



DEPARTMENT OF THE ARMY

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

REPLY TO
ATTENTION OF:

CEDB (715jj)

17 September 1996

MEMORANDUM FOR USACE COMMANDS, ATTN: DEPUTY FOR SMALL BUSINESS

SUBJECT: SADBUE Policy Memorandum 96-2, Small Business and Small Disadvantaged Business Subcontracting Plan Administration

1. Reference SADBUE Policy Memorandum 93-2, dated 7 September 1993, subject: Small Business and Small Disadvantaged Business Subcontracting Plan Administration.
2. The purpose of this policy memorandum (PM) is to affirm the previous guidance (PM 93-2) concerning SADBUE subcontract plan administration, and to disseminate two current Construction Bulletins (CB) which reflect the recent changes in subcontracting goals for women-owned small businesses and changes in reporting.
3. I fully endorse the division of responsibilities between the Administrative Contracting Officer (ACO), Procurement Contracting Officer (POC), and the Deputy for Small Business, as explained in the Construction Bulletins. The same principals of partnership in subcontract plan administration apply to contracts other than construction. The Deputy for Small Business remains in an assistance, management and oversight role. Communication is essential to establish a team effort for program execution.

FOR THE COMMANDER:

2 Encls

1. CB 96-3
2. CB 96-4


DIANE S. SISSON
Director
Small and Disadvantaged Business
Utilization



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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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

CEMP-CP

**SUBJECT: Small, Small Disadvantaged and Women-Owned Small Business
Subcontracting Plan**

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.