

Procurement & Property Division Policy Memorandum

Subject: Subcontracting Plan for FSS Items			Number: 19-03
Distribution: ARS: PAO's FD PPD	Date: January 10, 2000	This Replaces: N/A	

Background

This memorandum provides general guidelines to Headquarters personnel and Area Offices in supporting the requirements of FAR 19.7, Small Business Subcontracting Plan, when it involves Federal Supply Schedule (FSS) items exceeding \$500,000 (supply/service) or \$1 million (construction) or is an Energy Savings Performance Contract (ESPC). There has been some concern as to whether a Delivery Order above \$500,000 under a General Services Administration (GSA) schedule or ESPC contract with a large business firm will require submission, review, and approval of the subcontracting plan.

Neither FAR Parts 8 nor 19 provide guidance in this area. There are no specific requirements in the AGAR or other internal procedures which require submission of a Subcontracting Plan for Delivery Orders under a FSS or ESPC contract.

Policy Guidance

The Office of Small and Disadvantaged Business Utilization (OSDBU), the Small Business Administration (SBA), and the GSA have agreed that a subcontracting plan must be developed for all FSS purchases from large businesses exceeding \$500,000 for supplies and services.

The FSS contracts program is directed and managed by GSA to provide a simplified process for obtaining commonly used commercial supplies and services through indefinite delivery contracts at a stated price for a specified period of time.

GSA establishes individual contracts for this purpose and each should contain an individual or commercial subcontracting plan. When products or services exceeding \$500,000 in value are ordered from a large business FSS contractor, the Contracting Officer (CO) should ensure that a subcontracting plan was negotiated by GSA and is included in the FSS contract.

When The Contract Does Not Include A Subcontracting Plan. In the event GSA failed to negotiate a subcontracting plan (individual or commercial) with the FSS contractor, the CO shall notify the GSA CO of the omission, in writing, with a copy to the REE OSDBU Coordinator. In no event should the CO modify a GSA contract to include a plan into the contract or negotiate a separate subcontracting plan as part of a Delivery Order. Only GSA has authority to modify one of its contracts. REE would not receive credit for the action under any circumstances and only GSA will receive credit for the achievement.

Commercial Subcontracting Plan. For products under FSS contracts the contractor, in most cases, will have negotiated a commercial plan with GSA to cover his entire production or a portion thereof which will cover the contractor's entire fiscal year. All Delivery Orders placed against the FSS contract will be covered by the commercial plan.

Note also that contracts and purchase orders issued by the CO to the FSS contractor on an open market basis may cover items usually included under a commercial plan. This may occur when award of the FSS contract has been delayed. Upon award, the FSS contractor may report the transaction(s) on the SF-295 under their commercial plan as it is simpler to issue one SF-295 under a commercial plan rather than a multitude of reports to individual agencies. REE has experienced instances where GSA received credit for REE's contract awards when an item, previously covered by the commercial plan, was ordered on the open market because the FSS contract had not yet been awarded. When the FSS award had finally been made the contractor elected to report all of the transactions under the commercial plan. In similar circumstances, the CO should satisfy himself that these are the facts of the case and notify the REE OSDBU Coordinator, in writing, of the situation.

Energy Savings Performance Contracts (ESPC). These multi-year indefinite delivery master contracts have been issued by the Department of Energy (DOE) to provide consistent management and performance control to Federal Agencies to avoid significant duplication of effort, inconsistencies in contractual and technical controls, and inconsistencies in measuring energy performance. DOE established contracts with 12 firms and permits other Federal Agencies to issue Delivery Orders thereunder.

DOE's negotiated ESPC contract with the supplier, should contain the master subcontracting plan. The DOE will be credited for the subcontracting plan. If the plan is not contained in the contract, the CO shall notify, in writing, the DOE CO of the omission with a copy to the REE OSDBU Coordinator.

Reporting Requirements. A number of reports emanate from transactions requiring subcontracting plans. Each is addressed individually below.

1. **SF-279, Individual Contract Report (ICAR).** Block 33 should be coded "A" to denote that a subcontracting plan *is required and is contained within the contract*. (Note that the block pertains to the contract as a whole rather than individual Delivery Orders).
2. **Quarterly Report of Contract Award To Large Business Contractors.** Report *all* transactions awarded to large business firms including Delivery Orders under FSS (or ESPC) contracts, sole source contracts, contracts without subcontracting opportunities, and those being performed outside of the United States. Indicate, where appropriate, that it is a "Delivery Order under FSS Contract XXXXXX, an individual (or commercial) plan."

