



GSA Public Buildings Service

July 16, 2020

MEMORANDUM FOR REGIONAL COMMISSIONERS, PBS  
REGIONAL LEASING DIRECTORS  
REGIONAL LEASING ACQUISITION OFFICERS

FROM: JOHN D. THOMAS  
ACTING ASSISTANT COMMISSIONER  
OFFICE OF LEASING – PR

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**John Thomas**  
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SUBJECT: LEASING ALERT (LA-20-08), Lease Requirements for Small  
Business Subcontracting Plans and Required Reports

1. Purpose. This Leasing Alert is being issued to correct the numbering of the previously issued “Leasing Alert LA-20-07 Lease Requirements for Small Business Subcontracting Plans and Required Reports (Replaces LA-FY17-09),” which revised the initial leasing policy from July 6, 2017 for Small Business Subcontracting Plans and associated reports required by GSAM 570.701 and as defined by FAR subpart 19.7. This new Leasing Alert re-issues Leasing Alert LA-20-07 as LA-20-08. All other guidance remains unchanged.

Therefore, this leasing alert reissues the following substantive changes made in the Leasing Alert issued on June 8, 2020:

- Removes two template attachments (Leasing Model Small Business Subcontracting Plan and Small Business Subcontracting Plan Review Checklist) and instead directs leasing specialists to go to GSA’s Insite page to obtain the most recent version of these documents.
- Updates Attachment 1 to:
  - Clarify that the guidance contained under this Leasing Alert also applies to succeeding and superseding lease actions;
  - Revise guidance with respect to the timeframe allotted for review, to conform to GSAM 519.705-5.
- Includes minor technical editorial changes.

The plan and reports as outlined in this guidance are required to be included in the lease file, and will be subject to review. This guidance references the memorandum entitled “Elimination of FPDS-NG Reporting Requirement for Contract Actions Impacting Leasing” dated August 20, 2012, and sets policy for Small Business Subcontracting

U.S. General Services Administration  
1800 F Street, NW  
Washington, DC 20405-0002  
[www.gsa.gov](http://www.gsa.gov)

compliance for the Leasing community.

## 2. Background.

### a. FAR Subpart 19.7- The Small Business Subcontracting Program.

The Subcontracting Program is comprised of activities to ensure small businesses<sup>1</sup> receive a “maximum practicable opportunity” to participate in requirements awarded by Federal agencies, including subcontracts resulting from award of prime contracts which the Lessor agrees to implement to the “fullest extent”<sup>2</sup>. When total contract value, including options, exceeds certain size thresholds, and the apparently successful offeror (prime contractor) is other than a small business, that offeror must submit an acceptable Small Business Subcontracting Plan in accordance with [FAR 19.702](#).

Small business size standards are government-wide and are determined based upon the North American Industry Classification System Codes (NAICS) with thresholds for the number of employees or annual revenue sales. For lease acquisitions, the NAICS code is 531120, unless the real property is self-storage (531130), land (531130), or residential (531110). The current size standard for a small business under NAICS code 531120 is \$41.5M in annual average gross revenue of the concern for the last 3 fiscal years<sup>3</sup>. **Note that this size standard is subject to revision.** Offerors will certify this information as part of the online Representations and Certifications to be completed during the System for Award Management (SAM) registration process.

### b. When is a Small Business Subcontracting Plan Required?

A Small Business Subcontracting Plan is required when:

- 1) the offeror is other than a small business (as defined by the NAICS code size standard), and
- 2) total contract value, including options, will exceed \$700,000<sup>4</sup> or when a lease modification<sup>5</sup> will change the value of the lease to exceed the \$700,000 threshold.

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<sup>1</sup> This includes the small business socio-economic categories: small disadvantaged businesses, women-owned small businesses, veteran-owned small businesses, service-disabled veteran owned small businesses and HUBZone small businesses.

<sup>2</sup> FAR 52. 219-8, *Utilization of small business concerns*, incorporated in each lease terms and conditions.

<sup>3</sup> Current size standard effective August 19, 2019, subject to change

<sup>4</sup> Current threshold under FAR 19.702; subject to change

<sup>5</sup> Per FAR 19.702(b)(4), subcontracting plans are not required for modifications that are within the scope of the contract and the contract does not contain the clause at [52.219-8](#), Utilization of Small Business Concerns.

The submitted plan must be reviewed and go through the current Small Business Subcontracting Plan approval process outlined under Attachment 1 prior to lease award. Failure to submit an acceptable plan will make the Lessor ineligible for award as outlined in the General Clause “FAR 52.219-9, Small Business Subcontracting Plan.” At award, the subcontracting plan is incorporated into, and becomes a material part of, the lease. Note that the subcontracting plan remains in effect should the building ownership change, even when the new ownership is a small business. In instances where the Lessor’s size status changes from small to other than small as a result of a size re-representation as required by FAR 52.219-28, Post Award Small Business Program Rerepresentation, the LCO may require a small business subcontracting plan, as outlined under [FAR 19.301-2\(e\)](#). The following two examples present situations where a subcontracting plan will foster opportunities for small businesses during the remainder of the lease term and ensure that GSA meets agency-wide goals for small business participation in Government contracting actions:

- Example 1 - Lease renewal: Prior to exercising a renewal option, the LCO, as part of his/her confirmation of the Lessor’s active SAM registration, should also review the Lessor’s current SAM online representations and certifications to confirm whether their size status has changed to an “other than small business.” If this is the case, the LCO may require the Lessor to submit an approved Small Business Subcontracting Plan for the remaining term(s) of the lease.
- Example 2 – Change of ownership/novation: The Administrative LCO (ALCO), as part of his/her confirmation of the Lessor’s active SAM registration, should also review the Lessor’s current version of representations and certifications in SAM to confirm whether their size status has changed to an “other than small business” as compared to the size status of the original Lessor/owner (“transferor”). If this is the case, the ALCO will notify the LCO as part of coordination effort which occurs during the novation process. The LCO may then require the new Lessor/owner (transferee) to submit an approved Small Business Subcontracting Plan.

#### c. Required Reports

After award, when a Small Business Subcontracting Plan is incorporated into the lease, Lessors are required by the terms of the lease to submit periodic reports each year so that the Government can determine the extent of compliance by the offeror with the subcontracting plan as outlined in [FAR 52.219-9](#). These reports are the Standard Form 294 Subcontracting Report for Individual Contracts (ISR) and the Summary Subcontract Report (SSR). The ISR is a semi-annual report which collects subcontracting award data from the Lessor for an individual lease. It is due by April 30, encompassing the reporting period October 1 – March 31, and by October 30, for the reporting period April 1 – September 30, for each year the lease is active. The SSR collects subcontracting

award data for all contracts that a Lessor has been awarded, and is due by October 30.

Reports are required when due, regardless of whether there has been any subcontracting activity.

d. Reporting Method

Since lease award data is not uploaded into the Federal Procurement Data System (FPDS), it is not possible for Lessors to submit their ISR via Electronic Subcontracting Reporting System (eSRS). The Lessor must manually submit their ISR to the Lease Contracting Officer, or their designated representative, via Standard Form 294. The SSR<sup>6</sup> is submitted annually and is accepted using the eSRS system. See Attachment 1 for additional guidance regarding the report validation and enforcement process.

e. Special Guidance for On-Airport Leases

Attachments 5 and 6 contain additional guidance to assist regional leasing programs in leasing on-airport space from airport authorities.

3. Effective Date. This Leasing Alert and the accompanying attachments are effective June 8, 2020.

4. Applicability. This Leasing Alert and the accompanying attachments are mandatory and apply to all U.S. General Services Administration (GSA) real property leasing activities and to activities delegated by GSA to other Federal agencies.

5. Cancellation. Leasing Alert LA-20-07 issued on June 8, 2020 is cancelled.

6. Instructions and Procedures. See Instructions in Attachment 1.

Attachment 1 – General Guidance for Approval of Subcontracting Plans and Required Reports

Attachment 2 – Initial Lessor Letter- Subcontracting Required Reports

Attachment 3 – Lessor Reminder Letter - Subcontracting Required Reports

Attachment 4 – Individual Subcontracting Report (Standard Form - 294)

Attachment 5– Special Guidance for Airports

Attachment 6 – Airport Individual Deviation Template

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<sup>6</sup> Data in the annual SSR is used to evaluate each federal agency's small business subcontracting achievement during the fiscal year.

## LA 20-08 Attachment 1: General Guidance for Approval of Subcontracting Plans and Required Reports

Offerors are required to register with the System for Award Management (SAM) and complete the online Representations and Certifications as part of that registration. Small business lessors are also required after award to re-represent their size status in SAM, in accordance with [FAR 52.219-28](#). In doing so, they will certify whether or not they are still a small business concern, based upon the size standard for their NAICS code. A change in the Lessor's size status from "Small Business" to "Other than a Small Business" does not change the terms of the contract; however, as stated in the Leasing Alert, the LCO may choose at that time to require the Lessor to submit a Small Business Subcontracting Plan.

For lease acquisitions, the NAICS code is 531120, unless the real property is self-storage (531130), land (531190), or residential (531110). The current size standard for a small business under NAICS code 531120 is \$38.5 million in annual average gross revenue of the concern for the last 3 fiscal years. **Note that this size standard is subject to revision.**

If the lease contract has a total value, including options, exceeding \$700,000<sup>7</sup> and the offeror is not a small business, a Small Business Subcontracting Plan must be included as part of their offer. This applies to succeeding and superseding leases, in addition to new and new/replacing leases.

A leasing specific Small Business Subcontracting Plan template, subject to revision, can be found on the [Office of Small and Disadvantaged Business Utilization \(OSDBU\) webpage](#) on GSA Insite (<https://insite.gsa.gov/subcontracting>)

Prior to lease award, the prospective Lessor's plan must be reviewed, negotiated and approved by the Lease Contracting Officer (LCO) using the latest version of the "Checklist for Review of Subcontracting Plan" posted on the [OSDBU webpage](#) on Insite. Once the plan is acceptable to the LCO, the plan and the checklist are forwarded to the GSA Regional Small Business Technical Advisor (SBTA) for their review and approval. Each region's SBTA can be found at the [OSDBU webpage](#). The SBTA will then forward the plan and checklist to the Small Business Administration (SBA) Procurement Center Representative (PCR) for their review and approval as required by [FAR 19.705-5](#). Both the GSA SBTA and the SBA PCR are the LCO's technical advisors when it comes to small business subcontracting plans. Any necessary changes must be discussed with

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<sup>7</sup> current threshold per FAR 19.702, subject to change

the offeror during negotiations.

In the event that the LCO does not receive review comments from SBTA within 5 workdays, the LCO shall document the file, and continue with the award process with the offered plan as approved solely by the LCO. For those subcontracting plans subject to Associate Administrator of the Office of Small and Disadvantaged Business Utilization (AAOSDBU) review, the timeframe is 10 workdays. This process and timeframe are set in [GSAM 519.705-5](#)<sup>8</sup>.

The LCO must include the plan as an exhibit to the lease; upon award, the plan becomes a material part of the lease as required by the FAR 17.705-5. The LCO must notify the SBA Area Director of the award with a copy of the subcontracting plan as required by [FAR 19.705-5](#) and [GSAM 519.705-6](#) (currently within 5 work days of lease award).

Note: the SBA Area Director is not the SBA PCR who reviewed the plan initially. The current SBR Area Director for each region can be found on the SBA's website <https://www.sba.gov/contracting/resources-small-businesses/pcr-directory/area-directors>.

Once the Area Director receives a copy of the award and negotiated subcontracting plan, a SBA Customer Marketing Representative (CMR) is assigned who will monitor and assist the Lessor in finding small businesses and its required reporting responsibilities.

Given the subcontracting plan is a material part of the lease, it is imperative that the Lessor be made aware of, or be reminded of, their reporting responsibilities during the initial post award meeting. In addition, the Lessor should be provided with a letter advising them of responsibilities to submit periodic reports documenting their subcontracting activity. A sample notification letter has been included as Attachment 2. The letter should outline the method of delivery for both the Individual Subcontract Report (ISR) and Summary Subcontract Report (SSR). Currently, the Lessor must manually submit the ISR to the LCO, or his/her designated representative, using Standard Form-294 (see Attachment 4; note that Lessors should obtain most current version from the GSA Forms library at <https://www.gsa.gov/reference/forms>). The LCO or designated representative checks the ISR against the approved plan. Both the ISR

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<sup>8</sup> Per GSAM 519.705-5 (b), the following subcontracts are subject to AAOSDBU review:

- (i) Contract performance will occur in two or more Regions and the estimated value of the acquisition exceeds \$50 million (including options), excluding multiple award schedule contracts
- (ii) Based on political sensitivity or importance to GSA, the AAOSDBU designates the procurement for reviewthe review period is 10 workdays.

and evidence of the LCO review must be saved within the lease file. The SSR still must be submitted electronically, and accepted via eSRS.

Upon receipt, the LCO will have 60 days from the end of the reporting period<sup>9</sup> to review and accept the report. Tips to review the reports can be found on the OSDDBU Subcontracting Insite Page at <https://insite.gsa.gov/subcontracting>. The purpose of the ISR review is to ensure the Lessor is on track to meet the lease's subcontracting goals established in the plan. If there has been little or no progress in sharing subcontracted dollars with small businesses, question the Lessor. If the explanation is reasonable, accept the report. If the Lessor cannot adequately explain any shortfalls, or, if the Lessor did not follow the instructions on the back of the SF294, reject the report, and identify the reason(s) for the rejection. The Lessor is required to submit a revised report within 30 days of the rejection. When the Lessor is not meeting its goals, remind the Lessor of the commitments made in the subcontracting plan and ask for a corrective action plan to comply with the contract. The LCO should remind the Lessor that failure to make a good faith effort may result in assessing liquidated damages.<sup>10</sup> Ultimately, it is the responsibility of the LCO to enforce the small business subcontracting goals established in the lease.

In the event that the Lessor does not submit either report, a sample reminder letter has been included as Attachment 3.

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<sup>9</sup> The end dates of the ISR reporting periods are March 31 and September 30 each year; SSR reporting period ends September 30. Thus, the LCO review must be completed no later than May 30 (ISR) and November 30 (ISR and SSR).

<sup>10</sup>FAR 52.219-16, *Liquidated damages*

**COVER PAGE FOR ATTACHMENTS 2 THROUGH 6**