

Carla: Hello and welcome to the live SBA web conference. Please note that all participant lines will be muted for the duration of this event. You are welcome to submit written questions during the presentation, and Debora Crumity will repeat the questions that come in for the benefit of the entire group. To send a note, please select the participant's menu at the top of your screen and opt to send note to all presenters.

If you are logged in using the web-based application, use your notes function on the lower right hand side of your screen, and address your note to all moderators. In addition, to adjust the presentation view on your screen on the participant application, click on the stick to white board icon located on the lower left hand section of your screen.

If you are connected via the web-based application, you can adjust the presentation view by simultaneously clicking the control and the plus or minus button your keyboard. If you require technical assistance, please send a note to me, the ATT CES operator, or call our help desk at 888-796-6118.

I would now like to formally begin today's conference, and turn the call over to Valerie Coleman. Valerie, please go ahead.

Valerie: Thank you, Carla. Good morning, everyone. Ten years ago, a PCR out of Omaha, Nebraska by the name of Dwight Johnson, decided that he was going to give training to all of his contracting officers for the agencies that he covered in Nebraska and its surrounding states. Unfortunately, as we know now, it happened back then too, budgets were tight and so he started this small little webinar to his local folks. And it has grown, and grown and grown. Through word of mouth and everything else to where it is today. Dwight had a vision for this, I don't think he ever thought it would be as big as it is now. What started off with 10 or 15 contracting officers has turned into a mailing list of over eight thousand. 1102s, 2 Tacks, FDA PCRs, and VOS's.

Dwight, as you know, you always heard his voice if you've been listening to this for more than a year, you heard Dwight come on every month and talk about the webinar. You haven't heard his voice for the last year or so. Unfortunately, he hasn't been able to continue with this, and last March, this past March, excuse me, Dwight officially retired from SBA. During the time that he did this, he got a lot of us in SBA involved. I gave my first presentation in 2010 with Dwight and I know that some of the individuals involved today, like Stephanie Lewis, she and I would do joint trainings. So it's a wonderful jewel in SBA's crown, what Dwight started and what that's increased to what it is today.

When Dwight realized that he wouldn't be able to do this all by himself and it had grown so big, he brought in Jan Kaiser to assist him. And she was our question person, just like Deborah is today. Little did Jan know that she would eventually be taking this over. Jan has done an absolutely wonderful job. I did not realize all the planning that goes into this until I got my current position and the webinar came under my contract. But it is a lot of work and I want to just thank Jan tremendously for all of her hard work, her dedication. This is the collateral duty. This is not something that she does all the time and it does take up a lot of time to do it and I've realized that being involved with Jan on

this. So I just wanted to give you a background for those of you who've only been listening for the past year and never had the pleasure and the honor of meeting Dwight. You missed one of the finest people that has ever worked for SBA. For those of you who do hear Dwight all the time or knew him, if you'd like to send to the SBA inbox, anything about Dwight and thanking him for this program or whatever, please do so and we'll make sure that he gets it. So right now, I just want to give you some background cause I've had people ask why we haven't heard from Dwight and, so this is the official notice that Dwight did retire in March. But this program is in very, very capable hands of Jan Kaiser and Area 4.

So Jan, thank you for allowing me to take a few minutes to talk about Dwight and the history of the program, and I turn it over to you now.

Jan: Thank you for your very nice words, Valerie, I appreciate that. Hello everyone and welcome to today's First Wednesday Webinar. This year we've concentrated on getting SBA headquarters- level speakers and hope this session provides information you can use in the performance of your job in the Federal Procurement Process or assisting small business concerns.

I am Jan Kaiser and I am a Procurement Federal Representative, or PCR, in Chicago Illinois. Additionally, Deb Crumity is the SBA PCR assigned to the Rock Island Arsenal and she will be reading your questions submitted during the program for our speaker to address towards the end of today's session.

Now let's discuss a little bit more about how today's webinar works. We'll address questions we've received during the program at the end of our speaker's presentation. And once again, if you're having technical problems at this point, you can hear my voice but cannot log into the ATC connect participant application, which is the online portion of the webinar, call the AT&T Connect Support Desk at 1-888-796-6118. If you didn't get that, the telephone numbers for the AT&T Connect Support Desk are on the email invitation for today's program and on slide three of the PowerPoint slide deck that accompanied the SBA email notifying you of today's training. Otherwise, just keep listening and follow along with the PowerPoint that accompanied the invitation for today. This is why we periodically announce the page numbers.

For more SBA Small Business Program Training, you can also visit the SBA Learning Center at www.sba.gov.

The Association of Procurement Technical Assistance Centers hosts a website where they post First Wednesday programming. Their website is provided here on slide four. We've also provided a link to how PTAC partners with federal agencies to learn more about PTAC's and we're the closest one to you is located, you can see the link on this slide. Partnering with the PTAC for an industry day, sharing sources spot, and RFI notices or referring small business concerns to a PTAC are just a couple of reasons why PTAC is such useful resource for our position personnel.

This is slide three that our topic for this month, sorry for next month, is about SBA's Women Owned Small Business Programs. If you recall in January, or the last First Wednesday program, when Valerie Coleman presented about SBA Surveillance Reviews. One of the findings that has been recurrent regarding the Woman Owned Small Business Program was that there were contracts on the slide for Woman Owned Small Business or economically disadvantaged Women Owned Small Business concerns using make's codes which meant we're not appropriate to the set aside.

We will as usual be accepting questions at the end of that program so be thinking of what you'd like to ask about the Women Owned Small Business Program in May, on May 3rd. Please note that for the remainder of the 2017 season, we've returned to a start time of 9:30 a.m. Central. So thank you to the approximately 450 individuals who provided feedback for our survey regarding start times of either 9:30 or 1:00 p.m. Central. We received the survey responses through the SurveyMonkey link that we had provided and we also received email responses regarding the survey. And so at this point we currently anticipate that next year's sessions will be held at 1:00 p.m. Central or 2:00 p.m. Eastern. And so as you can see from this slide, 38.59% of the respondents preferred the 2:00 Eastern Time start time. We had a number of neutral, and thank you also for the feedback that we received regarding suggested topics for next year.

I know we talked about this last month but I'm just gonna mention it again. That we are asking that you not recommend C for service or dot com firms to small businesses in registering for SAM. So that's pretty much what this slide covers and if you are looking to assist a small business in their SAM registration, you can refer them to a PTAC or a Procurement Technical Assistance Center. And remember, their link was provided on slide four if you're looking for a PTAC that's even close to you or close to the small business that is asking questions. Because SAM registrations should be at no cost.

This is slide eight, and this is a reminder that today's session is one continuous learning point. And this is the slide that you will print out from the PowerPoint slide deck that was sent in the invitation for today's training. SBA does not track your CLP's or communicate with your training program regarding your CLP achievement. This is up to you to upload into your training system and request CLP's from the training today.

We will begin today's session on slide ten with the speaker directing me to change the page. There may be some delay in the slide changes on your screen. These are just one of those remote locational webinar issues so, bear with me as I change the slide and it appears as though I have not made the selection to change the slide.

Angela Terry is the SBA Subcontracting Program Manager and with her today are Stephanie Lewis an SBA Size Specialist, and Sally Walton, an SBA PCR. Ladies, we're pleased to have you meet with us today and I'll turn the program over to you. Angela?

Angela: Hello everyone. I apologize, my phone was on mute. Hi everyone, my name is Angela Terry and I'm the Subcontracting Program Manager. As Jan said, I accompanied by Stephanie Lewis and Sally Walton. Also, SBA. Sally is a PCR who assists you in your pre-solicitation, in your pre-award state. We find subcontracting possibilities, as well as

reviewing any assistance you need with subcontracting plans. Stephanie is a sty-specialist. So if you are having any issue with size protests or things of that nature, Stephanie will be a good resource for that. They all have been with SBA for numerous years and have utilized both services of our CMR duties. CMR is our commercial marketing representative that assist you in your post-award duties and they both have played both of those roles, Stephanie and Sally.

Stephanie and Sally, did you want to say anything during this introduction?

Sally: No I don't have anything.

Stephanie: I'm good, continue on.

Angela: All right Jan, you can give us our first slide.

So what will we cover today? We're gonna talk about, and we're gonna try to get all of this in the next, let's see we have, 45 minutes. What's new in subcontracting plan regulations? A lot of new things came out from the Jobs Act of 2013, well the Jobs Act, I didn't realize what the Jobs Act was, however SBA came out with this final rule in August of 2013 and everyone, these Jobs Act regulations became FAR regulations in November of 2016. So it kind of tells you how long it takes for a rule to become a regulation in FAR.

So we're gonna talk about some of those. We're gonna talk about some, 'Did You Know?' One of the things that we are doing, the contracting program is changing a lot of our processes and equipping you with many tools. One of the tools that we'll be equipping you with is a 'Did You Know?' That will come out every month. Which is either a fact to a myth, or issue that we see that is prevalent in our industry and we just want to make sure that you have the most up to date information.

We're gonna talk about who can offer you assistance. We're gonna talk about the new SUB-Net. I am rebuilding SUB-Net. It will not only help small businesses or large businesses but it will also help you in discovering subcontracting possibilities. And then of course, we'll do questions.

So you can go to the next slide.

So the new regulation that we will talk about is 19.704(a)(12): Assurance to use Pre-appointed Small Businesses. I like to call it "bait and switch." Communication with contracting officers, payment to subs, small business subcontractors and task order requirements.

You can go to the next slide.

All right, so the way that I'm going to do this since you all have the slides and we don't have a lot of time for me to just talk about the regulations in general or read them. So I'm gonna do paraphrasing.

So 19.704(a)(12) pretty much talks to you about a small business concern which utilized in a bid or proposal. And what we mean utilized is that the prime contractor actually mentioned their name, they attached their bid quote with their proposal, there was indication that the small business actually worked on the proposal, and there was an intent that they were going to be used. And what is happening is larger businesses are utilizing those small businesses, which you know have very little resources, but then aren't using them.

So 19.704(a)(12) instituted a rule that subcontractors can contact the contracting officer when they find that they have bait and switch issues. When that happens, the contracting officer, so what happens if you get a phone call, what should you do? Okay I have a subcontractor saying, 'hey you awarded a contract and that person did not use me.'

One of the things that you need to do is ask them, did they have anything in writing that they can provide that states the intent to use them as a subcontractor? And you need to let them know that responding to a request for a quote does not constitute a use in preparing a bid or proposal. So it has to be a little bit more than that. However, if they responded to a quote and the prime contractor attached that quote to their proposal, then that was intent for them to utilize them and that is specifically written.

One of the things that I will provide to Jan, because I think it's a great tool as you try to understand these regulations, is the Federal Register. The Federal Register provides you with in-depth information about questions that came in during this common period and how SBA responded to them. So I'm gonna give you that.

So the first thing that you need to do is make sure that they can provide you with something in writing. However, let's say that they don't have anything in writing, right? You need to contact your prime contractor. You ask if they had anything in writing. Before I would even go to looking over proposals, because we do know that we have limited time and we have many things to do, I would just contact the prime contractor. And when you contact the prime contractor, if the contractor does say, 'Yes, we intended to use them but we didn't.' Then 704(13) advises you that you do need written notification from the prime stating why they did not utilize the subcontractor.

So, because it states that the offer must make a good faith offer to acquire articles, equipment, supplies, and services or materials, obtain performance of construction work from the small business concerns that the offeror used in preparing the bid or proposal, in the same scope, amount, quality utilized in preparing the bid. So therefore if you've contacted your prime and your prime says, 'Yea, we do have a issue. We intended to use them but we've now changed our minds.' Just in the conversation, let them know that you need to have something in writing. All right.

Once you've received that in writing, the intent of the particular regulation was to ensure that you are making comments toward the prime performance in their past performance. In your evaluation of their past performance of that particular contract. So you will evaluate the information to provide an to identify it's intent. If you find that this

was a bait and switch issue, that the prime contractor actually did have an intent to use a small business subcontractor and decided, 'hey, I'm not going to use them.' Then at that particular time you do need to ensure that you have conversations with your prime contractor as it relates to you. Okay?

You can change the slide for me.

Jan: Okay, we've had a couple people ask that maybe the volume be turned up louder. I don't know if there's any way maybe that you can get closer to the phone.

Angela: I'm on a headset so I'm speaking right into the mic.

Jan: Oh good, I can hear you better right now. Thank you.

Angela: You can change the slide. You can change it again.

Okay. So I want to give a little bit more information in reference to this. So you evaluate the information provided to identify intent. SBA notes that the contracting officer cannot be party to disputes between subcontractors and prime contractors, but must be involved in evaluating the prime contractor's performance. So in essence, what we're saying is once you get this information and you've identified that the offeror did use a small business concern's pricing, cost information, technical expertise, they did perhaps even add the information and specifically mention the contractor or added it to a quote, then they did. Or maybe they even mention their name in the subcontracting plan. Then they did have intent on using that particular contractor and you do need to evaluate that as properly when you do their past performance.

The contracting officer will not take any action with respect of the subcontractor and it's prime. Rather, the contracting officer can take action with respect to the prime contractor's performance, which is the purpose of this statutory provision.

So, one of the concerns was in the comment period is that, hey, now the contracting officer is going to be the mediator of problems that happen. And what we're saying, nope, that's not what you're here to do. However, a contractor's performance is questionable if they utilize a small business resources, which are very limited, to assist them in getting a contract and then drop them, for lack of a better phrase, like a hot potato. Right?

So I want to address some myths because some people have said to me, 'Well, Angela, as long as the prime contractor works with another small business, then they're not in violation of this rule.' And that is incorrect. The Job Act specifically intended to apply and protect individual small businesses. Right? So if I was the individual small business that worked on this particular bid and proposal, then I had intent to do this subcontracting. This statutory provision does not reference whether or not the prime contractor is meeting goals. Which means, 'If I don't use you, I use someone else, I still meet my small business quote goals,' with quotations. This is more reference to continue to address the complaints of small businesses that expanding significant time

and resources to assist large [inaudible 00:22:20] fair bids quotes and proposals that assisted those large businesses and then awarded a contract and then were not used in the performance of that contract. Okay? Very important.

Another myth that I want to address is that the rule does not apply if they quote from a small business that's included in the bid or proposal as supporting documentation for a budget. And the reason why they say that is because one part of the rule says just providing a quote does not constitute intent by itself. However, providing a quote and a large business adding that quote to their proposal are two different things. And SBA made it very clear in their Federal Register that if a large prime contractor attaches the quote of a small business then there is intent to inclusion of, to utilize that small business once the award was won.

So it's very important that we understand that yes, just because you provided a quote that doesn't mean that you're entitled. And that's why I always say you need to ask the subcontractor if they have something in writing. However, once the subcontractor has brought that to your attention, one of the things you definitely should do is ensure that they contact the prime contractor. Again, as long as that quote was attached to that proposal, then there was intent and then you have an issue that needs to be addressed.

All right. Can you go to the next slide for me please?

Jan: We're on slide 16.

Angela: Okay, thank you. As stated, the contracting officers will provide you with a written explanation if they failed to acquire the articles and goods in the performance of the contract. This written is so if it can be proactive if the subcontractor contacts you. Correct? If the subcontractor contacts you then it's proactive. You need to contact the prime contractor once the situation. However, let's say nobody ever contact you, right? If this happens, it is the prime's responsibility to make you aware that this happened within 30 days of contract completion.

There was a lot of back and forth negative comments towards this because, in the Federal Register, because most people say well, 'Hey the contract is over now, what can be done?' One of the things that you know, unless it states in the contract, a contracting officer cannot tell a prime who to use. Right? So we don't have any privity of that. So therefore, what we're seeing is well, even if we found out earlier, we can't make them use you. However, we can state in their past performance evaluation that they did bait and switch a small business and they did not utilize a small business that was intended. Because that's what this statute is about. This statute is not about making sure that they got the work. Do we understand that?

Okay, you can go to the next slide. Stephanie or Sally, did you have anything you wanted to add to 19.704(13)?

Stephanie: I don't.

Angela: How bout you Sally?

Sally: No, I think this is probably one of the better adds to 19.

Angela: Okay great. I do too.

Okay, so one of the things that I do want to state about that that I didn't is what should be included in the explanation. Because there's often when we review even the subcontracting plans they are very vague and extremely. The explanation should not be vague. If it is vague it is automatically a negative. What we're looking for in the explanation as to why the subcontractor was not actually used in the performance to the extent set forth in the offer, because just because the small business says, 'I should've been used,' or they were told they'd be used and they weren't used doesn't necessarily mean the prime is doing something "negative." It could very well be that the quality of service of the subcontractor wasn't up to par. And in fact it would cause damage or harm to the government's services, right? It could be that they were non-responsive, it could mean that prices were more elevated and because when they first initially approached [inaudible 00:27:05] So it could be lot of rational reasons why the prime made the decision not to utilize. However, that explanation is supposed to inform us. Your evaluation of that explanation is subjective. It's pretty much what you feel.

We do now have some, I don't want to call it guidance, but we did make some suggestions in the Federal Register to say the explanation should certainly include any information as to why the proposed subcontractor was not used. Such information as required is quantity changes, you know we had to change the quantity because the government changed the scope of the project. Down scoping proposals, subcontractor went out of business. That's an obvious one. 'You went out of business mid-way and we need to go ahead and find another supplier. So we're no longer gonna utilize you.'

Quality or delivery issue - you know, 'hey, you're late. You're not on time. You don't give us what we ask for.' Oh and issues, whatever the reason was that the subcontractor was not utilized as intended and again, once you review it, you are adding that information to the past performance of that particular contract.

Okay. So now when we get into 19.704(14), which to me is pretty much the same as 13. One is proactive, and it talks about utilization. 14 talks about utilization and payment. Which has become a problem. A lot of people had problem with us stating that the contractor did not have to contact us within 90 days because they felt that that's a very long length of time for a small business not to be paid. However, SBA felt that 90 was sufficient from the contract terms that the contract was supposed to actually be paid. So let's just talk about this for a moment.

The contract again, 14 does not allow the prime contractor to stop the subcontractor from contacting you to discuss payment issues. Again, utilization is so important as you see, they re-state utilization again in 14. So it's pertaining to their payment for utilization of the subcontractor. I'm telling you the government now, especially SBA, is really making this utilization issue one of the things that we have at our forefront

because it is a very bad problem we have with contractors. Small business are utilizing their time and energy only to get nothing out of it. And those are resources that probably scraping out to get this information in.

However, just like 13, the contractors can be proactive when contacting you saying, 'hey I have not gotten paid and it's been over 90 days, or it's been 30 days or 40 days, and I need payment.' Again, you would contact the prime contractor. Talk to them to find out why hasn't this individual been paid. Now an untimely payment in the definition of 19.701 of FAR is means and payments of a subcontractor if more than 90 days past due. Under the terms and conditions of a subcontractor supplies and services which the government has paid the prime contractor.

So if they say they have not been paid and they've contacted you, you do need to contact their prime contractor to find out what's the issue. Because again, this rule was intended for the government to address the prime contractor's utilization and payment to the subcontractors that were used in preparing their bid or used for services. Okay, so by this time you need to be contacting your prime contractor.

Now the prime contractor is supposed to automatically notify you, their contracting officer, if an offer of payment has reduced or untimely payment to a small business subcontractor. So if they didn't automatically contact you, then again, they are in direct violation with the regulation. They are supposed to contact you whether or not they didn't utilize a small business and they're supposed to proactive, without being 30 days by contract completion. Or, let me read it the rest of the way. As it related to the utilization. 30 days of contract completion, they need to contact you when it comes to payment, they need to contact you if they know that a payment is more than 90 days past due. Again, a subcontractor, can make that proactive for you to now go out and contact your prime contractor.

These two regulations again, with established to ensure prime and subcontractor can notify the contracting officer of reduced or untimely payments. Personally to the subcontract, the prime must put in writing an explanation whenever a payment to a subcontractor is reduced or is 90 days more past due the goods and services provided for the contract for which the federal agency has paid the contractor. If we have paid them and they received small business goods, and they didn't pay them, that's a problem. There's a major problem. And the reason why we wrote this statute is so that we can address that issue in their past performance evaluation. Okay?

You can treat the next slide.

Okay. I already spoke on that. The prime cannot prohibit the subcontractor from calling you. You can go to the next one.

This particular slide just lets you know what the definition of the 90 days are. You can go to the next one.

This particular slide, we're gonna get to this one. So let me give you some things to talk about when we talk about what do you do when you receive a letter or telephone call from a subcontractor or you receive a letter from a prime? Again, and I keep stressing this, this rule is not meant for you to become the mediator between the prime and the sub. Right? Again, it is only for you to be made aware that the prime contractor is not doing what he was supposed to do so that we can evaluate them in their past performance. This rule doesn't apply to higher-tier subcontractors and that's very important. This rule applies to the prime. So this is not something that they slow down. It is I, Angela, gave a small business subcontract to Stephanie. It applies to me. But if Stephanie now gives a subcontract to someone else, it does not apply to them. They cannot contact the contracting officer saying, 'this person did not pay me.' Even though that is still sad, it's very bad for business, but the rule doesn't apply to higher-tier subcontractors that do not pay their subcontractors. The statute specifically refers to prime contractors and the contracting officer's ability to consider late payment and measuring the prime contractor's performance.

There is lack of privity and [inaudible 00:35:01] between the government and the lower tier subcontractors to extend this requirement. Okay?

However, if a sub does contact you, I always say ask them to put it in writing. And once they put it in writing, you can contact your prime. However if you feel compelled to know ahead just with a phone call, you can do that as well as contact your prime. I do ... now one of the reasons that I brought this to your attention is because I do talk to contracting offices all the time and they don't feel that they can do anything about it when they get these calls. Or I talk to small businesses who say, 'Well I've contacted the contracting officer and the contracting officer just said they don't have anything to do with that.' That's why we made statutes to make sure that you understand that you do have something to do with it. And if you have been made aware of the issue, then you need to make sure that you get the explanations. And if you don't get the explanations then they have already violated the regulation. And you should note so accordingly. Okay? And again, it's only related to the ability to consider reduced payments or utilization or payment in measuring the contractor's performance. All right?

We're about 24 minutes so let's talk about task orders. Task order reporting. I get a lot of phone calls once this rule was came out in November. All of the new FAR clauses and people were just largely, up in arms about reporting for task orders and 'oh my gosh how do we do that?' So I want to put everybody's mind at ease. The federal government, contractors will utilize the FR for eSRS. It has been altered to allow large businesses federal government contractors to report subcontracting results on an order by order basis. Right? It hasn't happened yet. We know it's in the FAR. We know that it says after November 30. Right? And we need to make sure that the updated clause is in the contract.

This is only for contract solicitations that were issued the effective date of their rule. This is not something retroactive. Okay? If a solicitation was issued, I think it was November 2016, when this regulation went into effect. If this solicitation was issued any time after, then this will apply. However, if the system is not available to November 30,

then it cannot happen. If the system is available November 30, then it shall happen. In addition to [inaudible 00:37:52], other assistors may have to be altered to allow funding agencies to receive credit towards their small business subcontracting goal. Because [inaudible 00:37:59] with this particular rule with SBA is that if it is an IDIQ multiple award contract, and GSA is the owner, whoever is funding the task order will now get subcontracting credit. Something that the agencies wanted for a very long time and I'm sure that GSA is happy too because that means they don't have these very high goals anymore. So it was kind of a fit for both of them. GSA had the contract and then they had to be responsible for the subcontract and accomplishments and the funding agency was funding it and wasn't getting any data. So with this new regulation, your agency will now get credit for funding the task order.

Until this is accomplished, other than small businesses, will be able to report on any task order level. So they will continue to report as they have been. By reporting [inaudible 00:38:57] on the base contract with all of the subcontracting accomplishments they have done on the order. They get the benefit of this task order reporting, will benefit the small business subcontractors by requiring large business concerns to report on their subcontracting resource by order. Because right now, I'm sure you are aware, it's just discombobulating. You can't really tell what the initial contract might be one million dollars, but they might've gotten \$25,000 or let's say a \$50,000 task order. And yet they had these goals associated with this million dollars, so you can't really tell how the prime contractor is doing when it relates to their small business goals. But with this new functionality we will be able to see it and it will also allow us to review their subcontracting accomplishments as we do individual and commercial contracts. So we'll have enough time to understand what's going on and how we can assist them.

In this issue, it also requires transparency with respect to small business subcontractors on the order by order basis allowing the funding agency to monitor performance and establishing subcontracting goals for a particular order. Right? And it takes it out of the owner, out of the contract hands. Again, utilizing GSA and agents like HHF will have more control over what it wants for its task order as it relates so they can hit their goals. Okay?

I have not asked Stephanie or Sally if they've had anything to say thus far. Do you guys have anything you want to add?

Stephanie: No, I don't.

Sally: With the new 30 November institution, you're asking it will help contracting officers in their task order reporting.

Angela: Yeah, I think it's a great idea too actually. So we're gonna go to the next slide. I'm gonna try to do this in the next 18 minutes.

Jan: Slide 21.

Angela: Yes mam. Okay. So 19.705-1(b)(2) under FAR, and now Sally I know you have a lot to say about this. So contracting officers can now place orders in placing orders, may establish subcontracting small business goals for each order. Right? And having those, so let's talk about that for a minute. So yes, we know that you should only have one subcontracting plan. And we know when we put out that solicitation that everyone who was "awarded" the opportunity to bid on the task order provided us with a subcontracting plan on the base contract, right? But as I just said, that's really kind of discombobulated cause that plan that they gave was based on them getting the entire contract, which we know that pretty much never happens, right? That task orders are awarded and they're awarded to various people. And we really want to know, 'well what are you doing that relates to this?' Because we look in the ESR runs, we can't tell if you're succeeding or not succeeding with your small business goals. So what this regulation allows for is for contracting officers to say, 'okay, I need a subcontracting goal. I need to have subcontracting goals related to my task order.' And people are getting that kind of confused. It is not an entire plan.

What it is that goals should not be in the form of a new subcontracting plan. Cause a contract may not have more than one plan. So what you're asking your contractor to provide you, which are asking other than small business, prime contractors to provide you is goals on the task orders. And those goals will be crafted as 19.704-1-6 of the Far. Broken down in a social economic category. Broken down to subcontract value percentages of contract value. And then they're gonna tell you how they came up with their methodology. They're gonna tell you what forces that they utilized to come up with the data. So everything in 1.6 of the FAR that speaks to the subcontracting plan is what will be on the subcontracting goal. Sometimes we refer to it as a "goal sheet" just for easier pronunciation of it. Not that that is the official terminology of it, but it's just easier to say goal sheet than it is to say goals.

Sally, you want to speak to that one?

Sally: So, one of the problems when you award an IDIQ, like Angela said, you don't know if you're going to obligate the entire amount. So you can't give a subcontracting plan for the IDIQ that has the goals in it. My recommendation to my agencies is that in that portion 1-6 of 5022.19-9 that they reference that those will be established on each task order. So then, once the task order is issued, they can establish the goal and give the contracting officer a better idea of whether or not that prime is obtaining their goals.

Stephanie: That's a good example that Sally just gave on IDIQ orders. Another example of using requiring goals on a task order basis is when an agency taps into the contracting vehicle that was established by another agency, they can then set goals for the orders that they're placing. Also on a multiple award contract, sometimes it's hard in the subcontracting plan for the offerors to anticipate which of those orders they may receive because they're going to be competing each order against the other contract holders. And so this is another instance where a contracting officer may want to ensure that small businesses receive a certain amount of the contract so they can negotiate task order goals for that particular order.

Angela: Thank you ladies. All right, you can change the next slide.

[inaudible 00:45:47] has established a new thing here in the subcontracting program, and one of those things, we're establishing a new website. On our website, every month we will do a new 'Did You Know?' We will also send out the Did You Know, it's just a quick synopsis of quick tips so to speak, via eSRS. So if you're registered in the eSRS, you will also get the 'Did You Know.' We are working with the eSRS program manager so have that in your announcement section as well. So once you log in you would be privy to the information under Did You Know.

So today's 'Did You Know' that we're going to discuss is 19.705-2(e) of the FAR. A contract may have more than one subcontracting plan. However, a contracting officer may establish separate goals, which is what we just talked about. Because one of the things that Sally and I have noticed, you're now solicitations. Sometimes you are putting the subcontracting plan and the participation plan together. All right? And you're actually, because you're using templates, you're actually asking the bids to provide you with another plan. So I want to make sure that you are checking your templates that you're using and ensuring that you are changing the terminology to ask for goals and not plans when it comes to asking for those task orders.

Another thing that I want to make sure that we all understand is when a contract modification exceeds the subcontracting plan threshold, you can look at 19.702(a), or an option is exercise the goals of an existing subcontracting plan shall be amended to respect any new subcontracting opportunities that envision the common contract. Now if it was a subcontracting plan that was issued to a, other than small business than small business, and at the time the contract award was not going to meet the subcontracting threshold, but you issued a modification that met the threshold, you now have to request a subcontracting plan. And often enough, it's forgotten. I can tell you as we come out to do compliance reviews in partnership with the surveillance reviews, that is something that we're going to be looking at. Did you issue modifications over the threshold? And we can see that without even coming to your agency. We can pull reports out of SPS and see and let us know that you have issued, you know right now the threshold is 750 for services and supplies and 1.5 for construction. I can pull a report that tells me whether or not you required a subcontracting plan on that or not. Did you modify the contract to require one? So I really want everyone to understand that, and when you're requesting these codes, they're not applied retroactively. They are applied from what has made this contract now require a subcontracting plan.

Stephanie and Sally, do you have anything you want to add? Or take away?

Sally: No the only thing I would add, Angela, is if the contracting officer asks for re-representation and the small business goes from small to large, at that time they're required to have the subcontracting plan.

Angela: Well I don't want to use the word required. I want to say it is up to the subcontracting officer, we have now with the new regulation, gave you the power, so to speak. We all love power. It is giving you the power to now request a subcontracting plan. And

definitely for SBA, we want all maximum practical opportunities for small businesses. So if it was small and it is now large and that re-representation period, please ask for a subcontracting plan. Okay. But you will have to modify the contract to add the clause cause I'm sure the clause 5022.19 is not there. Because remember you had awarded it to a small business. Utilization of small business was probably there, but the requirement of a subcontracting plan is probably not there. So you would also have to have a contract for that.

Are you in agreement with that Sally? And Stephanie?

Sally: Yes.

Angela: Okay.

Jan: We've got ten minutes left in the program so, is there some place you'd like to skip to? Or is there ...

Angela: No, we're gonna finish what we're doing. Just give me the next slide.

Jan: Okay.

Angela: So let's talk about who do you call for assistance? Because we do get a lot of telephone calls with people needing assistance. If it's eSRS functionality, you contact eSRS Federal Service Desk. If it's assistance with interpreting SBA's regulations, it is not your CMR or your PCR, we are enforcers of the regulations. Interpreting the regulations go through our Office of Policy, Planning and Liaison. Ken Dodds is our director, Michael is the supervisor. But if you contact Ken he will definitely let you know who you need to contact. If you were at the TLD Small Business Training Meet, if you noticed it was our attorneys interpreting the FAR for you and our OPP staff. It was not the PCR's or their CMR's. We are the program managers. We tell you how we enforce the processes and procedures.

Okay you can go to the next slide.

Assistance it enforcement or compliance questions, the how-to of the regulations, pre-awards, go to your Procurement Center Representative, which Val manages the prime contract, Valerie Coleman who spoke to you earlier, manages all of the prime contracts. I am currently writing, along with Stephanie and Sally and Val, a pre-solicitation for subcontracting plans. To have information and key facts that you need to know. And that manual will go up by next fiscal year. But when it comes to post-award, you need contact commercial marketing reps which are under the subcontracting program for assistance with subcontracting. Okay?

We do assist with trying to find subcontracting possibilities, as well as the PCR's are your main. And I apologize for this slide not putting that under there. The PCR's are your main key focus when it's in the pre-solicitation stage. And then new manual that will

coming out will tell you how you're supposed to have communications with that. Oh, that's right, ten minutes in we're supposed to do questions. Is that correct Janis?

Jan: That is correct.

Angela: Okay, I'll stop with that because they have the rest of the slides.

Jan: Okay. We've have a number of questions received from participants today. And I'll let Deborah Crumity review those questions and select some to provide to Angela and Stephanie and Sally.

Angela: Okay.

Jan: Well, I don't know if Deborah is on mute but I did want to ask - who can contractors contact in preparing their SSR's for submission into eSRS?

Angela: Hey Janis, if you have a question pertaining to what we talked about, I would rather answer that question first than an SSR question cause people came on for these particular topics. But if you don't have a question relating to these topics then I'll answer that.

Jan: Is Deborah on?

Deborah: Yes, hi. Angela, I do have a question regarding the bait and switch issue. Is it recommended that the contracting officer incorporates a contact proposal into the contract?

Angela: Sally, I'm gonna let you answer that. My answer would be yes, it should be part of the contract. But I'll let Sally, as the PCR, answer.

Sally: Unfortunately, I don't recommend that because if you get a FOIA request, you may have to reject a large portion of the contract because you incorporated the proposal. What you may want to do is incorporate the clause approved for the subcontract. I'm not sure which clause it is, I can get that for you, but there is a clause that contracting officer proves who is all of the subcontractors.

Stephanie: Really incorporating a proposal into a contract is way more information than the public needs available. It's not standard contracting practice to do that. It would require change that's much bigger than the bait and switch issue. And like Sally mentioned, the FOIA, the Freedom of Information Act, request also, that would cause a big problem for that as well.

Angela: I think what the person, and whoever this is correct me if I'm wrong, what they're trying to find out is if they do not incorporate the proposal and these small businesses were on the proposal duties will still apply. I'm going to tell you yes they do. Because the FAR clause specifically says, 'if the small business was used in the bid or proposal.' So whether or not you incorporate it as part of the contract itself, it is part of the contract

because it is the reason why you awarded this contract. It was based on their bid. It was based off their proposal. And it did not specify that it needed to be incorporated into the contract. It specifically if the small business was utilized, or the intent in the proposal or the bid. Let us know if that answers your question.

Sally and Stephanie did you have anything to say on that.

Stephanie: No

Sally: Nope.

Angela: Okay.

Deborah: Okay, Angela. I believe this next question is actually a continuation of the first.

Angela: Okay.

Deborah: If that situation, the baiting issue, would occur, is that grounds for contract termination to say that they've ...?

Angela: No. No. And I would like to, for Janis to send you all out, or I can tell you what volume of the Federal Register and that was one of the questions that came through, you know? If this happened, is it grounds for terminating the contract? And again, the only reason why this statute was put into effect was for us to evaluate the past performance. So that when someone else is now looking toward contract with this agency, they will know that this agency, or not agency excuse me, this contractor. They will know that this contractor has a history of not utilizing who they say that they're going to utilize. It was not intended for us to stop the contract, for us to say. It was for evaluation purposes only.

Deborah: Okay. We have another question from I believe NASA, and it talks about how can we make a prime use a small business sub just because they propose them in their original proposal?

Angela: Say that one more time please.

Deborah: The question is, 'how can we make a prime use a small business sub just because they proposed them in the original proposal?'

Angela: You can't. And that's one of the things that we said during the presentation. You cannot make them use anybody. Again, this particular regulation was put in full effect with the intent, only intent, that it was, is to specifically apply and protect individual small businesses. Right? This actual provision does not reference whether or not a prime is hitting their goals or whatever, or that you can make them use. The statute was intended to address the complaint of small businesses that extended significant time and resources to assist offices on proposals and assist those large business in contract award. It is only for evaluation of the prime. So one of the questions I saw came in was,

'do we address it in CPARs?' Whatever your past performance system is, and I do think it's CPAR at this particular time, is where that you will address this issue. This is only for past performance evaluation. Evaluation of this current contract. It is not for you to say hey you must use them. You don't get into the quarrel between the prime and the sub. Okay?

Deborah: Okay. I think we have one more minute left and I have a final question regarding 19.704(a)10-3. I think you mentioned the multiple-award IDIQ. The question is does this apply to a single agency- multiple award IDIQ?

Angela: Goals and the, goals on task orders apply to any task order. You can request to have goals on the task order. The regulation allows you to do that.

Sally or Stephanie do you want to add anything to that?

Stephanie: I agree.

Sally: No, that's exactly.

Deborah: Jan, do we have time for anymore questions?

Jan: Sure, I think we could take one more.

Angela: Okay. And I'm here. I can stay another five minutes or so, it's up to you guys.

Jan: No, we need to draw this to a conclusion.

Angela: Okay.

Deborah: This one is estimated goals at task order levels. How can the contracting ...

Angela: Let me, before you you ask me that question, you don't have anymore questions related to the subject? Because if so I have to answer Jan's question first. About the SSR.

Deborah: No, I believe I captured the important ones.

Angela: Okay, before I answer that question let me answer Jan's question. What was your question about SSR Jan?

Jan: Okay. That's okay. It had to do with eSRS and where a large prime can get assistance in preparing their SSR to submit into eSRS.

Angela: Well, definitely they can contact a commercial marketing representative to ask for assistance, but when we say prepare, are we talking about pulling data from their system or just providing with the knowledge of what goes in it?

Jan: Right, and you said something about information in this format today. And with that, that was our last question that we have time to answer. I'd like to thank Ms. Angela Terry and Stephanie Lewis and Sally Walton for their time and assistance in today's program and I hope that everyone will participate next month when we talk about the Woman Owned Small Business Program. Thank you.

Angela: Thanks everybody.

Carla: Thank you all for joining today's conference. This session has now concluded and you may disconnect.