

CHANGE REQUEST COVER SHEET

Change Request Number: 10-13A

Date Received: 11/24/2009

Title: Small Business Development Program - AMS Guidance and Clauses

Name: Tim Eckert

Phone: (202) 267-7527

Policy OR Guidance: Guidance

Section/Text Location Affected: T3.6 and Clauses

Summary of Change: Change to AMS Guidance, and clauses 3.6.1-1, 3.6.1-4, 3.6.1-6, 3.6.1-12, and new AMS clauses for Incentive Subcontracting Program, Notice of Partial Small Business Set-Aside and Post-Award Small Business Program Representation. Changes will also require submittal of subcontracting reports via eSRS (Government- wide subcontract reporting system) and updates to small business size status representations after contract award.

Reason for Change: Need to update current AMS guidance and small business clauses to remove obsolete language and to add clauses that will further Small Business Development Program goals and objectives.

Development, Review, and/or Concurrence: AJA-8

Target Audience: FAA Contracting Personnel Workforce

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS EDITED:

Procurement Guidance:

T3.6.1 - Small Business Development Program

Small Business Development

Section 4 : Subcontracting with Small Business [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.6.1 - Small Business Development Program

Small Business Development

Section 6 : Business Declaration [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 4 : Subcontracting with Small Business

Old Content: Procurement Guidance:

T3.6.1 - Small Business Development Program

Small Business Development

Section 4 : Subcontracting with Small Business

In procurements estimated to exceed \$550,000 (\$1,000,000 for construction), the CO must incorporate subcontracting provisions (including attainable and reasonable subcontracting goals for the participation of small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, women-owned small businesses and service disabled veteran owned small businesses). Subcontracting provisions are not required for commercial items or when there are no subcontracting possibilities or when the prime contractor is a small business or a small business owned and controlled by a socially and economically disadvantaged individual. The contract should include requirements for contractors to periodically report data on subcontracting accomplishments in sufficient detail to determine the extent of the contractor's attainment of subcontracting goals.

The following is a listing of the subcontracting considerations as a guide that should be used in procurements that have subcontracting provisions as appropriate:

- a. Establishment of goals requires much care to ensure that they are realistic and motivate the contractor. Percentage goals that are unrealistically low will only create a false sense of success and should be avoided. Likewise, goals that are too high can be counterproductive.
- b. Subcontracting requirements should be a subject for review and discussion at postaward conferences. It is important to monitor contractor performance in meeting goals. This is particularly important early in the life of the contract when the majority of subcontracts will be awarded. Prompt corrective action should be taken if it appears that a contractor will not meet its goal. The CO is responsible for ensuring that the contractor attains all subcontracting goals. Subcontracting data (accomplishments) must be timely forwarded to the individual responsible for the preparation of the Major Procurement Program Goal Report.
- c. The procurement team should notify the Small Business Development Program Office (SBDPO)/liaison of the opportunity to review the subcontracting proposal in sufficient time to

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provide the representative a reasonable time to review the material and submit advisory recommendations prior to award.

d. The CO should provide a listing of potential small business subcontractors for information purposes. The FAA should not make any warranty as to their capabilities or abilities to perform any portion of the contract. The listing may be obtained from the SBDPO.

e. Evaluate the percentage and dollar volume of planned subcontracting, total dollar volume of expected awards to small business subcontractors (including small businesses owned and controlled by a socially and economically disadvantaged individuals, women-owned and service-disabled veteran owned concerns).

f. There should be separate subcontracting goals for small businesses and small businesses owned and controlled by a socially and economically disadvantaged individuals, women-owned and service-disabled veteran owned concerns expressed as a percentage of total planned subcontracting dollars.

g. Principal product and service areas to be subcontracted and an identification of those areas where it is planned to use small business, small businesses owned and controlled by a socially and economically disadvantaged individual, women-owned and service-disabled veteran owned subcontractors.

h. Review business declarations of principal proposed small business and small disadvantaged business subcontractors, including the type of product or service and the dollar value thereof to be awarded to each principal subcontractor. This information is to be used to assist the CO in making a determination as to the acceptability of the proposed subcontracting goals. The contractor is not contractually bound to make awards to the designated subcontractors nor is the Government approving the subcontracts.

i. Evaluate extent of complexity and variety of work to be performed by small businesses with greater weight on performance of substantive or high technology components or services. In this way, the FAA can ensure that small businesses will receive technologically challenging or a meaningful portion of the overall contract;

j. Include subcontracting monetary incentives such as including an award fee provision to provide incentives for providing meaningful, technically substantive subcontracting work to small businesses. Under this approach subcontracting proposals that provide appropriate percentage commitments would be accepted, but an award fee contract line item would be incorporated as part of the contract. Receipt of the award fee would be after either preliminary design review, critical design review, or other appropriate milestones. The percentage amount of the award fee pool would be based on the extent the contractor has provided meaningful, technically substantive work to eligible small businesses within the previously accepted percentage goals;

- k. Evaluate past performance related to the offeror's compliance with prior subcontracting proposals and subcontracting plans with greater weight on subcontracting proposals received from concerns that have successfully attained, or exceeded subcontracting goals in the past.
- l. Evaluate level of participation of small businesses evaluated based on the percentage of the total contract value (if appropriate). This is particularly recommended for requirements traditionally performed by small businesses that perhaps will be displaced due to the bundling of smaller set-aside requirements into one larger contract.
- m. Contractors should be required to flow down similar subcontracting requirements under the prime contract to all subcontractors (except small businesses).
- n. If an offeror submits an offer that does not address each of the subcontracting provisions, the CO should advise the offeror of the deficiency and request submission of a revised offer by a specific date; and
- o. If the offeror does not submit an offer which incorporates the subcontracting requirements within the time allotted, the offeror should be ineligible for award.

New Content: Procurement Guidance:

T3.6.1 - Small Business Development Program

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The procurement team should notify the Small Business Development Program Group (SBDPG) or Small Business Liaison Representative of the opportunity to review the subcontracting proposal in sufficient time to provide the representative a reasonable time to review the material and submit advisory recommendations prior to award. The CO is responsible for ensuring that the contractor attains all subcontracting goals. Subcontracting data (accomplishments) must be timely reported in the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov/>.

c. The CO should provide a listing of potential small business subcontractors for information purposes. The FAA should not make any warranty as to their capabilities or abilities to perform any portion of the contract. The listing may be obtained from the SBDPG or Small Business Liaison Representative.

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Section 6 : Business Declaration

Old Content: Procurement Guidance:

T3.6.1 - Small Business Development Program

Small Business Development

Section 6 : Business Declaration

a. To preserve the integrity and foster the objectives of the small business program, the FAA must satisfy itself that the ownership, control, and day-to-day management requirements of the program are fulfilled. Each business claiming eligibility as a small business or small business owned and controlled by a socially and economically disadvantaged individual must be required

to provide evidence of eligibility prior to award. The FAA reserves the right to review and verify each firm's program eligibility. If the firm is not a small business as defined by the North American Industry Classification (NAIC) code size standards, it will not qualify as a small business.

b. For set-asides restricted to small businesses, very small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals (8(a) certified) and/or service-disabled veteran owned small businesses, the Business Declaration Form shall be included in the SIR, and completed by each offeror.

c. For unrestricted procurements, the successful offeror shall complete and submit the Business Declaration Form to the contracting officer.

d. When subcontracting goals are established for small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, small businesses owned and controlled by women, and service-disabled veteran owned small businesses, the prime contractor shall obtain a completed Business Declaration Form for such small businesses counted toward the successful offeror's subcontracting goals.

e. A successful small business program rests with the FAA's ability to limit participation to bona fide small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals for they are the intended recipients of the agency's procurement dollars earmarked for small business set-asides.

f. To that end, the business declaration is:

(1) A tool used to ensure that the small business program benefits only those businesses that are bona fide small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals by establishing a basis for determining a firm's eligibility to participate in a small business set-aside; and

(2) A tool used internally by the Small Business Development Program Office (SBDPO)/Liaison to accurately report awards made to small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals on the Major Procurement Program Goal (Accomplishments) Report.

g. In order for the owner of the firm to be found to have controlling interest in the company the following must exist:

(1) The eligible owner holds the position of chairperson of the board, president or Chief Executive Officer;

(2) The eligible owner has the right to vote his or her shares or other equity interest to elect the majority of voting members of the Board of Directors or other governing body;

(3) The eligible owner holds at least 51% unconditionally ownership and control of the operation;

(4) The eligible owner has direct full-time responsibility for the day-to-day management of the business, as evidenced by all of the following:

(a) Directly related managerial or technical experience and competency;

(b) Establishment of company policies;

(c) Determination and selection of business opportunities;

(d) Supervision and coordination of projects;

(e) Control of major expenditures;

(f) Hiring and dismissing key personnel;

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(3) A tool used to periodically conduct recertification of compliance with small business size standards on short-term contracts (not more than five years duration) in the event of a merger, acquisition, or novation and long-term contracts (more than five years duration). A contractor must rerepresent its size status according to the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract. The purpose of the rerepresentation is to improve the accuracy of small business size status reporting. If the contractor rerepresents that it is other than small, FAA may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements beginning October 1 of the fiscal year following the rerepresentation by amending the FDPS to reflect the new size status. It is the CO's discretion to exercise the option or terminate the contract taking into account the Government's need for continuity of operations, potential costs of disrupting operations, and the impact on small business. A contractor's change in size status as a result of a rerepresentation requirement will have no effect on subcontracting plan requirements that were imposed, or not imposed, at the time of contract award. The rerepresentation should have no effect on the terms and conditions of a contract and a contracting officer is not required to terminate the contract when, as a result of a protest, the concern is found to be other than small. Blanket purchase agreements (BPAs) are not

contracts and the representation of size status for purposes of options on BPA Orders and multi-year BPA orders is not required.

g. For the owner of the firm to be found to have controlling interest in the company, the following must exist:

(1) The eligible owner holds the position of chairperson of the board, president or chief executive officer;

(2) The eligible owner has the right to vote his or her shares or other equity interest to elect the majority of voting members of the board of directors or other governing body;

(3) The eligible owner holds at least 51% unconditionally ownership and control of the operation;

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(2) A tool used internally by ~~the~~ contracting personnel, Small Business Development Program ~~Office Group~~ (SBDPO/SBDPG) ~~and Small Business Liaison Representatives~~ to accurately report awards made to small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals on the Major Procurement Program Goal (Accomplishments) Report; and

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