



GSA Federal Acquisition Service

November 7, 2011

FAS INSTRUCTIONAL LETTER 2011-09
Supplement No. 1

MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES

FROM:

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ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)



SUBJECT:

Implementation of the Requirement for Subcontracting Plans

1. Purpose. This supplement provides guidance on the requirement for subcontracting plans in the event of a re-representation modification.
2. Background. IL 2011-09 provided guidance on the implementation of the requirement for small business subcontracting plans for Federal Supply Schedule (FSS) contracts designated as contracts to "other than small" (e.g. large) business concerns. The guidance provided instructions on how to implement the subcontracting plan requirement during the solicitation, pre-award, and option phases.

Guidance is also needed on what the requirement for subcontracting plans is when a small business Schedule contractor re-represents itself as an other than small (e.g. large) business.

3. Effective Date. Date of signature.
4. Termination Date. This IL remains effective until cancelled.
5. Applicability. This IL applies to all GSA/FAS acquisition activities awarding and administering FSS contracts.

6. Reference to Regulations. FAR 19.301-2, Rerepresentation by a contractor that represented itself as a small business concern; FAR 19.702, Statutory requirements; FAR 19.705-2, Determining the need for a subcontracting plan; GSAM 519.705-2, Determining the need for a subcontracting plan.
7. Instructions / Procedures.
(continuing section 7.C. from [IL 2011-09](#))

C. Post Award

- III. In the case of a contractor who submits a re-representation modification that indicates a change in size from small to "other than small" (large), a contracting officer cannot require the submission of a small business subcontracting plan.
 - a. While a subcontracting plan may be submitted and incorporated into the contract through a bilateral modification, note that the Federal Procurement Data System (FPDS) will not accept the subcontracting plan. Consequently, the subcontracting plan will not be forwarded to the Electronic Subcontracting Reporting System (eSRS), and the vendor will not be able to report against the subcontracting plan in eSRS. The Small Business Administration (SBA) uses the reports in eSRS when compiling the agency scorecards on small business subcontracting.

8. Questions and Answers.
(continuing section 8 from [IL 2011-09](#))

Q5. Why is a contracting officer unable to require a subcontracting plan following a re-representation modification that changes a contractor's size determination from small to large?

A5. Language in FAR 19.301-2(e) states that a "change in size status does not change the terms and conditions of the contract." It is the SBA's interpretation that this language prohibits Contracting Officers from requiring a subcontracting plan from a contractor following a rerepresentation modification since the requirement for a plan can be seen as a change in the terms and conditions of the contract. Federal Procurement Data System (FPDS) is tailored to the SBA's interpretation as the FAR is based on the SBA regulation. Until and unless the SBA changes their regulation to say otherwise, contracting officers cannot require small business subcontracting plans from contractors following a re-representation modification.

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