



**U.S. Small Business
Administration**



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Part 2: Category Management: Increasing Small Business Participation Through Subcontracting and Legal Obligations

Hosts

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Welcome to “SBA Virtual Learning 2021”

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” programming 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 6, 2021 – 8(a) Program Updates: <https://youtu.be/yNQ4u-Ha9Go>
- November 3, 2021 – Non-Manufacture Rule (NMR): <https://youtu.be/QnN2XvlaupQ>
- December 1, 2021 – Releasing Requirements from 8(a): <https://youtu.be/htkYbkajS4o>
- January 5, 2022 – Category Management Part 1: <https://youtu.be/JJ-OyTlT3HM>
- February 2, 2022 – Category Management Part 2:
- March 2, 2022 – Market Research:
- April 6, 2022 – All Small Mentor Protégé Program:
- May 4, 2022 – ESRS System:
- Jun 1, 2022 – Legislature and Regulatory Updates:
- July 6, 2022 – Women Owned Small Business Program:
- August 3, 2022 – HUBZone Program:

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

FY 2022 SCHEDULE

1:00 to 2:00 PM Central Time

FY 2022	Date	Topic
1	October 6, 2021	8(a) Business Development Program Updates
2	November 3, 2021	Non-Manufacturing Rule (NMR)
3	December 1, 2021	Releasing Requirements from 8(a) Business Development Program
4	January 5, 2022	Part I: Category Management: Policy Considerations and Flexibilities and Small Business Utilization
 5	February 2, 2022	Part 2: Category Management: Increasing Small Business Participation Through Subcontracting and Legal Obligations
6	March 2, 2022	Market Research
7	April 6, 2022	All Small Mentor Protégé Program
8	May 4, 2022	Electronic Subcontracting Reporting System (ESRS)
9	June 1, 2022	Legislature and Regulatory Updates
10	July 6, 2022	Women-Owned Small Business Program
11	August 3, 2022	HUBZone Program

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

One Continuous Learning Point

- Self-service: Using the PowerPoint that was sent with your invitation for this training event, fill in your name on the certificate slide and save. Download the certificate and print for your records. You submit your request for training credit IAW your agency policy, i.e. FAITAS.
- 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 2022”

This Certificate is awarded to

Insert Your Name Here

For completion of

Part 2: Category Management: Increasing Small Business Participation Through Subcontracting and Legal Obligations

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

2/02/2022

DATE

Today's Speakers

Valerie Coleman
Program Manager, Prime Contracts
Office of Government Contracting
U.S. Small Business Administration

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

Sam Le
Director, Office of Policy Planning and Liaison
Office of Government Contracting and Business Development
U.S. Small Business Administration

Small Business and Category Management

Table of Contents

- I. Policy Considerations and Flexibilities**
- II. Small Business Utilization Through Category Management**
- III. Increasing Small Business Participation Through Subcontracting**
- IV. Legal Obligations**

Course Objectives

As it relates to category management:

(1) Identifying best practices for procuring goods and services from small business concerns; and

(2) Avoiding conflicts with the requirements of the Small Business Act (15 U.S.C. 631 et seq.).

The purpose of this training is to assist federal agencies with understanding how they can successfully balance category management practices and small business utilization in prime and subcontracting.



**The SBA works to ignite change and spark action
so small businesses can confidently**

START • GROW • EXPAND • RECOVER

**Increasing Small Business
Participation
Through Subcontracting**

Background

Purpose

Federal Government contracting professionals can increase small business participation through subcontracting (while earning agency credit using SUM contracts) by:

1. Knowing and understanding the regulatory requirements
2. Complying with the regulatory requirements
3. Utilizing practices that encourage small business participation as subcontractors

Category Management Encourages Subcontracting

Some multi-agency or government-wide procurements may be too large, complex, or multi-disciplined for small businesses to participate as prime contractors.

Subcontracting allows small businesses to continue to have a role in the successful performance of the overall contract.

Subcontracting includes any agreement that calls for supplies or services required for performance of the contract or a subcontract.

Subcontracting opportunities can exist through several subcontracting tiers.

Regulatory Requirements

Subcontracting Requirements

- **Small business participation as a subcontractor stems from Section (8)(d) of the Small Business Act.**
- **The Act requires that small businesses are afforded a “maximum practicable opportunity” to participate as subcontractors.**
- **The Small Business Administration ensures that small businesses receive these opportunities through its [Small Business Subcontracting Assistance Program](#).**

Regulatory Requirements

Federal Acquisition Regulation (FAR)

Subcontracting Assistance Program's regulatory requirements:

- The requirements for utilizing small business in Federal subcontracting are under Section 8(d)(1) of the Small Business Act. The details of when, what, and how to use the requirements are in FAR 52.219-8, *Utilization of Small Business Concerns*
- The requirements for when to obtain a Small Business Subcontracting Plan are under Section 8(d)(4) and 8(d)(6) of the Small Business Act. The details of when, what, and how to use the requirements are in FAR 19.7 - *The Small Business Subcontracting Program* and 52.219-9, *Small Business Subcontracting Plan*

Applying Regulatory Requirements

- [52.219-8 Utilization of Small Business Concerns. | Acquisition.GOV](#)
- **Insert this clause in every Federal acquisition, whether awarded to a small business or an “other than small” business, that meets all the following criteria:**
 - Contact exceeds the simplified acquisition threshold
 - Is not performed entirely outside of the United States
 - Is not personal in nature
- [52.219-9 Small Business Subcontracting Plan. | Acquisition.GOV](#)
- **Insert this clause in every Federal acquisition awarded to an “other than small” business that meets all the following criteria:**
 - Contracts or modifications that causes a contract to exceed the subcontract plan dollar threshold (threshold is currently \$750,000 and \$1.5 million for construction contracts and includes options)
 - Has subcontract possibilities
 - Requires the clause at FAR [52.219-8](#)
 - Is not performed entirely outside of the United States
 - Is not personal in nature

Resources for Understanding the Requirements

- Federal Agencies' Offices of Small and Disadvantaged Business Utilization (OSDBU) and Offices of Small Business Programs (OSBP)
- Federal Agency Small Business Professionals
- Small Business Administration's:
 - Government Contracting Area Office Customer Liaisons
 - Procurement Center Representatives (PCRs)
 - Commercial Marketing Representatives (CMRs)

Compliance with the Subcontracting Assistance Program

FAR 52.219-8, *Utilization of Small Business Concerns*

- Read [FAR 19.708 contract clauses](#)
- Review the acquisition to ascertain whether the FAR clause is applicable
- If it is applicable:
 - Insert the clause(s) in every applicable Federal contract awarded
 - Educate the contractor of the requirements to provide “maximum practicable opportunity” for small business to participate as subcontracts consistent with efficient contract performance
 - Remember that subcontracts can be direct or indirect
 - Remember applicability to “other than small” and small businesses

FAR 52.219-9, *Small Business Subcontracting Plan*

Five Steps

- 1. Determine if the requirement meets the subcontracting plan regulatory requirements**
- 2. Determine if the requirement has subcontracting possibilities**
- 3. Determine the subcontracting goals for the solicitation**
- 4. Determine the evaluations factors**
- 5. Negotiate the Subcontracting Goals**

Order-Level Goals

Subcontracting plan goals for small businesses and socioeconomic groups are established in the contract with the awarding agency. All contracts can have only one subcontracting plan.

However, in multiple-award IDIQ contracts (such as those used in Category Management), an agency awarding a task order against a multiple-award IDIQ contract may require order-level goals.

FAR 19.705-1(b)(2): Contracting officers placing orders may establish small business subcontracting goals for each order. Establishing goals shall not be in the form of a new subcontracting plan as a contract may not have more than one plan (19.705-2(e)).

More opportunities exist for small business subcontractors at the task-order level than at the contract level.

Requiring order-level goals for an IDIQ contract emphasizes to the contractor that small business participation for the order is important and expected.

Order-Level Goals (cont'd)

Subcontracting Plan is required in the overarching contract (i.e., GWAC contract #XYZ with GSA)



Order Level Goals can be required with orders placed against contract #XYZ



Order-level goals do not replace the contract's overarching subcontracting plan and goals

Strengthening Small Business Participation in Subcontracting

Actions that Strengthen Small Business Participation in Subcontracting

Contracting Officers can include language in the solicitation that strengthens the contractor's commitment to small business utilization, such as:

- requesting the name of proposed small business subcontractors in the subcontracting plan,
- including small business commitment in the contract's evaluation factors;
- encouraging the establishment of teaming agreements and subcontracting agreements with small businesses, and
- including the small business subcontracting plan incentive at [FAR 52.219-10](#).

What encourages subcontracting at all subcontracting tiers of a procurement?

- (1) The inclusion of order-level subcontracting goals on IDIQ contracts
- (2) The flow-down subcontracting plan requirement

Legal Obligations

What Small Business Legal Obligations Apply to Category Management?

Short answer: All the normal requirements!

- **Category Management does not waive existing small business requirements**

Long answer:

- **Consolidation and bundling**
- **PCR review**
- **8(a) release requirement**
- **Rule of Two (with a few exceptions)**

...plus some small business legal flexibilities to explore:

- **SBIR/STTR Phase III sole-source authority**
- **8(a) sole-source authority**

Consolidation and Bundling Restrictions

Both specifically apply to task orders.

Consolidation – A solicitation for a single contract or order to satisfy multiple agency requirements previously lower in cost.

Bundling – Consolidating multiple requirements performed by small business (or suitable for small business) into a single contract or order likely to be unsuitable for award to small business.

- 1. Must be justified by benefits**
- 2. Must notify the public for consolidation, substantial bundling**
- 3. Must consult with PCR at least 30 days prior**

How does Consolidation and Bundling Apply to Category Management?

- 1. Consolidating multiple requirements into one FSS task order or IDIQ task order.**
- 2. Bundling through the use of a non-SB vehicle. Some have only large businesses.**

PCR Review Requirement

1. **PCRs must be provided a copy of or PCRs must review any proposed procurement** currently being performed by a small business, but **the quantity or estimated dollar value makes small business participation as a prime contractor unlikely.**

FAR 19.202-1(e)(1)(i).

2. At the SBA's discretion, PCRs may review “**any acquisition**” to determine whether a set-aside or sole-source award to a small business under one of SBA’s programs is appropriate. 13 CFR 125.2(b)(1)(i)(A).

How does PCR Review Apply to Category Management?

✓ IDIQ contracts

-13 CFR 125.2(b)(1)(i)(A)

✓ IDIQ orders

-13 CFR 125.2(b)(1)(i)(A)

✓ FSS orders

-65 FR 36023 (6/6/00)

8(a) Contracts

Once 8(a), Always 8(a) Rule (13 CFR 124.504(d))

Follow-on requirement **must remain** in the 8(a) BD program **unless** SBA agrees to release it

Where new requirement contains 8(a) work, **must notify SBA**

8(a) Category Management Case Study: *Eminent IT (GAO B-418570)*

Dept. of State removed requirement from 8(a) program to put on IT Schedule 70.

Incumbent protested under “once 8(a), always 8(a)” rule.

State argued that the requirement was “new” relative to the incumbent services, but GAO disagreed.

GAO: If not “new,” State should use 8(a) or obtain SBA’s release.

Rule of Two

FAR 19.502-2(b)

The contracting officer ***shall*** set aside ***any acquisition*** over the SAT for small-business participation when there is a reasonable expectation that -

- (1) Offers will be obtained from ***at least two responsible small business concerns***; and
- (2) Award will be made at fair market prices.

Rule of Two Category Management case study: *Mori Associates (Claims Ct.)*

- 1. NIH cancelled FSS award for IT help desk services under IT70 and decided to use CIO-SP2i.**
- 2. No small businesses held a CIO-SP2i award.**

Result: Agency must apply the Rule of Two.

“nothing in the FAR provisions pertaining to task orders, or in FASA itself, exempts those purchases from the Rule of Two.” Case No. 10-298C

Rule of Two Category Management case study: *The Tolliver Group (Claims Ct.)*

1. The Army's Fort Sill canceled a GSA Schedule SDVOSB set-aside for training services.
2. Instead of setting aside the requirement, Army competed among large businesses on a non-set-aside multiple-award IDIQ contract.

Result: Agency must apply the Rule of Two.

“In sum, the government’s failure to apply the Rule of Two prior to deciding to cancel the solicitations at issue is fatal to that decision, whether because that failure undermines the central rationale of the cancellation decision or whether because the decision to move the work to the TMS MAIDIQ prior to conducting a Rule of Two analysis constitutes an independent violation of law.” Case No. 20-1108C

Rule of Two Category Management case study #2: *VSolvit* (Claims Ct.)

- 1. USDA combined two IT maintenance contracts.**
- 2. USDA competed the requirement among both large and small vendors on GSA Schedule IT70. A small business protested that the requirement was not set aside.**

Result: Agency does not need to apply the Rule of Two.

“Only when an agency intends to select a contract vehicle that does not have an exemption similar to FAR 8.404(a), does the Rule of Two set-aside determination apply.” Case No. 20-849C

Rule of Two Category Management case study #3: *Itility* (GAO B-419167)

- 1. DHS canceled a GSA Schedule SDVOSB set-aside task order for program management services. Changed from program management to IT.**
- 2. DHS elected to use Alliant 2. No small businesses hold an Alliant 2 contract.**

Result: Rule of Two protest denied.

GAO previously held that set-aside task orders are discretionary, not mandatory. DHS's current requirements are different from ITility's task order. DHS requires IT-centric labor categories and expertise.

Category Management Tier 1: SBIR/SBIR Phase III

Sole Source



GAO: **No competition** for an SBIR Phase III award that is **derived from, extends, or completes efforts** made under SBIR Phase I/Phase II.

GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548
Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE
The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: ASRC Federal Data Network Technologies, LLC
File: B-418765
Date: August 28, 2020

Damien C. Specht, Esq., James A. Tucker, Esq., and Caitlin A. Crujido, Esq., Morrison & Foerster LLP, for the protester.
Katherine B. Burrows, Esq., and Nathanael D. Hartland, Esq., Nelson Mullins Riley & Scarborough LLP, for American Systems Corporation, the intervenor.
Morgan Hilgendorf, Esq., and Timothy J. Haight, Esq., Defense Health Agency, for the agency.
John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

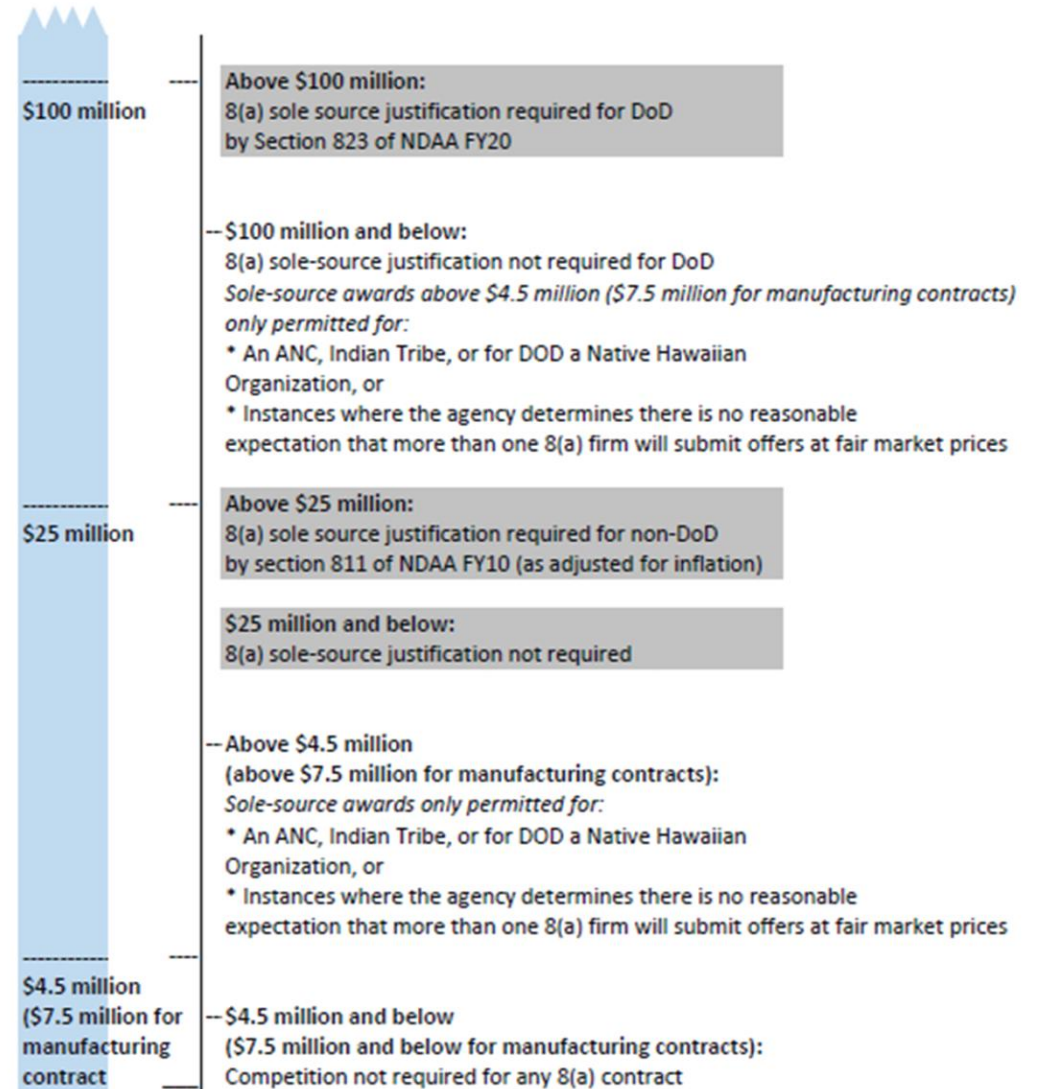
DIGEST

Protest that agency's issuance of a small business innovation research (SBIR) phase III sole-source task order was improper because the work required by the order did not derive from, extend, or complete a prior SBIR phase I or II agreement is denied where protester fails to show that the order's requirements do not incorporate any original concepts, findings, ideas, or research results generated through performance of a prior SBIR phase I or II contract.

DECISION

8(a) Sole-Source Authority

- At present, counted as SUM if part of an agency plan submitted to OMB
- Agencies can nominate an 8(a) firm, or submit an **open requirement**.
- SBA can conduct outreach to find 8(a) firms in needed industry categories—**But we have to know what those are**



See FAR 6.303-1, 19.805-1; DFARS 206.303-1, 219.808-1

Questions?