

[START OF TRANSCRIPT]

**Helen:** Ladies and gentlemen, welcome and thank you for joining today's live SBA web conference. Before we begin, please ensure you've logged in to the WebEx event and open the chat panel by using the associated icon located at the bottom of your screen. You're welcome to submit written questions during the presentation, and these will be addressed during Q&A. To submit a question, please select "all panelists" from the dropdown menu in the chat panel, enter your question message box provided, and press "send." Please note that all audio connections are muted at this time. If you require technical assistance, please send a chat to the event producer. With that, I turn the conference over to Chris Ishan. Please go ahead, Chris.

**Chris:** Thank you, Helen. Hello everyone and welcome to the third session of SBA's first Wednesday webinar series for fiscal year 2020. For today's session, we'll be focusing on the pre-award side of subcontracting plans and by the end of the program, you should have a better understanding of this topic as well as the resources available to you. If you are new to our event, this is a webinar series that focuses on getting subject matter experts on specific small business topics such as subcontracting plans and having them provide you with valuable information you can use in the performance of your job. We appreciate you taking this time to participate in the program for FY 20, and we hope that you benefit from today's session.

On to slide three. As Helen mentioned, I am Chris Ishan and I work as a procurement center representative or otherwise known as PCR and I'm located in Kansas City, Missouri. Additionally, Ms. Gwen Davis who is the PCR in Minneapolis, Minnesota will be reading your questions submitted during the program for our speaker to address at the end of today's session. We both work in government contracting area four, and slide three includes our information.

On to slide four. Please note that all lines are on mute, however, you may submit questions or technical issues in the chat box on your screen. Your questions may be submitted anytime during today's session by entering them into the chat box and these questions will be addressed at the end of our speaker's presentation. To make sure your question doesn't get overlooked, please ensure it's addressed to all panelists on the dropdown menu and not just to one individual.

As most of you know, we have transitioned to WebEx and have been informed that some users may experience issues such as a blocked

website or other error messages when attempting to access the conference login from their computer. If you're affected by this issue, please make sure you dial in and follow along with the slides provided in this email. We will ensure the page numbers are clearly stated so you can follow along.

Now if you're having any other technical issues, please call the AT&T support desk at the following number: that number is 301-250-7202. This telephone number is also included in the email invitation for today's program and on slide four of the PowerPoint presentation.

For more SBA small business program training and additional resources, please visit the SBA learning center at [www.sba.gov](http://www.sba.gov).

On to slide five. Did you know the Association of Procurement Technical Assistant Centers or APTAC hosts a website where they post the first Wednesday programs? Since these sessions are recorded, you can re-listen to this program as well as previous sessions by visiting their website which is provided here on slide five.

Additionally, Procurement Technical Assistant Centers or PTACs are a great resource in partnering with your local PTAC for an industry day, sharing RFI notices or [0:03:27 inaudible] announcement, or simply referring small business [0:03:30 inaudible] to a PTAC, or just a few reasons why they are such a useful resource for acquisition personnel. Please contact your local PTAC for additional information.

Slide six is the program schedule for fiscal year 2020, and today's session on subcontracting plans is the third topic in this series for this fiscal year. You will see that we have added some new topics to our program list and improved on other topics that have been presented in the past. The participation continues to grow each month and the positive word-of-mouth is greatly appreciated, so thank you for that.

On to slide seven. I'm sure many of you will want to receive credit for today's training, so be it'd glad to know that today's session is worth one CLP. On the following slide, which is slide 8, you will find the training certificate and I will go over the instructions when we get there.

Now, several of you may have received the information for this training from a friend or colleague, but if you want to receive an email directly from us, notifying you of upcoming first Wednesday

webinar events, just send us an email at [sbalearning](mailto:sbalearning@sba.gov), so that's S-B-A-L-E-A-R-N-I-N-G, @sba.gov. In the subject line, please enter the words "add to list" and we'll ensure you're added to the distribution list.

Now on to slide eight. As I mentioned, this is the certificate. First, you will need to access the PowerPoint presentation that was emailed to you, then you will manually fill in your name where it states, "Insert your name here." Next within the print settings, you will select "print current slide" which will allow for only the certificate to be printed. Once this is done, you can coordinate the CLP achievement through your training program. Another reminder, please note that SBA does not track your CLPs or communicate with your training program coordinator regarding your CLP achievements.

On to slide nine, today's training program has been assembled to address the pre-award side of subcontracting plans as well as provide you with the additional resources available for your use. Our speaker has graciously accepted our invitation, and she will be directing me to continue on to the next slide.

As mentioned earlier, if you are unable to access WebEx, please follow along with the PowerPoint presentation that was included in the email for today's training. We will identify the page number so you can follow along. Also, please note that some viewers may experience a delay as the slide changes on your screen.

Now, I am pleased to introduce today's speaker to you: Ms. Valerie Coleman who is the Prime Contracts Program manager guru for SBA's Office of Government Contracting. Val, we appreciate that you could meet with us today and I'll turn the program over to you now.

**Valerie:**

Thanks Chris. Well, good afternoon or morning depending on where you're located, and I hope everyone had a great Thanksgiving and you're going to have a wonderful holiday season. We're going to be talking about subcontracting plans pre-award only. Nothing after award which includes ESRS reporting, modifications, etcetera. If you do have a question that you need to ask that has to do with post-award, please send an email to [sbalearning@sba.gov](mailto:sbalearning@sba.gov) and I will forward that question to the appropriate person to answer your question.

On slide 10, you will see a goal without a plan is just a wish, and I want to thank and give credit to Stephanie Lewis who is the deputy area director for the Office of Government Contracting with SBA area five in Fort Worth for the below quote and also a few of the

slides from our presentation that we gave together couple of years ago.

Next slide. We will be on 11. Let's start with some basics. When I do training, I always like to start at the pre-K or kindergarten level and bring you all up through elementary school, junior high, high school, and then graduate school because it doesn't do any good to start you at graduate school if you haven't learned to read or write. Let's start with the basics of subcontracting and the basics are in part part 19.7 that talks about the subcontracting program.

The basics of subcontracting are that only other than small businesses do subcontracting plans and the reason we say "other than small rather than large" is because other than small, also includes non-profits and universities. Please be aware that if you are awarding any contracts to non-profits that they must be submitting a subcontracting plan if they meet the remainder of the criteria that we'll be talking about and part of that is any contract or modification over 700,000 are 1.5 million for construction that is required that a subcontracting plan be submitted.

It's also required that if a... other than small business Prime is only going to do subcontract work to another other than small business. They still have to do a small business subcontracting plan. It doesn't matter who they subcontract to. If they do subcontracting at all, a plan has to be in effect.

We're going to go over FAR 52-219-9, which is the small business subcontracting plan clause and it has been updated so you will have the August 2018 addition that's in the FAR right now. We want to give maximum practicable opportunity to small businesses and that includes the woman-owned small business, small disadvantage business, hub-zone-certified firms, veteran-owned small business, and service-disabled veteran-owned small business.

While we're talking about this slide... we're still on 11. When we talk about maximum practicable opportunity, what are we talking about? Well, we're talking about a Prime that might be break out contract work into feasible units to facilitate small business participation. They conduct market research to identify small business subcontractors. They solicit small business concerns. As early in the acquisition process, it's practical to allow them time to submit a timely offer for a subcontract. They might also provide interested small businesses with adequate and timely information about the plans, the specs, and the requirements for performance of the Prime contract to assist them in submitting a timely offer for a subcontract.

Along with that, they could assist interested small businesses in giving them assistance in obtaining bonding or lines of credit, insurance, providing necessary equipment, supplies, materials or services. They might utilize the available services of small business associations to find other small businesses, and they might also participate in a formal mentor protégé program. These are all ways that other than small business could give maximum practicable opportunity.

Next slide. We will be on 12. Who doesn't have to submit a plan? Well, small businesses of course. On the next one, says no subcontracting opportunities exist. We want to make a little caveat on this to let you know it's not subcontracting officer or the agency that makes that determination that no subcontracting opportunities exist. What it requires is for the Prime contractor to submit documentation into the contracting officer that states that they will not be subcontracting out any work and will be doing it 100% in-house. If that's the case, the contracting officer can get it approved one level above him or her, and then place the document in the contract file, but they do need to be aware that even though they said no opportunities exist, if they subcontract out even \$1, that will require that Prime to submit a subcontracting plan into the contracting officer for approval. Subcontracting plan is not required when it's performed exclusively outside of the United States.

I was a PCR for 16 years before getting my current position and so I was working with an agency that had work that they did in the United States and also outside of the United States over in Asia and Europe. What we did on that plan was all of the work that was done outside the United States was taking off of the plan so we could compare apples to apples, and they did a subcontracting plan for the work that was just performed inside the United States.

Next slide, which will be 13. There are basically three different types of plans, and then DOD has their own. Over the next few slides, we're going to be talking about commercial plans, master subcontracting plans, individual subcontracting plans, and then the DOD comprehensive plan so that you'll kind of be more familiar with them if you're not already when you see one.

Next slide, number 14. Let's talk with the commercial... let's start with the commercial plan. The commercial plan is of course the preferred type for commercial item, and your definition for commercial item is in FAR part 2.101. It's based on the contractor's fiscal year which is different than the DOD comprehensive plan which is based on the government's fiscal year. You need to make

sure that you have the correct plan and have the correct fiscal year that you're looking at. The commercial plan, again, is on the contractor's fiscal year. It applies to the entire production of commercial items. This could be on a corporate, or plant basis, or division, or a product line.

You could have a company, which I did at one time, have three separate divisions and each division had their own commercial plan. They then decided that that was too much of a hassle and they combine them all into one, which was great, but normally, when you get a commercial plan at the top, the Prime will tell you that it covers the following maybe affiliates or subsidiaries, or it covers their entire operation.

The commercial plan also covers all subcontracting whether it's government or commercial. When you see a commercial plan, you're going to notice that the goals are much smaller than you would see in an individual plan, but the dollar volume is much higher. It does require all the required elements that are in FAR 19.704, and you will see 19.704 on the following slides. It remains in effect during the contractor's fiscal year for all federal government contracts in effect during that period. Basically, the Prime contractor submits one commercial plan that gets approved and that is accepted by all of the federal government for any contracts that are awarded under that particular corporate or corporation plant division or product line for the remainder of that contractor's fiscal year.

Next slide. We are on 15. The next is a master plan. I only saw one or two of those in my 16 years as a PCR, but that's on a plant or a division basis. Basically, what a master plan is, is it's a template or it's the boiler plate of a subcontractor plan with all of the required elements and it's effective for three years after approved. The only thing that's not in the boiler plate are the goals and that's because the goals are negotiated for each contract that that company may be awarded, and then the master plan and the goals are kind of merged or married together and become an individual plan that's for the life of that contract.

Next slide, 16. The individual subcontracting plan I think is the one that most of us see all the time. It's for a specific contract, so you have one contract, you have one plan. A little bit difference on this one, it does cover the entire contract period which includes the option years and so if you have a base contract plus four option years, you will have five sets of goals and the reason for that is as we know, option years don't have to be exercised by the government.

There could be poor performance, or maybe the work is no longer needed, or funding run out. You don't want to penalize a company for a five-year subcontracting plan when we're on, in this case, as my example shows, a year-to-year basis. You would only be... the Prime would only be obligated for the base year and then when you exercise the option year, then the first option year would be added into the base. There must be separate goals for each of the option periods. As you've seen in the previous slides, it does contain all of the required elements.

Next slide. Seventeen is the comprehensive subcontracting plan for DOD contracts. I'm going to be honest here and say that in my years as a PCR, I never dealt with any DOD comprehensive subcontracting plans, but the information, if you do need it, is in the DFARS 219-702. It's an annual plan that involves all DOD subcontracting and as you can see here, it's based on the government's fiscal year on a corporate plant basis. DCMA (Defense Contract Management Agency) administers the program. It does contain all of the elements just like a master, a commercial, and an individual plan. DOD may add some additional elements as each procurement center does the plan. If you're involved in the DOD comprehensive subcontracting program, 219-702 in the DFARS is where you would go.

Next slide please. We're on 18. Who reviews plans? Well, of course, on individual master plan, the contracting officer is going to look at it and then per 19-705, they should be having their small business specialist and the procurement center review it. As you can see, I took the exact quote from the FAR on the small business specialist and the PCR looking at it. While the small business specialist can recommend approval and things of that nature, the PCR is advisory comments only. We cannot dictate the dollar amount of subcontracting, the goal percentage, or anything else and say, "This is what it must be." We would... advisory comments only, basically, based on the required elements that are in the plan and a few others things that we'll be talking about as we go along.

On the commercial subcontracting plan, the first approval is by the contracting officer for the first federal contract that's awarded. It's still reviewed by the small business specialist and the PCR, and then subsequent approvals, if the contracting officer, as you can read here, responsible for the uncompleted contract with the latest completion date, is going to be looking at it and the large Prime would provide a copy of their approved plan to each of the contracting officers with each of the procurement centers after dealing with a contract on. The DOD comprehensive subcontracting

plan's a little bit different and that it's negotiated with DCMA annually.

Next slide. You've heard a lot on the previous slides, the FAR 19.704, so let's get into that part of the FAR and the subcontracting clause 51-219-19. The offers plan shall include - and I do not normally like to read slides, but I will on this one - separate goals expressed in terms of total dollars subcontracted that would include base and option years, and as the percentage of total plan subcontracting dollars for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, hub-zone small business, small disadvantage business, and woman-owned small business concerns as subcontractors. You will see that this is a little bit different than the Prime and that there will be goals for veteran-owned small businesses which we don't have in Prime in this Prime statutory goals. The option years are broken out separately as I've already talked about, that's in FAR 52-219-9C1. On individual plans only, a contracting officer can also establish goals as the percentage of total contract value. I'm going to give you an example of that as we get farther down into the slides, but a lot of times, what I said at Johnson Space Center in Houston which is where I'm located and every subcontracting plan actually had goals based on total contract value for award [0:22:12 inaudible] purposes, and then subcontracting goals for reporting purposes, and to be in compliance with the FAR.

I do want to read one last line in the very first part of 19.704 and 52-219-9, which says, "Failure to submit and negotiate the subcontracting plan shall make the offer ineligible for award of a contract." We need to get these plans approved and looked at so that they can be made a material part of the contract prior to award.

Next slide please. We're on slide 20. The goals are a biggie in subcontracting plans as you all know, so let's talk about them for a little bit about are they acceptable. A lot of agencies will put in solicitations, minimum goals or floors. I like to use the word "floors" because the goal, sometimes people say, "Well, I reached it and I don't have to do anything else after that because we met our goal." Now, goal is the minimum you should have. We always want you to exceed that. You could also just do the plain statutory goals - 23% small business, 5% SDB, 5% women, 3% service-disabled vets, and 3% hub zone. We see that a lot.

One of the things that you may not be aware of, however, is that your agency has subcontracting goals. Just like SBA negotiates Prime



goals with your agency, we also negotiate subcontracting goals. You may see goals that maybe higher or lower than the statutory goals based on what SBA has negotiated with your procurement center.

Then, are the goals realistic? Well, when you just look at that and say "realistic," your first question is, "What does 'realistic' mean?" How do we determine if something is realistic when we're talking about things that we really can't control a lot? Let's go to the next slide, Chris, which is 21, and talk about realistic goals.

The first thing is they must be at a reasonable level and what we mean is that the Prime expended good faith efforts to the maximum practical extent possible to try to get work set aside for small businesses as the subcontractor. They shouldn't lowball the goals which means to minimize exposure to liquidated damages, we don't want the Prime ding that, or to avoid the administrative burden of substantiating good faith effort. They shouldn't negotiate upwards, that means if a higher goal will significantly increase, the government's costs are seriously impede... the attainment of acquisition objectives, we don't want to negotiate upward. The main thing you need to understand is there is no standard goal with a plan. Every plan is different just like every acquisition is different, so there's going to be different goals.

We always say that goals should be aggressive, but they should be attainable. You must consider the circumstances. When you're looking at the goals as a contracting officer or a small business specialist, consider some of these things when you're looking at the plan: the previous involvement of small business in similar acquisitions, the availability of small businesses in socio-economic groups, past performance of contractors, reasonableness of the goals, and message that the Prime intends to use towards meeting the goal.

Let me just give you an example of one of the ways that you really have to look at goals is I got a subcontracting plan and I was told the work was basically the same thing, it was a follow-on contract, and what happened was they had in the plan that they had achieved a 10% WOSB goal for the past five years. When I looked at the plan that they gave me for the follow-on, it only had a 5% goal. My comments are advisory, but I asked, "Why is this goal half of what it was before if it's the same type of work," and I found out later when they went to look at it because the small business specialist did not know either, when we went back and looked at it, it turned out that a large of chunk of the work that this contractor had done for the past five years that was being done by a woman-owned small

business had been taken out of statement of work and put into another contract. If there had been an explanation concerning that in there, we wouldn't have had to go back. Look for explanations in your subcontracting plans when you get them if the goal seems off to you based on maybe trends that the Prime has put in their plan.

Next slide. Let's do a little test. This is actually a subcontracting plan goal statement that I got one time. As you can see on here, the total subcontracting was a hundred thousand and they had work subcontracted to small business, SDBs, 8(a), woman-owned, economically-disadvantaged woman-owned other - which we never found out what they thought was "other," but they put that in there - hub zone, veteran-owned small business, and service-disabled veteran-owned small business.

We're going to go to the next slide to see how it should have been submitted, slide 23. This is the correct method. The only time you're going to get 100% is when you add large business subcontracting and small business subcontracting, those two numbers equal 100%. Then the small business was 30%, and you do the percentage based on the total subcontracting, not based on the small business subcontracting which is what they did in the first example. As you can see on here, each of the dollar amounts are exactly the same as the previous slide, but the percentages now are correct because they're based on total subcontracting dollars instead of just the small business dollars.

Next slide please, 24. Let's see if you can spot the other mistakes. I am leaving this. This slide is going to be the same all the way through for the next four slides I guess, but we're going to show the mistakes that happened that a PCR will pick up on, a small business specialist will pick up on, and contracting officer should pick up on.

Next slide, to 25, please. Here's the first thing that catches when I would be reviewing plans that catches my eye. When I look over here and I see, first off, a hub-zone goal and a service-disabled-vet goal above 3%. Now, there's nothing wrong with the 5% goal, but when I look at 5%, and I look at woman-owned, and I look at SDB, it's obvious they raised the goals because they thought all of the goals had to add up to the 30% goal that was small business, and they're not supposed to add up, and the reason for that is just like in Prime dollars where if you have a woman-owned hub-zone firm that's a small business, you count those dollars in small business, and woman-owned, and hub zone, a Prime contractor can do the same thing on a subcontract where if they have a woman-owned hub-zone small business, they get to count of course the dollars in

small business, but then they also get to count it in hub zone and woman, so that is why your socioeconomic categories, your percentage in dollar are never... well, your percentage is never going to add up to your small business percentage. Let's see if we can spot some more errors on this.

Next slide, 26. All right. Now, we've got veteran-owned small business which has to have a separate goal and service-disabled vets. All service-disabled vets are also vets. The veteran goal and percentage, if it's not equal to allow veterans who are not service connected to get subcontracts, it should always be higher than the service-disabled vet goal, so that's an obvious error right there. I would be making an advisory comment that that is incorrect, and it should be corrected.

Let's go to slide 27, Chris. Here's another one. We see this all the time. Folks, I hate to tell you this, but zero is not a goal and so if you do see a zero in there, there should be an explanation from the Prime contractor on why it's zero and a lot of times they can't explain it. I've seen a lot of plans that had zeroes for everything except SDB, and they gave a very good explanation. There was only thing they subcontracted out, and it went to an SDB, and they were not anything else. They were just a small business and disadvantaged, and so they explained that. Just be aware that these are some of the mistakes that we see when we get plans in, not so much from your season Primes, but a small business who's become other than small or a Prime who's never submitted a plan, you'll need to maybe handhold them a little bit to help them understand about how to do their goals.

Next slide. The first thing I want to say is I know you wouldn't have done a plan on a \$300,000 contract, but I didn't want to get too big on numbers. I know you wouldn't have done this except on 700,000, but I did it on 300,000 just to make it a little easier on me to be putting these numbers down, so that's my caveat on this slide.

One of the things that happens is for those agencies that require total contract value and subcontracted value, this is kind of the way the chart would look. If you look over on the left, the dollar amount is going to stay the same. You've got all your categories there. On your subcontracted value, you see it equals it 100%, then you have your socioeconomic categories, and that percentage is based on the \$100,000 which is the total subcontracted value, but this agency wanted it on total contract value also. For large business, it's 23% of the total contract value. It only comes up to 33% and then you can see the difference in the total contract value percentages. Again, the

dollar amount stays the same, the percentage changes based on whether it's on subcontracted value or total contract value. You can see there's a huge difference in them in the percentage on that.

Next slide please. We keep on talking - we're on slide 29 -about subcontracts. What is a "subcontract" basically? This the definition from the FAR: "Any agreement entered into by a federal government Prime contractor, or subcontractor calling for supplies or services required for performance of the contractor's subcontract."

Next slide, slide 30. Let's get into the elements. We did have 11 and then it got increased to 15, so let's start off: total dollars to be subcontracted. You must have separate goals expressed in terms of total dollars to be subcontracted to small businesses, veteran-owned small businesses, service-connected disabled-veteran-owned small businesses, hub zone, SDBs, and woman-owned small businesses.

The next one is the types of supplies and services to be subcontracted and identification of the types, plan for each of the socioeconomic groups that I just talked about. What's excluded from subcontracting? I'm not going to read these because you all can see them, but it's basically if you see a plan and a lot of times, they will list the name of the company and they will list what that company is going to be doing for them as a subcontract. If you see any of these that are listed, those should be excluded from subcontracting, and so if you go back to them and they are excluded, that's going to change up your percentage of what you're doing with them. Just be aware that there are exclusions from subcontracting that are per the FAR.

Next slide, 31. Then, there has to be a method of the Prime used to develop the goals. What did they look at? They could have listed on there that they had past history, they had input from small businesses when they were preparing the proposal, they could have an internal listing of small businesses, that's how they looked at the goals and what they could actually subcontract out.

Then, the method they used to identify potential sources. It could be trade fairs, industry days. They could have gone into SAM. They could have gone into the dynamic small business search. They could have gone to resource organizations like veterans or minority organizations to find potential sources.

Third is whether indirect costs were included or not included on individual plans. Most of the time, indirect costs are not included.

On commercial plans, they will be. Just be aware of which plan you're looking at.

The name of the individual administering the plan and its description of their duties, that's very important because you could be... and I'll use Houston since I'm here. You could have Johnson Space Center award a contract to someone in Houston for work in New Mexico and the administrator of the plan is in California. You need to be aware of who's administering the plan. It's not always the local person where your agency is located or where the company that's doing the work is located. There could be different divisions that handle different things. Be aware of where the person administering the plan is located because you're going to be in contact with them a lot on the post-award.

The efforts to ensure small businesses have equitable opportunity to compete which could be... we don't use the term "set asides" when we're talking about subcontract. We talk about their called "managed procurements," so that could be that let's say Boeing decided to... they have engineering services and they want to set it aside just for hub-zone firms to compete as a subcontractor. You want to make sure that they have in there what they're doing that small businesses have an equitable opportunity that nothing is too hard for them to obtain blueprints, things of that nature. You want to make sure that one of the elements in there is that the required clauses and provisions will flow down to the subs. Anything that goes to other than small business over 700,000 or 1.5 in construction, that subcontractor has to then submit a plan back to the Prime and that will continue until it flows down to a small business or it's less than 700,000 or 1.5 million in construction. You could actually have several tiers of this flowing down.

Assurances that the reporting will be done and that of course is post-award, that recordkeeping procedures are available, and how they're going to keep the records. Then, these are the four new ones that were added that we need to make sure a lot of people, especially season Primes. There used to be 11. They forget about these other four to make 15. Please make sure when you're reviewing a plan that these four are in there and that's... as you can see, a good faith effort will be made to utilize those small businesses that a Prime used to prepare their proposal or bid, and the next one is an explanation to the contracting officer if those small businesses' not used that needs to be to the contracting officer within 30 days after the end of the contract, assurances that a Prime will not prohibit a small business from discussing payment with the

contracting officer, and also assurances that the small business will be paid on time.

I will like to mention that we get a lot of calls on this one about small businesses saying that a Prime has not paid them. The fact that a Prime has not been paid is not an excuse to pay a small business sub. We want to make sure that those four additional elements are listed in that subcontracting plan and if they're not, it needs to go back to the Prime contractor to be corrected.

Next slide, slide 32. One of the things that we do is surveillance reviews and I'm sure a lot of you have been involved on that. As a program manager, I have oversight over the surveillance review program and so I get to see every report that comes in. I wanted to list some things that on the pre-award side that we're not seeing. As a PCR for my 16 years, I was on 37 surveillance reviews and every single one of them had problems with subcontracting. I would say almost 100% over the last three years I've had this position, subcontracting is still a problem. The main things wrong is that a plan was not made a material part of the contract and, therefore, it's not in the file. If it's a commercial plan, there is no indication that the contracting officer has a copy of it, the goals were not figured correctly, and so that kind of messed up the whole plan because it was not figured correctly. It was done after the award which as I read earlier, it's supposed to be done prior to award.

This one's kind of on the border, but I wanted to put it in because it's a biggie because I'm not getting into post-award like reports and things of that nature: the plan was not sent to SBA and there's a FAR reference that says the approved plan is to be sent to SBA for our commercial market reps.

Next slide please, 33. If you need additional assistance on pre-award, you can always contact your local PCR. There's a reference right there for where they're located that you can also ask for some additional training if you need that to go in and maybe those individuals that are not on this call, but you think they might get some benefit of learning more about pre-award subcontracting plans, we'll be more than happy to come in and do that training for you also.

I believe, next slide, that we are at the end of subcontracting plans pre-award. Again, please remember if you're submitting a question, that we are doing questions on pre-award only and if you do have a post-award, please send it to [sbalearning@sba.gov](mailto:sbalearning@sba.gov) and we will send it to the appropriate individuals to get you an answer. Chris, Gwen, I will turn it back over to you.

**Chris:** Okay. Great. Thanks Val. Gwen, if you are ready, let's start with the questions.

**Gwen:** Okay. First question is, this person used to see goals primarily for supporting services such as janitorial, is this still the case or are more of the goals in the subcontracting plan for substantial items like production of product?

**Valerie:** It depends on what type of plan you have. If you're doing a commercial plan, anything that that Prime does whether it's supply, service, manufacturing, whatever, they get to count whether it's on a government or commercial basis. If it's an individual contract, we're seeing all sorts of things - engineering services, manufacturing, IT, and then your basic services like janitorial or grass-cutting, all of those kind of things. There's no limit to what can be subcontracted out. A Prime can't do it all, so anything that they want to subcontract out, they have the ability to do that so that makes a difference on their goals of course and the percentage when you review it.

**Gwen:** Okay. Next question is, on slide 18, for commercial subcontracting plans for scheduled contracts, or like scheduled 70 or consolidated schedule, do the small business specialist in PCR need to review plans for subsequent annual approvals like annual approvals after the initial first-year plan?

**Valerie:** The plans that are off of GSA schedules and stuff, GSA approves the plans. The GSA contracting officers will take care of approval of those plans.

**Gwen:** Okay. Next question. What do you recommend for design-build contracts where the contract is awarded prior to the scope being fully defined, but we have to approve the subcontracting plan in order to award the contract? There's significant guesswork with no recourse to raise someone to build portion get slashed out.

**Valerie:** This is bordering on a post-award, but there can be... if you do a modification to the contract because additional work's been added over the 700,000 or 1.5 million, you're going to adjust your goals. It's just kind of like when you get an IDIQ contract, you have to base the plan on the total amount, let's say, not to exceed 50 million. You have to make it on the 50 million, but then your reporting is done on what you actually have gotten to date, that's why it's important on your reports that you do them correctly and didn't mean to get into post-award, but yeah, those are the kind of things that can be adjusted because some of them are variable. You're just not going to know, and it's almost like a guesstimate. You can do the best

guess. A lot of Primes, once they actually submit the plan, they get it approved and then they find out the scope of work is different or it's changed, they have gone in and modified the subcontracting plan to fit more with what the actual scope is.

**Gwen:** Okay. Is there a repository for a commercial plan, and how does the contracting office know if a commercial plan has already been approved and how do they get a copy of it?

**Valerie:** Well, you ask the Prime if they have a commercial plan. I will tell you, most Prime contractors that I know of because they don't want to do plans all the time, if they have a commercial plan, they're going to let you know that they've got a commercial plan, and it's already been approved, and all you do is you ask them for it. If they can't produce a commercial plan and they say ones' been approved, I would then say, "Give me the name of the contracting officer that approved the plan so I can get it." There's absolutely no reason why they shouldn't have a copy of it though.

**Gwen:** Okay. Can you explain a quick definition between a subcontracting plan... when the subcontracting plan is required and a small business participation plan?

**Valerie:** Subcontracting plan is, as we said, required when there are subcontracting opportunities and it's over 700,000 or over 1.5 million if it's in construction. A participation plan is basically when I procurement center wants to be able to count dollars in a different way than a subcontracting plan does. I will be very honest with you, I will give you a better answer to that if you send me the question because in my entire career with SBA as a PCR, I never had to deal with participation plans whatsoever, but I will get you an answer from our legal staff or someone that can give you a side-by-side difference between the two.

**Gwen:** Okay. Slide 32: if a subcontracting plan is required, is it mandatory for the contracting officer to incorporate the approved plan into the contract award and if so, how do you make the plan a material part of the contract? Do you simply make it as an attachment?

**Valerie:** Yeah. You can just make it an attachment. It is in the FAR that it says it will be made a part of the resultant contract. It is in the FAR that you must put it in there. Most of the time, it's in there as an attachment.

**Gwen:** Okay. Next question. How is a good-faith effort measured? What is the recourse when a large Prime using a small business by name, and they're appraising and preparing the proposal, but when the



contract is awarded, the Prime has not used the small business that's used in preparing the proposal?

**Valerie:** Post-award question. Please send that to the inbox.

**Gwen:** Okay. Contractor generates one plan for the fiscal year, doesn't the FAR require updates on an annual basis?

**Valerie:** If it's a commercial plan, it does have to be updated every year, yes. The individual plan is for the length of the contract no matter how long it is. The master plan is approved for three years, but the commercial plan is on a year-to-year basis.

**Gwen:** Okay. While individual subcontracting plan is most used for commercial services, should we use the commercial plan? In other words, the individual subcontracting plan should only be used for non-commercial contract?

**Valerie:** If the item meets the definition of a commercial, it says it's the preferred way. It doesn't say you must do it that way. It says it's the preferred way and so a lot of Primes that I worked with - because I'm here in Houston, so I have a lot of oil and gas companies - I had a company that did almost 60 million dollars a year with small business, but they did an individual plan because they only had a few contracts with... well, they had about five or six contracts with the federal government, but there were very few subcontracting opportunities. When you're dealing with the oil and gas industry, there may be some additives, there may be some trucking, but other than that, that's all that can be subcontracted. They may have only gotten credit to show that they subcontracted out maybe two or three million dollars instead of the 60 million. They decided to go with the commercial plan so that they could credit for the full 60 million where their goals were smaller, but the dollar volume was higher. If it's a commercial item, the government prefers that they use a plan, but we're not going to force them to do a commercial plan if they want to do an individual one.

**Gwen:** Okay. In regards to counting subcontracting dollars, if a contract is awarded to a woman-owned company located in a hub zone, will that count towards both goals?

**Valerie:** If their hub zone's certified. They have to be certified, not just located in a hub zone, but they have to receive a hub zone certification. Basically, what a Prime... just like the federal government, the Prime's the same way. They'd love to have a service-connected disabled-vet woman who got hub-zone certified and self-certifies as an SDB, that way, that 50 or 100,000 that they

awarded to them, they've gotten a small business and they get to put it in each one of the other socioeconomic categories, that's why you're never going to add up, that's why it doesn't add up.

**Gwen:** Okay. Next question. Are any services contract that a Prime contract awards, is that fair game as part of subcontracting? For example, a subcontract to a surety or bonding company can be considered subcontracting?

**Valerie:** Yeah. They're not doing it in-house. Well, if it's a construction company and they're getting bonds... if they're getting performance payment and bid bonds from a surety, that's not a subcontract, that's more of your general and administrative expenses that you have as a construction company that you have to deal with, but if they need plans made, if they have a courier service, they have to take them different places. If they have to go out and buy a different type of equipment to... an AutoCAD or something like that, those are all subcontracts.

**Gwen:** Okay, and somebody chimed in on regarding a small business participation plan. He said, "FAR part 15 requires a small business participation plan as an evaluation factor and resourceful action not related to FAR part 19."

**Valerie:** Okay. There you got your answer and as I said, I've never dealt with participation plans at all.

**Gwen:** Okay. For SBA surveillance purposes, what are the required signatures for an approved subcontracting plan incorporated into a contract, for example, PCR, PCO, SBS? Can the contracting officer and the small business specialist be sufficient?

**Valerie:** No. A PCR under the FAR. You need to send a subcontracting plan to the PCR for advisory comments. I will just say that as a PCR, when I was doing it, I caught a lot of things that were not caught before, so yeah. Under the FAR, advisory comments come from the small business specialist and the PCR. The FAR is not written "or," it says "and." For surveillance review purposes, we would look to see if a PCR was given the opportunity to review a plan, yes.

**Gwen:** Okay. Next question is, on slide 30, this person can't find the subcontracting exclusions list in the FAR reference or FAR 19-704A and 52-219-9. Can you confirm that that's where that is or is it some place--?

**Valerie:** No. What I did on that, and I apologize if that was confusing, I gave you the elements. This is in a different part and if they will send me

a note, I will give them the FAR reference on where the exclusions are.

**Gwen:** Okay. For multiple award IDIQ, can some offer/submit commercial plans and others submit individual plans?

**Valerie:** If it's a commercial item, they can submit a commercial plan, but it's going to be on a year-to-year basis on what they're going to be doing and they would have no idea how much they're going to get on an IDIQ. They would have to be basing it on that they were going to get 50 million in one year and if it's a 10-year contract, I don't think they want to do that. IDIQs are really made for individual plans.

**Gwen:** Okay, and then somebody from GSA said that, multiple award schedule subcontracting plans are viewed as options which is rewarded and every five years after assuming their contract is renewed for individual plan. Commercial plans on GSA schedule are reviewed annually.

**Valerie:** Okay. Most of the time on Federal Supply Schedules, they do a five-year base and like three-five-year options. If the base is five years, then even if they do an individual plan, it's good for five years and then they would renew it because that's an option. On commercial plans, yes, they do them every single year, but GSA approves them.

**Gwen:** That was the last question/comment that we had, Val.

**Valerie:** Okay.

**Chris:** Well, great. Well, thank you very much. If there are some additional questions, feel free to send those questions in to [sbalearning@sba.gov](mailto:sbalearning@sba.gov). If you do have any additional questions, please send the email to that address as well. I hope everybody has a great holiday coming up, and our next session will be the first one of 2020 and that will be on January 8<sup>th</sup> in regards to surveillance reviews, and hopefully you're getting used to Val's voice because you're going to hear that again next month. Val, once again, thanks for your great presentation and all your input, and thank you all, everyone, and we'll talk to you next year.

**Helen:** That concludes our conference. Thank you for using AT&T Events Conferencing: Enhanced. You may now disconnect.

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