

- i. Remove “and, if possible and practicable, the original copyright registration number;”
- ii. Add “or the original copyright registration number” after “the title”;
- iii. Add “, or both, if possible and practicable,” after “the work”;
- c. In paragraph (d), add “or by reputable courier service delivered” after “by first class mail sent” and add “, or by means of electronic transmission (such as email) if the grantee expressly consents to accept service in this manner” after “grantee or successor in title”.
- d. In paragraph (e)(1), add “preparing, serving, or seeking to record” after “Harmless errors in” and add “or that do not materially affect, in the Office’s discretion, the Office’s ability to record the notice” after “whichever applies,”;
- e. In paragraph (e)(2), remove “or registration number”;
- f. In paragraph (f)(1)(ii)(A), remove “will” from the first sentence and add in its place “may”, remove “will” from the second sentence and add in its place “may”, and add “on or” after “the date of recordation is”; and
- g. In paragraph (f)(3), remove “all of the elements required for recordation, including the prescribed fee and, if required, the statement of service, have been” and add in its place “the notice of termination is”.

Dated: June 1, 2020.

**Regan A. Smith,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2020–12038 Filed 6–2–20; 8:45 am]

BILLING CODE 1410–30–P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 19, 42, and 52

[FAR Case 2019–004, Docket No. FAR–2019–0030, Sequence No. 1]

RIN 9000–AN87

#### Federal Acquisition Regulation: Good Faith in Small Business Subcontracting

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and 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 a section of the National Defense Authorization Act for Fiscal Year 2017, which requires examples of failure to make good faith efforts to comply with a small business subcontracting plan.

**DATES:** Interested parties should submit written comments at the address shown below on or before August 3, 2020 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2019–004 to <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2019–004”. Select the link “Comment Now” that corresponds with FAR Case 2019–004. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2019–004” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite FAR Case 2019–004 in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Malissa Jones, Procurement Analyst, at (703)605–2815, or by email at [malissa.jones@gsa.gov](mailto:malissa.jones@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAR Case 2019–004.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement section 1821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (15 U.S.C 637 note, Pub. L. 114–328). Section 1821 requires the Small Business Administration (SBA) to amend its regulations to provide examples of activities that would be considered a failure to make a good faith effort to comply with a small business subcontracting plan. SBA issued a rule at 84 FR 65647, November 29, 2019, to implement section 1821 of the NDAA for FY 2017. In its rule, SBA amends 13

CFR 125.3(d)(3) to provide guidance on evaluating whether the prime contractor made a good faith effort to comply with its small business subcontracting plan and a list of examples of activities reflective of a failure to make a good faith effort.

Additionally, SBA revised 13 CFR 125.3(c)(1)(iv) to require that prime contractors with commercial subcontracting plans include indirect costs in their subcontracting goals. Other than small business concerns that have a commercial subcontracting plan report on performance through a summary subcontract report (SSR). SBA’s regulations currently require that contractors using a commercial subcontracting plan must include indirect costs in their SSRs, but do not require these contractors to include indirect costs in their subcontracting goals, which leads to inconsistencies when comparing the data reported in the SSR to the goals in the commercial subcontracting plan.

Small business subcontracting plans are required from large prime contractors when a contract is expected to exceed \$700,000 (\$1.5 million for construction) and has subcontracting possibilities. FAR 19.704 lists the elements of the plan, which include the contractor’s goals for subcontracting to small business concerns and a description of the efforts the contractor will make to ensure 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. Failure to make a good faith effort to comply with the plan may result in the assessment of liquidated damages per FAR 52.219–16, Liquidated Damages—Subcontracting Plan.

##### II. Discussion and Analysis

The proposed changes to the FAR are summarized in the following paragraphs.

###### A. Inclusion of Indirect Costs in Commercial Plans

Section 19.704, Subcontracting plan requirements, and the clause at 52.219–9, Small Business Subcontracting Plan, are amended to require that all indirect costs, with certain exceptions, are included in commercial plans and SSRs.

###### B. Compliance With the Subcontracting Plan

Section 19.705–7, Liquidated damages, is renamed “Compliance with the subcontracting plan” and is reorganized, with paragraph headings

added to make this section easier to read and understand. This section includes examples of a good faith effort, and examples of a failure to make a good faith effort to comply with the subcontracting plan, including SBA's examples at 13 CFR 125.3(d). References to the examples in 19.705–7 are added in other sections in subparts 19.7 and 42.15. A reference to SBA's examples at 13 CFR 125.3(d), now located at FAR 19.705–7, is added in the clause at 52.219–16.

### III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule proposes to implement a statutory requirement to provide examples of activities that would be considered a failure to make a good faith effort to comply with a small business subcontracting plan. Because section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires subcontracting plans only for acquisitions valued above \$700,000 (\$1.5 million for construction contracts), the requirements of section 1821 of the NDAA for FY 2017 (15 U.S.C 637 note, Pub. L. 114–328) would not apply to contracts at or below the SAT. The FAR Council intends to apply the requirements of section 1821 to contracts for the acquisition of commercial items. Revisions to the clauses at FAR 52.219–9 and 52.219–16 are proposed by this rule. Discussion of these preliminary determinations is set forth below. The FAR Council will consider public feedback before making a final determination on the scope of the final rule.

#### A. Applicability to Contracts for the Acquisition of Commercial Items

Pursuant to 41 U.S.C. 1906, acquisitions of commercial items (other than acquisitions of COTS items, which are addressed in 41 U.S.C. 1907) are exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1906 and states that the law applies to acquisitions of commercial items; or (iii) the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercial items from the provision of law. If none of these conditions are met, the FAR is required to include the statutory requirement(s) on a list of provisions of law that are inapplicable to the acquisition of commercial items.

The purpose of this rule is to implement section 1821 of the NDAA

for FY 2017 and SBA's implementing regulations. Section 1821 requires SBA to provide examples of activities that would be considered a failure to make a good faith effort to comply with a small business subcontracting plan. Both the FAR and SBA's regulations require contractors with small business subcontracting plans, including commercial plans, to make a good faith effort to comply with the plans. SBA's rule did not exempt the acquisition of commercial items.

Section 1821 furthers the Administration's goal of supporting small business. It advances the interests of small business subcontractors by promoting good faith efforts by large prime contractors to find and use small business concerns as subcontractors, thereby providing valuable opportunities for small business concerns.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of this rule to the acquisition of commercial items.

#### B. Applicability to Contracts for the Acquisition of COTS Items

Pursuant to 41 U.S.C. 1907, acquisitions of COTS items will be exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1907 and states that the law applies to acquisitions of COTS items; (iii) concerns authorities or responsibilities under the Small Business Act (15 U.S.C. 644) or bid protest procedures developed under the authority of 31 U.S.C. 3551 *et seq.*, 10 U.S.C. 2305(e) and (f), or 41 U.S.C. 3706 and 3707; or (iv) the Administrator for Federal Procurement Policy makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law. If none of these conditions are met, the FAR is required to include the statutory requirement(s) on a list of provisions of law that are inapplicable to the acquisition of COTS items.

The purpose of this rule is to implement section 1821 of the NDAA for FY 2017 and SBA's implementing regulations. Section 1821 requires SBA to provide examples of activities that would be considered a failure to make a good faith effort to comply with a small business subcontracting plan. Both the FAR and SBA's regulations require contractors with small business subcontracting plans, including commercial plans, to make a good faith effort to comply with the plans. SBA's

rule did not exempt the acquisition of COTS items.

Section 1821 furthers the Administration's goal of supporting small business. It advances the interests of small business subcontractors by promoting good faith efforts by large prime contractors to find and use small business concerns as subcontractors, thereby providing valuable opportunities for small business concerns.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of this rule to the acquisition of COTS items.

### 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 rule is not a major rule under 5 U.S.C. 804.

### V. Executive Order 13771

This proposed rule is not expected to be subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

### VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to 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.* However, an initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to implement section 1821 of the NDAA for FY 2017 (Pub. L. 114–328). Section 1821 amends the Small Business Act (15 U.S.C 637 note), to require SBA to provide examples of activities that would be considered a failure to make a good faith effort to comply with the goals and other elements in small business subcontracting plans. Additionally, SBA clarified in its regulations that large prime contractors with commercial subcontracting plans must

include indirect costs in the commercial subcontracting plan goals.

The objective of this proposed rule is to implement section 1821 of the NDAA for FY 2017 and SBA's implementing regulations, which provide examples of activities that would be considered a failure to make a good faith effort to comply with a small business subcontracting plan. SBA has amended 13 CFR 125.3(d)(3) to provide guidance on evaluating whether the prime contractor made a good faith effort to comply with its small business subcontracting plan and a list of examples of activities reflective of a failure to make a good faith effort.

Additionally, SBA has revised 13 CFR 125.3(c)(1)(iv) to require that large prime contractors with commercial subcontracting plans include indirect costs in the commercial subcontracting plan goals. Large prime contractors that have a commercial subcontracting plan report on performance through a SSR in the Electronic Subcontracting Reporting System (eSRS). SBA's regulations and the FAR currently require that a contractor using a commercial subcontracting plan include indirect costs in its SSR. However, these regulations do not require contractors to include indirect costs in their commercial subcontracting plan goals, which leads to inconsistencies when comparing the data reported in the SSR to the goals in the commercial subcontracting plan.

This rule may have a positive economic impact on any small business entity that wishes to participate in Federal procurement as a subcontractor. By providing examples of a failure to make a good faith effort to comply with small business subcontracting plans, contracting officers can determine more easily whether large prime contractors have made a good faith effort to comply with their subcontracting plans and hold large prime contractors accountable for failing to make a good faith effort to comply with their subcontracting plans. More diligence in developing and meeting subcontracting goals on the part of large prime contractors could have a positive impact of giving small business concerns more opportunity to subcontract on Federal contracts. Data from the Federal Procurement Data System indicate that in FY 2018 there were 2,397 entities with 15,758 awards that required small business subcontracting plans. According to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS), there are 19,596 unique entities who are subcontractors. Approximately 80 percent of the entities registered in the System for Award Management are small entities. Therefore, we estimate that 80 percent (15,677) of the subcontractors in FSRS are small entities. These small entities may benefit from this rule.

This proposed rule will require a large prime contractor with a commercial subcontracting plan to include indirect costs in its subcontracting goals. The benefit of requiring that indirect costs be included in subcontracting goals in commercial subcontracting plans is that it will increase the small business subcontracting goal and thus increase the amount of funds the prime contractor will subcontract to small business

concerns, providing more opportunities for subcontract awards to small business concerns.

This proposed rule does not include any new reporting, recordkeeping or other compliance requirements for small entities.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches that would accomplish the stated objectives of the applicable statute.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the SBA. 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 this rule in accordance with 5 U.S.C. 610. Interested parties must submit comments separately and should cite 5 U.S.C. 610 (FAR case 2019-004) in correspondence.

## VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0007, Subcontracting Plans.

### List of Subjects in 48 CFR Parts 19, 42, and 52

Government procurement.

**William F. Clark,**

*Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.*

Therefore, for the reasons listed in the preamble, DoD, GSA, and NASA are proposing to amend 48 CFR parts 19, 42, and 52 to read as follows:

■ 1. The authority citation for 48 CFR parts 19, 42, 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 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.704 by—

■ a. Removing from paragraph (a)(6) “subcontracting goals” and adding “subcontracting goals (for commercial plans, see paragraph (d) of this section)” in its place;

■ b. Revising the introductory text of paragraph (d); and

■ c. Removing from paragraph (d)(4) “one SSR” and adding “one SSR that includes all indirect costs, except as described in paragraph (d) of this section,” in its place.

The revision reads as follows:

### 19.704 Subcontracting plan requirements.

\* \* \* \* \*

(d) A commercial plan (as defined in 19.701) is the preferred type of subcontracting plan for contractors furnishing commercial items. The subcontracting goals established for a commercial plan shall include all indirect costs with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. Once a contractor's commercial plan has been approved, the Government shall not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item. The contractor shall—

\* \* \* \* \*

### 19.705-4 [Amended]

■ 3. Amend section 19.705-4 by removing from paragraph (c), in the fourth sentence, “faith effort” and adding “faith effort (see 19.705-7)”.

■ 4. Amend section 19.705-6 by revising paragraphs (g)(1), (h), and (i) to read as follows:

### 19.705-6 Postaward responsibilities of the contracting officer.

\* \* \* \* \*

(g) \* \* \*

(1) Assess whether the prime contractor made a good faith effort to comply with its small business subcontracting plan. See 19.705-7(b) for more information on the determination of good faith effort.

\* \* \* \* \*

(h) Initiate action to assess liquidated damages in accordance with 19.705-7 upon a recommendation by the administrative contracting officer, if one is assigned, or receipt of other reliable evidence to indicate that assessing liquidated damages is warranted.

(i) Take action to enforce the terms of the contract upon receipt of a notice from the contract administration office under 19.706(f).

\* \* \* \* \*

■ 5. Amend section 19.705–7 by—

- a. Revising the section heading;
- b. Adding a paragraph heading to paragraph (a);
- c. Removing from paragraph (a) “small disadvantaged business” and adding “small disadvantaged business,” in its place;
- d. Revising paragraphs (b), (c), (d), and (e);
- e. Adding a paragraph heading to the introductory text of paragraph (f);
- f. Removing paragraph (g); and
- g. Redesignating paragraph (h) as paragraph (f)(5).

The revisions and additions read as follows:

**19.705–7 Compliance with the subcontracting plan.**

(a) *General.* \* \* \*

(b) *Determination of good faith effort.*

(1) In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor’s actions, consistent with the information and assurances provided in its plan. The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort (see 19.701). For example, notwithstanding a contractor’s diligent effort to identify and solicit offers from any of the small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, factors such as unavailability of anticipated sources or unreasonable prices may frustrate achievement of the contractor’s subcontracting goals. The contracting officer may consider any of the following, though not all inclusive, to be indicators of a good faith effort:

(i) Breaking out work to be subcontracted into economically feasible units, as appropriate, to facilitate small business participation.

(ii) Conducting market research to identify potential small business subcontractors through all reasonable means, such as searching SAM, posting notices or solicitations on SBA’s SUBNet, participating in business matchmaking events, and attending preproposal conferences.

(iii) Soliciting small business concerns as early in the acquisition process as practicable to allow them

sufficient time to submit a timely offer for the subcontract.

(iv) Providing interested small businesses with adequate and timely information about plans, specifications, and requirements for performance of the prime contract to assist them in submitting a timely offer for the subcontract.

(v) Negotiating in good faith with interested small businesses.

(vi) Directing small businesses that need additional assistance to SBA.

(vii) Assisting interested small businesses in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services.

(viii) Utilizing the available services of small business associations; local, state, and Federal small business assistance offices; and other organizations.

(ix) Participating in a formal mentor-protégé program with one or more small-business protégés that results in developmental assistance to the protégés.

(x) Although failing to meet the subcontracting goal in one socioeconomic category, exceeding the goal by an equal or greater amount in one or more of the other categories.

(xi) Fulfilling all of the requirements of the subcontracting plan.

(2) When considered in the context of the contractor’s total effort in accordance with its plan, the contracting officer may consider any of the following, though not all inclusive, to be indicators of a failure to make a good faith effort:

(i) Failure to attempt through market research to identify, contact, solicit, or consider for contract award small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns, through all reasonable means including outreach, industry days, or the use of Federal systems such as SBA’s Dynamic Small Business Search or SUBNet systems.

(ii) Failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan.

(iii) Failure to submit an acceptable ISR, or the SSR, using the eSRS, or as provided in agency regulations, by the report due dates specified in 52.219–9, Small Business Subcontracting Plan.

(iv) Failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan including subcontracting flowdown requirements.

(v) Adoption of company policies or documented procedures that have as their objectives the frustration of the objectives of the plan.

(vi) Failure to pay small business subcontractors in accordance with the terms of the contract with the prime contractor;

(vii) Failure to correct substantiated findings from Federal subcontracting compliance reviews or participate in subcontracting plan management training offered by the Government;

(viii) Failure 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 19.704(a)(12).

(ix) Falsifying records of subcontract awards to small business concerns.

(c) *Documentation of good faith effort.*

If, at completion of the basic contract or any option, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, a contractor has failed to comply with the requirements of its subcontracting plan, which includes meeting its subcontracting goals, the contracting officer shall review all available information for an indication that the contractor has not made a good faith effort to comply with the plan. If no such indication is found, the contracting officer shall document the file accordingly.

(d) *Notice of failure to make a good faith effort.* If the contracting officer decides in accordance with paragraph (b) of this section that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall give the contractor written notice in accordance with 52.219–16, Liquidated Damages—Subcontracting Plan, specifying the material breach, which may be included in the contractor’s past performance information, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages, and providing a period of 15 working days (or longer period as necessary) within which to respond. The notice shall give the contractor an opportunity to demonstrate what good faith efforts have been made before the contracting officer issues the final decision, and shall further state that failure of the contractor to respond may be taken as an admission that no valid explanation exists.

(e) *Payment of liquidated damages.*

(1) If, after consideration of all the pertinent data, the contracting officer finds that the contractor failed to make

a good faith effort to comply with its subcontracting plan, the contracting officer shall issue a final decision to the contractor to that effect and require the payment of liquidated damages in an amount stated. The contracting officer's final decision shall state that the contractor has the right to appeal under the clause in the contract entitled Disputes. Calculations and procedures shall be in accordance with 52.219-16, Liquidated Damages—Subcontracting Plan.

(2) The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal. For calculations for commercial plans see paragraph (f) of this section.

(3) Liquidated damages shall be in addition to any other remedies that the Government may have.

(f) Commercial plans. \* \* \*

19.706 [Amended]

■ 6. Amend section 19.706 by removing from paragraph (f) "subcontracting plan" and adding "subcontracting plan (see 19.705-7(b) for more information on the determination of good faith effort)".

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 7. Amend section 42.1501 by redesignating paragraphs (a)(5) thru (a)(7) as paragraphs (a)(6) thru (a)(8) and adding new paragraph (a)(5) to read as follows:

42.1501 General.

(a) \* \* \*

(5) Complying with the requirements of the small business subcontracting plan (see 19.705-7(b));

\* \* \* \* \*

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.212-5 by revising the date of the clause and paragraphs (b)(17)(i), (b)(17)(v), and (b)(20) 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) \* \* \*

(17)(i) 52.219-9, Small Business Subcontracting Plan (DATE) (15 U.S.C. 637(d)(4)).

\* \* \* \* \*

(v) Alternate IV (DATE) of 52.219-9.

\* \* \* \* \*

(20) 52.219-16, Liquidated Damages—Subcontracting Plan (DATE) (15 U.S.C. 637(d)(4)(F)(i)).

\* \* \* \* \*

■ 9. Amend section 52.219-9 by—

- a. Revising the date of the clause;
■ b. Removing from paragraph (d)(2)(i) "subcontracts" and adding "subcontracts, including all indirect costs except as described in paragraph (g) of this clause," in its place;
■ c. Adding a new fifth sentence to paragraph (g);
■ d. Amending alternate IV by revising the date of the clause and paragraph (d)(2)(i).

The revisions and additions read as follows:

52.219-9 Small Business Subcontracting Plan.

\* \* \* \* \*

Small Business Subcontracting Plan (DATE)

\* \* \* \* \*

(g) \* \* \* A Contractor authorized to use a commercial subcontracting plan shall include in its subcontracting goals and in its SSR all indirect costs, with the exception of

those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. \* \* \*

\* \* \* \* \*

Alternate IV (DATE). \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) Total dollars planned to be subcontracted for an individual subcontracting 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, including all indirect costs, with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions;

\* \* \* \* \*

■ 10. Amend 52.219-16 by revising the date of the clause and removing from paragraph (b) "plan, established" and adding "plan (see 19.705-7), established" in its place.

The revision reads as follows:

52.219-16 Liquidated Damages—Subcontracting Plan.

\* \* \* \* \*

Liquidated Damages—Subcontracting Plan (DATE)

\* \* \* \* \*

[FR Doc. 2020-10511 Filed 6-2-20; 8:45 am]

BILLING CODE 6820-EP-P