

19.702 Statutory requirements.

Any contractor receiving a contract with a value greater than the *simplified acquisition threshold* must agree in the contract that small business, veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), *HUBZone* small business, small disadvantaged business (SDB), and women-owned small business (WOSB) *concerns* will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their *subcontracts* with small business, VOSB *concerns*, SDVOSB *concerns*, *HUBZone* small business *concerns*, SDB *concerns*, and WOSB *concerns*.

(a)

(1) Except as stated in paragraph (b) of this section, section 8(d) of the Small Business Act (15 U.S.C. 637(d)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans:

(i) In negotiated *acquisitions*, each *solicitation* of *offers* to perform a contract that is expected to exceed \$750,000 (\$1.5 million for *construction*) and that has subcontracting possibilities, *shall* require the apparently successful *offeror* to submit an acceptable subcontracting plan. If the apparently successful *offeror* fails to negotiate a subcontracting plan acceptable to the *contracting officer* within the time limit prescribed by the *contracting officer*, the *offeror* will be *ineligible* for award. For a *multiple-award contract* with more than one North American Industry Classification System (NAICS) code, see paragraph (a)(2)(i) of this section.

(ii) In sealed bidding *acquisitions*, each invitation for bids to perform a contract that is expected to exceed \$750,000 (\$1.5 million for *construction*) and that has subcontracting possibilities, *shall* require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the *contracting officer*, the bidder will be *ineligible* for award. For a *multiple-award contract* with more than one NAICS code, see paragraph (a)(2)(i) of this section.

(iii) Each *contract modification* that causes the value of a contract without a subcontracting plan to exceed \$750,000 (\$1.5 million for *construction*), *shall* require the contractor to submit a subcontracting plan for the contract, if the *contracting officer* determines that subcontracting opportunities exist. For a *multiple-award contract* with more than one NAICS code, see paragraph (a)(2)(ii) of this section.

(2)

(i) For a *multiple-award contract* with more than one NAICS code, the *solicitation* referenced in paragraphs (a)(1)(i) and (ii) of this section *shall* require the apparently successful *offeror* to submit an acceptable subcontracting plan for either the distinct portion(s) or category(ies) of their proposal for which the *offeror* is other than small or for the entirety of their proposal, at the *offeror's* discretion. When determining the need for a subcontracting plan, the *contracting officer shall* consider the cumulative dollar value of the portion(s) or category(ies) of the *offeror's* proposal for which the *offeror* is other than small.

(ii) For a *multiple-award contract* with more than one NAICS code, the modification referenced in paragraph (a)(1)(iii) of this section *shall* require the contractor to submit an acceptable subcontracting plan for either the distinct portion(s) or category(ies) of the contract for which the contractor is other than small or for the entirety of their contract, at the contractor's discretion. When determining the need for a subcontracting plan, the *contracting officer shall* consider the cumulative dollar value of the portion(s) or category(ies) of the contract for which the contractor is other than small.

(b) Subcontracting plans (see paragraphs (a)(1) and (2) of this section) are not required-

(1) From small business *concerns*;

(2) For *personal services contracts*;

(3) For contracts or *contract modifications* that will be performed entirely outside of the *United States* and its *outlying areas*; or

(4) 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*.

(c) As stated in 15 U.S.C. 637(d)(9), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, 15 U.S.C. 637(d)(4)(F) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan *shall* result in the imposition of liquidated damages.

(d) As authorized by 15 U.S.C. 637(d)(12), certain costs incurred by a mentor firm in providing developmental assistance to a protégé firm under the Department of Defense Pilot Mentor-Protégé Program, *may* be credited as if they were *subcontract* awards to a protégé firm for the purpose of determining whether the mentor firm attains the applicable goals under any subcontracting plan entered into with any *executive agency*. However, the mentor-protégé agreement *must* have been approved by the Director, Small Business Programs of the cognizant DoD military department or defense agency, before developmental assistance costs *may* be credited against *subcontract* goals. A list of approved agreements *may* be obtained at <https://business.defense.gov/Programs/Mentor-Protége-Program/>.

Parent topic: Subpart 19.7 - The Small Business Subcontracting Program