



PROCEDURES FOR IMPLEMENTING THE LIMITATIONS ON SUBCONTRACTING CLAUSE - FAR 52.219-14

1. PURPOSE

Recent events have highlighted the need for providing procedures for Contracting Officers, Contract Specialists, and Contracting Officer's Representatives (CORs) to follow when awarding a prime contract under the authority of FAR 19.5, Small Business Set-aside or FAR 19.8, the 8(a) Program.

2. POLICY

When the Acquisition Strategy calls for a competitive small business set-aside, a small business set-aside, a partial small business set-aside, or the 8(a) program- then include [FAR 52.219-6](#) Notice of total Small Business Set Aside, [FAR 52.219-7](#) Notice of Partial Small Business Set-Aside, and/or [52-219-18](#) Notification of Competition Limited to Eligible 8(a) Concerns, as applicable, along with [FAR 52.219-14](#), Limitations on Subcontracting (also see [13 CFR 125.6](#)); in the RFP and resultant contract. It is DoD and SPAWAR Contracting Policy, to ensure the prime contractor complies and performs at a minimum, 50% of the costs for labor in a services contract; and at least 50% of the costs of manufacturing the supplies, not including the cost of labor. In addition, sole source awards using the authority of the 8(a) program, exceeding \$20M, must have written justification. The SBA may not accept for negotiation a sole-source 8(a) contract that exceeds \$20 million unless the requesting agency has completed a justification in accordance with the requirements of [6.303](#).

Award of any small business set-aside or 8(a) contract/ task order (**e.g. – Seaport**) requires a Post Award Conference to inform the Prime of their responsibilities in regards to the Limitations on Subcontracting clause. The Post-Award Conference may be face to face, VTC, telephone, or in writing.

**** REMINDER**** the following must be complied with when contemplating awards exceeding \$3000, but less than \$150,000 (Simplified Acquisition Threshold):

Section 15(j)(1) of the [Small Business Act](#) (page 164) and the Federal Acquisition Regulation (FAR) at [FAR 13.003\(b\)\(1\)](#), require contracting officers to set aside contracts above the \$3,000 micro-purchase threshold and below the \$150,000 SAT exclusively for small business, unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. This is known as the "rule of two." [FAR 19.502-2\(a\)](#)

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requires the contracting officer to document the file if a set-aside is not used in connection with the award of a contract in this dollar range.

3. RESPONSIBILITIES & PROCEDURES

PM/Technical Code: Develop the Acquisition Strategy in conjunction with the SPAWAR Office of Small Business Programs and the Contracting Officer/Specialists. If the Acquisition Strategy requires award to a small business, using either a competitive small business set-aside, or an 8(a) award, the RFP shall have [FAR 52.219-6](#) Notice of Total Small Business Set Aside; and [FAR 52.219-14](#), Limitations on Subcontracting. The FAR Limitation of Subcontracting clause requires the Prime to provide *at least* 50% of the labor costs. They may subcontract up to 50% of the labor.

The Contracting Officer's Representative (COR): The COR must not direct subcontracting. It may impact the Prime's ability to retain 50% of the costs for labor. Requests for adding subcontractors are typically approved by the Contracting Officer. The contractor must provide the size standard of the proposed subcontractor based on the NAICS code assigned to the contract. **Any additions to the subcontracting team, after award, is a Tripwire, and input must be made to the Tripwire Tool.** If the added subcontractor is going to be performing a significant amount of the work, the Prime must provide rationale and what steps they are going to take to ensure they retain 50% of the labor costs in-house or, submit a revised proposal to the Contracting Officer/Specialist. The COR must review invoice submissions monthly to determine the costs being billed for labor and determine if the costs are associated with the prime or a subcontractor. The COR must notify the Contracting Officer if the labor costs of the Prime slip below 50%.

The method SPAWAR shall use to track compliance is to require the contractor, through a Contract Data Requirements List (CDRL), to report, every three months, the % of subcontracted labor costs. This can be tracked by the Contract Specialist and corrections made to ensure the contract ends up with the Prime performing 50% of the labor costs in-house. ([See the CDRL in the Toolbox below](#))

The CDRL to be used to monitor subcontractor compliance is the "Certification/Data Report."

Instructions for completing the CDRL: 1) Identify whether the subcontracting methodology is a percent of contract value or percent of subcontracted value; 2) Identify the subcontracting credit (Tier 1, Tier 2, Tier 3, or All Tiers) in accordance with contract/task order (**e.g. – Seaport**); 3) Identify all subcontractors by name, socio-economic categories, prime vendor purchase order number, percentage of contract value or percent of subcontracted value whichever is applicable, dollar amount, NAICS code to include a description of significant events and how they were a benefit to small business (IAW [CPARS Guidance - Attachment A2-2](#)); and, 4) Identify the total percent of contract value or percent of subcontracted value, whichever is applicable, that was expended. The Government reserves the right to perform spot checks and/or request copies of supporting documentation.

BLOCK 12 & 13: The Contractor shall deliver the initial monthly report 105 DACA. Subsequent submissions due no later than 15 days after the end of the next three month period. The required reporting covers every three month period and is an accumulation of the subcontracting efforts to

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date. The subcontracting information in this report shall be provided in accordance with 52.219-14 as prescribed in 19.508(e) or 19.811-3(e).

Contract Specialist/PCO: When the Acquisition Strategy calls for a competitive small business set-aside, a small business set-aside, or the 8(a) program- then include [FAR 52.219-6](#) Notice of total Small Business Set Aside; and [FAR 52.219-14](#), Limitations on Subcontracting; in the RFP and resultant contract. [FAR 52.219-14](#)-Limitations on Subcontracting - **requires for services- at least 50% of the cost of contract performance incurred for personnel shall be expended for employees of the firm. For supplies- the concern shall perform work for at least 50% of the cost of manufacturing the supplies, not including the cost of labor. This limitation must be addressed in any post-award meeting with the Prime.** In order to ensure compliance with this clause, the Policy is to require the prime contractor to propose at least 50% of the costs for personnel in performing the **contract/task order (e.g. - Seaport)** . If the proposal does not comply with the requirements of the Limitations of Subcontracting Clause, the Specialist will typically negotiate the **contract/task order (e.g. Seaport)**. For IDIQ contracts or MACs, **the subcontracting percentage will be monitored at a delivery order/task order level, but reported at the IDIQ or MAC basic contract level. Each contract/task order (e.g. - Seaport) must have at least 50% of the labor costs being performed by the Prime contractor.** The method SPAWAR shall use to track compliance is to require the contractor, through a Contract Data Requirements List (CDRL) to report, on a tri-monthly basis, the % of subcontracted labor costs. This can be tracked by the Contract Specialist and corrections made to ensure the contract ends up with the Prime performing 50% of the labor costs in-house ([See the CDRL in the Toolbox below](#)). The Contracting Officer/Contract Specialist must provide the COR the total costs for labor for a particular **contract/task order (e.g. - Seaport)**. Then, work with the COR to determine the amount of dollars being invoiced to determine compliance with the clause. Any variances or dollar amounts which will exceed the 50% limitation must be brought to the Prime contractor's attention. (Note – If the contractor has an approved purchasing system, consent to subcontract must be specifically identified by the PCO IAW [FAR 44.201-1](#), Consent requirements)

If the award is to be made using the authority of the 8(a) Program, the Contracting Officer must provide notification to the SBA office **PRIOR TO COMMENCING NEGOTIATIONS**, IAW [FAR 19.804-2](#). Note that IAW PGI 219.804-2 the notification is not required for 8(a) awards under the SAT. The SBA has 10 working days to respond to the agency request. Please contact the SPAWAR Office of Small Business Programs for guidance in this area.

4. MISCELLANEOUS

Limitations on Subcontracting Toolbox

[Certification/Data Report CDRL](#) (include in Small Business Set-Asides)