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(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 46009, Oct. 31, 1989; 55 FR 3888, Feb. 5, 1990; 61 FR 67422, Dec. 20, 1996; 82 FR 4731, Jan. 13, 2017]

52.219–12 Special 8(a) Subcontract Conditions.

As prescribed in 19.811–3(b), insert the following clause:

SPECIAL 8(a) SUBCONTRACT CONDITIONS (OCT 2019)

(a) The Small Business Administration (SBA) has entered into Contract No. ____ [*insert number of contract*] with the ____ [*insert name of contracting agency*] to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The ____ [*insert name of subcontractor*], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. ___ [*insert number of contract*] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements, for the administration of this subcontract to the ___ [*insert name of contracting agency*] with complete authority to take any action on behalf of the Government und_d conditions of this subcontract.

(3) That it will notify the [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the ____ [*insert name of contracting agency*].

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 34757, Aug. 21, 1989; 54 FR 46009, Oct. 31, 1989; 55 FR 3889, Feb. 5, 1990; 55 FR 38518, Sept. 18, 1990; 61 FR 67422, Dec. 20, 1996; 82 FR 4731, Jan. 13, 2017; 84 FR 47864, Sept. 10, 2019]

52.219–13 Notice of Set-Aside of Orders.

As prescribed in 19.507(f)(1), insert the following clause:

NOTICE OF SET-ASIDE OF ORDERS (MAR 2020)

(a) The Contracting Officer may set aside orders for the small business concerns identified in 19.000(a)(3).

(b) The Contracting Officer will give notice of the order or orders, if any, to be set aside for small business concerns identified in 19.000(a)(3) and the applicable small business program. This notice, and its restrictions, will apply only to the specific orders that have been set aside for any of the small business concerns identified in 19.000(a)(3).

(End of clause)

Alternate I (MAR 2020). As prescribed in 19.507(f)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer will set aside orders for the small business concerns identified in 19.000(a)(3) when the conditions of FAR 19.502–2 and the specific program eligibility requirements are met, as applicable.

[76 FR 68036, Nov. 2, 2011, as amended at 85 FR 11770, Feb. 27, 2020]

52.219–14 Limitations on Subcontracting.

As prescribed in 19.507(e), insert the following clause:

LIMITATIONS ON SUBCONTRACTING (OCT 2022)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Definition. Similarly situated entity*, as used in this clause, means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (*e.g.*, for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(c) *Applicability*. This clause applies only to—

(1) Contracts that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(3) Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15;

(4) Orders expected to exceed the simplified acquisition threshold and that are—

(i) Set aside for small business concerns under multiple-award contracts, as described in 8.405–5 and 16.505(b)(2)(i)(F); or

(ii) Issued directly to small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii);

(5) Orders, regardless of dollar value, that are—

(i) Set aside in accordance with subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 8.405–5 and 16.505(b)(2)(i)(F); or

(ii) Issued directly to concerns that qualify for the programs described in subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 19.504(c)(1)(ii); and

(6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.

(d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a North American Industry Classification System (NAICS) code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) The Contractor shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (c)(1), (2), (3) and (6) of this clause—

[*Contracting Officer check as appropriate.*]

____By the end of the base term of the contract and then by the end of each subsequent option period; or

____By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (c)(4) and (5) of this clause, by the end of the performance period for the order.

(g) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

(1) In a joint venture comprised of a small business protégé and its mentor approved by the Small Business Administration, the small business protégé shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protégé in the joint venture must be more than administrative functions.

(2) In an 8(a) joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.

(End of clause)

[86 FR 44245, Aug. 11, 2021, as amended at 87 FR 58226, Sept. 23, 2022]

52.219–15 [Reserved]

52.219–16 Liquidated Damages—Subcontracting Plan.

As prescribed in 19.708(b)(2), insert the following clause:

LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (SEP 2021)

(a) *Failure to make a good faith effort to comply with the subcontracting plan,* as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled ''Small Business Subcontracting Plan,'' or willful or intentional action to frustrate the plan.