

Solving the Mystery: Small Business Participation Factor

Presented by

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References:

▶ FAR 19.702 – Statutory Requirements

Section 8(d) of the Small Business Act (15

U.S.C. 637(d): *In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, that individually is expected to exceed \$650,000 (\$1.5 million for construction) - including options - and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan.*

If the apparently successful offeror fails to negotiate an acceptable subcontracting plan in a reasonable time, it becomes ineligible for award.



References, cont'd:

▶ Defense FAR Supplement 215.304 (c)(i) (A-C)

“In acquisitions that require use of the clause at FAR 52.219-9, Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable (LPTA) source selection process, the extent of participation of small business concerns in performance of the contract shall be addressed in source selection. The contracting officer shall evaluate the extent to which offerors identify and commit to small business performance of the contract.”

This means, for DoD agencies, solicitations meeting the criteria must contain an evaluation factor for small business participation.



DFARS 215.304 (c)(i) (A-C) , cont'd:

- ▶ Proposals addressing the extent of small business performance shall be separate from subcontracting plans. Is part of the proposal itself – a submission same as your technical, key personnel, experience, etc.
- ▶ Is NOT a subcontracting plan.



MORE ON THAT LATER....



References, cont'd.

- ▶ **FAR 19.708 Contract clauses** (to comply with Small Business Act)
 - **FAR 52.219-8 Utilization of Small Business Concerns** – R'qd in all contracts over \$150K (*contains exceptions*)
 - Past performance is evaluated via this clause
 - **FAR 52.219-9 Small Business Subcontracting Plans** in UNRESTRICTED (full & open) solicitations, & contracts awarded to LARGE business, that contains subcontracting opportunities -
 - ▷ Where 52.219-8 applies, **AND**...
 - ▷ Over \$650K for supplies & services, or
 - ▷ Over \$1.5M for construction

Some exceptions apply....



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- FAR 52.219-9 Small Business Subcontracting Plans EXCEPTIONS:

- ▷ Contracts below the thresholds listed.
- ▷ Does not apply to small businesses.
- ▷ For any contract where 52.219-8 Utilization of Small Business does not apply –
 - Contracts under the SAT (\$150K)
 - For personal services contracts
 - For contracts performed entirely outside the U.S. or outlying possessions

If the clause does not apply to the procurement, there will be no small business evaluation factor in the solicitation (DoD only).



Differences Between a Small Business Participation Proposal and a Subcontracting Plan

Small Business Participation Proposal (SBPP)

- ▶ SOLICITATION EVALUATION – applies to ALL offerors, both Large & Small
- ▶ EVALUATION FACTOR - a rating is assigned after evaluation of the small business participation proposal. Rating will be rolled into an overall rating for the offeror, all factors/subfactors included.
- ▶ SB gets to claim their own self-performance as part of the SB %.
- ▶ The % of small business participation is calculated on **the total dollar amount of the offer.**

$$\underline{\$ SB + \$ LB = Total \$}$$

Small Business Subcontracting Plan (SBSP) (FAR 19.7)

- ▶ **After the apparently successful offeror is determined.** (but, there is an alternate to this...)
- ▶ **DOES NOT APPLY TO SMALL BUSINESSES.** If they are successful offeror, nothing further is required to be submitted. (But...)
- ▶ **MUST** reflect the **dollar amounts** for each SB category that are contained in the final SB factor proposal.
- ▶ The % of small business subcontracting is calculated on **the total dollar amount of subcontracting.**

$$\underline{\$ self-perform + \$ subkt = Total \$}$$

SOLICITATION PHASE

PRE-AWARD PHASE



Differences Between a Small Business Participation Proposal and a Subcontracting Plan, cont'd

Small Business Participation Proposal (SBPP)

SOLICITATION PHASE

- ▶ The offeror **MUST** revise the SB proposal when revising other non-price factor proposal areas as offer amounts, approaches, etc. change.
- ▶ Potential for higher rating if Offeror has signed subcontracting agreements, teaming agreements, joint ventures, etc. already in place.
 - This does **NOT** mean obtaining a letter **FROM** the small business that says they will agree to perform on the contract if the Offeror gets the award.
- ▶ A Large Business cannot be rated any higher than “Excellent” Rating in the SB factor.



Small Business Subcontracting Plan (SBSP)

PRE-AWARD PHASE

- ▶ If a particular small business's proposal (price, approach, etc.) is used to develop the Offer, that SB is **required** to be given the subcontract. (Jobs Act Change)
- ▶ Small Businesses particularly named in the proposal as being a party to a teaming agreement must be utilized.
- ▶ **NO BAIT AND SWITCH!**
 - **WHY?** You received a rating based on promises you made – dollars promised to small business. You cannot renege on that.



Differences Between a Small Business Participation Proposal and a Subcontracting Plan, cont'd

Small Business Participation Proposal (SBPP)

SOLICITATION PHASE

- ▶ The final Small Business Participation Proposal is the source document for drafting the subcontracting plan (if applicable).
- ▶ Why do we evaluate dollars and not just percents alone?
 - Not apples to apples comparison. Using percents is fixed value but results in differing dollar amounts because it is calculated on the total price of the proposal.
Ex: 50% of \$100K = \$50K, whereas
50% of \$120K = \$60K

Small Business Subcontracting Plan (SBSP)

PRE-AWARD PHASE

- ▶ Total \$ to be subcontracted is the new base for calculating percentages. HOWEVER, dollars offered on the proposal in the SBPP must be carried over. The only thing recalculated is the % value against the new smaller base amount.
- ▶ % for each small business subcategory becomes subcontract goals for the contract. Dollars should not have changed from proposal.
- ▶ Goals are applicable for life of contract unless a modification is done to add dollars that meet the original thresholds. The new contract price requires the plan goals to be reflective of new scope.



Small Business Participation Proposal (SBPP)

Illustrations – assumes offeror is Large Business

Total Offer **\$1,750,000**

Amt for Large*
Business \$1,000,000

Amt for Small*
Business \$750,000

Small Biz % **43%**

Large Biz % 57%

100%

** includes amount to be self-performed*

Small Business Subcontracting Plan (SBSP)

Illustrations – assumes successful offeror is Large Business

Total Offer \$1,750,000

\$ for Subktn* \$1,500,000

\$ SB Subktn** \$750,000

\$ LB-Subktn \$750,000

Small Biz % **50%**

(Becomes SB Goal)

** No longer includes amount of self-performance*

*** SB dollars are brought forth from proposal*



■ What if the solicitation contains “goals?”



The solicitation language may list percentages (sometimes called “goals”) that the offeror must meet in their proposal in order to be rated “Acceptable.”

- Use of term “goal” is misleading – what they really mean is the percentage to be offered for small business participation.
- Normally, the SB category is mandatory, but lower tier categories (SDB, SDVOSB, etc) may not be. This is at discretion of the KO and the PDT.



What if the solicitation contains “goals,” cont’d.

- Percentages should-
 - ▶ Be based on sound market research.
 - ▶ Be no more than 15-20% of total expected cost of contract.
- The rating schema in the solicitation should spell out how it is to be rated.
 - ▶ If offeror does not meet the minimum SB percentage, the offer is automatically rated “marginal” or “unacceptable” in that eval factor, depending on rating schema.
 - ▶ Offeror can revise, if asked to submit revised proposal.



WHAT IF THE SOLICITATION LANGUAGE SAYS “BEST EFFORT?”



Sometimes used if market research is inconclusive about the expected extent of small business expertise in the project elements to establish a minimum percentage.

- Can use the language “Offerors shall propose their best effort for small business participation...”
- There is no minimum, BUT...Offerors should make the effort to maximize small business participation and not keep work in-house unnecessarily.



What if the solicitation language says “best effort,” cont’d

- Best Effort language will not be used in those large dollar projects where the PARC must sign off. Eval factor must be specific so that fair evaluation can happen.
- Difficult to evaluate...is more intuitive...must consider dollars offered for all small biz categories in light of total of offer in addition to other areas of the proposal.
 - ▶ Ex: Offer A offers 32% as best effort; offer is \$75M
Best effort is \$24M for small business participation.

Offer B offers 32% as best effort; offer is \$102M
Best effort is \$32.6M for small business participation.

Which is better? *(no real answer)*



- After Evaluation...what happens now?
- If the successful Offeror is a **LARGE** business,
 - Must submit an acceptable Subcontracting Plan prior to award.
 - Must MIRROR the dollars, and commitments to small businesses found in their Small Business Participation Proposal.
 - Subcontracting Plan is a material part of the awarded contract.



- *After Evaluation...what happens now?, cont'd*
 - ▶ If the successful Offeror is a **SMALL** business –
 - The Small Business Participation Plan becomes part of their offer and is filed in the contract file.
 - No subcontracting plan is submitted (not required for small business).
 - BUT! The Small Business better follow the participation plan they submitted – a slippery slope! No bait & switch!



▪ **More tidbits to successful SBPP formulation:**

- ▶ Keep it all together – Your small biz Volume should stand alone. Don't put part in the Small Biz Factor and other info in Technical factor.
- ▶ Don't mistake your "*building your team*" activities to develop your Technical approach as sufficient to show your commitment to small biz. Not the same thing.
- ▶ Don't start out at subcontracting and try to work backwards. There will be areas you would want to address in the SBPP that might not apply to a SBSP



▪ **More tidbits, cont'd:**

▶ **CHECK YOUR MATH.** THEN CHECK IT AGAIN.



- It is necessary for the evaluator to see both dollars and percents. We can't evaluate on percent alone.
 - Identify your own amount of self performance as a separate statement from the math portion – this helps the evaluator see what your intentions are.
- ▶ It's a good idea to include a matrix in the proposal showing company names, their business size /categories, & the work description they will perform under the contract. If you are small, ensure your work is listed there as well.



▪ **More tidbits, cont'd**

- ▶ Don't start out at subcontracting and try to work backwards. There will be areas you would want to address in the SBPP that don't go into a SBSP, plus you could get the math wrong.
- ▶ Refrain from using cut & paste statements or "fluff" language. Tailor your content to the procurement.
- ▶ Mention participation in small business outreaches, membership in small biz groups, activities ,etc. at a company-wide level as long as it is current and relevant information.
- ▶ In your Small Biz Participation Proposal there's no such thing as a "goal." Your percentages are just that – percentage of work offered for small business. It's not a "goal".



■ Areas to include

- ▶ No real format, however areas considered when evaluating include (but not limited to) *(DFARS PGI 304(c)(i)(A)–*
 - Extent to which firms are specifically identified in the proposal
 - Extent of commitment to use identified firms – are there enforceable commitments included, copies of consummated teaming agreements or letters of intent, etc. This means both parties have signed on for the contract.
 - Complexity & variety of work intended for small biz. Describe – the matrix approach works well for this area.
 - Realism of the proposal – do the percentages and dollars make sense, etc. Does it appear overly inflated just to get a good rating?



Areas to include, cont'd

- Is the offeror keeping work in house that could be subcontracted out? Explain why.
- A company policy statement about small business commitment
- Identification of all self-performed items and a description.
- How the firm arrived at it's percentages being proposed, market research performed, etc.
- How the firm identifies potential sources and what efforts are normally made to provide for equitable opportunity in federal contracts it receives
- What kind of mentoring and counseling of small business it performs on a company-wide basis, if any.



- **What it shouldn't be...**

- DON'T use the words “subcontracting plan.” It's not a subcontracting plan. It's a proposal.
- Shouldn't talk about goals...it's not a goal until it's been rolled into a subcontracting plan.
- Shouldn't be blanket bullet statements. This is your chance to fully develop your firm's intentions to put work into the hands of small business.
- Should describe your company's small business program, tailoring statements towards the actual solicitation.
- Yes, even small businesses have to say how they'll involve their brethren rather than to just subcontract major portions to a large firm. Can imply they are a pass-through...



► Last but not least...

- Using an Alternate to the clause 52.219-9, the KO can ask for the offerors to submit their proposed subcontracting plan along with their offer.
- Must reflect the dollars for each socioeconomic group in the offer, and include any named firms who provided input and participated in the procurement along with the offeror. No bait & switch.
- **IS NOT LOOKED AT OR EVALUATED.** The KO retains the plan submitted and will use it when the apparent successful offeror is determined. So, it must be revised each and every time the offeror submits a new revised proposal to keep current.
- Don't forget to address past performance in utilization of small business in whatever manner the solicitation directs.



ANY QUESTIONS?

