

April 20, 2011

FAS INSTRUCTIONAL LETTER 2011-09

MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES

FROM:


HOUSTON W. TAYLOR
ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT:

Implementation of the Requirement for Subcontracting Plans

1. Purpose. The purpose of this Instructional Letter (IL) is to provide guidance on the implementation of the requirement for small business subcontracting plans for Federal Supply Schedule (FSS) contracts designated as "other than small business concerns (i.e. large businesses)."
2. Background. Generally, it is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance (See FAR 19.201 (a)).

Recently, there have been new policy changes and initiatives to improve the Government's performance on this important public policy objective. The Small Business Jobs Act of 2010 was passed to develop ways to assist small businesses compete for Federal contracts. This statute will help create additional opportunities for small businesses to drive economic recovery and create jobs. Additionally, in April 2010, the President established the Interagency Task Force on Federal Contracting Opportunities for Small Businesses to create strategies that would ensure small businesses had equal opportunity when competing for a Federal contract.

In addition to new statutory requirements and the Administration's programs to increase small business participation in Federal contracting, the Small Business Administration's annual scorecard will report on agencies' small business

subcontracting program compliance and success.

To promote increased small business utilization under the FSS program, Contracting Officers must ensure the requirement for small business subcontracting plans is being implemented correctly and consistently in FSS contracts.

3. Effective Date. Date of signature.
4. Termination Date. This IL expires one year from the effective date unless cancelled, extended, or incorporated into a handbook.
5. Applicability. This IL applies to all GSA/FAS acquisition activities awarding and administering FSS contracts.
6. Reference to Regulations. This IL references Federal Acquisition Regulations (FAR) Subparts 19.702 Statutory Requirements and 19.705-2, Determining the need for a subcontracting plan; and General Service Acquisition Manual (GSAM) Subpart 519.705-2, Determining the need for a subcontracting plan.
7. Instructions / Procedures.
 - A. Solicitation Refresh
 - I. Solicitations must be refreshed to include the requirement for submission of small business subcontracting plans for all large business offerors.
 - II. Those solicitations that already require a small business Subcontracting Plan from large business offerors need no further action (i.e. no refresh).
 - B. Pre-Award
 - I. Contracting Officers shall consider all offers received from other than small business concerns to have an estimated contract value at or exceeding the threshold, including option years, as specified in FAR Subpart 19.702(a) (1) and GSAM 519.705-2 (a).
 - II. If an offeror that is designated as an other than a small business concern estimates the FSS contract value to be below the threshold, the Contracting Officer shall question the offeror's estimate, request the offeror revise their estimated contract value to meet or exceed the threshold, and request the offeror submit a small business subcontracting plan.

- III. Contracting Officers shall not award a Schedule contract to an other than small business concern without an acceptable small business subcontracting plan incorporated into the contract.
- IV. If it is determined that there are no subcontracting possibilities, the determination shall be approved at one level above the Contracting Officer and placed in the contract file. In addition, the Contracting Officer shall notify their Small Business Technical Advisor (SBTA) and obtain written concurrence of the Office of Small Business Utilization (OSBU) on the determination prior to contract award (see GSAM 519.705-2 (d) (1)). OSBU's concurrence can be obtained through coordination with the SBTA.

C. Post Award

- I. Prior to exercising an option, Contracting Officers shall review the contractor's small business subcontracting goals and their progress towards the goals for the current contract period.
- II. If necessary, Contracting Officers should update the goals for the upcoming option period in the contract's small business subcontracting plan (e.g. Master Plan or Individual Plan) and incorporate the updated plan into the contract through a bilateral modification. This modification must be executed prior to exercise of the option period.

8. Questions and Answers.

Q1. Why are we requiring all large business offerors to submit small business subcontracting plans when the FAR only requires plans for those large businesses that are awarded contracts valued over a certain threshold?

A1. All offers received from large businesses should have an estimated contract value at or exceeding the threshold, including option years, as specified in FAR Subpart 19.702(a) (1) and GSAM 519.705-2 (a). See A3 for the rationale behind this estimation. The requirement established in this IL is aimed at improving the Government's performance in the important public policy objective of promoting socioeconomic programs. It is expected that as a result of this IL, all FSS contracts will now be consistent with regards to the application of the small business subcontracting plan requirement.

Q2. Are there examples of how a Schedule solicitation includes a requirement such as the one listed in section A.I of this IL?

A2. Refer to paragraph (f)(8) of solicitation provision SCP-FSS-003 General Proposal Submission Instructions (JAN 2010) in Schedule 70, and paragraph (a)(12) of solicitation provision SCP-FSS-002 Specific Proposal Submission Instructions (DEC 2010) in Schedules 36 and Schedules 874 for how other Schedules currently implement this requirement.

Q3. What is the rationale behind estimating the value of offers from large businesses to be an amount exceeding the threshold specified in FAR Subpart 19.702(a)(1)?

A3. At time of the effective date of this IL, the threshold listed in FAR 19.702(a)(1) is \$650,000. The rationale for estimating the value of each offer from an other than small business concern (i.e. large business) above the threshold is based on a two-fold line of reasoning:

– Clause I-FSS-639 Contract Sales Criteria requires that each Schedule contract has sales of \$25,000 in the first two years of the contract and \$25,000 for each year after that. For the 20 year Schedule contract, this adds up to at least \$475,000 in minimum sales for each Schedule contract. This clause is applicable to both small business and large business Contractors; but the expectation is that the large business Contractor will have greater sales (over \$475,000) under their Schedule contract over a 20 year period.

– Clause B-FSS-96 Estimated Sales provides a list of either a twelve-month reading of sales as reported by previous Contractor(s) for each SIN, or estimates of the anticipated dollar volume (in the event the SIN is new) for each SIN. Majority of the amounts listed in this clause are above \$650,000. If the “Estimated Sales” amount is used as the estimated value of an offer from a large business, they will be required to submit a subcontracting plan.

Q4. When would it be necessary to update the subcontracting goals for the next option period?

A4. Contracting Officers should negotiate different subcontracting goals for an option period when it appears that the contractor has consistently met (or exceeded) their goals for previous contract periods. A copy of this updated subcontracting plan then has to be sent to the SBTA, along with a copy of the modification (see FAR 19.705-6 and GSAR 519.705-6).

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