



VIRTUAL
SMALL BUSINESS TRAINING WEEK 2021
SBTW21
BUILD ★ GROW ★ ELEVATE
Expanding the Defense Industrial Base

SUBCONTRACTING PROGRAM

Learn the Difference Between Assessing a Subcontracting Plan and Evaluating Small Business Participation

KEN CARHUFF (DAU) & PAMELA MONROE (ARMY)

8/18/2021

SMALL BUSINESS LEARNING DIRECTOR & OSBP SUBCONTRACTING PROGRAM MANAGER



TOPICS

UNCLASSIFIED

- References
- Process
- Subcontracting
- Small Business Participation
- Source Selection - Past Performance Evaluations





Regulatory Requirements for Small Business Subcontracting

UNCLASSIFIED

SBPs need to understand the FAR and DFARS regulations that apply to small business subcontracting so they can act as accurate and authoritative advisors.



FAR 19.201, DFARS 219.201, and PGI 219.201



Successful Subcontracting starts with Acquisition Planning

UNCLASSIFIED

Market Research

Acquisition Strategy

Solicitation Development

Source Selection

Contract Award

Monitoring/Reporting of Performance



Acquisition Plan Review

UNCLASSIFIED

When market research does not support a set-aside, SBPs need to ensure that the acquisition plan reflects a proactive subcontracting strategy that maximizes opportunities for small businesses.





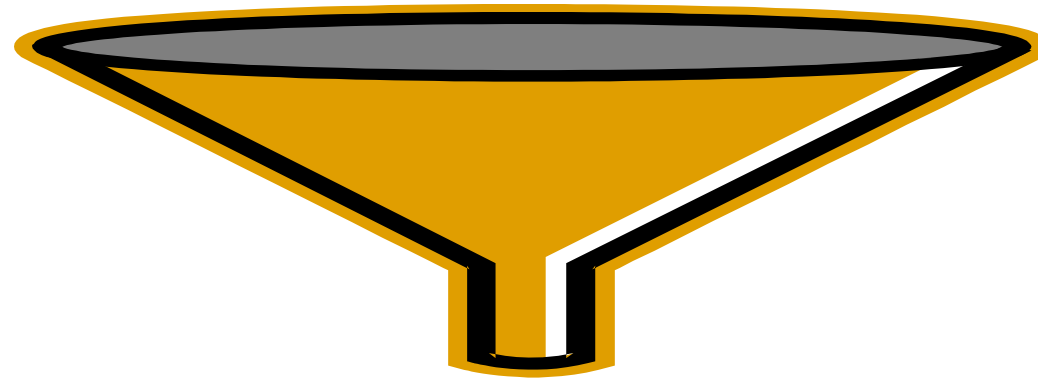
Elements That Affect Small Business Subcontracting

UNCLASSIFIED

Availability of Small
Businesses

Capability and Capacity of Small
Businesses

Types of Work



Complexity
of Work

Degree of Small Business
Subcontracting



Small Business and Subcontracting

UNCLASSIFIED

FAR 52.219-8 -- Utilization of Small Business Concerns

(b) It is the policy of the United States that small business concerns, (including socioeconomic concerns) shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

(c) The Contractor hereby agrees to carry out this policy in the awarding of **subcontracts** to the fullest extent consistent with efficient contract performance.

Note: This policy applies to both other than small businesses (OTSB) **and** **small businesses**



Subcontracting Plan Requirements

UNCLASSIFIED

FAR 19.702(a) requires that all negotiated and sealed bid acquisitions that are expected to exceed \$750,000 (\$1.5 million for construction) **and** that have subcontracting possibilities, shall require the apparently successful offeror/ bidder selected for award to submit an acceptable subcontracting plan.

(See *FAR* 19.702(b) for exceptions) within the time limit prescribed by the contracting officer.

Note: One exception is subcontracting plans are not required to be submitted by small business concerns.



Pre-Award Responsibilities of the Contracting Officer

UNCLASSIFIED

Determine the need for a subcontracting plan:

- Total contract dollars
- Proposed modification amounts
- Subcontracting possibilities exist or possibilities do not exist
- Subcontracting Goals
- Include formula for liquidated damages*
 - *Formula per FAR 52.219-16: The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.



Pre-Award Responsibilities of the Contracting Officer (Continued)

UNCLASSIFIED

Reviewing the subcontracting plan:

- No set standard for every plan
- Sealed Bids plans
- Negotiated acquisition plans
- Determine acceptability of plan



Subcontracting on DD Form 2579

UNCLASSIFIED

13. SUBCONTRACTING PLAN REQUIRED (X one) Yes No

[Empty text area for providing details on subcontracting plan requirements]

Block 13:

- Indicate whether a small business subcontracting plan is required.
- Specify actions that will be taken to maximize small business participation (if the acquisition is not a set-aside or is consolidated or bundled).



SBP Roles and Responsibilities in Support of Small Business Subcontracting

UNCLASSIFIED

What are the different roles that the SBP plays in supporting subcontracting throughout the acquisition and contracting process?

- General Activities (can occur at any time)
- Pre-Solicitation
- Solicitation and Award
- Post-Award





Pre-Award Responsibilities of the Small Business Professional

UNCLASSIFIED

Assist the Contracting Officer:

- In market research
- In maximizing small business opportunities
- Reviewing and recommending the acceptability or non-acceptability of the contractor's subcontracting plan
- In development of the formula to assess liquidated damages



Small Business Subcontracting Plans

UNCLASSIFIED

SBPs:

- Assess whether the small business subcontracting plan is acceptable.
- Give recommendations for improvements to the Contracting Officer for use in negotiations.

NOTE: SBA PCR also should review the small business subcontracting plan.



Small Business
Subcontracting Plan



Small Business Subcontracting Plan Considerations

UNCLASSIFIED



Contains 15 required elements?

Realistic goals?

Goals consistent with efficient contract performance?

Steps to demonstrate good-faith effort identified?

FAR 19.704 (d) actions?



Post-Award Responsibilities of the Contracting Officer

UNCLASSIFIED

After a contract or contract modification containing a subcontracting plan is awarded or an existing subcontracting plan is amended, the contracting officer shall do the following:

- Notify Small Business Administration (IAW FAR 19.705-6(a), (b), (c), (d))
- Forward copy to the cognizant contract administration office
- Monitor Prime Contractor Compliance
- Evaluate the prime contractor's compliance
- Assess liquidated damages if applicable*
- Enforce the terms of the contract upon receipt of notice (IAW FAR 19.706)
- Acknowledge receipt of or reject the Individual Summary Report (ISR) and the Summary Subcontract Report (SSR) in eSRS
- Document Small Business Subcontracting compliance in Contractor Performance Assessment Reporting System (CPARS)



Responsibilities of the Cognizant Administrative Contracting Officer

UNCLASSIFIED

Assist the contracting office with the contractor's performance and compliance by:

- Administering information on the extent to which the contractor is meeting the plan's subcontracting goals
- Administering information on whether the contractor's efforts to ensure the participation of small business are IAW plan
- Ensure that the contractor requires its subcontractors to adopt similar subcontracting plans
- Notify the contractor if its failing to meet commitments, lack of a good faith effort, and final notice of goals met or not met



Post-Award Responsibilities of the Contractor

UNCLASSIFIED

- Ensure goals stated in the subcontracting plan are met or exceeded
- Make a good faith effort to comply with the requirements of the subcontracting plan, IAW 15 U.S.C. 637(d)(8)
- Payment of Government assessed liquidated damages for non-compliance with good faith effort, 15 U.S.C. 637(d)(4)(f)





DoD FY 21 Subcontract Report Schedule

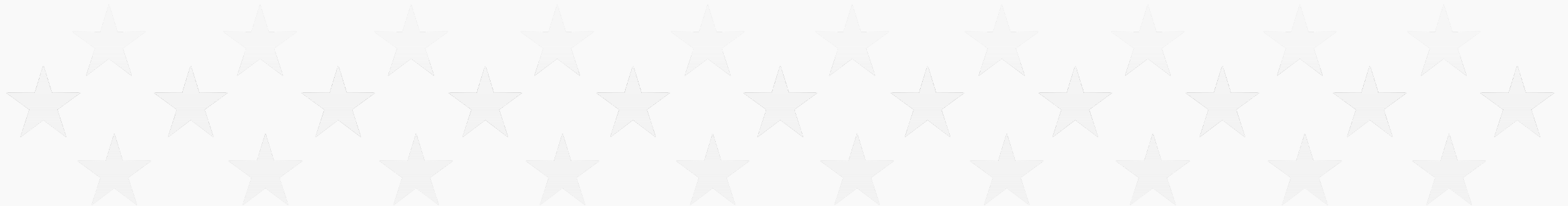
DATE	REQUIRED ACTION
15 May 2021 Update	Due date for Contractors' ISRs/SF 294s
14 Jun 2021 Update	Contracting Officers complete review of ISRs/SF 294s
15 Jul 2021 Update	DoD completes review of ISRs/SF 294s
15 Jul 2021 Update	Dept/Agency Subcontracting Program Managers submit semi-annual eSRS Status Report to OSBP and DPAP
14 Nov 2021 Update	Due date for Contractors' ISRs/SF 294s
14 Nov 2021 Update	Due date for Contractors' SSRs
14 Dec 2021 Update	Contracting Officers complete review of ISRs/SF294s & SSRs
15 Jan 2022 Update	Dept/Agency Subcontracting Program Managers submit semi-annual eSRS Status Report to OSBP and DPAP
15 Jan 2022 Update	DoD completes review of ISRs/SF 294s



Post-Award Responsibilities of the Small Business Professional

UNCLASSIFIED

- Ensure contracting officer and contractor are compliant with FAR Subpart 19.705-6
- Assess the contractor's good faith effort with the contracting officer





Six Steps to Successful Subcontracting

UNCLASSIFIED

Pre-Award

1. Market Research

2. Acquisition Strategy/Plan
and Solicitation

3. Consider SB for
Subcontracting & Reporting in
Acquisition Planning

4. Evaluate SB Participation
in Source Selection. Get
acceptable Subcontracting
Plan, where required

Post-Award

5. Monitor Subcontracting

6. Assess Contractor
Performance



Small Business Participation Commitment Document (SBPCD) Considerations

UNCLASSIFIED



- Identify specific small business subcontractors.
- Identify what subcontractors will provide.
- Provide enforceable commitments.
- Is the amount of small business subcontracting / small business participation realistic?



Benefits of a SBPCD

UNCLASSIFIED

- Clearly distinguishable from the small business subcontracting plan
- Takes small business utilization beyond intent (plan) to actual, more enforceable commitment
- Can obtain meaningful information that is not obtainable elsewhere





Contents of a SBPCD

UNCLASSIFIED

Example Criteria

- ✓ Names of subcontractors and their products/services
- ✓ Type and complexity of supplies/services to be provided by small businesses
- ✓ Extent to which small businesses will be used in terms of the TCV (with documentation)
- ✓ Evidence of past performance in small business use





Best Practice: Require an SBPCD from all Offerors

UNCLASSIFIED



Small Business
Participation
Commitment
Document



Capture information required to accomplish evaluation of small business participation, in accordance with DFARS 215.304.

NOTE: SBPCDs were previously referred to as “small business participation plans.”



Best Practice: Use TCV in the SBPCD, if appropriate

UNCLASSIFIED

	Offeror 1	Offeror 2
TCV	\$10M	\$10M
Total Planned Subcontracting Dollars	\$1M	\$5M
Percent Small Business Based on Subcontracting Dollars	50% <u>Appears Better</u>	20%
Amount of Small Business Subcontracting Dollars	\$500K	\$1M
Percent Small Business Based on TCV	5%	10% <u>Better Participation</u>



Evaluation of Small Business Participation Requirements

UNCLASSIFIED

1. FAR 15.304(c)(4) requires evaluation of small business participation for solicitations involving consolidation or bundling.
2. DFARS 215.304(c) requires *evaluation of* small business participation in other than lowest priced technically acceptable (LPTA) source selections whenever a subcontracting plan is required.

Note: Although evaluation of small business participation is not required for LPTA source selections, it is permissible as one of the “technical” factors/subfactors.

(March 31, 2016 Department of Defense (DoD) Source Selection Procedures Appendix C (C.4))

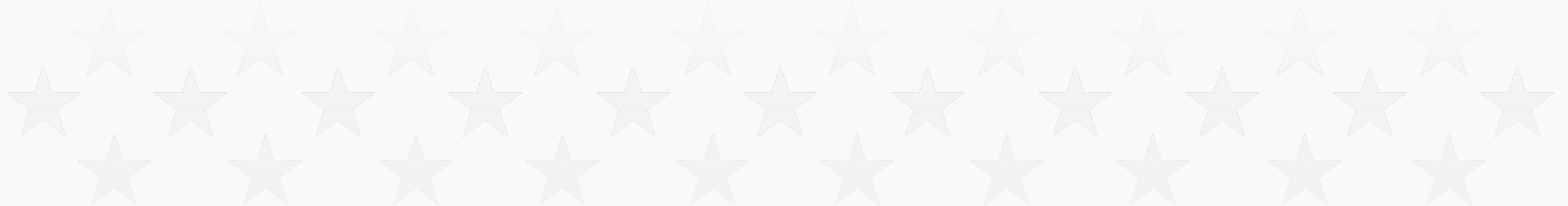


Evaluation of Small Business Participation

UNCLASSIFIED

Consideration # 1 – Determine the source selection evaluation criteria

1. Extent to which SB firms are specifically identified in proposals
2. Extent of commitment to use such firms
3. Complexity and variety of work
4. Realism of the proposal
5. Past performance of complying with subcontracting requirements
6. Extent of participation of SB firms in terms of the value of the total acquisition





Evaluation of Small Business Participation

UNCLASSIFIED

Consideration # 2 – Determine which way small business participation will be evaluated

Evaluation of small business participation may be accomplished in one of three ways:

<p>1. Establish a separate small business participation evaluation factor</p> <p>Example: <u>Section M – Evaluation Factors</u> Factor 1 Technical Factor 2 Past Performance Factor 3 Small Business Participation Factor 4 Cost</p>	<p>2. Establish a small business participation subfactor under the technical factor</p> <p>Example: <u>Section M – Evaluation Factors</u> Factor 1 Technical Subfactor a. Management Approach Subfactor b. Small Business Participation</p>	<p>3. Consider small business participation within the evaluation of a technical subfactor</p> <p>Example: <u>Section M – Evaluation Factors</u> Factor 1 Technical Subfactor a. Management Approach i. Consideration of Small Business Participation</p>
--	--	--



Evaluation of Small Business Participation

Consideration # 3 – Select an appropriate option for rating small business participation

The appropriate options for rating small business participation is dependent upon the way it is evaluated.

<p>1. Small business participation is evaluated as a separate evaluation factor</p> <p>Utilize all ratings in Table 6 of DoD Source Selection Procedures</p> <p style="text-align: center;">-or-</p> <p>Use the acceptable/unacceptable ratings as defined in table 6 only</p>	<p>2. Small business participation is evaluated as a subfactor under the technical factor</p> <p>Utilize all ratings in Table 6 of DoD Source Selection Procedures</p> <p style="text-align: center;">-or-</p> <p>Use the acceptable/unacceptable ratings as defined in table 6 only</p>	<p>3. Small business participation is evaluated within the evaluation of a technical subfactor</p> <p>A separate small business rating is not applied. However, small business participation shall be considered in determining the appropriate technical rating applied</p>
--	--	---



Evaluation of Small Business Participation

UNCLASSIFIED

Consideration #4 - Establish Small Business Participation (Utilization) Reporting Requirements

- No regulatory requirement to require contractor to report subcontracting performance other than through the Electronic Subcontracting Reporting System (eSRS)
 - Reporting IAW subcontracting plans
- Why require other than eSRS reporting?
 - Enhances enforceability of the small business participation requirements
 - To obtain information not required by eSRS reporting
 - Ability to monitor small business performance of ALL contractors (small businesses do not report to eSRS)
 - Aids determination of good faith effort; supports assessing liquidated damages
- For other than eSRS reporting requirements;
 - Tailor to what is appropriate for the acquisition
 - Include in the solicitation
 - Make contractual



When is the evaluation of Past Performance Required?

- *FAR 15.304(c)(3)(i)* - Past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold
- *DFARS 215.305(a)(2)* requires that in DoD solicitations that require past performance evaluation and include the clauses at *FAR 52.219-8 Utilization of Small Business Concerns* and *FAR 52.219-9 Small Business Subcontracting Plan*, the past performance of offerors in complying with the requirements of those clauses shall be evaluated.
- A past performance evaluation is required for negotiated competitive acquisitions meeting the thresholds established in DoD Class Deviation 2013-00018, Past Performance Evaluation Thresholds and Reporting Requirements, issued on 24 September 2013



Evaluating Past Performance of Small Business Participation

UNCLASSIFIED

What to evaluate?

Examples of elements of small business utilization in past performance (compliance with *FAR* 52.219-8) to evaluate include:

- 1) Actual prior use of small businesses
- 2) Use of small businesses in the socioeconomic categories
- 3) Types of work performed by small businesses
- 4) Complexity of the work performed by small businesses
- 5) Reporting of small business performance in CPARS
- 6) History of prompt payments to small businesses

**CPARS=Guidance for the Contractor Performance Assessment Reporting System
(October 2020)**



Evaluating Past Performance of Small Business Participation

UNCLASSIFIED

Additionally, when a subcontracting plan is required, evaluation of small business past performance participation (compliance with *FAR* 52.219-9) should include an evaluation of:

1. Performance against subcontracting goals
2. Compliance with the subcontracting plan in general
3. Timely eSRS reporting
4. Compliance with requirements of *FAR* 42.1502(g) Reduced or Untimely Payments



Subcontracting & SB Participation Implementation

UNCLASSIFIED

Small Business Participation and Source Selection

To underscore the significance of small business participation, a good solicitation and source selection evaluation plan will:

- 1) Emphasize how the **assessment** of the subcontracting plan IAW *FAR* 19.704 and *FAR* 52.219-9 is different from the **evaluation** of small business participation
- 2) Explain how offers from small business primes must be structured and how they will be evaluated (if different from OTSB offerors)
- 3) State that evaluation of small business participation applies to Commercial Subcontracting Plan holders and Comprehensive Subcontracting Plan participants
- 4) If appropriate for the acquisition, state a baseline small business MQR (not a “goal”) for small business (and socioeconomic categories as well, if appropriate) **based on market research**



Subcontracting & SB Participation Implementation

UNCLASSIFIED

Small Business Participation and Source Selection (cont'd),

- 5) State if small business participation is based on TCV and explain how percentages and dollars should be stated in the subcontracting plan (if a plan is required)
- 6) Explain how offers will be rated
- 7) Evaluate small business past performance (compliance with *FAR 52.219-8* and/or *FAR 52.219-9*)
- 8) Determine the realism of the proposed utilization of small businesses
- 9) Require all offerors to submit periodic reports (monthly, quarterly, or whatever is appropriate for the acquisition) on their small business utilization for the contract

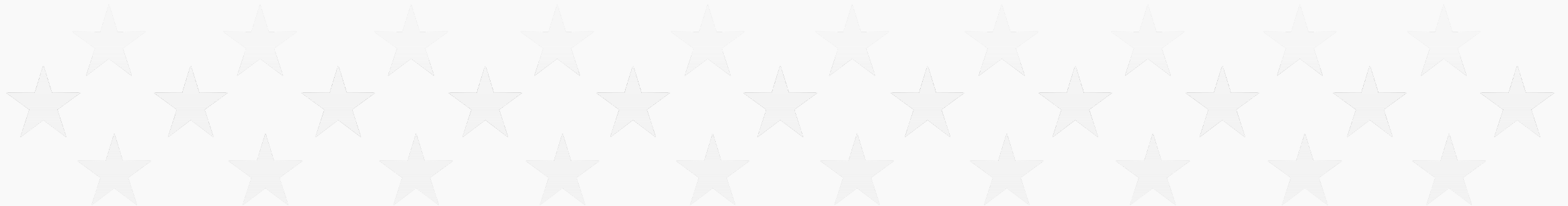


Similarities of Small Business Subcontracting Plan & SBPCD

UNCLASSIFIED

Generally, provisions of the subcontracting plan that coincide with the SBPCD should be consistent;

- Small Business Subcontracting Plan dollars should be at least equal to the dollars stated in the SBPCD
 - Subcontracting percentages may be different if SBPCD proposal based on total value of acquisition (total contract dollars)
 - Type of products/services to be subcontracted should be the same
 - Both the Subcontracting Plan and the SBPCD should be contractually binding





Differences of Assessing Subcontracting Plans & Evaluating Small Business Participation

UNCLASSIFIED

SB Subcontracting <u>Plan</u> (Requirements/ <u>Assessment</u>)	SB Participation <u>Commitment</u> Document / SB Participation (Requirements/ <u>Evaluation</u>)
<i>FAR 19.7</i>	<i>FAR 15.304, DFARS 215.304</i>
Must be negotiated and determined acceptable by the Contracting Officer (CO) prior to award	Solicitation establishes requirements and evaluation criteria for SB participation
Must have 15 elements as defined in <i>FAR 52.219-9</i>	Evaluation conducted IAW solicitation evaluation criteria
Required for all Federal contracts (subject to dollar limitations and exceptions) and includes both negotiated acquisitions and sealed bidding	Required only for consolidated or bundled contracts or certain DoD negotiated acquisitions
Does not apply to <u>small businesses</u>	Applies to <u>all businesses</u>
Based on total planned subcontracting dollars . (CO can request an individual subcontracting plan based on TCV dollars)	<u>DoD best practice MQR%</u> (if appropriate) based on TCV (dollars)
TCV=Total Contract Value	MQR=Minimum Quantitative Requirement



SBP Roles in Source Selection

UNCLASSIFIED

Assist with:

- Evaluating small business participation using the SBPCD
- Evaluating small business past performance
- Assessing proposed small business subcontracting plans





Evaluating SBPCD

UNCLASSIFIED

The SBPCD is evaluated as :

- A separate small business participation commitment evaluation factor (preferred method)
- A subfactor under the technical factor
- A consideration within the evaluation of a technical subfactor

Small Business Past Performance: Why Evaluate?

UNCLASSIFIED



Will the offeror satisfy its commitment to maximizing small business participation in its contracts?



Small Business Past Performance

UNCLASSIFIED

Evaluating past performance of complying with clauses at FAR 52.219-8, Utilization of Small Business Concerns and FAR 52.219-9 Small Business Subcontracting Plan



Small Business Participation
Commitment Evaluation Factor



Past Performance
Evaluation Factor



SBP may provide rating



SBP may contribute to overall rating



Small Business Past Performance: What to Evaluate

UNCLASSIFIED

- Prior use of small businesses?
- Types and complexity of work?
- History of prompt payment?
- Compliance with reporting requirements?
- Meeting subcontracting goals?
- Compliance with small business subcontracting plan overall?



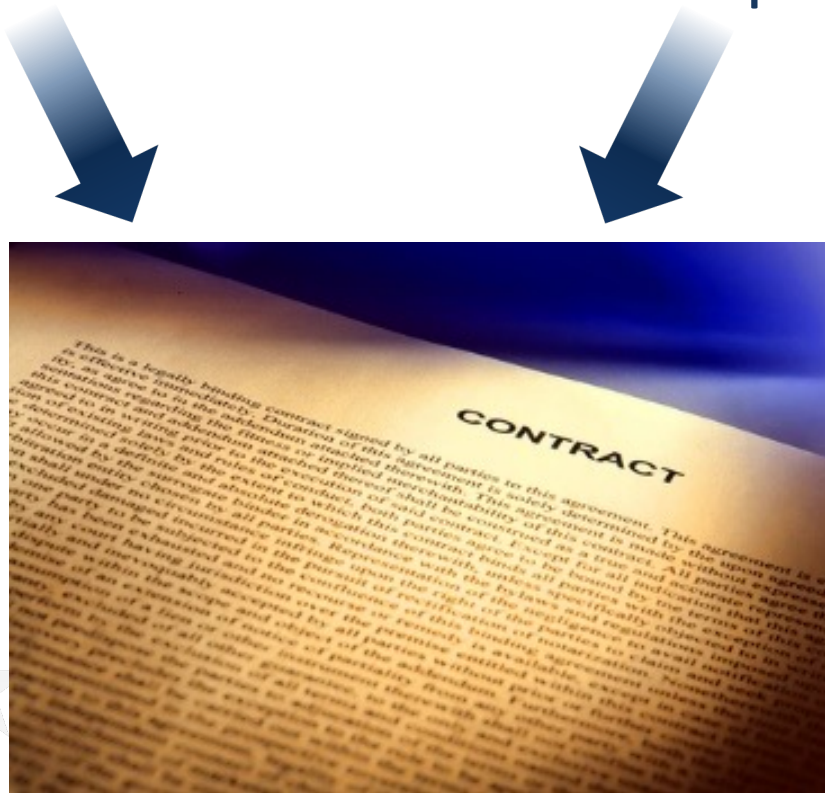


Make It Contractually Binding

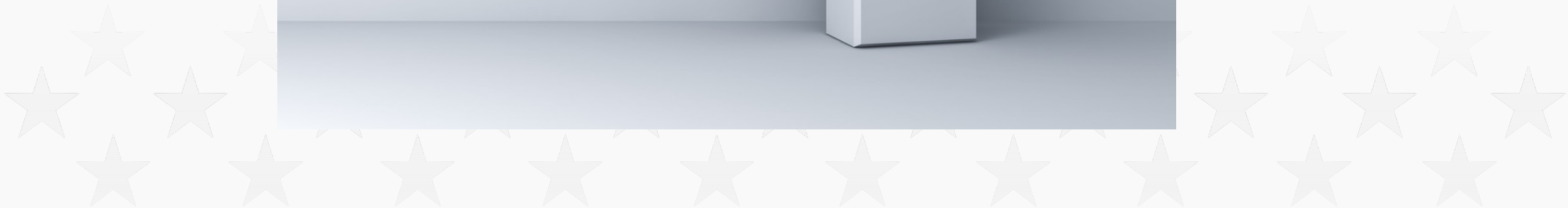
UNCLASSIFIED

Small Business Subcontracting Plan

Small Business Participation Requirements



Enforceable Subcontracting Commitments





VIRTUAL
SMALL BUSINESS TRAINING WEEK 2021
SBTW21
BUILD ★ GROW ★ ELEVATE
Expanding the Defense Industrial Base

Thank you

Contact information:

kenneth.carkhuff@dau.edu

pamela.l.monroe8.civ@mail.mil