

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 11, 19, 52, and 53

[FAR Case 97-300]

RIN 9000-AH53

Federal Acquisition Regulation;
Liquidated Damages

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations (DAR) Council are proposing to amend the Federal Acquisition Regulation (FAR) to clarify policy on liquidated damages and commercial subcontracting plans and to implement OFPP Policy Letter 95-1, Subcontracting Plans for Companies Supplying Commercial Items. Comments received under the existing interim rule FAR case 89-042, Liquidated Damages, will be addressed under this new FAR case 97-300. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before June 10, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW., Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: 97-300@www.arnet.gov. Please cite FAR case 97-300 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 97-300.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule, under FAR case 89-042, was published on July 21, 1989 (54

FR 30708), to require a prime contractor to pay liquidated damages upon a finding of lack of good faith efforts to meet its small business subcontracting goals. This rule implements Section 304 of the Business Opportunity Development Reform Act of 1988, Public Law 100-656.

Significant revisions to the interim rule were proposed based on analysis of public comments. Extensive discussions took place regarding long-standing problems of trying to extend and adapt the requirement of Section 8(d) of the Small Business Act to contracts for commercial products, now compounded by the introduction of liquidated damages. To resolve those problems, the case has been held pending release and conformance to Federal Acquisition Circular (FAC) 90-32, published on September 18, 1995 (60 FR 48231), FAR case 94-790, "Acquisition of Commercial Items", and OFPP Policy Letter 95-1, "Subcontracting Plans for Companies Supplying Commercial Items".

On January 17, 1997, the CAAC and the DAR Council agreed to close FAR case 89-042, Liquidated Damages, into new FAR case 97-300. All of the issues raised, and public comments submitted, in response to the interim rule published under FAR case 89-042, will be addressed under the new FAR case 97-300.

B. Regulatory Flexibility Act

This proposed rule is not expected 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.*, because the proposed changes clarify policy on liquidated damages and commercial subcontracting plans and the changes are not expected to increase or decrease small business awards, and because small businesses are exempt from subcontracting plan requirements per FAR 19.702(b). An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97-300), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because FAR case 97-300, in part, adds additional requirements that the subcontracting plan shall include. Therefore, a request for approval of a revised burden estimate for OMB

clearance 9000-0006 has been submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a **Federal Register** notice.

List of Subjects in 48 CFR Parts 11, 19, 52, and 53

Government procurement.

Dated: April 2, 1997.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 11, 19, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 11, 19, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY
NEEDS

2. Section 11.501 is revised to read as follows:

11.501 General.

This subpart provides policies and procedures for the use of liquidated damages clauses in solicitations and contracts for supplies, services, and construction, except for the Liquidated Damages—Subcontracting Plan Clause at 52.219-16, which may be applied pursuant to 19.705-7.

PART 19—SMALL BUSINESS
PROGRAMS

3. Section 19.701 is amended by adding, in alphabetical order, definitions for "Commercial plan", "Individual contract plan" and "Master plan" to read as follows:

19.701 Definitions.

Commercial plan, as used in this subpart, means a subcontracting plan 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).

* * * * *

Individual contract plan, as used in this subpart, 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 plan, as used in this subpart, means a subcontracting plan that

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

* * * * *

4. Section 19.702 is amended by revising paragraph (a) introductory text and (b)(4) to read as follows:

19.702 Statutory requirements.

* * * * *

(a) Except as stated in paragraph (b) of this section, Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans.

* * * * *

(b) * * *

(4) For in scope modifications to contracts that do not contain the clause at 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (or equivalent prior Defense Acquisition Regulation, Federal Procurement Regulations, or National Aeronautics and Space Administration clauses); e.g., contracts awarded before Public Law 95-507.

* * * * *

5. Section 19.703(b) is amended by revising the first sentence to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as either a small business concern, a small disadvantaged business concern or a women-owned small business concern. * * *

6. Section 19.704 is amended—(a) By redesignating paragraphs (a)(2) through (a)(6) as (a)(7) through (a)(11), respectively;

(b) By adding new paragraphs (a)(2) through (a)(6) and (d);

(c) In newly-designated (a)(8) by removing the word “will” the second time it appears, and

(d) By revising newly-designated paragraphs (a) (10) and (11) and paragraphs (b) in the first sentence and (c). The revised and added text reads as follows:

19.704 Subcontracting plan requirements.

* * * * *

(a) * * *

(2) A statement of total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small, small

disadvantaged and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of the types planned for subcontracting to small, small disadvantaged and women-owned small business concerns;

(4) A description of the methods used to develop the subcontracting goals;

(5) A description of the methods used to identify potential sources for solicitation purposes;

(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 small, small disadvantaged and women-owned small business concerns;

* * * * *

(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, and

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and

(iv) Ensure that its subcontractors agree to submit SF's 294 and 295;

(11) A description of the types of records that will be maintained concerning procedures 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, small disadvantaged and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant- or division-wide basis, a master plan (see 19.701) which contains all the elements required by the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, except goals.

* * *

(c) For multiyear contracts or contracts containing options, the cumulative value of the basic contract and all options is considered in determining whether a subcontracting plan is necessary (see 19.705-2(a)). If a plan is necessary and the offeror is submitting an individual contract plan, the plan shall contain all the elements required by 19.704(a) and shall contain separate statements and goals for the basic contract and for each option.

(d) A commercial plan (as defined in 19.701) is the preferred type of

subcontracting plan for contractors furnishing commercial items. The contractor shall:

(1) Submit the commercial plan to either

(i) The first contracting officer awarding a contract subject to the plan during the offeror's fiscal year, or

(ii) If the offeror has ongoing contracts with commercial plans, to the contracting officer responsible for the contract with the latest completion date. The contracting officer shall negotiate the commercial plan for the Government. The approved commercial plan shall remain in effect during the offeror's fiscal year for all Government contracts in effect during the period.

(2) Submit a new commercial plan, 30 days before the end of the fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan. Once the new commercial plan is approved, the contractor shall provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan.

7. Section 19.705-4 is amended—

(a) In the first sentence of paragraphs (b) and (c) by removing “six” and inserting “eleven” in its place,

(b) Paragraph (b) is further amended in the second sentence by removing “six”;

(c) Paragraph (c) is further amended by revising the third sentence and by adding a sentence between the second and third sentences;

(d) By revising paragraph (d)(1); and

(e) By redesignating paragraphs (d)(3) through (d)(6) as (d)(4) through (d)(7), respectively, adding a new paragraph (d)(3); and revising newly-designated (d)(5). The new and revised text reads as follows:

19.705-4 Reviewing the subcontracting plan.

* * * * *

(c) * * * The contracting officer shall take particular care to ensure that the offeror has not submitted unreasonably low goals in order to minimize exposure to liquidated damages and to avoid the administrative burden of substantiating good faith efforts. Additionally, particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort.

* * *

(d) * * *

(1) Obtain information available from the cognizant administrative contracting

office, as provided for in 19.706(a), and evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small, small disadvantaged and women-owned small business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance and consider the performance of other contractors on similar efforts.

* * * * *

(3) Ensure that the subcontracting goals are consistent with the offeror's cost and pricing data.

* * * * *

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small, small disadvantaged and women-owned small business concerns in the geographical area where the work will be performed.

* * * * *

8. Section 19.705-6 is amended by revising the introductory text and paragraphs (b) and (g) to read as follows:

19.705-6 Postaward responsibilities of the contracting officer.

After a contract or contract modification containing a subcontracting plan is awarded, the contracting officer who approved the plan is responsible for the following:

* * * * *

(b) Forwarding a copy of each commercial plan and any associated approvals to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contractor's headquarters is located.

* * * * *

(g) Taking action to enforce the terms of the contract upon receipt of a notice under 19.706(f).

9. Section 19.705-7 is amended by revising paragraphs (b), (c), and (f) and the last sentence of paragraph (d); and by adding (h) to read as follows:

19.705-7 Liquidated damages.

* * * * *

(b) 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.

(c) 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 meet 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. If the contracting officer decides in accordance with paragraph (d) of this subsection 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 specifying the failure, 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.

(d) * * * However, when considered in the context of the contractor's total effort in accordance with its plan, the following, though not all inclusive, may be considered as indicators of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award small, small disadvantaged or women-owned small business concerns; a failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan; a failure to submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and Standard Form (SF) 295, Summary Subcontract Report, in accordance with instructions on the forms or as provided in agency regulations; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; and the adoption of company policies or procedures which have as their objectives the frustration of the objectives of the plan.

* * * * *

(f) With respect to commercial plans approved under the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the contracting officer that approved the plan shall—

(1) Perform the functions of the contracting officer under this subsection on behalf of all agencies with contracts covered by the commercial plan;

(2) Determine whether or not the goals in the commercial plan were achieved and, if they were not achieved, review all available information for an indication that the contractor has not

made a good faith effort to comply with the plan, document the results of the review, and provide a copy to the other contracting officers with contracts subject to the commercial plan as listed in the *Remarks* block of the SF 295; and

(3) If a determination is made to assess liquidated damages, request other contracting officers with contracts incorporating the plan to provide the amount of payments made under their Government contracts subject to the plan that contributed to the contractor's total sales during the contractor's fiscal year in order to calculate and assess liquidated damages on the Government's behalf. For example: The contractor's total sales are \$50 million and the subcontracting dollars to support the sales are \$20 million, or 40 percent. The Government's payments under contracts subject to the plan contributing to the contractor's total sales are \$5 million. Therefore, the pro rata share of subcontracting attributable to the Government contracts covered by the plan is 10 percent of \$20 million, or \$2 million. If the contractor failed to achieve its small business goal by 1 percent, the liquidated damages would be calculated as 1 percent of \$2 million. A copy of the contracting officer's final decision assessing liquidated damages shall be provided to other contracting officers with contracts subject to the commercial plan as listed in the *Remarks* block of the SF 295.

* * * * *

(h) Every contracting officer with a contract that is subject to a commercial plan shall include in the contract file—

(1) A copy of the approved plan,
(2) A copy of the determination regarding goal achievement and (if applicable) whether the contractor made a good faith effort to comply with the plan, and

(3) A copy of the final decision assessing liquidating damages, if applicable.

10. Section 19.706 is amended in paragraph (a) by removing the paragraph designation "(a)"; by removing paragraph (b); by redesignating (a)(1) through (a)(6) as (a) through (f), respectively; in newly-designated (e) by removing "and" at the end; in newly-designated (f) by removing the period at the end and inserting "; and" in its place; and by adding (g) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

* * * * *

(g) Immediate notice that performance under a contract is complete, that the goals were or were not met, and if not met, whether there is any indication of

a lack of a good faith effort to comply with the subcontracting plan.

19.708 [Amended]

11. Section 19.708 is amended in paragraph (b)(2) by adding "the clause with" after the words "Plan, or"; in the parenthetical citation in (c)(1) by removing "(a)(1)"; and in the second sentence of (c)(2) by removing "award fee" and inserting "award-fee" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.219-9 is amended by revising the clause date and paragraphs (b), (d)(2)(i), (d)(10), (d)(11) first sentence of introductory text, (d)(11)(vi) second sentence, (f) introductory text, and (g) to read as follows:

52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (XXX 1997)

* * * * *

(b) *Definitions.* As used in this clause—
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 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).

Individual contract 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 plan means a subcontracting plan that contains all of the required elements of the individual plans, except goals, and may

be incorporated into individual 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.

* * * * *

(d) * * *

(2) * * *

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

* * * * *

(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, and (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and (iv) ensure that its subcontractors agree to submit SF's 294 and 295.

(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, small disadvantaged and women-owned small business concerns and to award subcontracts to them. * * *

* * * * *

(vi) * * * Contractors having commercial plans need not comply with this requirement.

* * * * *

(f) A master plan on a plant or division-wide basis which 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, * * *

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items (see paragraph

(b) of this clause). The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract.

* * * * *

(End of clause)

* * * * *

13. Section 52.219-16 is amended—

(a) By revising the clause date;

(b) In the first sentence of paragraph (b) by removing the word "product"; by adding a sentence at the beginning of (b); and by revising the last sentence;

(c) In (c) at the end of the first sentence, before the period, by adding "and to discuss the matter"; and

(d) By revising (d) to read as follows:

52.219-16 Liquidated Damages—Subcontracting Plan.

* * * * *

LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (XXX 1997)

* * * * *

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. * * * The amount of probable 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 subcontract goal.

* * * * *

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

* * * * *

(End of clause)

PART 53—FORMS

14. Section 53.301-294 is revised to read as follows:

BILLING CODE 6820-EP-P

53.301-294 Standard Form 294, Subcontracting Report for Individual Contracts

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)OMB No.: 9000-0006
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED	
a. COMPANY NAME			4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU: YEAR <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEPT 30	
b. STREET ADDRESS				
c. CITY	d. STATE	e. ZIP CODE		
2. CONTRACTOR IDENTIFICATION NUMBER			5. TYPE OF REPORT <input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED	
6. ADMINISTERING ACTIVITY (Please check applicable box)				
<input type="checkbox"/> ARMY <input type="checkbox"/> GSA <input type="checkbox"/> NASA <input type="checkbox"/> NAVY <input type="checkbox"/> DOE <input type="checkbox"/> OTHER FEDERAL AGENCY (Specify) <input type="checkbox"/> AIR FORCE <input type="checkbox"/> DEFENSE LOGISTICS AGENCY				
7. REPORT SUBMITTED AS (Check one and provide appropriate number)			8. AGENCY OR CONTRACTOR AWARDED CONTRACT	
<input type="checkbox"/> PRIME CONTRACTOR			a. AGENCY'S OR CONTRACTOR'S NAME	
<input type="checkbox"/> SUBCONTRACTOR			b. STREET ADDRESS	
9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS: <input type="checkbox"/> DO INCLUDE INDIRECT COSTS <input type="checkbox"/> DO NOT INCLUDE INDIRECT COSTS			c. CITY d. STATE e. ZIP CODE	

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS (Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)				
10b. LARGE BUSINESS CONCERNS (Dollar Amount and Percent of 10c.)				
10c. TOTAL (Sum of 10a and 10b.)		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS (Include HBCU/MI) (Dollar Amount and Percent of 10c.)				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS (Dollar Amount and Percent of 10c.)				
13. REMARKS				

14a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

14b. TELEPHONE NUMBER

AREA CODE

NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV.)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This report is not required for commercial items for which a company-wide annual plan (i.e., a Commercial Plan) has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at 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 since the previous report.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 12. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 12: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, and WOSB) from the sub-

contracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 13. The amounts entered in Blocks 10a through 12 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 and 12: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in both Block 11 and Block 12 (i.e., SDBs owned by women).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs owned by women).

BLOCK 13: Enter a short narrative explanation if (a) SB, SDB, or WOSB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS**DEFINITIONS**

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

2. Commercial plan means a subcontracting plan 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).

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

5. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT**For the Awarding Agency or Contractor:**

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

15. Section 53.301-295 is revised to read as follows:

53.301-295 Standard Form 295, Subcontract Report

SUMMARY SUBCONTRACT REPORT (See instructions on reverse)				OMB No.: 9000-0007 Expires: 03/31/98	
Public reporting burden for this collection of information is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.					
1. CORPORATION, COMPANY OR SUBDIVISION COVERED				3. DATE SUBMITTED	
a. COMPANY NAME				4. REPORTING PERIOD: <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <input type="checkbox"/> OCT 1 - MAR 31 </div> <div style="text-align: center;"> <input type="checkbox"/> OCT 1 - SEPT 30 </div> <div style="text-align: center;">YEAR</div> </div>	
b. STREET ADDRESS					
c. CITY		d. STATE			
2. CONTRACTOR IDENTIFICATION NUMBER				5. TYPE OF REPORT <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED </div>	
6. ADMINISTERING ACTIVITY (Please check applicable box)					
<input type="checkbox"/> ARMY		<input type="checkbox"/> DEFENSE LOGISTICS AGENCY		<input type="checkbox"/> DOE	
<input type="checkbox"/> NAVY		<input type="checkbox"/> NASA		<input type="checkbox"/> OTHER FEDERAL AGENCY (Specify)	
<input type="checkbox"/> AIR FORCE		<input type="checkbox"/> GSA			
7. REPORT SUBMITTED AS (Check one)			8. TYPE OF PLAN		
<input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> BOTH			<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> COMMERCIAL		
<input type="checkbox"/> SUBCONTRACTOR			IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶		
9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES					
a			c		
b			d		
CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS (Report cumulative figures for reporting period in Block 4)					
TYPE			WHOLE DOLLARS		PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS (Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)					
10b. LARGE BUSINESS CONCERNS (Dollar Amount and Percent of 10c.)					
10c. TOTAL (Sum of 10a and 10b.)					
11. SMALL DISADVANTAGED (SDB) CONCERNS (Dollar Amount and Percent of 10c.)					
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS (Dollar Amount and Percent of 10c.)					
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) (If applicable) (Dollar Amount and Percent of 10c.)					
14. REMARKS					
15. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM					
a. NAME		b. TITLE		c. TELEPHONE NUMBER	
				AREA CODE	NUMBER
16. CHIEF EXECUTIVE OFFICER					
a. NAME			c. SIGNATURE		
b. TITLE			d. DATE		

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.
2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.
4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.
5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$500,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)
6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.
7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.
8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lowest tier subcontractors.
10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 13 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 13: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 13: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported on both Block 11 and Block 12 (i.e., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.
2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.
3. Enter in Blocks 10a through 13 the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial products covered by an approved Commercial Plan were received.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisition Regulation.
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5. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HC), Washington, DC 20546
2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSD/DBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

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