

19.705-7 Compliance with the subcontracting plan.

(a) *General.* Maximum practicable utilization of small business, veteran-owned small business, service-disabled veteran-owned small business, *HUBZone* small business, small disadvantaged business, and *women-owned small business concerns* as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and [15 U.S.C.637\(d\)\(4\)\(F\)](#) directs that liquidated damages *shall* be paid by the contractor.

(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.* With respect to commercial plans approved under the clause at [52.219-9](#), 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, and document the results of the review;

(3) If a determination is made to assess liquidated damages, in order to calculate and assess the amount of damages, the *contracting officer shall* ask the contractor to provide-

(i) Contract numbers for the Government contracts subject to the plan;

(ii) The total Government sales during the contractor's fiscal year; and

(iii) The amount of payments made under the Government contracts subject to that plan that contributed to the contractor's total sales during the contractor's fiscal year; and

(4) When appropriate, assess liquidated damages on the Government's behalf, based on the pro rata share of subcontracting attributable to the Government contracts. For example: The contractor's total actual sales were \$50 million and its actual subcontracting was \$20 million. The Government's total payments under contracts subject to the plan contributing to the contractor's total sales were \$5 million, which accounted for 10 percent of the contractor's total sales. Therefore, the pro rata share of subcontracting attributable to the Government contracts would be 10 percent of \$20 million, or \$2 million. To continue the example, 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, or \$20,000. The *contracting officer shall* make similar calculations for each category of small business where the contractor failed to achieve its goal and the sum of the dollars for all of the categories equals the amount of the liquidated damages to be assessed. 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.

(5) Every *contracting officer* with a contract that is subject to a commercial plan *shall* include in the contract file a copy of the approved plan and a copy of the final decision assessing liquidating damages, if applicable.

Parent topic: 19.705 Responsibilities of the contracting officer under the subcontracting assistance program.