Carla: Welcome to today's live SBA web conference. With that, I'll turn the call over to Jan Kaiser. Jan, please go ahead.

Jan: Thanks Carla. Good morning everyone. My name is Jan Kaiser and I'm a procurement center representative out of Area IV in Chicago and our normal host is Dwight Johnson and as … I should say our usual host is Dwight Johnson and he's taking some much needed time off so I'll be hosting our webinar today.

Our presenter today is going to be Stephanie Lewis. Our next slide will give her information so that you can see that she is a size specialist and a commercial market representative out of Area V and I will go into Stephanie's information a little bit more but on the next slide I have my contact information. What I'd like you to do is as you listen to Stephanie's presentation today to wherever you are located, if you have a question or you think about another program that you think you'd like to see in the FY17 agenda of programs that we'll be offering next fiscal year, please give me a … contact me at my email address here. It's Janis, J-A-N-I-S, dot Kaiser, K-A-I-S-E-R, at SBA.gov. I'm very interested in getting any suggestions that you may have via email regarding potential topics for next year.

With that, I just want to go over some other information. This is a quick reference for you so that you can locate the PCR which is what I am, a procurement center representative, or you can also go to this directory and through the SBA website, locate a CMR, a commercial market representative, or someone in the Office of Government Contracting in your area of the country. This also provides just a quick reference about where in the FAR you might find some topics that you're trying to reference regarding small business and the small business program. Subcontracting plans you're going to find in FAR Part 19.7 which is what Stephanie is going to discuss with us today.

Then also just some reminders about SBA approving joint ventures of 8(a) firms only so you don't need to talk to SBA about or seek SBA approval for any other types of joint ventures prior to evaluating them or accepting them. Also, just also a reminder, in reviewing the 2579 or the Small Business Coordination forms which for GSA is the 2689 or for the VA is the 2268. You'll know your form for your agency. Just make sure that if you're doing a woman-owned or economically disadvantaged woman-owned small business set-aside that you're using the correct NAICS code and setting your procurement aside under the correct NAICS code.

Some of those have changed in this year and you want to make sure that you're not just using the NAICS codes that you used last time that you procured whatever service or supply that you're trying to do. Next slide please.

Just a quick review, the questions we're going to try to get done that you might ask during the program during the final 10 minutes. If you have any technical problems or issues, the telephone number is 1-888-796-6118. We'll also try to remember to state the page numbers periodically for folks that are working off of hard copies of the program because some people for security issues or for technical issues aren't able to log on and are only listening today so we'll try to say the page number. Then also, there's a link to our friends at the PTAC, our favorite resource partner for all of us is our Procurement Technical Assistance Centers. If you're trying to find a procurement technical assistance center in your area, their website is www.aptac-us.org. Next slide please.

This is a self-serve program so in order to get your continuing education point or CLP, continuous learning point, you need to go to the slide that will be next. That will be slide number 10. My mind skips ahead. Go ahead, I'm sorry. Now stop there. If you are interested in listening to previous programs we've provided you the list of the link for past programs and also, there's an information about, I don't know, link for how PTACs partner with federal agencies.

Slide number 7 has a header called Caution and that is where we say … we're trying to remind folks not to recommend fee-for-service firms for SAM registration. Federal government provides SAM registration and has tried to make SAM registration something that a small business can do themselves whereas if you put into your solicitation or synopsis that a small business should or can be registered with SAM by using a fee-for-service type of company you're encouraging a small business to have to pay for what we're hoping they can do for free. They can also consult with a procurement technical assistance center which will also help them do this for no to little cost.

This slide talks about the program that we have for this fiscal year. Today's program, Understanding Small Businesses Subcontracting Plans with Stephanie Lewis is the final program for the 2016 learning series and we've, as I said, just brainstormed any topics that you might like to have covered in the 2017 program which we're putting together right now.

The next slide we'll talk to you about what I meant to talk … what I started talking about which is the continuous learning point and this is a, as I said, a self-service kind of program where slide number 10 will give you the … is what you are going to download and print off after you enter your name and you create your certificate for today's training. If you are interested in making sure that you get on future emails of the program, the sbalearning@sba.gov website or sorry, email address is where we'd like to have you notify us that you want to continue or you like to be added to the list of folks to receive notice of this program.

With that, I'd like to introduce Stephanie Lewis and I met Stephanie at DoD SBA Small Business Training Conference in Atlanta earlier this year. It was a pleasure to meet her face to face and I had heard her speak before and she's a good candidate for all of us to learn a lot about the SBA's subcontracting program and with that, Stephanie, if you like to take it away.

Stephanie: Hi, good morning. My name is Stephanie Lewis and as has been said I'm a size specialist and also a commercial market representative here at SBA in Fort Worth. What a commercial market representative does is that we monitor the small business subcontracting plans of large businesses and federal contracts. That's our involvement in how we learn about and know about subcontracting plans and their compliance in federal contracts. I know if you're having trouble viewing the slides because they're too big, a mass note was just sent out on how to make that adjustment. That has happened to me before and it doesn't allow you to see some of the material that's on the slide when that happens. If you'll follow the note, maybe you could adjust it down a little.

We're going to start off on slide 11. I'll pause a little bit because some of the slides take a little bit of time to load as we progress through them. We're probably going to talk for about 35 minutes through the slides. It's a basic presentation about subcontracting plans although I'll be truthful with you, I'm not as confident as I have been in other presentations because we have had a lot of proposed and final rules come out with regards to small business issues lately such as lower tier subcontracting, limitations on subcontracting, new mentor protégé programs, size affiliation rules and so all these new rules are in different statuses and so, you'll even note here on the screen that you're looking at now, a final rule was just issued July 14th into the FAR. It largely mirrors some subcontracting plan, changes we made here at SBA and put into the CFR as a result of a National Defense Authorization Act requirement.

What happened was we made all those changes to CFR but a lot of contracting officers don't feel comfortable following them until they're in the FAR so then those changes are mirrored in the FAR to be like what is in the CFR.

In the presentation, anything that's written in purple is addressed in that final rule in the FAR but it also has been a rule for about a year now in the CFR. The importance of the subcontracting program, there's a lot of dollars spent in the subcontracting program, almost as much as what's spent in the prime contracting program which is a little known fact. Small businesses in 2014, I don't have the 2015 data but received 91 billion in prime contracts and 75 billion in subcontracts, so it's getting up there.

Subcontracting plans are intended to maximize participation of small businesses at all tiers of federal contracting and federal agencies are seeing an increasing importance on your agency scorecard that you get from SBA every year. Subcontracting achievement is now a part of your rating and so there's an added importance on and visibility on your subcontracting achievement of your first tier prime contractors.

We're going to advance to slide 12. Subcontracting plans originate in the FAR under FAR 52.219-7. Of course all the small business subcontracting plan requirements are at a FAR 19.7 but the clause that flows down is on FAR 52.219.7 and this just basically says that any company that's in other than small business so that's companies that we would deem large as a result of their revenue or employees, also non-profit and anybody who does not meet the small business definition is considered other than small. If they are issued a contract or a modification over $700,000 or 1.5 million for construction they're required to have a small business subcontracting plan as a part of their contracting award.

There's also FAR 52.219-8 which flows down to both large and small businesses over the small simple plan acquisition threshold. That clause just simply says that the contractor will seek out and utilize small businesses to the maximum extent practicable in their subcontracting.

There's two key coined phrases that are throughout the regulations that you'll hear. One is maximum practical opportunity, we'll talk a little bit about that later and then also good faith effort. Basically, what it says is that large businesses have to make a good faith effort to give small businesses a maximum practicable opportunity to do business with them as a subcontractor.

Next slide is 13. This is a matrix that shows contracting staff when they have to obtain a subcontracting plan and if a modification is issued whether they should obtain subcontracting plan or not. The one that was recently issued is the third line down, so you can see the purple writing on that but we'll go through them all.

If a contract over $700,000 is issued, of course a subcontracting plan is required. If a modification over $700,000 is then issued a subcontracting plan is of course required. However, it's not necessary to obtain another plan for the modification. What they do is they adjust and modify their original plan so that the contractor has one overall subcontracting plan. On the second line if a contract over $700,000 is issued but a modification under $700,000 is issued, the original contract requires a subcontracting plan but the modification does not.

The third line if a contract under $700,000 is issued, subcontracting plan is not required and then if another modification is issued under $700,000, the total of that exceeds the dollar threshold so the contract and the MOD is now over $700,000 so now a subcontracting plan is required. The last line it says contract under $700,000 is issued, a subcontracting plan would not be required but then later on modification over $700,000 is issued, yes, then a subcontracting plan would be required at that point. We get this question all the time about the modification and how that affects the original subcontracting plans so that's the reason this slide is in there.

Next slide. The CFR does attempt to define what maximum practicable opportunities are and I won't read this whole slide to you but I've underlined in red the key phrases on how contractors are judged whether they are expending maximum practical opportunity and some of those are breaking out contract work items, doing good market research to find small businesses, soliciting those small businesses, providing them with adequate time to submit an offer, assisting the small businesses, referring them to other local resources that they can use and participating in a mentor protégé program.

Subcontracting plans are never required from small businesses. They're also not required when no subcontracting opportunities exist. Meaning the large prime contractor is not planning to subcontract out anything under the contract, that means to large or small businesses and if that's the case, then the contractor should tell the agency that in writing and it's required that the contracting officer gets approval one level above and places that in the contract file, that waiver to the subcontracting plan.

I've seen instances where contracting officers make that determination on their own that there's not going to be any subcontracting. That would be a little bit difficult I think because it's difficult for a contracting officer to know what materials might be required or whether they're going to plan to subcontract that, any of it. It's really something that the successful offer should tell the contacting officer in writing, not the other way around. Also, a subcontracting plan is not required when the contract is going to be performed exclusively outside the United States. The purpose of subcontracting plans is to capture the amount of subcontracting spending.

What is the subcontract? Basically, a subcontract … we're on slide 16 … is any agreement between the prime and the sub for supplies or services. It doesn't matter what the form of payment is, and at this point we're only capturing first tier subcontracting in a subcontracting plan. We do have a proposed rule out right now for lower tier subcontracting capturing. We'll talk about that on the further slide. First, we're going to talk about just the basis which is the different types of subcontracting plans. There's four basic types of subcontracting plans and it's really up to the offer which type of subcontracting plan they supply.

The first one and the most common one is called an individual subcontracting plan. That's where you have a specific contract on the successful offer submits one subcontracting plan to cover all the subcontracting under that one contract for the entire contract period including the option years or option periods. The option period and the base period are going to be separately called out within the subcontracting plan.

Also contracting plans have the required elements of a plan which is the standard language which is typically taken right out of 52.219-9. In an individual plan, the offer is able to choose whether or not their goals are going to include indirect cost. If they choose to, they have to show you the formula to prorate those on that contract. Then the contracting officer is going to use the ISR, the Individual Subcontracting Report in the ESRS system to determine whether the goals on the individual plan are met.

The second type of plan is a master plan and I just told you that a lot of the language that is required in the subcontracting plan is standard language that comes out of the regulation, so what happens in a master plan is that standard language, we call it a boilerplate plan, it is set forth in a subcontracting plan and presented to the contracting officer and approved for a three-year period so that each time a prime contactor wants to be on a contract they don't have to have all that wording approved. Again, they simply present that pre-approved wording to the contracting officer and then they only include goals for that specific contract. Goals including the dollar goals, the percentage goals, how they came up with the goals and whether indirect costs are included or not.

Then the master plan and these goals are married together and then that becomes the individual plan for the life of that contract. This can be done on, the master plan can be done on a plant or division-wide basis and then again, because it becomes an individual plan in the end, an ISR is used to determine whether individual goals are met.

Next slide, we're on 20. The third type of plan is a commercial subcontracting plan and this is used when the government is buying commercial items as defined in FAR 2.1. In this type of subcontracting plan it's an annual plan that the contractor is going to present and it's going to include the entire production of commercial items on a corporate, plant, division or product line basis and it's going to cover all of the subcontracting during that one-year period that the prime contractor plans to do that is for its government and commercial work. This plan contains all the mandatory required elements out of the subcontracting plan and it must include indirect costs because the SSR which we used to measure their achievement with the plan requires the use of indirect costs.

We use the SSR, the summary subcontract report, in the ESRS to determine whether the goals in the commercial plan are met. So because this is an annual approved by one contracting officer it remains effective and valid throughout the contractor's fiscal year for any federal government that they've been on and once that original contracting officer has approved the commercial plan the government shall not require another subcontracting plan from the same contractor while that plan remains in effect as long as they're supplying a commercial item. That originally approved commercial subcontracting plan covers them for any commercial item that they did in that one-year period.

These pictures on the bottom are commercial items that we currently have that we know there are commercial subcontracting plans for. Just to give you a typical idea. Commercial plans are those commonly bought items that typically fulfill multiple purposes and are not altered when they're procured so like the eye drops. When the government buys those, they're not altered or specked out just for the government to buy. It's just a standard off-the-shelf type item that the government is buying.

We see a lot of commercial plans in VA contracts and GSA schedule contracts as well as the airlines have commercial plans. The last type of subcontracting plan on slide 22 is the DoD comprehensive subcontracting plan. It applies to DoD contracts only under DFARS 219.702. This is typically the largest DoD contractors. They set forth subcontracting goals on an annual basis based on the government's fiscal year. They can set them for on the corporate, plant or division basis. Then DCMA is going to administer the subcontracting plans and it's DCMA that negotiates those subcontracting plans with these participants in the comprehensive program.

The plan contains all the required elements. You can find a list of comp plan holders on the DoD [inaudible 00:24:17] website and they use the summary subcontract report in ESRS to determine whether the goals are met each year. These are typically the biggest DoD contractors like Raytheon, Lockheed, those types of companies have this type of plant. If you're a contracting officer and you have a subcontracting plan requirement and it comes from a company that has a comprehensive subcontracting plan, you don't have to do anything further because this DoD contract is already covered under their comprehensive plan.

One thing I meant to mention back on commercial plans is that commercial subcontracting plans can only be used when the government is buying a commercial item so in the event that the government attempts to buy a noncommercial item from the same contractor they can't really use their commercial plan to suffice for that subcontracting plan requirement. There are instances where certain companies have a commercial plan that covers all their commercial items they're supplying to the government but then they also have some individual plans out there for times that they have altered one of their products for government use.

A contracting can have no more than one subcontracting plan. Also, it's the contracting officer's discretion whether to require a plan if the contractor size changes from a small business to a large business at the time of recertification. You know how you have to get a size recertification for companies if there's a merger, innovation or if the contract's over five years in length? When that recertification comes in if they were small business and they've changed to a large business then it's the contracting officer's discretion whether to obtain a subcontracting plan for the remainder of the contract for which they are large.

Jan: Slide 24.

Stephanie: Thanks. How are plans reviewed? Individual and master plans are reviewed on a contract by contract basis by the contracting officer. Commercial subcontracting plans, when the company first gets involved in federal contracting and wins their first federal contract, the contracting officers for that first federal contract will approve their first commercial plan. It's an annual, if you remember, so at the expiration of their year, they need another plan approved and so they will go to the contracting officer for the contract that has the latest completion dates.

The contracting officer who approves the commercial plan, I'm sorry, the contractor provides a copy of that approved plan to each contracting officer for which they have submitted a commercial plan to meet the subcontracting plan requirement in any of their contracts. The DoD comprehensive plan is negotiated with DCMA annually.

Each subcontracting plan has a set of fixed goals to small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service disabled veteran-owned small business. A contracting officer may also establish goals as a percentage of total subcontract dollars, so all subcontracting plans have to have goals established as a percentage, the dollars and percentage as a result of their total subcontracting but then the new regulations allow contracting officers to also establish goals as a percentage of total subcontracting so that would be in addition to the total subcontracting. Then of course option years are always broken out separately in the goals area of the plan.

When the subcontractors are certifying their size to the prime contractor what happens is that the prime contractor decides the appropriate NAICS code for the subcontract. Very often it's not the same NAICS code that's used on their prime contract because they're going to choose the NAICS code that best describes the principal purpose of the subcontract work. Then they put that NAICS code on the face page of their solicitation award for the subcontract and so then the subcontractors know what size they have to meet to be considered small for the purposes of that subcontract.

Prime contractors have to collect written size self-certifications from all their subcontractors or if they put a certain cost into their solicitation they may rely on SAM, the subcontractor's representations in SAM and they may also use electronic certifications.

I mentioned the six goal categories, small, small disadvantaged, women, HUBZone, veteran and service-disabled veteran, of all of those there are all what we call self-certifying categories except one which is HUBZone. Self-certifying means that the company self-represents its size to the prime contractor on the written self-certification. That is taken at face value and considered to be true and accurate unless it's challenged or there's certain evidence that they know or they're aware that may be contradictory to that in which case they can refer that over to SBA for size determination. Companies they've count as HUBZone have to be HUBZone certified and they can validate that in the dynamic small business search.

For veteran VA contracts, there's one caveat to this in that they're service-disabled vets and veteran subcontractors do have to be in the vet [inaudible 00:29:56] registry but for all other federal contracts other than the VA, veteran and service disabled veteran is a self-certifying category. Also, when you do business with Alaska Native corporations or Indian tribes in subcontracting plans, those are counted towards the small business and the small disadvantaged business goal regardless of their size. When they do business with NIB/NISH, ability one, whatever, it's counted towards the small business goal and DoD contracts.

There are, when they're coming up with their subcontracting goals, there are things that they can exclude from subcontracting and this is a list of them and these now appear in the CFR. It's something we've never had before but they're typically well-known things like you would not include, depreciation, bank fees, charitable contributions, things like that.

We are on slide 29. Slide 29, so this is kind of a test yourself type slide. This slide reflects a lot of the problems and the inaccuracies that we see when reviewing subcontracting plan. Just take a look at this slide for one second and see if you can find the errors in this proposed subcontracting set of goals. We'll just pretend this is the base here. Don't worry about auction year goals or anything like that. That's not what this slide is for. Just take a second and look at them and then we'll go over what the errors are. I'm sure many of you on the line have seen much of these errors.

Actually, when you are reviewing the subcontracting plan it doesn't look too bad, right? They're doing 26% with SDV, 30% with small, 11 with HUBZone, veterans 7, well it depends on how you look at it, 16%. Women 5%, so it looks pretty good right, but there's a lot of errors on this slide the first one being that large business plus small business equals total subcontracting. Here we have small business at 30,000, which means the large business or other than small business is 70,000. That part is calculated correctly so their small business goal is 30%. However, there are subsets. There are small business subset goals, which is the SDB down through the SDV categories on the lower part of the slide.

Those are calculated into the small business goal which is not correct. You have to divide those into the total subcontracting dollars so on SDB you see that we have divided the 8,000 into the 30,000, that would be incorrect. The 8,000 has to be divided into the total which is $100,000 which makes their goal 8% and not 26.7%. Also, in subcontracting plans, there's no such thing as an 8(a) goal unless you are one of the DoE labs. That's the only exception to that. Those 8(a) firms, they would be categorized as SDBs in subcontracting plan. Also, in subcontracting plans we do not have economically disadvantaged women on small business. It's just the straight up women on small business category which is a self-certification category as we saw on the last slide for subcontracting plan.

Also you might have noticed with the women categories they had $1500 reflected in the EDWOSB line and nothing in the women-owned small business. Well, every EDWOSB is also small. If you have $1500 in EDWOSB that would be counted in the women-owned small business line so there's now $1500 in the women- owned pot. The same goes for the veteran-owned. You would never have a larger dollar in your service-disabled vet than you have in your plain veteran because service-disabled vets are also considered veterans. In this case the veteran-owned line should say 5,000 and the service-disabled veteran line should say 3,000.

There's nothing wrong with the HUBZone line but we do have a category on there called foreign. Foreign is a category that needs to be dissected a little further. Foreign can mean two things. Foreign can mean that the subcontract is being performed completely outside the United States. I remember on one of my earliest slides I said that those are not included in subcontracting plans. If that's the case with this $9,000 this $9,000 will be excluded from the subcontracting plan all together. Foreign can also mean that the company has foreign ownership and in this case … if that's the case then the company needs to decide whether its foreign ownership still meets the small business definition.

A small domestic company located in the United States can have foreign ownership and still be considered a small business as long as the small business is doing business here in the United States but it has to include their parent, foreign parent as an affiliate when calculating their size. That foreign line should be dissolved and put either excluded if it's outside the United States or it should be put up in the larger small business category.

I know you guys have seen a lot of those errors so I just wanted to go over them. When you take all those errors out this is the slide that represents their true small business subcontracting goals for this contract. They still look really good comparatively speaking to what the contract is about.

What contracting staff spends a lot of time doing with subcontracting plans is determining whether the goals that are proposed are acceptable or not. We have several types of goals. We have statutory goals which are 23% small, 5% to SDB, 5% to women, 3% to HUBZone and 3% to service-disabled veteran. We have from that each year each agency sets agency subcontracting goals with SBA for their agency. They may differ from these statutory goals but there's other goals that you all are held to on the SBA scorecard at the end of the year. You negotiate those annually with SBA and those become your agency goals.

Then a lot of times what we see is agencies will slow down these agency goals in subcontracting plans as minimum floors or minimum goals or suggested goals or something like that. I understand what agencies are doing when they do that although I don't think that's the intent on how goals are rolled down to large business prime contractors. I know that's the ballpark. The area, the way of thinking is that if everybody met those goals then the agency would meet their goals so everything would be good. Really, subcontracting plan goals that are reflected in subcontracting plans are supposed to present the maximum practicable opportunity that small businesses can have under the work that's reflected in that contract. Sometimes that is much higher than the agency's goals and sometimes it may not be as high as the agency's goals.

What the FAR says are that goals should be set, we're on slide 32, goals should be set at a reasonable level to reflect maximum faith effort to expand maximum practicable opportunity to small businesses. It says that prime contractors shouldn't low ball their goals just to eliminate liquidated damages or to eliminate an administrative burden of going out there and finding new small businesses to do business with. They shouldn't low ball their goals just so that they can meet their goals. The government should not require them to negotiate goals upward if a higher goal will significantly increase the government's cost or impede the attainment of the acquisition objectives.

This is all sort of a delicate balance I know when you're reviewing subcontracting plans. What we like to see is that no detailed standards apply to every subcontracting plan when you're reviewing the goals. It really is supposed to be reflective of maximum practicable small business opportunity under that contract. The goals should be attainable. They should not be setting goals that are so high that they can't attain them. When contracting officers and small business specialists are reviewing goals to determine whether they're acceptable or not, the things that they might consider are the company's previous involvement in small businesses in similar acquisitions, the availability of small businesses in socioeconomic groups. One germane example I can think of is that sometimes it's very hard to find HUBZones that are perhaps in the engineering or architectural fields. It's difficult under those types of contracts for them to set a very aggressive HUBZone goal.

You should consider the contractor's own past performance in the achievement of their subcontracting goals. You should consider the reasonableness of the goals. In the subcontracting plan itself it describes how they came up with the goals and how they plan to achieve them, so of course you should evaluate that.

The mandatory elements of a plan on slide 34, those are spelled out in FAR 19.704. Like I said earlier the mandatory elements are required in every type of plan, all four types of plans. The only thing that changes is the goals and they as we spoke of have to be based on the total plan subcontracting and then options are broken out separately. On individual plans, the goals may be represented also as a percentage of total contract value in addition to total plan subcontracting.

I don't want to redo these required mandatory elements. I'm sure you've seen them a lot of times. They haven't changed over the years and they're all listed in the FAR Part 19 and 52.219-19.

Slide 36. The PCR, the SBA PCR's role in reviewing subcontracting plans is an advisory rule. They review the solicitation and the subcontracting plan and then they provide advisory recommendations to the agency for which the agency makes the ultimate decision on whether the use of subcontracting plan is approved or not.

We're going to talk now a little bit about subcontracting plan reporting. We're making good progress so I think we'll be able to be done by 20 after the hour.

The post award responsibilities of the agency which is now not a proposed rule but a final rule in FAR 19.705-6. You must assess whether the prime contractor made a good faith effort to comply with its small business subcontracting plan and assess the prime contractor's written explanation if they did not use a small business that they had stated that they were going to use in the bid or proposal. There's a new rule that says when prime contractor does not use a small business that they named in the proposal or the subcontracting plan in the same scope, amount or quality that they now have to submit a written explanation to the contracting officer explaining why that happened.

You'll monitor the progress of their plans through the ESRS system at esrs.gov and we monitor those two types of reports. One's called the ISR, one's called the SSR. The ISR is submitted twice a year. It's submitted 30 days after the reporting period which is March 31st and September 30th. Then anytime they complete a contract they are also going to submit a final ISR. They must submit the ISR even if no subcontracting has occurred. When they submit their goals in the ISR the options years are rolled in as those goals are exercised. Of course, we spoke that ISRs are due from individual plan holders.

SSRs are due from every type of plan holder, individual, commercial, and comprehensive. It's due once a year annually at the end of the close of the government's fiscal year and it's due within 30 days after so it's due by October 30th each year.

Jan: Next slide is slide 40.

Stephanie: Great.

If you have a problem in the ESRS system, SBA CMRs are superusers and there's things that we can do in the system to assist you sometimes if you're at a critical point like you need a certain report rejected and you've previously accepted it or something like that. SBA superusers, you do have superuser right so we can go into the system and assist you in limited instances that you're having extreme difficulty in. Contact your local CMR from the website that Jan provided you earlier on our website at sba.gov and click on contracting and then click on commercial market representatives and you can find a list of who your local one is.

ISRs are approved by contracting officers. Also large businesses are required to secure flow down subcontracting plans from their large businesses when they issue a subcontractor over $700,000, we call that the flow down requirement. We also have large businesses going in and approving ISRs for their lower tier subcontractors as well. You must accept or reject the ISR report within 60 days. If you reject it there's a field in there for you to provide an explanation to the contractor so that they can read that and figure out what the problem is and then resubmit their report after they've made the corrections.

You should reject the report if there's errors, omissions or incomplete data. Accepting the report is not the same as approving the report which you want to make that distinction that just because you'd accepted it does not necessarily mean that you verified all the data and have approved the report as valid but you have accepted it as a contractor's representation of what they've done and you don't see any obvious errors, omissions, et cetera, and you are the proper person to be making that decision. We do have a lot of prime contractors who steer their report towards the wrong person to approve so if that's the case reject that and provide in the explanation.

The goals … I'm sorry, the remarks that you put in the system, those are logged in the systems so those are always visible underneath that ISR for running log or what occurred. Next slide, 41. We're going to go into SSR reporting, that summary subcontracting reporting, that's the report that every company does. For commercial plans that's going to be approved by the contracting officer who approved that commercial plan for that fiscal year. If they have a commercial plan they're just going to submit one SSR. Let's say they have a commercial plan and they had it with VA and then they also got some DoD work and then they also got some VA work for which they also filled the subcontracting plan requirement with their commercial plan. When it comes to submitting the SSR within that report they're going to select that it's a commercial plan and they're going to say the percentage of dollars attributable to each agency. For those three agencies that they had a subcontracting plan with it, that they use their commercial plan with, they're going to say what percentage of dollars is attributable. It may be that for the VA their work was 14% of their work so they put 14% in there.

The SSR for individual plans is approved by an agency representative that your particular agency has figured out who that is, it varies from agency to agency, who approves the SSRs for your agency. A separate report to each agency is submitted for an SSR that covers only that agency's contracts. When they have individual plans they have to submit individual SSRs so they would submit one to VA, one to DoD, one to NASA representing only the work that they've done under those agencies' contracts.

All subcontracting under prime contracting and subcontracting with the awarding agency, regardless of the dollar value of the subcontracts. There you have an individual plan and they're submitting a report to NASA they are going to include any subcontracting you may have done during that period for any NASA contract that was a prime contract or a subcontract. It's not just their prime contracting dollars. It includes their subcontracts that they may have had with NASA as well.

The SSR may be submitted on a corporate, company or subdivision basis and for DoD a consolidated report is submitted except for construction for which you would do it for each DoD component like army, navy, air force, et cetera.

Post award monitoring. SBA does post award monitoring. Our CMRs conduct certain types of reviews with companies that have subcontracting plan. We conduct subcontracting orientation and assistance reviews. Those are usually introductory type reviews where we explain the plan, what's required of the plan, how to do reporting, those types of things. We do desk reviews for which you may have received a copy of. That's where we take a look at what's in the ESRS as compared to their goals and we write them a letter on how they're doing. We conduct a full program compliance review which is an onsite review spending over a few days usually. That looks like that small business program from top to bottom and we issue a rating and a letter to them as a result of that review and then we have a follow-up review where we go back and check on previous recommendations we've made under a full review.

DCMA also does reviews of DoD contractors. We do have a new MOU with them where they are going to be also reviewing subcontracting plans from non-DoD contractors if they already are there reviewing a company because they are DoD contractor. They're relieving SBA a little bit from some of our civilian agency contractors. You may see reports from DCMA instead of SBA if you have a civilian agency contract now for which DCMA went out to do review. SBA also conducts surveillance reviews. That's where we go out to the agency themselves and take a look at their small business program and contract compliance.

The prime contractors get a rating from SBA as a result of a full review. Those ratings are exceptional, very good, satisfactory, marginal which we require them to submit a corrective action plan and unsatisfactory which would also require them to submit a corrective action plan for which we follow up on and keep a close eye on the companies that receive the marginal and unsatisfactory rating. Also if DCMA reviews a company and they receive one of those ratings they will engage now SBA and we will both be doing basic, double or in cooperation oversight for companies that have those lower ratings.

It's the contracting officer's discretion whether to assess liquidated damages. Sometimes when we go out and we see a company with poor performance not making good faith efforts and not making a maximum practicable opportunity we will submit a recommendation to the contracting officer that you consider imposing liquidated damages on the company. You would assess those damages when there is willful or intentional failure to perform in accordance with the requirements of the subcontract and/or willful or intentional action to frustrate the plan.

The FAR states how to calculate those damages but it's basically the amount that the goal was missed by is the amount of the damage.

Jan: Slide 45.

Stephanie: Okay. We do have four more slides. We're just going to look through them quickly just to make sure what they were.

This is a new rule. It basically says orders under IDIQ contracts. The agency funding the order may establish the small business subcontracting goals for individual orders, BPAs or BOAs. In this case we submit the subcontracting reports for individual orders to the contracting officer on an annual basis. The agency funding the order will receive credit towards its small business goals and more than one agency may not receive credit towards this subcontracting goal.

You might see there's a lot with GSA schedule, other agencies can place orders under the GSA schedule. The master GSA contract with GSA has a subcontracting plan already with GSA. When let's say DoD places an order under the GSA schedule they may now set small business subcontracting goals for that order. We do not have an appropriate reporting mechanism, like they would not input the small business achievements in ESRS for the order. They would still do it for the master GSA contract though. The individual order goals would just be reported to the contracting officer on an annual basis at this point.

We also have a proposed rule that's come out as a result of the NDAA 2014 and it basically states that for individual subcontracting plans the contractor's not going to be able to receive credit for lower tier subcontracting and it will devise its plan at the time of plan submission to the agency with these lower tiers in it. The comment period has closed on this and there is a draft final rule in review so we do expect this rule to be coming out soon. Again, it only applies to individual subcontracting plan.

The prime contractor must incorporate the subcontracting plan of their lower tier large businesses in their individual subcontracting plans. Then those lower tiers must also have their own individual plans if the subcontract is at or above this threshold and are required to meet the goals in those plans themselves as well.

What we don't want is double reporting. We don't want the roll up report of the highest tier prime contractor to be submitted and then also each lower tier submits because that would result in double counting. The actual subcontracting dollars are only reported once for the same award to avoid any double counting. Of course our systems are going to be adapted for this.

Okay. That's the end of my presentation. Jan, if you want to take it from there either with questions or with your remaining slides.

Jan: Well, let's start with questions that we've received so far this morning. Let's see.

If the regulation is in the CFR GAO is protested would still utilize the CFR to decide the case, right? It doesn't have to be in the FAR in order to be applicable, question mark. [inaudible 00:54:38]

Stephanie: Well, that's really something that you should talk with your legal counsel about SBA feels that once the regulations are in the CFR they become a regulation. However, we have some contracting officers that don't like to use the regulations until they are part of the FAR. Under the subcontracting achievements we no longer have that problem because now there's a final rule and these subcontracting rules, subcontracting improvement, the final rule has been issued and they will become effective on November 1st of this year.

We're always trying to play catch up with the CFR and the FAR to make sure that there's only one set of rules that are being followed by all, that is our intent but sometimes there's a little lapse and it's just something that we work through.

Jan: Yeah. One of the questions has to do with … It's actually a statement that universities are required to submit a subcontracting plan.

Stephanie: True. Universities themselves will determine whether they are large or small and based on that definition if they turn out to be large or what we call other than small, they would be required to submit a subcontracting plan. I personally monitor several subcontracting plans with universities here in Texas. It's true they do a lot of research type contracts.

Jan: Are there waivers for electricity and gas subcontracting plans?

Stephanie: No. We do have … One of our most successful large businesses is here in Texas in the Houston area that is a utility prime contractor. Again, if they meet the definition, do not meet the definition of a small business then they're required to submit a subcontracting plan. A lot of times they have commercial plans. They would submit commercial plans. They are treated and required to have a plan just the same.

Jan: Another question is does the commercial plan also include commercial services or is it more for commercial products?

Stephanie: Commercial plan has to include all subcontracting. It's anything that is thought to fulfill the ultimate contract. If that is a service then it would have to include the service as well.

Ultimately, the government's buying a commercial item, right, so that's a product. Sometimes in the development or production of that product, there's a service that goes with it that is subcontracted. If the service is a subcontract then yes, it has to be in the commercial plan.

Jan: Who approves the commercial subcontracting plan for multiple … sorry. It just skips because we're getting questions coming in and I was looking at a question and it just moved up. There was about who approves the commercial subcontracting plan since multiple agencies use the plan?

Stephanie: Okay. For commercial subcontracting plan when the company first submits a commercial subcontracting plan and that first contracting officer would approve the plan on behalf of … basically on behalf of all future contracting officers for which the commercial plan is going to be submitted. The commercial plan is based on a one-year period. Any contractor, that contractor bids during that one-year period that requires a subcontracting plan, they simply present the approved subcontracting plan to the contracting officer. When that plan expires at the end of the year, 30 days before its expiration, they go to the contracting officer with the farthest completion date and ask them to approve their subsequent year plan.

Then whatever contracting officer's approving their plan is responsible for going into the SSR and approving their SSR report at the end of that fiscal year. It can change. The contracting officer can change throughout the years with the commercial plan.

Jan: Regarding the commercial plan, if a plan already exist for a federal supply schedule or GSA schedule and we issue an IDIQ for a local contract, what do we need in our files for evidence that a plan already exist? Is a copy of the original plan sufficient?

Stephanie: Wow, I would be surprised that you could get a copy of the original plan. If it's like a GSA contract for schedule there is a subcontracting plan in that GSA contract with GSA. That is what the contractor has held to. If you're placing an order into the schedule, remember my slide says that you may now obtain goals for the order but you don't have to. It's basically the contracting officer's discretion. You can just go along with the master GSA subcontracting plan goals and do nothing, in which case I don't even believe you have to have a copy of the subcontracting plan but you should document somewhere in the file that it's an order under a GSA schedule so the responsibility of the subcontracting plan rests with GSA.

Jan: Okay. What does a subcontracting plan contain at the IDIQ level where just a minimum capacity has been established? Without knowing scopes of work of future task orders contractors couldn't reasonably project anticipated subcontract dollars so will the plan for the base IDIQ contract just have percentage goals?

Stephanie: No. You really can't do that. The company has to … in all instances when a company is creating a small business subcontracting plan they have to project their dollar and percentage goals. They have to project or estimate based on the expectations of the contract what is a reasonable or expected level of subcontracting. Sometimes it's very foggy when it comes to IDIQ contracting. Sometimes the contractor projects incorrectly from the beginning and either there's a lot more or a lot less contracting or the work is completely different from what they projected in a different scope that was still authorized under that contract. In that case, they may request to the contract officer that they modify their plans somewhere along the stream of the contract because they were so off-based originally and they don't want to look like they're not meeting their goals and they can do that. The contracting officer may decide whether they want to allow a company to modify its subcontracting plan or not. That may be considered but upfront, they have to have dollars and percentage goals.

Jan: Okay. I'm just going to ask you one more question is …

Stephanie: Okay.

Jan: Can a small business subcontract to a large business? Must they get approval and if they do, are they required to do any reporting?

Stephanie: No. If a small business is the prime contractor they do not have the subcontracting plan requirement so they do not have any flow down requirement either. If a small business prime contractor subcontracts to a large business there is no subcontracting plan stuff at all.

Jan, if there's a remaining question then anybody who wants to email me them, I'd be happy to answer those via email if you just forward it to me at stephanie.lewis@sba.gov. I know we're running past time. I do want to make sure everyone gets their questions answered. Just email them to me. I'd be happy to do that.

Jan: Thank you, Stephanie, for offering to do that. It's an awesome, awesome priceless thing. With that, we want to conclude today's program. Carla, if you have any other comments, that would be fine and I just want to thank everyone for participating in this year's 1102.

Carla: No Jan, that is all. Thank you all for joining us today. This concludes our event and you may now disconnect.