



U.S. Small Business
Administration



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SBA's Small Business Subcontracting Program

Not intended for public distribution

Hosts

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Welcome to “SBA Virtual Learning 2023”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact your IT admin who manages Teams settings for your organization.
3. Captioning available for this presentation.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

Association of Procurement Technical Assistance Centers (APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

- APTAC posts past “First Wednesday” programing at this link: <http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting officer resources: “How PTACs partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest Procurement Technical Assistance Center at <http://www.aptac-us.org>

Small Business Administration YouTube Page

SBA YouTube page posts past “First Wednesday” programming at links below.

- October 5, 2022 – 8(a) Business Development Program Updates: <https://youtu.be/Yl5Sp0dP1aE>
- November 2, 2022 – Surety Bond Guarantee Program:
- December 7, 2022 – Subcontracting Program:
- January 3, 2023 – Surveillance Review Program:
- February 1, 2023 – HUBZone Program:
- March 1, 2023 – All Small Mentor Protégé Program (ASMPP):
- April 5, 2023 – Non-Manufacture Rule (NMR):
- May 3, 2023 – Size Program:
- Jun 7, 2023 – Legislature and Regulatory Updates:
- July 5, 2023 – Market Research:
- August 2, 2023 – Service-Disabled Veteran Owned Program (SDVOSB):

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

FY 2023 SCHEDULE

1:00 to 2:00 PM Central Time

FY 2023	Date	Topic
1	October 5, 2022	8(a) Business Development Program Updates
2	November 2, 2022	Surety Bond Guarantee Program
3	December 7, 2022	Subcontracting Program
4	January 3, 2023	Surveillance Review Program
5	February 1, 2023	HUBZone Program
6	March 1, 2023	All Small Mentor Protégé Program (ASMPP)
7	April 5, 2023	Non-Manufacture Rule (NMR)
8	May 3, 2023	Size Program
9	June 7, 2023	Legislature and Regulatory Updates
10	July 5, 2023	Market Research
11	August 2, 2023	Service-Disabled Veteran Owned Program (SDVOSB)

The program schedule is for information only and is subject to change.

One Continuous Learning Point

- Self-service process for one CLP of credit for SBA employees only: Complete the survey contained in the link below. A new link will be provided every month. The link is activated on the day of the training and will be deactivated two weeks after the training event. <https://forms.office.com/g/EfXSnnf3dQ>
- Those SBA employees that do not complete the survey within two weeks, can manually upload the certificate included in the presentation.
- If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

“SBA 1st Wednesday Virtual Learning 2023”

This Certificate is awarded to

Insert Your Name Here

For completion of

Subcontracting Program

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Pamela J. Beavers

Director, Area IV
SBA Office of Government Contracting

12/07/2022

DATE

Today's Speaker(s)

Stephanie Lewis
National Subcontracting Program Manager
Office of Government Contracting
U.S. Small Business Administration

SBA's Role in Subcontracting Type of Reviews

Pre-Award Subcontracting Plan Activities

- SBA's Procurement Center Representatives (PCRs) review subcontracting plans prior to contract awarded (advisory)
- **PCRs:** <https://www.sba.gov/federal-contracting/counseling-help/procurement-center-representative-directory>

Post-Award Subcontracting Plan Activities

- SBA's Commercial Market Representatives (CMRs) monitor subcontracting goal achievement after contract award
- **CMRs:** <https://www.sba.gov/document/support--commercial-market-representatives>

SBA Subcontracting Program

Who Provides Post-Award SB Subcontracting Program Oversight?

Small Business Act, Section 8(d) – 15 USC 633(h)(1), 637, 644, 657(a) , 657(f), 13 CFR 125.3

- **SBA'S CMRs provide oversight over the SB Subcontracting Program**

CMRs are responsible for:

Performing compliance reviews of prime contractors with subcontracting plans,

Providing post-award subcontracting training,

Providing counseling to SBs regarding gaining access to subcontract opportunities, and

Facilitating in the matching of primes contractors with SBs.



SBA's Subcontracting Program

- **Training to Agencies:**

- FY22 Agency Subcontracting Plan training (2400 attendees)
- *First Wednesday annual session*

- ***Training to OTSBs with Subcontracting Plans:***

- *Second Wednesday* subcontracting plan training sessions
- YouTube Playlist:
 - <https://youtube.com/playlist?list=PLrwM1ZVcvDhab78HybaUQBNBPO3rP4q5P>
- For OTSBs to get on email invitation list, email Stephanie.Lewis@sba.gov

- **SUBNet**

- **Subcontracting@sba.gov**

Second Wednesday

Subcontracting Plan Training for OTSB contractors

FY22

		Attendees	Online Viewing *
November	Completing the ISR in eSRS (for Individual Subcontracting Plan holders)	591	697
December	Completing the SSR in eSRS (for Individual Subcontracting Plan holders)	381	285
January	Completing the SSR in eSRS (for Commercial Subcontracting Plan holders)	280	240
February	Legislative Update	498	206
March	SBA's Subcontracting Program Compliance Reviews	524	187
May	Obtaining Subcontractors' Size Representations	465	242
June	Determining NAICS Codes	500	257
July	Examples of Good Faith Effort & Failure to Exert Good Faith Efforts	554	185
August	Trends in Findings during SBA's Subcontracting Program Compliance Reviews	374	179
September	Creating a Robust Subcontracting Program	464	
	Total Online Attendees	4631	2478

Second Wednesday

FY23 Calendar

November	Setting Subcontracting Plan Goals
December	Utilizing PTAC Services
January	Managing Flow-Down Subcontracting Plans
February	Completing the ISR
March	Legislative Update
May	Utilizing SUBNet
June	Utilizing the DSBS
July	Completing the SSR (for individual plans)
August	Completing the SSR (for commercial plans)
September	Obtaining Subcontractor's Size Representations



SBA's Subcontracting Plan Compliance Reviews

Types of SBA Reviews

- Performance Review
- Subcontracting Program Compliance Review
- Follow-up Review



- Subcontracting Orientation and Assistance Review (SOAR)

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Performance Review

- Assesses on-time submission of ISRs and SSRs in eSRS.gov
 - Individual Subcontracting Plan submit Individual Subcontracting Reports (ISRs) and Summary Subcontract Reports (SSRs)
 - Commercial Subcontracting Plans submit SSRs
- Focuses on subcontracting achievements on a contract-by-contract basis and overall
 - Individual Subcontracting Plans – ISR
 - Commercial Plan - SSR
 - Overall performance through the SSR
 - Establishes a trend
- Offers CMR assistance in locating tools to locate small business sources
- Gives the prime contractor feedback on how it is progressing on accomplishing its subcontracting plan goals and identifies shortfalls/weaknesses so that it can make adjustments to ensure goal achievement and maximum practicable utilization of small business subcontractors

Subcontracting Program Compliance Review (SPCR)

- Performance is evaluated by means of on-site or virtual compliance reviews and follow-up reviews.
- A compliance review determines a contractor's achievements in meeting the goals and other elements in its subcontracting plan for both open contracts and contracts completed during the previous twelve months.
- Reviews compliance with all 15 elements in the subcontracting plan
- Results in a rating that is shared with
 - the President of the Company
 - all Contracting Officers



Some of the items covered

- Evaluates whether the prime contractor assigned the proper NAICS code and corresponding size standard to a subcontract and whether small business subcontractors' claim for the size or socio-economic status claimed are supported
- Validates the prime contractor's methodology for completing its subcontracting reports
- Validates whether the prime contractor is monitoring its “other-than-small subcontractors” with regards to flowing down subcontracting plans and reporting
- Determines achievement of the negotiated subcontracting goals
- Identifies the prime contractor's plan of action to achieve the subcontracting goals

Follow-up Review

- Assesses the contractor's progress towards correcting deficiencies and implementing SBA's recommendations identified in the SPCR Report
- Conducted within a year



How can SBA's Efforts Assist Contracting Officers?

Subcontracting Plan Performance Evaluation

Contracting Officers are required to:

Determine if “good faith efforts” were made to determine if Liquidated Damages should be imposed

- FAR 19.705-7, *Compliance with Subcontracting Plan* (revised in 2021)
- FAR 52.219-16, *Liquidated Damages - Subcontracting Plan*

Include Subcontracting Plan accomplishment in CPARS rating

- <https://www.cpars.gov/documents/CPARS-Guidance.pdf>
- Help Page-
https://cpars.cpars.gov/cpars/common/helpinfo_input.action?module=cpars&scope=de&topic=Small+Business

FAR 19.705-7(a)

Compliance with Subcontracting Plan

(a) *General.* Maximum practicable utilization of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and [15 U.S.C.637\(d\)\(4\)\(F\)](#) directs that liquidated damages shall be paid by the contractor.

FAR 19.705-7(c)

(c) *Documentation of good faith effort.* If, at completion of the basic contract or any option, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, a contractor has failed to comply with the requirements of its subcontracting plan, which includes meeting its subcontracting goals, the contracting officer shall review all available information for an indication that the contractor has not made a good faith effort to comply with the plan. If no such indication is found, the contracting officer shall document the file accordingly.

FAR 19.705-7(d)

(d) *Notice of failure to make a good faith effort.* If the contracting officer decides in accordance with paragraph (b) of this section that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall give the contractor written notice in accordance with [52.219-16](#), Liquidated Damages—Subcontracting Plan, specifying the material breach, which may be included in the contractor's past performance information, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages, and providing a period of 15 working days (or longer period as necessary) within which to respond. The notice shall give the contractor an opportunity to demonstrate what good faith efforts have been made before the contracting officer issues the final decision and shall further state that failure of the contractor to respond may be taken as an admission that no valid explanation exists.

FAR 19.705-7(e)

(e) Payment of liquidated damages.

(1) If, after consideration of all the pertinent data, the contracting officer finds that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall issue a final decision to the contractor to that effect and require the payment of liquidated damages in an amount stated. The contracting officer's final decision shall state that the contractor has the right to appeal under the clause in the contract entitled Disputes. Calculations and procedures shall be in accordance with [52.219-16](#), Liquidated Damages—Subcontracting Plan.

(2) The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal. For calculations for commercial plans see paragraph (f) of this section.

(3) Liquidated damages shall be in addition to any other remedies that the Government may have.

FAR 19.705-7(f)

(f) **Commercial plans.** With respect to commercial plans approved under the clause at [52.219-9](#), Small Business Subcontracting Plan, the contracting officer that approved the plan shall-

- (1) Perform the functions of the contracting officer under this subsection on behalf of all agencies with contracts covered by the commercial plan;
- (2) Determine whether or not the goals in the commercial plan were achieved and, if they were not achieved, review all available information for an indication that the contractor has not made a good faith effort to comply with the plan, and document the results of the review;
- (3) If a determination is made to assess liquidated damages, in order to calculate and assess the amount of damages, the contracting officer shall ask the contractor to provide-
 - (i) Contract numbers for the Government contracts subject to the plan
 - (ii) The total Government sales during the contractor's fiscal year; and
 - (iii) The amount of payments made under the Government contracts subject to that plan that contributed to the contractor's total sales during the contractor's fiscal year; and
- (4) When appropriate, **assess liquidated damages on the Government's behalf, based on the pro rata share of subcontracting attributable to the Government contracts.** For example: The contractor's total actual sales were \$50 million and its actual subcontracting was \$20 million. The Government's total payments under contracts subject to the plan contributing to the contractor's total sales were \$5 million, which accounted for 10 percent of the contractor's total sales. Therefore, the pro rata share of subcontracting attributable to the Government contracts would be 10 percent of \$20 million, or \$2 million. To continue the example, if the contractor failed to achieve its small business goal by 1 percent, the liquidated damages would be calculated as 1 percent of \$2 million, or \$20,000. The contracting officer shall make similar calculations for each category of small business where the contractor failed to achieve its goal and the sum of the dollars for all of the categories equals the amount of the liquidated damages to be assessed. A copy of the contracting officer's final decision assessing liquidated damages shall be provided to other contracting officers with contracts subject to the commercial plan.
- (5) Every contracting officer with a contract that is subject to a commercial plan shall include in the contract file a copy of the approved plan and a copy of the final decision assessing liquidating damages, if applicable.

How Can These Efforts Assist Contracting Officers?

- Consider SBA Review Findings (& for DOD, DCMA Review Findings)
 - Reinforce concern with Marginal/Unsatisfactory Ratings (SBA/DCMA)
- Reject ISR reports (SSRs for commercial plans) when report lacks explanation of goal shortfalls or has apparent errors
- Utilize “Remarks” on ISR/SSR reports in determining if “good faith effort” was made
- Pre-Award -- Use previous eSRS data to determine if proposed subcontracting plan goals are realistic (for the incumbent contract and for the contractor proposing)

Evidence of Good Faith Efforts

- Breaking out contract work items;
- Conducting market research to identify SBs subcontractors;
- Soliciting SBs as early in the acquisition process as practicable;
- Providing SBs with adequate and timely information;
- Negotiating in good faith with interested SBs;
- Directing SBs that need additional assistance to SBA;
- Assisting SBs in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services;
- Utilizing available services of SB associations; local, state, and Federal small business assistance offices; and other organizations; and
- Participating in a formal mentor-protégé program with one or more small-business protégés that results in developmental assistance to the protégés. **13 CFR 125.3(b)**

Examples of **Failure** to Make Good Faith Efforts (include but not limited to)

- Failure to submit the acceptable individual or summary subcontracting reports in eSRS by the report due dates or as provided by other agency regulations within prescribed time frames;
- Failure to pay small business concern subcontractors in accordance with the terms of the contract with the prime;
- Failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan;
- Failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan including subcontracting flow-down requirements;
- Adoption of company policies or documented procedures that have as their objectives the frustration of the objectives of the plan;
- Failure to correct substantiated findings from federal subcontracting compliance reviews or participate in subcontracting plan management training offered by the government;
- Failure to conduct market research identifying potential small business concern subcontractors through all reasonable means including outreach, industry days, or the use of federal database marketing systems such as SBA's Dynamic Small Business Search (DSBS) or SUBNet Systems or any successor federal systems;
- Failure to comply with regulations requiring submission of a written explanation to the contracting officer to change small business concern subcontractors that were used in preparing offers; or
- Falsifying records of subcontracting awards to SBCs.

13 CFR 125.3(d)(3)(ii)

Accepting or Rejecting ISR/SSR Reports

Who Accepts or Rejects ISRs/SSRs?

ISRs – Contracting Officer (FAR 19.705-6(f)(2))

SSRs –

- For Commercial Plan – Contracting Officer that approved the commercial plan (FAR 19.705-6(f)(3)(i))
- For Individual Plan – Individual Assigned by Agency/OSDBU
- For DOD Comprehensive Plan - DCMA

Importance of the REMARKS Block

ISR & SSR for Commercial Plan

- To explain goal shortfalls
- To explain circumstances
 - which orders have order-level goals, merger information
- To explain good faith efforts & action plan to meet goals by contract's end
- To explain contract information that should be noted/part of record

SSR

If contractor files an individual plan SSR that encompasses the DUNS/UEI numbers of several entities, it is helpful if they list these entities by UEI in the Remarks block

SSR and the SBA SCORECARD

- Only “Accepted” SSRs are credited to the SBA Scorecard
- Attend to **PENDING** reports, but also follow up on any ISR/SSRs that are:
 - **REVISED**
 - **REJECTED**
 - **REOPENED**
- Track and following up on Rejected SSRs



Common Compliance Review Findings

Most Common Findings

- Subcontracting plan goals do not match goals on ISR
- Failure to include indirect costs on the SSR
- Failure to include credit card & online purchases in reports
- Size representation is not current/accurate
 - Solicitation/subcontract does not contain NAICS/size standard
 - HUBZone Firms are not SBA-certified
- CEO is not signing the SSR
- Contractor is confusing other supplier diversity program definitions with the Federal size classification definitions
- Failure to document “if not, why not” justification
- Failure to flow-down FAR 52.219-8
- Failure to flow-down FAR 52.219-9 & obtain/monitor a flow-down subcontracting plan (unless prime contract contains FAR 52.244-6 or FAR 52.212-5)

Inappropriate individual listed as CEO

SSR – Individual Plans

- Is it signed by CEO (most senior executive at facility)
- Does the Remarks block answer any questions you have with regards to the data (low achievements, mergers, which UEs are consolidated onto one SSR)

14. Chief Executive Officer(CEO)

This is the full name and title of the CEO (if you do not use the title CEO this is the most Senior Executive in your organization) for the company submitting this report. **No delegation of authority is accepted.**

a. Name:

████████████████████

b. Title:

██████

c. Date:

November 12, 2021

15. CEO Approval:

This is a self-certification that the individual whom is listed as the CEO on this report will sign a paper print-out of this report and keep it on file.

Yes

Sample of the “If-not-why-not” Requirement

Purchase Order/Subcontract Awarded To: _____
Purchase Order/Subcontract #: _____
Date: _____

SIZE CATEGORY	NUMBER SOLICITED	REASON NOT SOLICITED (use key below)	REASON NOT SELECTED (use key below)
Small Businesses (including ANCs and Indian tribes)	2		A, B
Small Disadvantaged Businesses (including ANCs and Indian tribes)	1		E
Women-owned Small Businesses	0	5	
HUBZone Small Businesses	0	5	
Veteran-Owned Small Businesses	1		D
Service-Disabled Veteran Owned Small Businesses	0	5	

Instructions for completing above table:

Key:

1. Government/Customer Directed Sources
2. Follow-up work to previous P.O./contract (awarded to same supplier)
3. Company-wide Purchasing Agreement exists for this product/service
4. Sole Source (only approved supplier, proprietary item)
5. No known Small Businesses (checked SAM, DSBS, or other sources)
6. Category not solicited for another reason (explain below)

- A - Company did not offer the lowest price
- B - Company was found to be not qualified (explain below)
- C - Company was not the best offer for reasons other than price (explain below)
- D - Company did not respond to the solicitation
- E - Company stated it was not interested in the work
- F - OTHER – EXPLANATION REQUIRED BELOW

Comments: _____



How to Assign NAICS Code and Size Standard to a Subcontract

Non-compliance issues:

- NAICS/Size Standard not assigned

Prime Contractor is responsible for assigning a NAICS code and corresponding Size Standard to every subcontract, and to each solicitation if a solicitation is utilized.

(FAR 52-219.9(e)(7))

- **The contractor must assign** to each subcontract, and to each solicitation, if a solicitation is utilized, the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.
- A formal solicitation is not required for each subcontract, but the contractor must provide some form of written notice of the NAICS code and size standard assigned to potential offerors prior to acceptance and award of the subcontract.
- For subcontracting purposes, a concern is small for subcontracts which relate to Government procurements if it does not exceed the size standard for the NAICS code that the prime contractor believes best describes the product or service being acquired by the subcontract.

13 CFR 125.3(c)(1) (v) and 13 CFR 121.410

How to Assign NAICS Code and Size Standard to a Subcontract – cont.

- Contractors cannot satisfy the requirement to supply the NAICS/size standard requirement by simply referencing 13 CFR 121.201; contractors must determine the size standard and enter it beside the NAICS code on the subcontract and on the solicitation, if a solicitation is utilized.
- Every subcontract should contain only one NAICS code and only one corresponding size standard.
- Wholesalers/Distributors NAICS codes (sector 42, 44, and 45) cannot be used to classify Government acquisitions for supplies.

Sector 42—Wholesale Trade

(These NAICS codes shall not be used to classify Government acquisitions for supplies. They also shall not be used by Federal Government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)

Flow-down Requirement

Non-compliance issues:

- *Not obtaining flow down plans/no exemption clause in contract*
 - *Subcontractor's ISRs were not monitored accordingly*
-
- FAR clause 52.219-8 must be flow-downed to every subcontract.
 - Prime contractors must require all OTSB subcontractors who receive subcontracts in excess of \$750,000 (\$1.5 million for construction of a public facility), and which offer further subcontracting possibilities, to adopt a subcontracting plan.
 - Not required for commercial items from subcontractors if the prime contract contains FAR 52.212-5 or 52.244-6
 - Prime contractors will monitor their subcontractors' compliance with their approved subcontracting plans.

QUESTIONS?

