

(iv) *Review and disposition of informal complaints.*

(A) Where it appears from the NDBEDP certified program's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed without response to the complainant or NDBEDP certified program. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information shall be transmitted to the complainant and NDBEDP certified program in the manner requested by the complainant.

(B) A complainant unsatisfied with the NDBEDP certified program's response to the informal complaint and the Commission's disposition of the informal complaint may file a formal complaint with the Commission pursuant to paragraph (i)(2) of this section.

(2) *Formal complaints.* Formal complaints against an NDBEDP certified program may be filed in the form and in the manner prescribed under §§ 1.720 through 1.736 of this chapter. Commission staff may grant waivers of, or exceptions to, particular requirements under §§ 1.720 through 1.736 of this chapter for good cause shown; provided, however, that such waiver authority may not be exercised in a manner that relieves, or has the effect of relieving, a complainant of the obligation under §§ 1.720 and 1.728 of this chapter to allege facts which, if true, are sufficient to constitute a violation or violations of section 719 of the Act or this subpart.

(3) *Actions by the Commission on its own motion.* The Commission may on its own motion conduct such inquiries and hold such proceedings as it may deem necessary to enforce the requirements of this subpart and section 719 of the Communications Act. The procedures to be followed by the Commission shall, unless specifically prescribed in the Act and the Commission's rules, be such as in the opinion of the Commission will best serve the purposes of such inquiries and proceedings.

(j) *Whistleblower protections.*

(1) NDBEDP certified programs shall permit, without reprisal in the form of an adverse personnel action, purchase or contract cancellation or discontinuance, eligibility disqualification, or otherwise, any current or former employee, agent, contractor, manufacturer, vendor, applicant, or recipient, to disclose to a designated official of the certified program, the NDBEDP Administrator,

the TRS Fund Administrator, the Commission's Office of Inspector General and Enforcement Bureau, or to any federal or state law enforcement entity, any known or suspected violations of the Act or Commission rules, or any other activity that the reporting person reasonably believes to be unlawful, wasteful, fraudulent, or abusive, or that otherwise could result in the improper distribution of equipment, provision of services, or billing to the TRS Fund.

(2) NDBEDP certified programs shall include these whistleblower protections with the information they provide about the program in any employee handbooks or manuals, on their Web sites, and in other appropriate publications.

(k) *Suspension or revocation of certification.*

(1) The Commission may suspend or revoke NDBEDP certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

(2) In the event of suspension or revocation, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of the NDBEDP for the state whose program has been suspended or revoked.

(3) The Commission may, at its discretion and on its own motion, require a certified program to submit documentation demonstrating ongoing compliance with the Commission's rules.

[FR Doc. 2015-13718 Filed 6-9-15; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 15, 19, and 52

[FAR Case 2014-003; Docket No. 2014-0003, Sequence No. 1]

RIN 9000-AM91

Federal Acquisition Regulation: Small Business Subcontracting Improvements

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal

Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration, which provide for a Governmentwide policy on small business subcontracting.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before August 10, 2015 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2014-003 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching "FAR Case 2014-003". Select the link "Comment Now" that corresponds with "FAR Case 2014-003." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2014-003" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F. Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2014-003, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAR Case 2014-003.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule at 78 FR 42391, dated July 16, 2013, concerning small business subcontracting. Among other things, SBA's final rule implements the statutory requirements set forth at sections 1321 and 1322 of the Small Business Jobs Act of 2010 (Jobs Act), (Pub. L. 111-240).

- Section 1321 of the Jobs Act requires promulgation of regulations on subcontracting compliance relating to small business concerns, including assignment of compliance responsibilities between contracting offices, small business offices, and

program offices and periodic oversight and review activities.

- Section 1322 of the Jobs Act amends the Small Business Act (15 U.S.C. 637(d)(6)) to require as part of a subcontracting plan that a prime contractor make a good faith effort to utilize a small business subcontractor during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal. If a prime contractor does not utilize a small business subcontractor as described above, the prime contractor is required to explain, in writing, to the contracting officer the reasons why it is unable to do so.

SBA's final rule revised 13 CFR 125.3, and also implemented changes aimed at improving subcontracting regulations to increase small business opportunities. These changes include:

- Authorizing contracting officers to establish subcontracting goals in terms of total contract dollars in addition to the required goals in terms of total subcontracted dollars, for individual plans.
- Providing contracting officers discretion to require a subcontracting plan in instances where a prime contractor's size status changes from small to other than small business as a result of rerepresentation.
- Requiring subcontracting plans, to the extent that subcontracting opportunities exist, when a modification causes the overall contract value to exceed the subcontracting plan threshold, even if the modification's value is less than the threshold.
- Requiring prime contractors to assign North American Industry Classification System (NAICS) codes to subcontracts.
- Providing that prime contractors cannot prohibit a subcontractor from discussing payment or utilization matters with the contracting officer.
- Requiring prime contractors to resubmit a corrected subcontracting report within 30 days of receiving the contracting officer's notice of report rejection.
- Clarifying a requirement that prime contractors notify unsuccessful offerors for subcontracts in writing.
- Requiring prime contractors with individual subcontracting plans to report order level subcontracting information.
- Clarifying that failure to comply in good faith with the subcontracting plan shall be a material breach of the contract and may be considered in any past performance evaluation of the prime contractor.

The proposed rule will implement a change in the method that Federal agencies will receive small business subcontracting credit. Historically, the agency that awards the contract also receives the small business subcontracting credit. The proposed rule changes this model by allowing the funding agency to receive the small business credit. SBA implemented this change of providing funding agency credit in its final rule in deference to the concerns expressed by the users of multi-agency contracts (MACs) and Government-wide acquisition contracts (GWACs), who have long been of the opinion that the agencies using these vehicles, *i.e.*, the funding agencies, should receive the small business subcontracting credit. For consistency, this proposed FAR rule implements the requirement for funding agencies receiving small business subcontracting credit for all contract vehicles, not just MACs and GWACs.

This proposed FAR rule also changes the requirement for a prime contractor to submit Summary Subcontract Reports (SSRs) for DoD and NASA contracts to be annually rather than semi-annually, and deletes the requirement for a prime contractor to submit a separate report to each DoD component for construction and related maintenance and repair contracts.

II. Discussion and Analysis

Amendments to FAR subparts 1.1, 2.1, 15.3, 19.3, 19.7, and 52.2 are proposed by this rule. The proposed changes are summarized in the following paragraphs.

A. FAR Subpart 1.1, Purpose, Authority, Issuance. Section 1.106 under this subpart is amended to reflect the new Paperwork Burden OMB clearance number associated with the requirement of section 1322 of the Jobs Act.

B. FAR Subpart 2.1, Definitions. This subpart is amended to revise the definitions of HUBZone contract and HUBZone small business concern to clarify that HUBZone status is not a self-certification. The clarification is necessary due to instances of some small business concerns located in HUBZones identifying themselves as HUBZone small business concerns without realizing that business concerns may not self-certify as a HUBZone small business concern. A certified HUBZone small business concern is one on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration. This subpart is also amended to revise the definition of "small business subcontractor."

C. FAR Subpart 15.3, Source Selection.

- FAR 15.304, Evaluation factors and significant subfactors. This section is amended to make minor editorial changes.

D. FAR Subpart 19.3, Determination of Small Business Status for Small Business Programs.

- FAR 19.301–2, Rerepresentation by a contractor that represented itself as a small business concern. This subsection is amended to give contracting officers the discretionary authority to require a subcontracting plan in the event a prime contractor's size changes from small to other than small as a result of a size rerepresentation on a contract that contains FAR clause 52.219–9, Small Business Subcontracting Plan.

E. FAR Subpart 19.7, The Small Business Subcontracting Program.

- FAR 19.701, Definitions. This section is amended to reflect the common usage name of "individual subcontracting plans" instead of "individual contract plans" and clarify that a "master plan" refers to a "master subcontracting plan." This section also adds a definition for the term "total contract dollars" which is introduced in 19.704 in this case.

- FAR 19.702, Statutory requirements. This section is amended to be more consistent with SBA's revised regulations on requiring subcontracting plans when a modification causes the value of a contract without a subcontracting plan to exceed the subcontracting threshold. This section is also amended to remove an outdated reference to clauses in contracts awarded before 1978.

- FAR 19.703, Eligibility requirements for participating in the program. This section is amended to implement SBA's regulatory changes regarding prime contractors' responsibility in assigning NAICS codes and corresponding size standards to subcontracts. In addition, new guidance is added regarding acceptable sources of information a prime contractor may use to determine a subcontractor's size and socioeconomic status and the old language is removed. This section is also amended to correct outdated information and to move language regarding protest of the disadvantaged status of a proposed subcontractor to new paragraph (e).

- FAR 19.704, Subcontracting plan requirements. This section is amended to implement various SBA regulatory changes and clarifications including—
 - Explicitly authorizing contracting officers to establish additional subcontract goals in terms of total

contract dollars for individual subcontracting plans;

- A requirement for prime contractors to report order-level subcontracting information for multiple-award contracts intended for use by multiple agencies;

- A requirement for prime contractors to resubmit a corrected subcontracting report within 30 days of receiving the contracting officer's notice of report rejection;

- Changing the requirement for semi-annual submission of the SSR for DoD and NASA to be annual;

- A requirement that prime contractors make good faith efforts to utilize the small business subcontractors to the same or greater extent they were used in preparing the bid or proposal;

- A requirement for the prime contractor to provide the contracting officer with a written explanation if it does not use a small business subcontractor to the same extent as described in the prime contractor's bid or proposal; and

- Restricting prime contractors from prohibiting a subcontractor from discussing payment or utilization matters with the contracting officer.

- FAR 19.705, Responsibilities of the contracting officer under the subcontracting assistance program.

- FAR 19.705-1, General support of the program. This subsection is amended to revise the title of the subsection and to implement SBA's regulatory requirements regarding subcontracting plans for indefinite-delivery, indefinite-quantity contracts exceeding the subcontracting threshold and discretion of ordering contracting officers to establish subcontracting goals for individual orders.

- FAR 19.705-2, Determining the need for a subcontracting plan. This subsection is amended to implement SBA's regulatory requirement to establish a subcontracting plan when a modification of any value causes the contract to exceed the subcontracting plan threshold, and there are potential subcontracting opportunities. Language is added to explicitly require the rationale to be placed in the contract file for determining that no subcontracting opportunities exist. This subsection is also amended to clarify that while changes made to an existing subcontracting plan do not apply retroactively, the contractor's achievements prior to the modification will be factored into its overall achievement on the plan. This subsection also adds language clarifying that when a subcontracting plan is required for a contract as a result of a size rerepresentation or a modification

which causes the value of the contract to exceed the threshold for a subcontracting plan, the goals in the subcontracting plan apply from the date of incorporation of the plan into the contract and the contractor is to report its subcontracting achievement from the date the plan is incorporated into the contract.

- FAR 19.705-4, Reviewing the subcontracting plan. This subsection makes conforming changes to paragraphs (b) and (c).

- FAR 19.705-6, Postaward responsibilities of the contracting officer. This subsection implements the SBA's regulatory requirements for contracting officers to ensure prime contractors meet their obligations under their subcontracting plan. This subsection is amended as follows—

- New language is added clarifying that upon receipt of the prime contractor's subcontracting reports into eSRS, the contracting officer shall review the submitted reports within 60 days of the report ending date and ensure that an explanation is provided in the event the contracting officer rejects a submitted report; and

- New language is added to require the contracting officer to evaluate a prime contractor's written explanation concerning its failure to use a small business concern in the performance of a contract when that small business concern was used to prepare the bid or proposal.

- FAR 19.708, Contract Clauses. This section is amended to add a prescription for the newly-created Alternate IV to clause 52.219-9 Small Business Subcontracting Plan.

F. *FAR Subpart 52.2, Text of Provisions and Clauses.*

- FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items. This clause is amended to reflect the updated 52.219-8 and 52.219-9.

- FAR 52.219-8, Utilization of Small Business Concerns. This clause is amended to make conforming changes based on changes to FAR 2.101 and 19.703.

- FAR 52.219-9, Small Business Subcontracting Plan. This clause is amended to incorporate corresponding guidance and policy changes made to section 19.704 and SBA's regulatory guidance regarding inclusion of indirect costs and awards made by affiliates in ISRs and SSRs. This clause is also amended to reflect the change of DoD's and NASA's semi-annual submission requirement for Summary Subcontract Reports (SSR) and eliminate a unique DoD requirement for a separate SSR for

construction contracts. In addition, an Alternate IV to the clause is created for use in contracts where a subcontracting plan will be required when a modification causes the contract to exceed the threshold for a subcontracting plan and there are subcontracting opportunities.

III. Applicability to Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule proposes to amend the clauses at 52.219-8, Utilization of Small Business Concerns, and 52.219-9, Small Business Subcontracting Plan, in order to implement sections 1321 and 1322 of the Small Business Jobs Act of 2010. The Federal Acquisition Regulatory Council, pursuant to the authority granted in 41 U.S.C. 1906 and the Administrator, Office of Federal Procurement Policy, pursuant to the authority granted in 41 U.S.C. 1907, have determined that the application of these statutory provisions to contracts for commercial items and commercially available off-the-shelf items, is in the best interests of the Federal Government.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to provide uniform guidance consistent with SBA's final rule at 78 FR 42391, dated July 16, 2013, which implements Sections 1321 and 1322 of the Small Business Jobs Act of 2010 (Pub. L. 111-240). SBA's final rule also implements other changes intended to help small

business subcontractors by explicitly authorizing procuring agencies to consider proposed small business participation when evaluating offers from other than small business concerns and to require other than small prime contractors to report data on small business subcontracting in connection with orders.

The objectives of this proposed rule are to implement statutory requirements as well as make improvements to increase subcontracting opportunities for small businesses. The authorizing legislation for this action are sections 1321 and 1322 of the Small Business Jobs Act of 2010 (Pub. L. 111-240).

This rule may have a positive economic impact on any small business entity that wishes to participate in the Federal procurement arena as a subcontractor. Analysis of the System for Award Management (SAM) database indicates there are over 297,181 small business registrants. It is unknown how many of these concerns participate in small business subcontracting. Firms do not need to register in the SAM database to participate in subcontracting. Thus, the number of firms participating in subcontracting may be greater than or lower than the number of firms registered in the SAM database.

This rule does not impose any new reporting, recordkeeping or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2014-003), in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. This proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat Division has submitted a request for approval of one new and two revised information collection requirements concerning FAR Case 2014-003 Small Business Subcontracting Improvements to the Office of Management and Budget.

A1. *Request for approval of new information collection requirement 9000-00xx.* Public reporting burden for the collection of information regarding a contractor's utilization of small business

subcontractors to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal is estimated to be \$202,464. FPDS for FY 2013 lists 5,327 actions with small business subcontracting plans. However, it is estimated that at most 50 percent of these contracts with subcontracting plans may have instances of the prime contractor not using a small business subcontractor to the same extent used in preparing the bid or proposal. Using this method provides the number of respondents as 2,664. It is estimated that the average time required to read and prepare information for this collection is two hours. It is also estimated that the responses per respondent would be once a year since prime contractors have until 30 days of contract completion to submit the written explanation.

The annual reporting burden is estimated as follows:

Respondents: 2,664.

Responses per respondent: 1.

Total annual responses: 2,664.

Preparation hours per response: 2.

Total response burden hours: 5,328.

Cost per hour: \$38.

Total annual burden: \$202,464.

A2. *Revision to existing OMB Clearance 9000-0006.* Based on the proposed revisions to the FAR as well as a more accurate basis for estimation, an upward adjustment is being made to the average burden hours for reporting and recordkeeping per response but a downward adjustment is being made to the number of respondents (*i.e.*, subcontracting plans and the individual subcontracting reports associated with them). As a result, a downward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 78 FR 17668, on March 22, 2013.

Respondents: 59,336.

Responses per respondent: 3.

Total annual responses: 178,008.

Preparation hours per response: 13.5.

Total response burden hours: 2,403,108.

Cost per hour: \$30.

Total annual burden: \$72,093,240.

A3. *Revision to existing OMB Clearance 9000-0007.* Based on the proposed revisions to the FAR as well as a more accurate basis for estimation, a downward adjustment is being made to the number of respondents (*i.e.*, summary subcontracting reports). Since the proposed revisions to the FAR do not require additional information in the Summary Subcontract Report, the estimated preparation hours per response remains unchanged. As a

result, a downward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 78 FR 17668, on March 22, 2013.

Respondents: 59,336.

Responses per respondent: 1.

Total annual responses: 59,336.

Preparation hours per response: 9.0.

Total response burden hours: 534,024.

Cost per hour: \$30.

Total annual burden: \$16,020,720.

B. *Request for Comments Regarding Paperwork Burden.* Submit comments, including suggestions for reducing this burden, no later than August 10, 2015 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F. Street NW., 2nd Floor, Washington, DC 20405.

Public comments are particularly invited on: Whether these collections of information are necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of these collections of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, or clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statements from the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F. Street NW., 2nd Floor, Washington, DC 20405. Please cite OMB Control Number 9000-00XX, Utilization of Small Business Subcontractors, 9000-0006, Subcontracting Plans/Subcontract Report For Individual Contracts, or 9000-0007, Summary Subcontract Report, as applicable, in all correspondence.

List of Subjects in 48 CFR Parts 1, 2, 15, 19, and 52

Government procurement.

Dated: June 3, 2015.

William Clark

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 1, 2, 15, 19, and 52, as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 15, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by removing from the table “19.7” and “52.219–9” and their corresponding OMB Control Numbers “9000–0006 and 9000–0007” and adding, in numerical sequence, “19.7” and “52.219–9” with their corresponding control numbers “9000–00xx, 9000–0006, and 9000–0007”, respectively.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b) by—
 ■ a. Revising the introductory paragraph of the definition “HUBZone contract”;
 ■ b. Revising the definition “HUBZone small business concern”; and
 ■ c. Revising the definition “Small business subcontractor”.

The revised text reads as follows:

2.101 Definitions.

* * * * *

HUBZone contract means a contract awarded to a SBA certified “HUBZone small business concern” through any of the following procurement methods:

* * * * *

HUBZone small business concern means a small business concern, certified by the Small Business Administration, that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration (13 CFR 126.103).

* * * * *

Small business subcontractor means a concern that does not exceed the size standard for the North American Industry Classification Systems code that the prime contractor determines best describes the product or service being acquired by the subcontract.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 4. Amend section 15.304 by—
 ■ a. Revising paragraph (c)(3)(i); and
 ■ b. Removing from paragraphs (c)(3)(ii) and (c)(4) “must” and adding “shall” in their places.

The revised text reads as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(3)(i) Past performance, except as set forth in paragraph (c)(3)(iii) of this

section, shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold.

* * * * *

PART 19—THE SMALL BUSINESS PROGRAMS

■ 5. Amend section 19.301–2 by revising paragraph (e) to read as follows:

19.301–2 Rerepresentation by a contractor that represented itself as a small business concern.

* * * * *

(e) A change in size status does not change the terms and conditions of the contract. However, the contracting officer may require a subcontracting plan for a contract containing 52.219–9, Small Business Subcontracting Plan, if a prime contractor’s size status changes from small to other than small as a result of a size rerepresentation.

19.305 [Amended]

■ 6. Amend section 19.305 by removing from paragraph (c) “19.703(a)(2)” and “19.703(b)” and adding “19.703(e)” and “19.703(c)” in their places, respectively.

■ 7. Amend section 19.701 by—

■ a. Revising the heading of the definition “Individual contract plan” to read “Individual subcontracting plan”;
 ■ b. Revising the heading of “Master plan” to read “Master subcontracting plan”; and revising the definition; and
 ■ c. Adding, in alphabetical order, the definition “Total contract dollars”.

The revised and added text reads as follows:

19.701 Definitions.

* * * * *

Master subcontracting plan means a subcontracting plan that contains all the required elements of an individual subcontracting contract plan, except goals, and may be incorporated into individual subcontracting contract plans, provided the master plan has been approved.

* * * * *

Total contract dollars means the final anticipated dollar value, including the dollar value of all options.

■ 8. Amend section 19.702 by—

■ a. Removing from paragraph (a) introductory text the word “Section” and adding “section” in its place;
 ■ b. Removing from paragraphs (a)(1) and (a)(2) “a contract or contract modification that individually is” and adding “a contract is” in their places wherever they appear;
 ■ c. Adding paragraph (a)(3); and
 ■ d. Revising paragraph (b)(4).

The revised and added text reads as follows:

19.702 Statutory requirements.

* * * * *

(a) * * *

(3) Each contract modification that causes the value of a contract without a subcontracting plan to exceed \$650,000 (\$1.5 million for construction), shall require the contractor to submit an acceptable subcontracting plan for the contract, if the contracting officer determines that subcontracting opportunities exist.

(b) * * *

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at 52.219–8, Utilization of Small Business Concerns.

* * * * *

■ 9. Amend section 19.703 by—

■ a. Adding a sentence to the end of paragraph (a)(1);
 ■ b. Revising paragraphs (a)(2) and (b);
 ■ c. Removing from paragraph (d)(1) “System for Award Management” and adding “SAM” in its place;
 ■ d. Removing from paragraph (d)(1)(i) “or <http://www.sba.gov/hubzone>”;
 ■ e. Removing from paragraph (d)(1)(ii) “HUB” and adding “HUBZone Program” in its place;
 ■ f. Removing from paragraph (d)(2) “13 CFR 121.411” and adding “13 CFR 126.801” in its place; and
 ■ g. Adding paragraph (e).

The added and revised text reads as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(a) * * *

(1) * * * For subcontracting purposes, a concern is small if it does not exceed the size standard for the NAICS code that the prime contractor determines best describes the product or service being acquired by the subcontract.

(2)(i) The prime contractor may accept a subcontractor’s representations of its small business size and status as a small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business in the System for Award Management (SAM) if:

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and status representations made in SAM (or any successor system) are current, accurate and complete as of the date of the offer for the subcontract.

(ii) The prime contractor may accept a subcontractor’s written representations of its small business size and status as a small disadvantaged

business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business if:

(A) The subcontractor is not registered in SAM; and

(B) The subcontractor represents that the size and status representations provided with its offer are current, accurate and complete as of the date of the offer for the subcontract.

(b) The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1001 through 121.1008.

* * * * *

(e) The contracting officer or the SBA may protest the disadvantaged status of a proposed subcontractor. Protests challenging a subcontractor's small disadvantaged business representation must be filed in accordance with 13 CFR 124.1007 through 124.1014. Other interested parties may submit information to the contracting officer or the SBA in an effort to persuade the contracting officer or the SBA to initiate a protest. Such protests, in order to be considered timely, must be submitted to the SBA prior to completion of performance by the intended subcontractor.

- 10. Amend section 19.704 by—
- a. Revising the introductory text of paragraph (a);
- b. Revising paragraphs (a)(2) and (3);
- c. Redesignating paragraphs (a)(10)(iii) through (vi) as paragraphs (a)(10)(iv) through (vii), respectively;
- d. Adding new paragraph (a)(10)(iii);
- e. Removing from the newly designated paragraph (a)(10)(iv) "eSRS;" and adding "eSRS." in its place;
- f. Adding a sentence to the end of the newly designated paragraph (a)(10)(iv)(A);
- g. Revising the newly designated paragraph (a)(10)(iv)(B);
- h. Removing from the newly designated paragraph (a)(10)(vii) "plans." and adding "plans;" in its place;
- i. Removing from paragraph (a)(11) "them." and adding "them;";
- j. Adding paragraphs (a)(12) through (14);
- k. Removing from paragraph (b) "master" and "Master" adding "master subcontracting" and "Master subcontracting" in their places, respectively, wherever they appear; and
- l. Revising the last sentence of paragraph (c).

The revised and added text reads as follows:

19.704 Subcontracting plan requirements.

(a) Each subcontracting plan required under 19.301–2(e) and 19.702(a)(1), (2), and (3) shall include—

(1) * * *

(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns, as a percentage of total subcontract dollars. For individual subcontracting plans, a contracting officer may require the goals referenced in paragraph (a)(1) of this section to be established as a percentage of total contract dollars, in addition to the goals established as a percentage of total subcontract dollars;

(3) The NAICS code and corresponding size standard of each subcontract that best describes the principal purpose, including the supplies and services to be subcontracted, and an identification of types of supplies or services planned for subcontracting to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns;

* * * * *

(10) * * *
(iii) Include subcontracting data for each order when reporting subcontracting achievements for multiple-award contracts intended for use by multiple agencies;

(iv) * * *

(A) * * * When a contracting officer rejects an ISR due the report being incomplete or incorrect, the contractor is required to submit a revised ISR within 30 days of receiving the notice of the ISR rejection.

(B) The SSR shall be submitted annually by October 30 for the twelve-month period ending September 30. When a contracting officer rejects an SSR due to the report being incomplete or incorrect, the contractor is required to submit a revised SSR within 30 days of receiving the notice of SSR rejection;

* * * * *

(12) Assurances that the offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that the offeror used in preparing the bid or proposal, in the

same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. An offeror used a small business concern in preparing the bid or proposal if—

(i) The offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the contract; or

(ii) The offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the offeror is awarded the contract;

(13) A requirement for the contractor to provide the contracting officer with a written explanation if the contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (a)(12) of this section. This written explanation shall be submitted to the contracting officer within 30 days of contract completion; and

(14) Assurances that the contractor will not prohibit a subcontractor from discussing with the contracting officer any material matter pertaining to payment to or utilization of a subcontractor.

* * * * *

(c) * * * If a subcontracting plan is necessary and the offeror is submitting an individual subcontracting plan, the individual subcontracting plan shall contain all the elements required by paragraph (a) of this section and shall contain separate statements and goals for the basic contract and for each option.

* * * * *

- 11. Amend section 19.705–1 by—
- a. Revising the heading;
- b. Redesignating the introductory paragraph as paragraph (a); and
- c. Adding paragraph (b).

The revised and added text reads as follows:

19.705–1 General.

(a) * * *

(b)(1) Except where a contractor has a commercial plan, the contracting officer shall require a subcontracting plan for each indefinite-delivery, indefinite-quantity contract (including task or delivery order contracts, FSS, GWACs, and MACs), when the estimated value of the contract meets the subcontracting

plan thresholds at 19.702(a)(1) and small business subcontracting opportunities exist.

(2) Contracting officers placing orders may establish small business subcontracting goals for each order.

- 12. Amend section 19.705–2 by—
- a. Removing from the introductory text “must” and adding “shall” in its place;
- b. Revising paragraph (a);
- c. Adding paragraph (b)(3);
- d. Revising paragraphs (c) and (e); and
- e. Adding paragraph (f).

The revised and added text reads as follows:

19.705–2 Determining the need for a subcontracting plan.

* * * * *

(a)(1) Determine whether the proposed total contract dollars will exceed the subcontracting plan threshold in 19.702(a).

(2) Determine whether a proposed modification will cause the total contract dollars to exceed the subcontracting plan threshold (see 19.702(a)).

(b) * * *

(3) Whether the firm can acquire the items to be furnished by contract with minimal or no disruption of contract performance (with consideration given to the time remaining until contract completion), and at fair market value, when a determination is made in accordance with paragraph (a)(2).

(c)(1) When adding a subcontracting plan pursuant to 19.705–2(a)(2), the subcontracting goals apply from the date of incorporation of the subcontracting plan into the contract.

(2) If it is determined that there are no subcontracting possibilities, the determination shall include a detailed rationale, be approved at a level above the contracting officer, and placed in the contract file.

* * * * *

(e) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold (see 19.702(a)), or an option is exercised, the goals of an existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. These goal changes do not apply retroactively.

(f) If a subcontracting plan has been added to the contract due to a modification (see 19.702(a)(3)) or a size re-representation (see 19.301–2(e)), the contractor’s achievements must be reported on the ISR (or the SF–294, if applicable) on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

19.705–4 [Amended]

- 13. Amend section 19.705–4 by removing from paragraph (b) “11 required” and adding “14 required” in its place; and removing from paragraph (c) “11 elements” and adding “14 elements” in its place.
- 14. Amend section 19.705–6 by—
- a. Revising the introductory paragraph;
- b. Removing from paragraph (a) “Notifying” and adding “Notify” in its place;
- c. Removing from paragraph (b) “Forwarding” and adding “Forward” in its place;
- d. Removing from the introductory text of paragraph (c) “Giving” and adding “Give” in its place;
- e. Removing from paragraph (d) “Notifying” and adding “Notify” in its place;
- f. Removing from paragraph (e) “Forwarding” and adding “Forward” in its place;
- g. Redesignating paragraphs (f) through (h) as paragraphs (h) through (j), respectively;
- h. Adding new paragraphs (f) and (g);
- i. Removing from newly redesignated paragraph (h) “Initiating” and adding “Initiate” in its place;
- j. Removing from newly redesignated paragraph (i) “Taking” and adding “Take” in its place; and
- k. Removing from newly redesignated paragraph (j) “Acknowledging receipt of or rejecting” and adding “Acknowledge receipt of or reject” in its place.

The revised and added text reads as follows:

19.705–6 Postaward responsibilities of the contracting officer.

After a contract or contract modification containing a subcontracting plan is awarded or an existing subcontracting plan is amended, the contracting officer shall do the following:

* * * * *

(f) Monitor the prime contractor’s compliance with its subcontracting plan, to include the following:

(1) Ensure that subcontracting reports are submitted into the eSRS (or any successor system) within 30 days after the report ending date (e.g., by October 30th for the fiscal year ended September 30th).

(2) Review ISRs, and where applicable, SSRs, in eSRS (or any successor system) within 60 days of the report ending date (e.g., by November 30th for a report submitted for the fiscal year ended September 30th).

(3) Either acknowledge receipt of or reject the reports in accordance with subpart 19.7, 52.219–9, Small Business

Subcontracting Plan, and the eSRS instructions (www.esrs.gov).

(i) The authority to acknowledge or reject SSRs for commercial plans resides with the contracting officer who approved the commercial plan.

(ii) If a report is rejected, the contracting officer must provide an explanation for the rejection to allow the prime contractor the opportunity to respond specifically to perceived deficiencies.

(g) Evaluate the prime contractor’s compliance with its subcontracting plan, to include the following:

(1) Assess whether the prime contractor made a good faith effort to comply with its small business subcontracting plan (see 13 CFR 125.3(d)(3)).

(2) Assess the prime contractor’s written explanation concerning the prime contractor’s failure to use a small business concern in the performance of the contract in the same scope, amount, and quality used in preparing and submitting the bid or proposal, if applicable.

* * * * *

■ 15. Amend section 19.708 by—

- a. Removing from paragraph (b)(1) “facility),” and adding “facility)” in its place;
- b. Removing the period at the end of paragraphs (b)(1)(i) and (ii) and adding a semicolon in their places;
- c. Removing from paragraph (b)(1)(iii) “Alternate III.” and adding “Alternate III; or” in its place;
- d. Adding a new paragraph (b)(1)(iv);
- e. Removing from paragraph (b)(2) “Alternate I, II, or III.” and adding “Alternate I, II, III, or IV.” in its place.

The added text reads as follows:

19.708 Contract clauses.

* * * * *

(b)(1) * * *

(iv) Incorporating a subcontracting plan due to a modification as provided for in 19.702(a)(3), the contracting officer shall use the clause with its Alternate IV.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. Amend section 52.212–5 by revising the date of the clause; and revising paragraphs (b) (16) and (17) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

**Contract Terms and Conditions
Required To Implement Statutes or
Executive Orders—Commercial Items
(Date)**

* * * * *

(b) * * *

___(16) 52.219–8, Utilization of Small Business Concerns (Date) (15 U.S.C. 637(d)(2) and (3)).

___(17)(i) 52.219–9, Small Business Subcontracting Plan (Date) (15 U.S.C. 637(d)(4)).

___(ii) Alternate I (Date) of 52.219–9.

___(iii) Alternate II (Date) of 52.219–9.

___(iv) Alternate III (Date) of 52.219–9.

___(v) Alternative IV (Date) of 52.219–9.

* * * * *

■ 17. Amend section 52.219–8 by—

■ a. Revising the date of the clause;

■ b. Revising the definition in paragraph (a) of “HUBZone small business concern”;

■ c. Revising paragraph (d)(1);

■ d. Redesignating paragraph (d)(2) as (d)(3); and

■ e. Adding a new paragraph (d)(2).

The revised and added text reads as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

**Utilization of Small Business Concerns
(Date)**

(a) * * *

HUBZone small business concern means a small business concern, certified by the Small Business Administration, that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

* * * * *

(d)(1) The prime Contractor may accept a subcontractor’s representations of its small business size and status as a small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business in the System for Award Management (SAM) if:

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and status representations made in SAM (or any successor system) are current, accurate and complete as of the date of the offer for the subcontract.

(2) The prime Contractor may accept a subcontractor’s written representations of its small business size and status as a small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business if:

(i) The subcontractor is not registered in SAM; and

(ii) The subcontractor represents that the size and status representations provided with its offer are current, accurate and complete as of the date of the offer for the subcontract.

* * * * *

■ 18. Amend section 52.219–9 by—

■ a. Revising the section heading;

■ b. Revising the date of the clause;

■ c. Revising paragraphs (b), (c), and (d);

■ d. Revising paragraphs (e)(4) and (6);

■ e. Revising paragraphs (f), (i), (k), and (l);

■ f. Revising Alternates I, II, and III; and

■ g. Adding Alternate IV.

The revised and added text reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

**Small Business Subcontracting Plan
(Date)**

* * * * *

(b) *Definitions.* As used in this clause—
Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the Offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

Individual subcontracting plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the Offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master subcontracting plan means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual

subcontracting plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

Total contract dollars means the final anticipated dollar value, including the dollar value of all options.

(c)(1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)(i) The prime Contractor may accept a subcontractor’s representations of its small business size and status as a small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business in the System for Award Management (SAM) if:

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and status representations made in SAM (or any successor system) are current, accurate and complete as of the date of the offer for the subcontract.

(ii) The prime Contractor may accept a subcontractor’s written representations of its small business size and status as a small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business if:

(A) The subcontractor is not registered in SAM; and

(B) The subcontractor represents that the size and status representations provided with its offer are current, accurate and complete as of the date of the offer for the subcontract.

(d) The Offeror’s subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business

concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) The NAICS code and corresponding size standard of each subcontract that best describes the principal purpose, including the types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled

“Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) Include subcontracting data for each order when reporting subcontracting achievements for multiple-award contracts intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its DUNS number, and the email address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the email address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the Offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if—

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or

technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) A requirement for the Contractor to provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(e) * * *

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern in accordance with 52.219-8(d)(2).

* * * * *

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract Offeror, the Contractor must inform each unsuccessful small business subcontract Offeror in writing of the name and location of the apparent successful Offeror and if the successful subcontract Offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern, prior to award of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided—

(1) The master subcontracting plan has been approved,

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

* * * * *

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

* * * * *

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns"; or

(2) An approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an *ISR*, the Contractor shall submit a corrected report shall within 30 days of receiving the notice of *ISR* rejection.

(ii)(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.705-2(c) or 19.301-2(e), the Contractor's achievements must be reported in the *ISR* on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the *ISR* resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR. (i) Reports submitted under individual subcontracting plans.*

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals;

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$650,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) *Reports submitted under a commercial plan.*

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of clause)

* * * * *

Alternate I (Date). As prescribed in 19.708(b)(1)(i), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone

small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

Alternate II (Date). As prescribed in 19.708(b)(1)(ii), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the Offeror ineligible for award of a contract.

Alternate III (Date). As prescribed in 19.708(b)(1)(iii), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause;

(d)(10) Assurances that the Offeror will—
(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and

Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause using the eSRS.

(l) The Contractor shall submit a SF 294. The Contractor shall submit SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the prime Contractor. Subcontract award data reported by Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294.* This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For Contractors the report shall be submitted to the Contracting Officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When a Contracting Officer rejects a report, the Contractor shall submit a revised report within 30 days of receiving the notice of report rejection.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic

contract, the first option, and the second option.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(2) *SSR. (i) Reports submitted under individual subcontracting plans.*

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors.

(D) The report shall be submitted annually by October 30, for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor is required to submit a revised SSR within 30 days of receiving the notice of report rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(i) *Reports submitted under a commercial plan.*

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

Alternate IV (Date). As prescribed in 19.708(b)(1)(iv), substitute the following paragraphs (c) and (d) for paragraphs (c) and (d) of the basic clause:

(c)(1) The Contractor, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-

owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Contractor is submitting an individual subcontracting plan, the plan shall separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be incorporated into the contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer.

(2)(i) The prime Contractor may accept a subcontractor's representations of its small business size and status as a small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business in the System for Award Management (SAM) if:

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and status representations made in SAM (or any successor system) are current, accurate and complete as of the date of the offer for the subcontract.

(ii) The prime Contractor may accept a subcontractor's written representations of its small business size and status as a small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business if:

(A) The subcontractor is not registered in SAM; and

(B) The subcontractor represents that the size and status representations provided with its offer are current, accurate and complete as of the date of the offer for the subcontract.

(d) The Contractor's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Contractor shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626—

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime

Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Contractor's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) The NAICS code and corresponding size standard of each subcontract that best describes the principal purpose, including the types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). The Contractor may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Contractor included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Contractor who will administer the Contractor's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Contractor will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Contractor will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Contractor will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Contractor will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Contractor with the subcontracting plan;
- (iii) Include subcontracting data for each order when reporting subcontracting achievements for a multiple-award contract intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its DUNS number, and the email address of the Contractor's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the email address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Contractor's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

- (A) Whether small business concerns were solicited and, if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.;

and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the Contractor to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Contractor will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing or proposal for the modification, in the same or greater scope, amount, and quality used in preparing and submitting the modification proposal. Responding to a request for a quote does not constitute use in preparing a proposal. The Contractor used a small business concern in preparing the proposal for a modification if—

(i) The Contractor identifies the small business concern as a subcontractor in the proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Contractor used the small business concern's pricing or cost information or technical expertise in preparing the proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work when the modification is executed.

(13) A requirement for the Contractor to provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in paragraph (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the contracting officer any material

matter pertaining to the payment to or utilization of a subcontractor.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2013-0003; 4500030113]

RIN 1018-AZ25

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat on Molokai, Lanai, Maui, and Kahoolawe for 135 Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our June 11, 2012 (77 FR 34464), proposal to designate or revise critical habitat for 135 plant and animal species on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe under the Endangered Species Act of 1973, as amended (Act). These 135 species include 2 plant species for which we reaffirmed their endangered listing status on May 28, 2013 (78 FR 32014); 37 plant and animal species we proposed for listing on June 11, 2012, and subsequently listed as endangered on May 28, 2013 (78 FR 32014); 11 plant and animal species that are also already listed as endangered but do not have critical habitat designations; and 85 plant species that are already listed as endangered or threatened and have designated critical habitat, but for which we proposed revisions to critical habitat. We are reopening the comment period to allow all interested parties further opportunity to comment on areas that we are considering for exclusion in the final rule. Comments previously submitted on the proposed rule do not need to be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: *Written Comments:* We will consider comments received or postmarked on or before June 25, 2015. Please note comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. If you are submitting your comments by hard copy, please mail

them by June 25, 2015, to ensure that we receive them in time to give them full consideration.

ADDRESSES: *Document Availability:* You may obtain copies of the June 11, 2012, proposed rule, this document, and the draft economic analysis of the proposed designation of critical habitat at <http://www.regulations.gov> at Docket Number FWS-R1-ES-2013-0003, from the Pacific Islands Fish and Wildlife Office's Web site (<http://www.fws.gov/pacificislands/>), or by contacting the Pacific Islands Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**).

Written Comments: You may submit written comments by one of the following methods, or at the public information meeting or public hearing:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS-R1-ES-2013-0003, which is the docket number for this rulemaking, and follow the directions for submitting a comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R1-ES-2013-0003; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

We will post all comments we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Kristi Young, Acting Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, HI 96850; by telephone at 808-792-9400; or by facsimile at 808-792-9581. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for 135 species on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe (collectively, "Maui Nui") that was published in the **Federal Register** on June 11, 2012 (77 FR 34464). In that proposed rule, we proposed to list 38 species as endangered, reaffirm the listing of 2 endemic Hawaiian plants currently listed as endangered, and designate critical habitat for 39 of these

40 plant and animal species on the Hawaiian Islands of Molokai, Lanai, and Maui; and to designate critical habitat for 11 plant and animal species that are already listed as endangered, and revise critical habitat for 85 plant species that are already listed as endangered or threatened on the Hawaiian Islands of Molokai, Lanai, Maui, and Kahoolawe. On May 28, 2013, we published a final rule listing 38 Maui Nui species (35 plants and 3 tree snails) as endangered and reaffirming the listing of 2 plant species as endangered (78 FR 32014). Critical habitat has not yet been finalized. We have previously extended or reopened the comment period on the proposed critical habitat twice: once for 30 days, on August 9, 2012 (77 FR 47587), and again for 30 days on January 31, 2013 (78 FR 6785).

In particular we are seeking public comment on the areas that we are considering for exclusion from the final designation of critical habitat. Although we had previously indicated that we were considering the possible exclusion of non-Federal lands, especially areas in private ownership, and asked for comment on the broad public benefits of encouraging collaborative conservation efforts with local and private partners, we are now offering an additional opportunity for public comment on this issue. We will consider information and recommendations from all interested parties.

We are particularly interested in comments concerning whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act (16 U.S.C. 1531 *et se.*), after considering the potential impacts and benefits of the proposed critical habitat designation. We are considering the possible exclusion of non-Federal lands, especially areas in private ownership, and whether the benefits of exclusion may outweigh the benefits of inclusion of those areas. We, therefore, request specific information on:

- The benefits of including any specific areas in the final designation and supporting rationale.
- The benefits of excluding any specific areas from the final designation and supporting rationale.
- Whether any specific exclusions may result in the extinction of the species and why.

For non-Federal lands in particular, we are interested in information regarding the potential benefits of including such lands in critical habitat versus the benefits of excluding such lands from critical habitat. This information does not need to include a