

Small Business Regulation and Legislation Update

Lower Tier Subk Final Rule

- ▶ 81 FR 94246 (12/23/16), Implements Section 1614 of NDAA of 2014, 15 USC 637(d)(16)

Where the prime contractor has an individual subcontracting plan, the prime contractor shall establish two sets of small business subcontracting goals, one goal for the first tier and one goal for lower tier subcontracts awarded by other than small subcontractors with individual subcontracting plans.

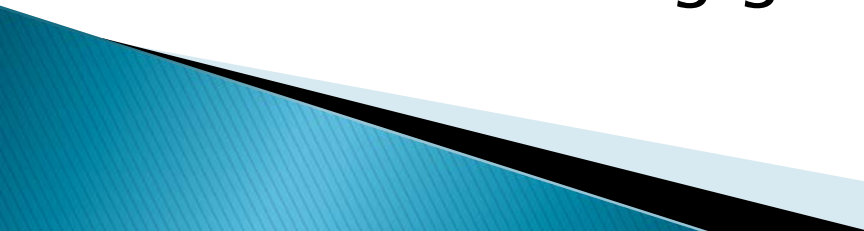
Under individual subcontracting plans the prime contractor shall receive credit for small business concerns performing as first tier subcontractors (first tier goal) and subcontractors at any tier pursuant to the subcontracting plans required under paragraph (c) of this section in an amount equal to the dollar value of work awarded to such small business concerns (lower tier goal).

Other-than-small, lower tier subcontractors must have their own individual subcontracting plans if the subcontract is at or above the subcontracting plan threshold, and are required to make a good faith effort to meet their subcontracting plan goals. The prime contractor and any subcontractor with a subcontracting plan are responsible for reporting on subcontracting performance under their contracts or subcontracts at their first tier.

NDAA 2016, P.L. 114-92, 11/25/15

- ▶ 867 – Allows past performance of all team members (JV or subs) to be considered for bundled or consolidated contracts, or multiple award contracts above the substantial bundling threshold for the agency (DOD \$8 million, \$6 million NASA/GSA/DOE, \$2.5 million or more for all other agencies).
- ▶ Section 868 – SBA Scorecard
 - 50% prime goals
 - 50% subk goals, number of SBCs awarded contracts, number of SBCs awarded subks, other factors

NDAA 2016, P.L. 114-92, 11/25/15

- ▶ 869 – Authorizes petitions for reconsideration of industry size standards to SBA’s Office of Hearings and Appeals – Proposed Rule 81 FR 69723 (Oct. 7, 2016)
 - ▶ 870 – OSDDBU – notice from SBC that solicitation unduly restricts the ability of SBCs
 - ▶ 871 – SES – Responsible for meeting subcontracting goals
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FAR Final Rule on Payment of Subcontractors

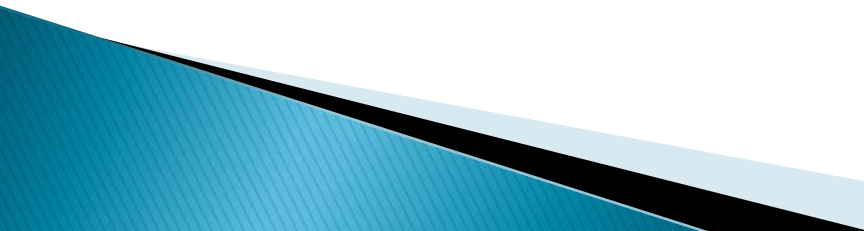
- ▶ (g) Past performance evaluations shall include an assessment of the contractor's—
- ▶ (1) Performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219-9, Small Business Subcontracting Plan; and
- ▶ (2) Reduced or untimely payments (as defined in 19.701), made to small business subcontractors, determined by the contracting officer to be unjustified. The contracting officer shall—
- ▶ (i) Consider and evaluate a contractor's written explanation for a reduced or an untimely payment when determining whether the reduced or untimely payment is justified; and
- ▶ (ii) Determine that a history of unjustified reduced or untimely payments has occurred when the contractor has reported three or more occasions of unjustified reduced or untimely payments under a single contract within a 12-month period (see 42.1503(h)(1)(vi) and the evaluation ratings in Table 42-2).
- ▶ The following payment or nonpayment situations are not considered to be unjustified:
- ▶ (A) There is a contract dispute on performance.
- ▶ (B) A partial payment is made for amounts not in dispute.
- ▶ (C) A payment is reduced due to past overpayments.
- ▶ (D) There is an administrative mistake.
- ▶ (E) Late performance by the subcontractor leads to later payment by the prime contractor.

- ▶ 81 FR 93481 (December 20, 2016)

FAR Subcontracting Final Rule

- ▶ (1) Requiring prime contractors to make good faith efforts to utilize their proposed small business subcontractors during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal. To the extent a prime contractor is unable to make a good faith effort to utilize its small business subcontractors as described above, the prime contractor is required to explain, in writing, within 30 days of contract completion, to the contracting officer the reasons why it is unable to do so.
- ▶ (2) Authorizing contracting officers to calculate subcontracting goals in terms of total contract dollars in addition to the required goals in terms of total subcontracted dollars.
- ▶ 81 FR 45833 (July 14, 2016) effective November 1, 2016

HUBZone Direct Final Rule

- ▶ Qualified Base Closure Area
 - ▶ Qualified Disaster Area
 - ▶ Native Hawaiian Organization
 - ▶ 81 FR 51312 (August 4, 2016), effective October 3, 2016
 - ▶ Implements Section 866 of the NDAA 2016, P.L. 114-92, 11/25
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- ▶ Questions? Don't ask me