



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION
AND SUSTAINMENT

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Department of Defense Small Business Subcontracting Requirements

As recommended by Department of Defense (DoD) Inspector General (IG) report, DODIG-2022-069, "Audit of Department of Defense Small Business Subcontracting Requirements," dated March 7, 2022, this memorandum reminds the Contracting Workforce of the small business subcontracting requirements associated with set-aside and sole-source contracts awarded to the small business entities identified at Federal Acquisition Regulation (FAR) 19.000(a)(3). The complete audit report may be reviewed at: <https://www.dodig.mil/reports.html/Article/2960412/audit-of-department-of-defense-small-business-subcontracting-requirements-dodig/>.

Limitations on Subcontracting

FAR 1.602-2 states that Contracting Officers are responsible for ensuring performance of all necessary actions for effective contracting, including compliance with the terms and conditions of the contract. Paragraph (e) of FAR clause 52.219-14, Limitations on Subcontracting (DEVIATION 2021-O0008), stipulates, by submission of an offer and execution of a contract, the contractor agrees that in performance of a contract it will comply with the limitations on subcontracting set forth in the clause.

Contracting Officers may rely on the contractor's signature and contractual obligation to comply with FAR 52.219-14 (DEVIATION 2021-O0008). However, if there is a reason to believe a contractor is not in compliance, Contracting Officers shall consult with legal counsel regarding use of appropriate contractual remedies, include pertinent contract administration information in the contract file as required pursuant to FAR 4.803(b)(19), and include a failure to comply with limitations on subcontracting in the contractor's performance information as required pursuant to FAR 42.1503(b)(2)(vi).

Reporting of Executive Compensation and First-Tier Subcontract Awards

Paragraph (a) of FAR 4.1402 requires agencies to ensure contractors comply with the reporting requirements of FAR clause 52.204-10, Reporting of Executive Compensation and First-Tier Subcontract Awards. Section 4.4 of the FY 2022 DoD Procurement Data Improvement and Compliance Plan implements this requirement and provides instructions and procedures for performance of quarterly and annual reviews of sub-award information and subcontracting plan achievement information that has been reported by contractors in the Federal Subaward Reporting System and the Electronic Subcontracting Reporting System. The plan for FY 2022 is available at <https://www.acq.osd.mil/asda/dpc/ce/cap/data-improvement.html>.

If a quarterly or annual review reveals a contractor failed to comply with the reporting requirements at FAR 52.204-10, in accordance with FAR 4.1402(c), Contracting Officers shall consult legal counsel regarding appropriate contractual remedies and include a contractor's failure to comply in the contractor's performance information. Contracting Officers shall include information regarding a contractor's noncompliance in the contract file and document in the contractor performance assessment report, as appropriate.

Subcontracting Compliance Training

To facilitate compliance with subcontracting requirements, DoD Senior Procurement Executives and Heads of the Contracting Activities are requested to have personnel who monitor contract performance and are responsible for ensuring compliance with subcontracting requirements, including Contracting Officers, Administrative Contracting Officers, and Contracting Officer Representatives, complete the Defense Acquisition University online course CLC 059, "Management of Subcontracting Compliance." Additionally, with successful completion of CLC 059, personnel in acquisition-coded positions will earn continuous learning points (CLPs) towards the continuous learning requirement to achieve 80 CLPs within a two-year period.

Please provide broad distribution of this memorandum to the Contracting Workforce, small business professionals, requiring activities, and program offices. My senior staff lead for small business procurement policy is Ms. Susan Pollack who may be contacted at susan.w.pollack.civ@mail.mil.

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Defense Pricing and Contracting