D
Washington, D.C. 20201

4. Submit "information" copy of the SF 295 and the SF 294 upon request to the SBA Commercial Market Representative (CMR); visit the SBA at <http://www.sba.gov/gc> and click on assistance directory to locate your nearest CMR.

Record keeping

FAR 19.704(a) (11) requires a list of the types of records your company will maintain to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan. The following is a recitation of the types of records the contractor will maintain to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan. These records will include, but not be limited to, the following:

1. SB, SDB, WOSB, HUBZone, and VOSB source lists, guides and other data identifying such vendors;
2. Organizations contacted in an attempt to locate SB, SDB, WOSB, HUBZone, and VOSB sources;
3. On a contract-by-contract basis, records on all subcontract solicitations over \$100,000, which indicate for each solicitation (1) whether SB, SDB, WOSB, HUBZone, and/or VOSB concerns were solicited, if not, why not and the reasons solicited concerns did not receive subcontract awards.
4. Records to support other outreach efforts, e.g., contacts with minority and small business trade associations, attendance at small and minority business procurement conferences and trade fairs;
5. Records to support internal guidance and encouragement provided to buyers through (1) workshops, seminars, training programs, incentive awards; and (2) monitoring performance to evaluate compliance with the program and requirements; and
6. On a contract-by-contract basis, records to support subcontract award data including the name, address, and business type and size of each subcontractor. (This item is not required on a *contract – by – contract* basis for company or division-wide commercial plans.)
7. Other records to support your compliance with the subcontracting plan: (Please describe)

Timely Payments to Subcontractors

FAR 19.702 requires your company to establish and use procedures to ensure the timely payment of amounts due pursuant to the terms of your subcontracts with small business concerns, HubZone small business concerns, small disadvantaged small business concerns, veteran-owned small business concerns and women-owned small business concerns.

Your company has established and uses such procedures: _____ yes _____ no

Description of Good Faith Effort

Maximum practicable utilization of small, HubZone small, small disadvantaged, veteran-owned, and women-owned small business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. **When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d) (4) (F) directs that liquidated damages shall be paid by the contractor.** In order to demonstrate your compliance with a good faith effort to achieve the small, HubZone, small disadvantaged, veteran-owned and women-owned small business subcontracting goals, outline the steps your company plans to take. These steps will be negotiated with the contracting officer prior to approval of the plan.

Signature Page

Signatures Required:

This subcontracting plan was submitted by:

Signature: _____

Typed Name: _____

Title: _____

Date: _____

This plan was reviewed by:

Signature: _____

Typed Name: _____

Title: _____ Contracting Officer

Date: _____

This plan was reviewed by:

Signature: _____

Typed Name: _____

Title: _____ Small Business Specialist

Date: _____

This plan was reviewed by:

Signature: _____

Typed Name: _____

Title: _____ SBA Procurement Center Representative

Date: _____

And Is Accepted By:

OPDIV: _____

Typed Name: _____

Title: _____

Date: _____