

ACQUISITION LETTER - MV-12-02 - DATED 1/31/12

QUESTIONS AND ANSWERS

QUESTION #1: Exactly where in a specification section should the Subcontracting Plan information be inserted? What should the language include?

FAR 19.702 advises a subcontracting plan is required from an other than small business, whose contract award, including all options whether exercised or not, is expected to exceed \$650,000 (\$1.5 million for construction).

To answer your question with regard specification section location and clauses to include, because each solicitation is different, it is recommended you contact your Regional Acquisition Executive in your Service area (FAS, PBS). If you have specific questions relating to subcontracting plans that they are unable to address, we recommend contacting your regional Small Business Technical Advisor. Their contact information is located at: <http://insite.gsa.gov/osbucontacts>

QUESTION #2: Should the subcontracting plan include options?

Yes. Please see FAR 19.705-2 and GSAM 519.505-2. If you have additional questions on this, your Regional Acquisition Executive in your Service area (FAS, PBS) is an exceptional resource available to you. If you have specific questions relating to subcontracting plans that they are unable to address, we recommend contacting your regional Small Business Technical Advisor. Their contact information is located at: <http://insite.gsa.gov/osbucontacts>

QUESTION #3: If a workshop is designated as a small business by SBA, then the workshop would fall under the small business exemption?

This is correct. If a workshop is small, then they are exempt. Both AbilityOne and UNICOR are working to update CCR and ORCA information to accurately reflect their current size. The contracting officer (CO) should look to ORCA and CCR, as always, for a size determination. No change in policy. The CO could ask the Workshop to ensure CCR and ORCA are updated, but that is just a suggestion.

QUESTION #4: On existing contracts, can you modify a contract to include a subcontracting plan?

Yes. When a modification meets the criteria in FAR 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.

If you have additional questions on this, your Regional Acquisition Executive in your Service area (FAS, PBS) is an exceptional resource available to you. If you have specific questions relating to subcontracting plans that they are unable to address, we recommend contacting your regional Small Business Technical Advisor. Their contact information is located at: <http://insite.gsa.gov/osbucontacts>

QUESTION #5: If a CO finds that the AbilityOne contractor is failing to make a good faith effort to comply with the subcontracting plan, will their existing processes be changing?

The CO should treat their review of the subcontracting plan submitted by an AbilityOne contractor as they would any other subcontracting plan. If the CO's review of the plan reveals the AbilityOne contractor is failing to make a good faith effort the CO must document and take appropriate remedies (see FAR 19.705-7 and GSAM 519.705-7).

UNICOR and AbilityOne both approached GSA and specifically asked that GSA remove the exemption outlined in the GSAM. No other agency has an exemption.

If you have additional questions on this, your Regional Acquisition Executive in your Service area (FAS, PBS) is an exceptional resource available to you.. If you have specific questions relating to subcontracting plans that they are unable to address, we recommend contacting your regional Small Business Technical Advisor. Their contact information is located at: <http://insite.gsa.gov/osbucontacts>

QUESTION #6: What will the education of the many stakeholders go through to understand the process? Stakeholders are NISH, Commission, OSBU, SBA, Contracting Officers, Customers, field office managers, etc.

Since GSA was the only agency that exempted AbilityOne and UNICOR from the subcontracting plan requirement, AbilityOne and UNICOR are already be familiar with the process through other agency contracts. If any of your AbilityOne or UNICOR contractors request assistance, the U.S. Small Business Administration (SBA) is available to train them using SBA's local Procurement Center Representatives.

COs were sent an Acquisition Alert on January 31, 2012. There is no change to the subcontracting plan process other than the inclusion of AbilityOne and UNICOR. For CO's needing general subcontracting training, please contact your Regional Acquisition Executive in your Service area (FAS, PBS) who will make arrangements for training

through your regional Small Business Technical Advisor. Their contact information is located at: <http://insite.gsa.gov/osbucontacts>

QUESTION #7: Concern on how OSBU arrived at the decision to determine that Ability One workshops were large business?

The determination was made by SBA.. GSA was the only agency who had exempted Unicor and Ability One from the requirement to submit subcontracting plans. AbilityOne and UNICOR are to ensure CCR and ORCA reflect their correct business size status. They are a business concern and can be categorized as small or large utilizing NAICS codes. When, based on NAICS code, an AbilityOne workshop or UNICOR determines their business size, those determined to be a small business would fall into the exemption whereby a subcontracting plan would not be required.

QUESTION #8: Going back to OSBU determining Ability One and UNICOR to be large business, is OSBU meaning that Ability One and UNICOR are considered large or are they really saying workshops under the Ability One program are large? Individual contracts are not signed by Ability One but are signed by Workshop executive directors. Does this mean that all workshops would not be able to make offers/bids on competitive commercial contracts unless was full and open competition?

The determination was made by SBA. Each workshop determines their own business size based on NAICS codes (<http://www.census.gov/eos/www/naics/>).

QUESTION #9: Ability One is a sole source contract majority of the time; however, there are times when Ability One does a competition between workshops for a specific requirement. Based on FAR 19.705-5(b)(2), you must require all offerors (other than small) to submit subcontracting plans with their initial offers when a negotiated acquisition meets all conditions of which there are 5 listed as follows: - clarify if the following meets all the criteria

1. You anticipate receiving individual subcontracting plans (not commercial plans)
2. You will award on basis of trade-offs among cost/price/technical/management factors under FAR 15.101-1.
3. Acquisition is not commercial item
4. Acquisition offers more than minimal subcontracting opportunities
5. Offeror's subcontracting plan is identified as evaluation factor in solicitation –

FAR 19.705-5(b)(2) does not state the above; however, GSAM 519.705-2(b)(2) does. FAR 19.705-2(d) advises the CO may require the submission of the subcontracting plan with the initial offer or at any time prior to award. Also GSAM 519.705-2(c) allows the CO to request subcontracting plans with initial offers. If you have additional questions

on this, your Regional Acquisition Executive in your Service area (FAS, PBS) is an exceptional resource available to you. If you have specific questions relating to subcontracting plans that they are unable to address, we recommend contacting your regional Small Business Technical Advisor. Their contact information is located at: <http://insite.gsa.gov/osbucontacts>

QUESTION #10: Provision 552.219-72(a) (Preparation, Submission & Negotiation of Subcontracting Plans) as required by 519.708-70(b) states an offeror other than small business concern submitting an offer that exceeds \$_____ shall submit a subcontracting plan with its initial offer. Subcontracting Plan will be negotiated concurrently with price and any required technical and management proposals, unless the offer submits a previously approved commercial plan. Do the provisions still apply?

Yes. Please see the response to question #9 as well as the requirement to submit plans with initial offers is discretionary on part of the CO. If you have additional questions on this, your Regional Acquisition Executive in your Service area (FAS, PBS) is an exceptional resource available to you. If you have specific questions relating to subcontracting plans that they are unable to address, we recommend contacting your regional Small Business Technical Advisor. Their contact information is located at: <http://insite.gsa.gov/osbucontacts>

QUESTION #11: Provision 552.219-73(d) – (Goals for Subcontracting Plan) states failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan with time specified by the CO shall make offeror ineligible for award. Since this is provision that establishes reviewing subcontracting plans prior to award, how can one modify into a contract?

When a modification meets the criteria in FAR 19.702 the CO is to include the requirement to submit the subcontracting plan in the modification (see FAR 19.702(a) for dollar thresholds). This means that even if an existing award did not have a subcontracting plan, one should be included via a modification if it meets the subcontracting plan requirements.

If you have additional questions on this, your Regional Acquisition Executive in your Service area (FAS, PBS) is an exceptional resource available to you. If you have specific questions relating to subcontracting plans that they are unable to address, we recommend contacting your regional Small Business Technical Advisor. Their contact information is located at: <http://insite.gsa.gov/osbucontacts>

QUESTION #12: FAR 42.15 (Contractor Performance Information) – specifically to FAR 42.1502 (Policy) paragraphs (g) and (h) that Past Performance evaluations shall include an assessment of contractor performance against and efforts to achieve the goals identified in the small business subcontracting plan when the contract includes the

clause at 52.219-9 (small business subcontracting plan). Then under paragraph (h) it states agencies shall not evaluate performance for contracts awarded under Subpart 8.7 which is Ability One contracts. How do we treat reviewing subcontracting plans as a past performance factor if we aren't supposed to evaluate past performance under Ability One contracts?

This question requires further research prior to a response. As mentioned above, all other federal agencies have always been requiring subcontracting plans from AbilityOne (those determined to be large businesses). Research will be done to determine how other agencies are handling past performance evaluations.

UPDATE 3/29/12: Karen Poole will take this to GSA's CAAC Representative. In the meantime, SBA's Office of Policy Guidance advised the following: Attempt to enter a "N/A, See FAR 8.7" or some similar comment that would be sufficient enough to advise the user of the contractor performance rating system of the requirements at 42.1502(g) IAW subpart 42.1952(h). You should address this issue with your agency's CAAC representative. Consideration may be given to providing additional guidance in the FAR.