



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CESB (715)

25 August 1998

MEMORANDUM FOR COMMANDERS/DIRECTORS, USACE COMMANDS

SUBJECT: Subcontracting Program

1. Reference Construction Bulletin, No. 96-4 dated 2/15/96, subject: Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (copy enclosed).
2. In March I wrote to you expressing my personal interest in and commitment to improving the participation of small business (SB), small disadvantaged business (SDB) and women-owned small business (WOSB) firms in USACE contracts. I requested that you become personally involved in both improving subcontracting performance and ensuring contract compliance.
3. I am pleased with the many initiatives we have undertaken throughout USACE to highlight the importance of the subcontracting program, especially the efforts to improve subcontract reporting. While many have made early progress in working with our prime contractors to establish challenging goals and improve reporting of performance, there is still much that can be done to improve our performance.
4. Accordingly, I request that special attention be given to eliminate any barriers or impediments to greater participation of SB/SDB/WOSB as subcontractors. Particular attention should be given during acquisition planning to ensure that requirements are reviewed with the intent of maximizing subcontracting opportunities. Ensure that procedures are structured to promote SB/ SDB/WOSB participation in selection criteria. Program and technical managers must play a major role in this area.
5. Commands must begin an intensive program to monitor subcontracting plans and ensure that contractors meet their contract provisions. Reporting is just one element of subcontract plan enforcement, and it may be an indicator that other elements of the subcontract plan are not being taken seriously. The above reference provides guidance on monitoring subcontracts and areas to inspect during contractor compliance reviews. Of particular importance are the actions which can be taken by Contracting Officers to enforce compliance. These include withholding retainage, issuing unsatisfactory ratings, notifying the CEO of the company, and assessing liquidated damages in cases where the contractor did not comply in good faith.
6. I am personally committed and dedicated to ensuring that USACE continues to build on its fine small business record. To assist in monitoring this important program, I have asked the Deputy Commander to review the subcontracting program at Command Reviews and keep me advised of our progress. I know I can count on your support.

A handwritten signature in black ink, appearing to read "Joe N. Ballard".

JOE N. BALLARD
Lieutenant General, USA
Commanding

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US Army Corps
of Engineers

Construction Bulletin

No. 96-4 Issuing Office: CEMP-CP Issue Date: 2/15/96 Exp. Date: 31 DEC 98

CEMP-C

Subject: Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan

Applicability: GUIDANCE

1. REFERENCE: Construction Bulletin (CB) No. 96-3 dated 2/15/96, subject: Small Business Programs.

2. PURPOSE. This CB is a reissue of CB No. 93-19 dated 26 August 1993, subject: Administration of the Small Business and Small Disadvantaged Business Subcontracting Plan. It also incorporates all the revisions which were summarized in referenced CB.

3. When a construction contract exceeding \$1 million is to be awarded to a large business, the successful offerer is required to submit a subcontracting plan prior to award. The plan is to be reviewed by the Small and Disadvantaged Business Utilization Specialist (SADBUS), and approved by the Contracting Officer. The elements of the subcontracting plan include goals for subcontract awards to small, small disadvantaged, and women-owned small business (SB, SDB & WOSB) concerns(*), certain reporting requirements, flow down provisions for subcontracting, and other responsibilities which the contractor agrees to carry out. The approved subcontracting plan is incorporated into and made a material part of the contract. The subcontracting program flow down requirements apply to construction subcontracts exceeding \$1 million awarded to large businesses.

4. a. Reporting Requirements. The SF 294 "Subcontracting Report for Individual Contracts" is submitted by the contractor to the Administrative Contracting Officer (ACO) or his representative twice a year. This form is the primary tool for monitoring contractor's compliance with the subcontracting plan. The SF 294 is due 30 days following the end of the reporting periods (31 March and 30 September). The SF 295 "Summary Subcontract Report" contains information for all contracts that the contractor has with the U.S. Army Corps of Engineers. The SF 295 is submitted by the

(*) FAR Part 19--Small Business Programs, provides definition of these terms

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contractor to the cognizant contract administration office on a semiannual basis. This report is due 30 days following the end of the reporting periods (31 March and 30 September). Dollars awarded by the contractor/subcontractor (large business) to SB, SDB and WOSB are reported on SF 294 and 295 during a specific reporting period. Percentages of awards to SB, SDB, and WOSB reported on the forms are based on total subcontracted amount (large and small businesses) for the life of the contract (SF 294) and current fiscal year (SF 295).

b. Liquidated Damages (LDs) - Subcontracting Plan. When a contract includes the requirement for a subcontracting plan, the Federal Acquisition Regulation (FAR) requires that the FAR clause 52.219-16 "Liquidated Damages-Subcontracting Plan" be incorporated in the contract. The Liquidated Damages (LDs) are to be assessed when the contractor fails to make a good faith effort to comply with the subcontracting plan. The amount of damages attributable to the contractor's failure to comply is equal to the actual dollar amount by which the contractor failed to achieve each subcontract goal.

5. RESPONSIBILITIES OF THE ADMINISTRATIVE CONTRACTING OFFICER (ACO).

a. The major responsibility of ACOs in administering contracts is to assure contractors' compliance with all contract requirements. This includes enforcing all contract requirements concerning SB, SDB, and WOSB utilization and recommending to the respective Contracting Officer the assessment of LDs when warranted.

b. When a contract includes provisions for a subcontracting plan, the responsible ACO must discuss with the contractor at the preconstruction conference the details of the plan and document these discussions in the preconstruction conference minutes. The district SADBUS shall be invited to the preconstruction conference to advise on subcontracting requirements and on SB, SDB, and WOSB opportunities. The ACO shall ensure that the individual identified by the contractor as the administrator of the subcontracting plan is also in attendance at the preconstruction conference. The SADBUS or the ACO shall provide the contractor with blank copies of the new SF 294 and SF 295, a schedule of reporting dates and the appropriate distribution of the required reports. The original completed SF 294 and a copy of the completed SF 295 for each reporting period (completed by the prime contractor) shall be provided to the ACO. The ACO will forward the original SF 294 and a copy of the SF 295 which are submitted by the prime contractor to the SADBUS. Contractors are not required to submit copies of the SF 294 report to the Defense Logistics Agency (DLA) unless DLA is administering the contract. First tier subcontractors submit original SF 294 to the prime contractor. The prime contractor maintains the SF 294 for his records and compliance reviews. First and lower tier subcontractors submit SF 295s to the prime contractor who in turn submit them to the ACO. The ACO will forward the SF 295 reports to the district SADBU office for processing. Other issues to be covered include: what constitutes a "good faith effort", assessment of LDs, and procedures to be followed in the implementation of the plan.

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c. The ACO will perform a review of the prime contractor SF 294 reports before they are submitted to the SADBUS. The ACO must assure that all subcontract awards made by the prime contractor to SB, SDB, and WOSB during any reporting period are reported on the SF 294. ACOs must work closely with the SADBUS to assure proper administration of the overall reporting process.

d. ACOs shall continuously monitor contractors' compliance with the subcontracting plan throughout contract performance. This is to include timely submittal of the required reports. Information reported on SF 294 may be an indication of how well the contractor is performing and can be used to determine if there is a need for improvement. Some tools which can be utilized during contract performance by the ACO to enforce compliance include withholding retainage and issuing interim unsatisfactory ratings. A telephone call from the Contracting Officer to the CEO of a company may be necessary to correct persistent problems in reporting or when there is evidence of the lack of a good faith effort on the contractor's part to meet the goals.

e. The ACO shall review all contract modifications over \$10,000 to validate subcontracting possibilities and enhance opportunities for SB, SDB, and WOSB, revise the subcontracting plan as required and reflect this revision on the SF 30, or recommend a separate acquisition for the added work when appropriate. The ACO shall coordinate this effort with the SADBUS and document the contract file.

f. The FAR states that failure to meet the goals in itself does not constitute a failure to make a good faith effort. In accordance with the FAR the following may be considered indications of failure to make a good faith effort and should be considered in the context of the contractor's total effort: failure to attempt to identify, contact, solicit, or consider for contract award SB, SDB, and WOSB concerns; failure to designate a company official to administer the subcontracting program; failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; and the adoption of company policies or procedures which have as their objectives the frustration of the objectives of the plan. Failure to submit the reports may also be an indication of lack of a good faith effort.

g. The ACO shall maintain documentation of the contractor's efforts to comply with the subcontracting plan. Upon completion of the contract, the ACO shall ensure that a final SF 294 report is submitted and provided to the SADBUS for review and evaluation. Upon review of the final SF 294, the ACO shall, in conjunction with the SADBUS, make a final determination on whether the contractor made a good faith effort. If it is determined that the contractor did not comply in good faith, the ACO shall make appropriate recommendations to the Contracting Officer to assess liquidated damages. In addition, the ACO shall consider the contractor's performance in meeting the subcontracting goal when evaluating the contractor's effectiveness of management on the SF 1420, Performance Evaluation - Construction Contracts, and coordinate this effort with the SADBUS.

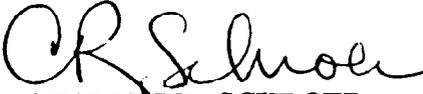
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6. Dollar amounts to be reported on SF 294 and SF 295 are subcontract award amounts and not disbursements. Should you have any current contracts for which the contractors are reporting disbursements, it is not necessary to change since this would be disruptive to the reporting process. However, it is reiterated that for new contracts, ACOs must ensure that contractors are reporting award amounts, not disbursements.

7. The responsibilities of the ACO in administering the subcontracting plan are defined in FAR Subparts 42.3 and 19.7 and are in line with the above described duties. For your information, the U.S. Army Engineering and Support Center, Huntsville offers a course entitled "Small and Disadvantaged Business Utilization" which is available for contract administrators. I request that you follow the instructions contained in this CB and work very closely with your district SADBUS and the Contracting Officer on issues related to this subject.

8. This CB has been coordinated with the following HQUSACE organizations: Office of Small and Small Disadvantaged Business Utilization (CEDB); Office of the Chief Counsel (CECC-C); Office of the Principal Assistant Responsible for Contracting (CEPR-P); and Operations, Construction and Readiness Division (CECW-O).


CHARLES R. SCHROER
Chief, Construction Division



US Army Corps
of Engineers

Construction Bulletin

No. 96-3 Issuing Office: CEMP-CP Issue Date: 2/15/96 Exp. Date: 31 DEC 98

CEMP-C

Subject: Small Business Programs

Applicability: INFORMATION

1. **REFERENCE:** Federal Acquisition Circular (FAC) 90-32 dated 18 September 1995.
2. **PURPOSE.** This Construction Bulletin (CB) outlines the recent changes to the Small Business Programs with which construction field personnel should be familiar.
3. **a.** Changes issued by referenced publication revised the Small Business Programs to provide Women-Owned Small Businesses (WOSB) with the maximum opportunity to participate in contracts let by Federal agencies. For example, FAR clauses 52.219-8 and 52.219-9 now have been titled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" and "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" respectively. The subcontracting plan has been revised to include goals for total dollars planned to be subcontracted to WOSB concerns.
 - b.** Standard Form (SF) 294 "Subcontracting Report for Individual Contracts" and SF 295 "Summary Subcontract Report" have been completely revised. The changes to the SF 294: (1) add WOSB subcontract awards data; (2) require reporting of only cumulative dollars from the beginning of the contract; (3) require the signature of the individual administering the subcontracting plan only; and (4) instruct contractors to send copies of SF 294s to the Defense Logistics Agency (DLA) (only when DLA is administering the contract). The changes to SF 295: (1) extend contractor reporting of all subcontracts for all contracts with USACE from quarterly to semiannually; (2) eliminate the requirement for reporting the dollars for the same period last year; (3) eliminate reporting of subcontract goal achievement; and (4) instruct contractors to send a copy of the SF 295 to the Small Business Administration. The revised SF 295 gives no instructions for reporting of subcontracts at lower tiers (except for sending the reports to the cognizant contract administration office as stated in the contract).

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4. The effective date for the use of the new forms was 1 October 1995. The end of the first reporting period (using the new forms) is 31 March 1996 with reports due 30 days after the end of the reporting period. CB No. 96-4, dated 2/15/96 describes the procedures that should be followed, reporting requirements (including reporting procedures for lower tier subcontracts) and responsibilities of the ACOs.

5. This CB has been coordinated with the following HQUSACE organizations: Office of the Chief Counsel (CECC-C); Office of the Principal Assistant Responsible for Contracting (CEPR-P); Office of the Small and Small Disadvantaged Business Utilization (CEDB); and Operations, Construction and Readiness Division (CECW-O).


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