

## FAQs For Subcontractors

1. When is the size status of a business concern determined?

Response: SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer (or other formal response to a solicitation), which includes price.

2. What are the size standards for SBA's Section 8(d) Subcontracting Program?

Response: For subcontracting purposes pursuant to sections 8(d) of the Small Business Act, a concern is small for subcontracts which relate to Government procurements if it does not exceed the size standard for the NAICS code that the prime contractor believes best describes the product or service being acquired by the subcontract.

3. What are the size procedures for SBA's Section 8(d) Subcontracting Program?

Response: Prime contractors may rely on the information contained in the System for Award Management (SAM) (or any successor system or equivalent database maintained or sanctioned by SBA) as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. Additional information can be found under the 13 CFR 121.411 or direct link [https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8154a2a82577252c35588966a34dfa6b&mc=true&n=sp13.1.121.a&r=SUBPART&ty=HTML#se13.1.121\\_1411](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8154a2a82577252c35588966a34dfa6b&mc=true&n=sp13.1.121.a&r=SUBPART&ty=HTML#se13.1.121_1411).

4. What types of subcontracting assistance are available to small businesses?

Response: The purpose of the subcontracting assistance program is to provide the maximum practicable subcontracting opportunities for small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, certified HUBZone small business concerns, certified small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The subcontracting assistance program implements section 8(d) of the Small Business Act, which includes the requirement that, unless otherwise exempt, other than small business concerns awarded contracts that offer subcontracting possibilities by the Federal Government in excess of \$650,000, or in excess of \$1,500,000 for construction of a public facility, must submit a subcontracting plan to the appropriate contracting agency. The Federal Acquisition Regulation sets forth the requirements for subcontracting plans in 48 CFR 19.7, and the clause at 48 CFR 52.219-9.

5. What are the size procedures for partial small business set-asides?

Response: A firm is required to meet size standard requirements only for the small business set-aside portion of a procurement, and is not required to qualify as a small business for the unrestricted portion.

6. Does the Government offer any assistance to subcontractors?

Response: Yes, the Government has developed a Small Business Subcontracting Plan. Information can be found under FAR Part 19.7.

7. What can be done when the negotiated subcontract amount is going to be exceeded?

**Response:** As soon as it is known that cost will exceed the negotiated subcontract amount, contact the Prime. Depending on the contract language, the Prime may need to request a modification to increase the sub's contract ceiling.

8. How can payments to subcontractors be made promptly, especially if the sub is a small business?

**Response:** All solicitations and contracts should contain the clause titled "Providing Accelerated Payment to Small Business Subcontractors, FAR 52.232-40".

**PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS, FAR 52.232-40 (December 2013)**

- a. Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.
- b. The acceleration of payments under this clause does not provide any new rights under the prompt Payment Act.
- c. Include the substance of this clause, include this paragraph c, in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.  
(End of Clause)

9. Are you familiar with the format your intended prime uses for quotes? Can you quickly and readily match that format, so that the format of your sub quote is consistent with the format of the prime (i.e., having a different structure for indirect cost rate bases, or reporting periods, FFP vs. CR).

**Response:** The prime contractor may choose what format they would like to use. If a subcontractor doesn't understand the format used by the Prime, they should ask the Prime.

10. How will you invoice the contractor for your subcontract employees' labor and/or materials.

**Response:** Invoice in accordance with the terms and conditions of the subcontractor contract.

11. If the sub is a university, have you deleted percent effort pricing from your business and technical proposals, which applies to grants but not NCI contracts?

**Response:** This is an action that the prime contractor or sub-contractor should perform.

12. If the sub is a university, have you scrubbed the word "grant" from your proposal and replaced it with concepts and terminology relevant to contracts?

**Response:** This is an action that the prime contractor or sub-contractor should perform.

13. Have you refrained from using the terms "subcontractor" and "consultant" interchangeably?

**Response:** This is an action that the prime contractor should perform.

14. Does the technical proposal clearly state how the proposed employee will work on the government's requirement, rather than simply listing what they have worked on in the past? Example: "Dr. So-and-So has worked as the Director of Surgical Products for XYZ corporation for the past 20 years and has numerous patents. He has lectured extensively..." Unless the government is seeking a lecturer, this is vague and does not address what the government needs to have done.

**Response:** The Prime should address these concerns when reviewing the subcontract.

15. What if I want to be included in a proposal for a new contract as a proposed subcontractor, but I don't want to divulge proprietary information to the prime contractor/offeror?

**Response:** Notify the Prime that proprietary information will be provided to the Government directly. The Prime will notify the Government specialist that proprietary information will be submitted by the subcontractor directly.

16. Does subcontract work have to be competed similar to how prime contracts have to be?

**Response:** Work should be completed in accordance with the terms and conditions of the subcontractor contract. Subcontractors will need to partner up with a prime contractor prior to submission of a proposal. Subcontracting opportunities are posted in the following directories:

- [Subcontracting Network database](#)
- [General Services Administration's Subcontracting Directory for Small Businesses](#)
- [Department of Defense Subcontracting Opportunity Directory](#)
- [SBA's Directory of Federal Government Prime Contractors with a Subcontracting Plan](#)

17. Does a subcontractor have to comply with all rules and regulations that a prime contractor must agree to?

**Response:** The rules and regulations that govern the subcontracting program are fully defined in the [Code of Federal Regulations](#), the [Federal Acquisition Regulations](#), and supplements that are individually published by federal agencies. Prime contractors work directly with the government. They manage any subcontractors and are responsible for ensuring that the work is completed as defined in the contract. Subcontracting limitations are part of the [governing rules and responsibilities](#) that all contractors should be familiar with.

18. Should I, as a subcontractor, ever be talking to the Government without the prime contractor involved?

**Response:** Subcontractors should always involve the prime when communicating with the Government.

19. What can be done when the subcontractor alleges that they are not being paid by the prime contractor?

**Response:** Subcontractors should communicate with prime contractor and include the Government as part of the communication to find some resolution.

20. How can the subcontractor's private data (indirect rates, labor rates) be kept from the prime contractor during the pre-award process and post-award performance when everything has to go through the prime to the Government?

**Response:** Notify the Prime that proprietary information will be provided to the Government directly. The Prime will notify the Government specialist that proprietary information will be submitted by the subcontractor directly.

21. Does the sub have any responsibility in keeping its portion of a contract effort less than 50% of the cost? And is that 50% of the labor? Or 50% of the total cost? Or what?

**Response:** It is the prime contractor's responsibility to track effort/cost. The subcontractor is only required to perform in accordance with the contract terms and conditions in their contract with the Prime.

22. Does NCI OA provide any assistance to small businesses looking to be matched with large businesses (Primes) for work they specialize in? Or vice versa.

**Response:** NCI does not provide assistance. However, the Small Business office does.

23. What information must a subcontractor supply to the prime in a proposal?

**Response:** The subcontract should provide the information requested by the Prime. If this involves proprietary information, the sub may submit that information directly to the Government.

24. What articles are required to flow down to the subcontract?

Response: The Prime is required to flow down clauses based on the type of contract the Prime received. The list of FAR mandatory flow down clauses is taken from the prime contract with the federal government and included in the subcontract. This allows for consistency and liability for all parties performing on a federal project.

- Government contract flow down clauses depends on the type of contract awarded.

FAR clauses state that government contracting agencies shall require the prime “shall insert the substance of this clause in all subcontracts. Therefore, if you are the main contractor, you should not just put a clause in your subcontract that states “all clauses that are in the prime contract flow down to the subcontractor.

- You must include each subcontract clause individually.
- You should not be flowing down the exact words of the prime’s contract clauses.
- For the prime flow down clauses to be enforceable, it needs to be modified to fit your specific subcontract.

As a general practice, there are “mandatory” flow down clauses and “discretionary” flow-down clauses.

#### Common Clauses

- 52.244-6, “Subcontracts for Commercial Items” – for other than commercial items
- 52.215-5, “Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items” – For commercial items
- 52.203-13, “Contractor Code of Business Ethics and Conduct”
- 52.203-15, “Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009”
- 52.219-8, “Utilization of Small Business Concerns”
- 52.222-26, “Equal Opportunity”
- 52.222-35, “Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans”
- 52.222-36, “Affirmative Action for Works with Disabilities”
- 52.222-39, “Notification of Employee Rights Concerning Payment of Union Dues or Fees”
- 52.222-50, “Combating Trafficking in Persons”
- 52.247-64, “Preference for Privately Owned U.S.-Flag Commercial Vessels”

#### List of Useful Prime FAR Flow Down Clauses to Subcontractors

- The Default clause is a discretionary flow-down clause
- Option to exercise clause. This is also discretionary
- Rights in Technical Data Rights –discretionary
- Limitation of Funds or/Limitation of Costs –discretionary
- Service Contract Act Requirements. This contract flow down clause is mandatory
- Davis-Bacon Act Requirements — This is a mandatory flow-down clause
- Audit and Records Clause and Sealed Bidding and Negotiated Contracts — Mandatory
- Cost and Pricing Data — Mandatory
- Subcontracts for Commercial Items — This clause is Mandatory)

Tip for subcontractors: Many prime contractors, especially in construction contracts try to limit payment to their subcontractors by inserting a pay-when-paid clause in the subcontract. This is not a mandatory FAR flow down clause and should be reviewed with caution. Make sure that you comply with the FAR Mandatory Disclosure Rule.