Collins CIV Cathy

From: Collins CIV Cathy
Sent: Wednesday, May 13, 2009 6:14 PM
To: M_HQMC_MCFCS_Civilian; M_HQMC_MCFCS_Directors/Deputies; M_HQMC_MCFCS_Enlisted; M_HQMC_MCFCS_Officer
Cc: M_HQMC_LB
Subject: APM 09-15: Class Deviation 2009-O0006, Electronic Subcontracting Reporting System (eSRS)
Signed By: cathy.collins@usmc.mil

Attachments: Class Deviation 2009-O0006 eSRS.pdf; Class Deviation 2008-O0008 eSRS.pdf

Class Deviation 2009-O0006 eSR... Class Deviation 2008-O0008 eSR...

To All,

SUBJECT: Class Deviation 2009-O0006 - Electronic Subcontracting Reporting System (eSRS)

1. PURPOSE:

a. This APM supersedes APM 09-11, Class Deviation - Electronic Subcontracting Reporting System (eSRS), dated 20 March 2009.

b. The purpose of this APM is to outline the policy and procedures necessary to ensure compliance with Class Deviation 2008-O0008 and Class Deviation 2009-O0006, both regarding implementation of eSRS.

2. BACKGROUND:

a. APM 09-03, dated 5 December 2008, implemented the Electronic Subcontracting Reporting System (eSRS) and Reporting Functions for MCFCS Offices. This implementation requires the submission of Individual Subcontracting Report (ISRs) in eSRS for reporting subcontracting awards in lieu of the previously authorized manually prepared Standard Form (SF) 294, Subcontracting Report, which was submitted to the Contracting Officer.

b. Following implementation, it was determined eSRS was unable to support the submission of Individual Subcontracting Report (ISRs) under certain limited circumstances. As a result, the attached Class Deviation 2008-O0008 was issued by USD(AT&L) (DPAP) memorandum of 12 February 2009 authorizing a deviation from the FAR and the DFARS to allow for the submission of SF 294s (instead of ISRs in eSRS) for those certain limited circumstances.

c. On 6 May 2009, USD(AT&L) (DPAP) issued the attached Class Deviation 2009-O0006 which removes the deviation to the FAR and DFARS for one of the circumstances identified in Class Deviation 2008-O0008.

3. POLICY:

a. Effective immediately, in accordance with the attached Class Deviation 2009-O0006, which modifies Class Deviation 2008-O0008 (also attached):

(1) Deviation from the FAR and DFARS Small Business Subcontracting Plan clauses (as specified in the procedures below) is authorized only when:

(a) Placing orders against basic ordering agreements and blanket purchase agreements; or

(b) Awarding contracts using other authorities that do not require FPDS-NG

Reporting.

(2) Purchase orders issued under the Test Program for Certain Commercial Items at FAR 13.5 are removed from the deviation authorized in Class Deviation 2008-O0006. Contractors must now submit ISRs in eSRS for these actions. Submission of SF 294s are no longer acceptable.

(3) DFARS 219-708, paragraph (b)(i)(A) is modified to read:

"(b)(i)(A) Use 52.219-9 Small Business Subcontracting Plan (DEVIATION), rather than FAR 52.219-9 Small Business Subcontracting Plan, in orders under basic ordering agreements or blanket purchase orders, or contracts that through other authority are not required to be reported in the Federal Procurement Data System."

b. Class Deviation 2009-O0006 and modified Class Deviation 2008-O0008 remain in effect until implemented in regulation, modified, superseded, or rescinded.

4. PROCEDURES:

a. For orders placed against basic ordering agreements and blanket purchase agreements or contracts awarded that through other authority are not required to be reported in FPDS:

(1) Use the FAR 52.219-9 Small Business Subcontracting Plan (DEVIATION) clause included in the attached Class Deviation 2008-O0008, rather than the FAR 52.219-9 Small Business Subcontracting Plan clause. The attached clause allows DoD entities to use the Standard Form 294-Subcontracting Report for Individual Contracts to submit reports for individual contracts, in lieu of using eSRS.

(2) Use the DFARS 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (DEVIATION) clause included in the attached Class Deviation 2008-O0008, rather than the DFARS 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) clause.

b. For purchase orders issued under the Test Program for Certain Commercial Items at FAR 13.5:

(1) Use the clause at DFARS 252.219-7004, Small Business Subcontracting Plan (Test Program), rather than DFARS 252.219.7004 Small Business Subcontracting Plan (Test Program)(DEVIATION) clause included in Class Deviation 2008-O0008.

(2) Contracting officers are reminded that when using commercial item procedures for acquisitions exceeding $1 million in value, even under FAR 13.5, they must (per DFARS 212.102) determine in writing that the acquisition meets the commercial item definition in FAR 2.101, and include the written determination in the contract file following the procedures in PGI 212.102(a).

5. POC: Please direct questions to the MCFCS eSRS Agency Coordinator (AC), Mr. Randy Johnston, HQMC (LBP), (703) 695-6590 x2513 or DSN 225-6590. Small Business questions may be directed to Mr. Stan Daise, HQMC (LK), (703) 614-6810 or DSN 225-6810.

R/ cc

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ACQUISITION
TECHNOLOGY
AND LOGISTICS

MAY -6 2009

In reply:
DARS Tracking Number 2009-O0006

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISTICS MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Class Deviation – Modification of Class Deviation 2008-O0008 - Electronic Subcontracting Reporting System

When Class Deviation 2008-O0008 was issued on February 12, 2009, the Electronic Subcontracting Reporting System (eSRS) did not support submitting an individual subcontract report (ISR) on purchase orders issued under the Test Program for Certain Commercial Items at FAR 13.5. At that time, it was necessary to deviate from the FAR to allow a Standard Form 294 to be submitted, rather than an ISR in eSRS.

It is no longer necessary to deviate from the FAR for purchase orders under the Test Program for Certain Commercial Items at FAR 13.5. For purchase orders under the Test Program for Certain Commercial Items at FAR 13.5, contractors must now submit ISRs in eSRS.

Class Deviation 2008-O0008 - Electronic Subcontracting Reporting System is, therefore, revised as follows:

Paragraph (b)(i)(A) of 219.708 Contract clauses (DEVIATION) is revised to read—

" (b)(i)(A) Use 52.219-9 Small Business Subcontracting Plan (DEVIATION), rather than FAR 52.219-9 Small Business Subcontracting Plan, in orders under basic ordering agreements or blanket purchase orders, or contracts that through other authority are not required to be reported in the Federal Procurement Data System."

Except for the change to paragraph (b)(i)(A) of 219.708 Contract clauses (DEVIATION), Class Deviation 2008-O0008 remains unchanged. It will remain in effect as modified herein until it is implemented in regulation, rescinded, superseded, or further modified.

For questions concerning this deviation, please contact Deborah Tronic, 703-602-0289, debbie.tronic@osd.mil. For questions concerning eSRS, please contact Mae Bartley, 703-602-8011, mae.bartley@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

FEB 13 2009

MEMORANDUM FOR DISTRIBUTION

Subj: CLASS DEVIATION – ELECTRONIC SUBCONTRACTING REPORTING SYSTEM (eSRS)

Encl: (1) DPAP memorandum dated February 12, 2009

Enclosure (1) is forwarded for information and action. The Director of Defense Procurement (DPAP) has issued enclosure (1), which states that under certain limited circumstances, Department of Defense (DoD) entities will deviate from the Federal Acquisition Regulation (FAR) requirement for vendors to use the Electronic Subcontracting Reporting System (eSRS) for subcontracting reports.

When using orders placed against basic ordering agreements and blanket purchase agreements, and purchase orders issued under the Test Program for Certain Commercial Items at FAR 13.5, DoD entities must deviate from the FAR by substituting the clause at FAR 52.219-9 Small Business Subcontracting Plan (DEVIATION), for FAR 52.219-9 Small Business Subcontracting Plan. This clause allows DoD entities to use the Standard Form 294 – Subcontracting Report for Individual Contracts to submit reports for individual contracts, in lieu of using eSRS.

DoD entities will also deviate from the Defense Federal Acquisition Regulation Supplement (DFARS) by: (1) using the clause at DFARS 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (DEVIATION), rather than DFARS 252.219-7003 Small Business Subcontracting Plan (DoD Contracts); and (2) using the clause at DFARS 252.219-7004 Small Business Subcontracting Plan (Test Program) (DEVIATION), rather than DFARS 252.219-7004 Small Business Subcontracting Plan (Test Program).

This class deviation became effective February 12, 2009 and will remain in effect until it is implemented in regulation, modified, or rescinded. It is requested that this guidance be forwarded to all appropriate acquisition personnel.

M. E. Yaggard
Chief of Staff/Policy
DASN (A&LM)

Distribution: See next page

Subj: CLASS DEVIATION – ELECTRONIC SUBCONTRACTING REPORTING SYSTEM (eSRS)

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3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
TECHNOLOGY
AND LOGISTICS

FEB 12 2009

In reply refer to
DARS Tracking Number 2008-O0008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISTICS MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation - Electronic Subcontracting Reporting System

The Department of Defense (DoD) has begun using the Electronic Subcontracting Reporting System (eSRS), as required by the Federal Acquisition Regulation (FAR). At this time, eSRS does not support submitting individual subcontract reports on contracts that through other authority are not required to be reported in the Federal Procurement Data System, orders placed against basic ordering agreements and blanket purchase agreements, and purchase orders issued under the Test Program for Certain Commercial Items at FAR 13.5.

Under the circumstances described above, DoD entities will deviate from the FAR by substituting the attached clause 52.219-9 Small Business Subcontracting Plan (DEVIATION), for FAR clause 52.219-9 Small Business Subcontracting Plan. The attached clause allows DoD entities to use the Standard Form 294 - Subcontracting Report for Individual Contracts to submit reports for individual contracts, in lieu of using eSRS.

DoD entities will also deviate from the Defense Federal Acquisition Regulation Supplement (DFARS) by: (1) using the attached clause, 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (DEVIATION), in conjunction with the two

clauses mentioned in the proceeding paragraph, rather than using 252.219-7003 Small Business Subcontracting Plan (DoD Contracts); and (2) using the attached clause 252.219-7004 Small Business Subcontracting Plan (Test Program) (DEVIATION), rather than using 252.219-7004 Small Business Subcontracting Plan (Test Program). The attached 252.219-7003 (DEVIATION) and 252.219-7004 (DEVIATION) provide DoD specific direction to contractors needed now that the FAR requires the use of eSRS.

This class deviation is effective upon signature and will remain in effect until it is implemented in regulation, modified, or rescinded.

For questions concerning this deviation, please contact Deborah Tronic, 703-602-0289, debbie.tronic@osd.mil. For questions concerning eSRS implementation, please contact Mae Bartley, 703-602-8011, mae.bartley@osd.mil.

Shay D. Assad
Director, Defense Procurement

Attachments:
As stated

Class Deviation – Electronic Subcontracting Reporting System
DARS Tracking Number 2008-O0008

Deviation from FAR

52.219-9 Small Business Subcontracting Plan (DEVIATION)

SMALL BUSINESS SUBCONTRACTING PLAN (DEVIATION)

(a) This clause does not apply to small business concerns.

(b) *Definitions*. As used in this clause—

"Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

"Electronic Subcontracting Reporting System (eSRS)" means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at http://www.esrs.gov.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $550,000 ($1,000,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause, using eSRS.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone

small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small

business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit a SF 294. The Contractor shall submit SSRs using the web-based eSRS at http://www.esrs.gov. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(1) *SF 294*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan. In the case of the prime Contractor, submit the report to the Contracting Officer. In the case of a subcontract with a subcontracting plan, submit the report to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over $550,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

Alternate I (Oct 2001). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

Alternate II (Oct 2001). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

Deviation from DFARS

219.708 Contract clauses (DEVIATION)

(b)(i)(A) Use 52.219-9 Small Business Subcontracting Plan (DEVIATION), rather than FAR 52.219-9 Small Business Subcontracting Plan, in orders under basic ordering agreements or blanket purchase orders, purchase orders issued under the Test Program for Certain Commercial Items at Federal Acquisition Regulation (FAR) 13.5, or contracts that through other authority are not required to be reported in the Federal Procurement Data System.

(B) Use clause 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (DEVIATION) in solicitations and contracts that contain the clause at FAR 52.219-9, Small Business Subcontracting Plan, or clause 52.219-9 Small Business Subcontracting Plan (DEVIATION).

(C) In contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702, use the clause at 252.219-7004, Small Business Subcontracting Plan (Test Program) (DEVIATION), instead of clauses FAR 52.219-9 Small Business Subcontracting Plan, 52.219-9 Small Business Subcontracting Plan (DEVIATION), and 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (DEVIATION). Include for flow down to subcontractors, the small business subcontracting plan clauses that would apply if the contractor were not participating in the test program described in 219.702.

(2) In contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702, do not use the clause at FAR 52.219-16, Liquidated Damages--Subcontracting Plan.

(c)(1) Do not use the clause at FAR 52.219-10, Incentive Subcontracting Program, in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702.

252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (DEVIATION)

Small Business Subcontracting Plan (DOD Contracts) (DEVIATION)

This clause supplements either Federal Acquisition Regulation clause 52.219-9 Small Business Subcontracting Plan, or clause 52.219-9 Small Business Subcontracting Plan (DEVIATION), whichever of those two clauses is included in this contract.

(a) *Definitions.*

"Historically black colleges and universities," as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institutions," as used in this clause, means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

"Summary Subcontract Report (SSR) Coordinator," as used in this clause, means the individual at the department or agency level who is registered in eSRS and is responsible for acknowledging or rejecting SSRs in eSRS for the department or agency.

(b) Except for company or division-wide commercial items subcontracting plans, the term, "small disadvantaged business," includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protégé Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to —

(1) Protégé firms which are qualified organizations employing the severely handicapped; and

(2) Former protégé firms that meet the criteria in Section 831(g)(4) of Pub. L. 101-510.

(f) The master plan is approved by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer (ACO) of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(h) (1) For DoD, the Contractor shall submit certain reports as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the ACO administering the contract unless contract administration has been delegated to the Defense Contract Management Agency (DCMA). If DCMA is administering the contract, submit the ISR to the Contracting Officer of the procuring contracting office. If no ACO has been assigned, submit the ISR to the Contracting Officer of the procuring contracting office.

(ii) An SSR for other than a commercial subcontracting plan, or construction and related maintenance repair contracts, shall be submitted in eSRS to the department or agency listed below that administers the majority of the Contractor's individual subcontracting plans:

(A) Department of the Army
(B) Department of Navy
(C) Department of the Air Force
(D) Defense Advance Research Projects Agency
(E) Defense Contract Management Agency
(F) Defense Commissary Agency
(G) Defense Finance and Accounting Service
(H) Defense Information System Agency
(I) Defense Logistics Agency
(J) Defense Media Center
(K) Defense Micro Electronics Activity
(L) Department of Defense Education Activity
(M) Defense Security Cooperation Agency
(N) Defense Security Service
(O) Defense Threat Reduction Agency
(P) Missile Defense Agency
(Q) Tricare Management Agency
(R) United States Special Operations Command
(S) United States Transportation Command
(T) Uniformed Services University of the Health Sciences
(U) Washington Headquarters Services

(2) For DoD, the authority to acknowledge or reject certain reports is as follows:

(i) The authority to acknowledge or reject the ISR resides with the ACO or the Contracting Officer who receives it, as described in paragraph (h)(1)(i) of this clause.

(ii) The authority to acknowledge or reject SSRs in eSRS resides with the SSR Coordinator at the department or agency that administers the majority of the Contractor's individual subcontracting plans.

(iii) The authority to acknowledge or reject SSRs for construction and related maintenance and repair contracts resides with the SSR Coordinator for each department or agency.

(iv) The authority to acknowledge or reject the Year-End Supplementary Report for Small Disadvantaged Businesses resides with the Component SSR Coordinator who acknowledges or rejects the SSR.

(v) If the Contractor submits the Small Disadvantaged Business Participation report using eSRS, the authority to acknowledge or reject this report in eSRS resides with the contracting officer who acknowledges or rejects the ISR.

(End of clause)

Alternate 1 When this clause is used to supplement clause 52.219-9 Small Business Subcontracting Plan (DEVIATION), substitute the following paragraph (h)(1) (i) for (h)(1)(i) in the basic clause:

(h)(1) (i) The Standard Form 294 Subcontracting Report for Individual Contracts shall be submitted to the ACO or, if no ACO is assigned, the Contracting Officer; paragraph (h)(2)(i) is inapplicable.

252.219-7004 Small Business Subcontracting Plan (Test Program) (DEVIATION)

(a) *Definition.*

"Electronic Subcontracting Reporting System (eSRS)" means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at http://www.esrs.gov.

"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Contractor's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101-189, as amended, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub. L. 95-507.

(c) The Contractor shall—

(1) Ensure that subcontractors with subcontracting plans agree to submit an Individual Subcontract Report (ISR) and/or Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS).

(2) Provide its contract number, its DUNS number, and the e-mail address of the Contractor's official responsible for acknowledging or rejecting the ISR, to all first-tier subcontractors so they can enter this information into the eSRS when submitting their reports.

(3) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging or rejecting the ISRs, to its subcontractors with subcontracting plans.

(4) Acknowledge or reject all ISRs submitted by its subcontractors using eSRS.

(d) The Contractor shall submit SSRs using eSRS at http://www.esrs.gov. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Purchases from a corporation, company, or subdivision that is an affiliate of the prime

Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(1) This report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, as negotiated in the comprehensive subcontracting plan with the Defense Contract Management Agency.

(2) This report encompasses all subcontracting under prime contracts and subcontracts with the Department of Defense, regardless of the dollar value of the subcontracts, and is based on the negotiated comprehensive subcontracting plan.

(3) The report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. Reports are due 30 days after the close of each reporting period.

(4) The authority to acknowledge receipt or reject the SSR resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

(e) All reports submitted at the close of each fiscal year shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. The authority to acknowledge receipt or reject the Year End Report resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

(f) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(g) The Contractor shall include, in contracts that offer subcontracting possibilities, are expected to exceed $550,000 ($1,000,000 for construction of any public facility), and are required to include the clause at 52.219-8, Utilization of Small Business Concerns --

(1) 52.219-9 Small Business Subcontracting Plan (DEVIATION) and 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (DEVIATION) with its Alternate 1,

when the Contracting Officer has included these clauses in the contract for purposes of flowing them down to subcontractors to allow submission of SF 294s in lieu of ISRs.

(2) 252.219-7004 Small Business Subcontracting Plan (Test Program) (DEVIATION) in subcontracts with subcontractors that participate in the test program described in DFARS 219.702.

(3) FAR 52.219-9 Small Business Subcontracting Plan and 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (DEVIATION) when the Contracting Officer has included these clauses in the contract for purposes of flowing them down to subcontractors to require submittal of ISRs using eSRS.