

OVERVIEW OF FEDERAL SMALL BUSINESS REQUIREMENTS & ELIGIBILITY

presented by Layli Pietri and Carrie Lieberman

May 20, 2021

Balfour Beatty
GRUNLEY

Agenda

- ▶ Small Business Administration (SBA)
- ▶ Applicable Federal Acquisition Regulations (FAR)
 - ▶ Highlights
- ▶ Maximum Practicable Opportunities
- ▶ Good Faith Efforts
- ▶ Small Business Eligibility
 - ▶ Federal
 - ▶ State/Local
- ▶ Free Resources
- ▶ Question + Answer

Balfour Beatty

GRUNLEY

Small Business Administration (SBA)

- ▶ In the Small Business Act of July 30, 1953, Congress created the Small Business Administration, whose function was to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns." The charter also stipulated that the SBA would ensure small businesses a "fair proportion" of government contracts and sales of surplus property.
- ▶ Responsible for the management and oversight of the small business procurement process across the Federal Government. SBA negotiates with Federal departments concerning their prime contracting goals and achievement with small businesses to ensure that small businesses have the **maximum practicable opportunity** to provide goods and services to the Federal Government.

Balfour Beatty

GRUNLEY

Federal Acquisition Regulations (FAR)

- ▶ 3 important FAR Clauses that address utilization of Small Business Concerns:
 1. [FAR 52.219-8 Utilization of Small Business Concerns](#)
 2. [FAR 52.219-9 Small Business Subcontracting Plan](#)
 3. [FAR 52.219-16 Liquidated Damages - Subcontracting Plan](#)

FAR 52.219-8 Highlights

- ▶ (b) It is the policy of the U.S. that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the **maximum practicable opportunity** to participate in performing contracts let by any Federal agency...
- ▶ (b) It is further the policy of the U.S. that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns...
- ▶ (c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance...to cooperate in any studies or surveys as may be conducted by the U.S. SBA or the awarding agency... to determine the extent of the Contractor's compliance with this clause.

Balfour Beatty

GRUNLEY

FAR 52.219-8 Highlights

- ▶ (d)(1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

Balfour Beatty

GRUNLEY

FAR 52.219-8 Highlights

- ▶ (d)(4) a contractor acting in **good faith** is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.
- ▶ (d)(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for *Award Management* or by contacting the SBA. Options for contacting the SBA include-
 - ▶ (i) [HUBZone small business database search application web page](#)
 - ▶ (ii) In writing to the Director/HUB...
 - ▶ (iii) The SBA HUBZone Help Desk at hubzone@sba.gov

FAR 52.219-9 Highlights

- ▶ (a) This clause **does not apply to small business concerns.**
- ▶ (d) The Offer's subcontracting plan shall include the following:
 - ▶ (d)(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of the total planned subcontracting dollars...
 - ▶ (d)(2) A statement of total dollars planned to be subcontracted for an individual subcontracting plan for each small business concern...
 - ▶ (d)(3) A description of the principal types of supplies and services to be subcontracted, and an identification fo the types plan for subcontracting to each small business concern...
 - ▶ (d)(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
 - ▶ (d)(5) A description of the method used to identify potential sources for solicitation purposes...

FAR 52.219-9 Highlights

- ▶ (d)(6) A statement as to whether or not the Offeror included indirect costs...
- ▶ (d)(7) The name of the individual employed by the Offeror who will administer the Offer's subcontracting program, and a description of the duties of the individual...
- ▶ (d)(8) A description of the efforts the Offeror will make to assure that small business concerns have an equitable opportunity to compete for subcontracts.
- ▶ (d)(9) Assurance that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will **require all subcontractors (except small business concerns) that receive subcontracts in excess of \$1,500,000 (for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan...**

Balfour Beatty

GRUNLEY

FAR 52.219-9 Highlights

- ▶ (d)(10) Assurance 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;... (iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR)...; (v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS; (vi) Provide its prime contract number, its DUNS number, and the email address of the Offeror's official responsible for acknowledging receipt of or rejecting...; (vii) Require that each subcontractor with a subcontracting plan provide the prime contract number...
- ▶ (d)(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...

Balfour Beatty

GRUNLEY

FAR 52.219-9 Highlights

- ▶ (d)(12) Assurances that the offeror will make a **good faith effort** to... obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal...
- ▶ (d)(13) Assurances that the Contractor will provide the Contracting Officer with written explanation if the Contractor fails to... obtain the performance of construction work... This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.
- ▶ (d)(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.
- ▶ (d)(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the Contracting Officer when the prime contractor makes either a reduced or an untimely payment...

Balfour Beatty

GRUNLEY

FAR 52.219-16 Highlights

- ▶ (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**.
- ▶ (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars... if at contract completion... the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make **good faith effort** to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b)...

Balfour Beatty

GRUNLEY

FAR 52.219-16 Highlights

- ▶ (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such **good faith effort**, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what **good faith efforts** have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. 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 the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b)...

Balfour Beatty

GRUNLEY

Maximum Practicable Opportunity

13 CFR 125.3

- ▶ (b)(3) Efforts to provide the **maximum practicable subcontracting opportunities** for small business concern may include, as appropriate for the procurement, one or more of the following actions:
 - ▶ (i) Breaking out contract work items... to facilitate small business participation;
 - ▶ (ii) Conducting market research to identify small business subcontractors and suppliers through all reasonable means...
 - ▶ (iii) Soliciting small business concerns as early in the acquisition process as practicable...
 - ▶ (iv) Providing interested small businesses with adequate and timely information about the plans, specifications, and requirements...

Balfour Beatty

GRUNLEY

Maximum Practicable Opportunity

13 CFR 125.3

- ▶ (v) Negotiating in good faith...
- ▶ (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; and
- ▶ (ix) Participating in a formal mentor-protégé program with one or more small-business proteges that results in developmental assistance to the protégé.

Balfour Beatty

GRUNLEY

Good Faith Effort

13 CFR 125.3

- ▶ (d)(3)(i) Evidence that a Large Business prime contractor has made a good faith effort to comply with its subcontracting plan or other subcontracting responsibilities includes supporting documentation that:
 - ▶ (A) The contractor performed one or more of the actions described in paragraph (b)...
 - ▶ (B) Although the contractor may have failed to achieve its goals in one socioeconomic category, it over-achieved its goal by an equal or greater amount in one or more of the other categories: or
 - ▶ (C) The contractor fulfilled all the requirements of its subcontracting plan

Balfour Beatty

GRUNLEY

Good Faith Effort

13 CFR 125.3

- ▶ (d)(3)(ii) Examples of activities reflective of a failure to make a good faith effort to comply with a subcontracting plan include, but are not limited, to:
 - ▶ (A) Failure to submit the acceptable individual or summary subcontracting reports in eSRS by the report dates...;
 - ▶ (B) Failure to pay small business concern subcontractors in accordance with the terms of the contract with the prime;
 - ▶ (C) Failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan;
 - ▶ (D) Failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan including subcontracting flow down requirements;

Good Faith Effort

13 CFR 125.3

- ▶ (E) Adoption of company policies or documented procedures that have as their objectives the frustration of the objectives of the plan;
- ▶ (F) Failure to correct substantiated findings from federal subcontracting compliance reviews...
- ▶ (G) Failure to conduct market research identifying potential small business concern subcontractors through all reasonable means including outreach... federal database marketing systems...;
- ▶ (H) Failure to comply with regulations requiring submission of a written explanation to the contracting officer to change small business concern subcontractors that were used in preparing offers...
- ▶ (I) Falsifying records of subcontracting awards to SBCs.

Balfour Beatty

GRUNLEY

Small Business Eligibility (Federal)

- ▶ A company, including its affiliates, located in the U.S., organized for profit, independently owned and operated, not dominant in field of operations in which it performs work, and qualified as a Small Business under the criteria and size standards in 13 CFR, part 121. If you have difficulty ascertaining your size status, please refer to SBA's website at www.sba.gov/size or contact your local SBA office.
- ▶ All classifications must be a Small Business (i.e., Disadvantaged, Woman-Owned, HUBZone, Veteran- Owned, Service-Disabled Veteran-Owned)
- ▶ Size standards typically based on annual dollar volume averaged over the last 3 or 5 fiscal years (whichever is more beneficial)

Balfour Beatty

GRUNLEY

Small Business Eligibility (Federal)

- ▶ Manufacturers are typical based on Number of Employees (not to exceed)
- ▶ Must include the employees or dollar volume of all affiliates
- ▶ Size standards depends on NAICS Code ([North American Industry Classification System](#)), but typically \$16.5M
 - ▶ Sector 23 - Construction, Subsector 332-Fabricated Metal Product Manufacturing
- ▶ [SBA Dynamic Small Business Search](#)
- ▶ Subcontractors/Suppliers may self certify (see Size Self Certification form) for all designations except for HUBZone

Balfour Beatty

GRUNLEY

SBA Size Self Certification template

SBLO Handbook: 06/15/2010

Company Name: _____
Address: _____
City, State, Zip _____
Contact Person _____
Phone & Fax Number _____

SIZE: _____ Small Business
_____ Small Disadvantaged Business
_____ Certified by SBA as a HUBZone Small Business
_____ Women Owned Small Business
_____ Veteran Owned Small Business
_____ Service Disabled Veteran Owned Small Business
_____ Historically Black College/University or Minority Institution
_____ Large Business (including non-profit)
_____ Alaskan Native Corporation
_____ Indian Tribe
_____ Other: Specify _____

If you are self certifying as a Small Business, fill out the information below for the work you have been contracted to perform:

NAICS Code (for work being contracted) _____

If you are self-certifying as a Small Disadvantaged Business fill out the information below:

Primary NAICS Code _____⁵

You may wish to review the definitions for the above categories in the Federal Acquisition Regulation 19.7 or 52.219-8 (www.arnet.gov/far). If you have difficulty ascertaining your size status, please refer to SBA's website at www.sba.gov/size or contact your local SBA office.

Under 15 U.S.C. 645(d), any person who misrepresents its size status shall (1) be punished by a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act.

Signature and Title

Date

*****INTERNAL USE ONLY*****

_____ HUBZone Status have been verified in the Central Contractor Registration (CCR) Dynamic Small Business Search Database as of ___/___/___.

⁵ NAICS codes are needed for the Summary Subcontract Report breakout report (by 3-digit NAICS subsector) that the prime contractor is required to submit to the Government annually pursuant to the Federal Acquisition Regulation (FAR) clause at 52.219-9(l)(2)(iii)

Small Business Eligibility (Virginia)

- ▶ SWaM (Small, Women-owned, and Minority-owned) Certification Program
 - ▶ Not required to be a Virginia based company
 - ▶ However, the following 12 states and district are not allowed to participate: Arkansas, California, Connecticut, Florida, Iowa, Louisiana, Minnesota, Mississippi, New Mexico, Ohio, Texas, Washington, DC
 - ▶ Granted a 5-year term
 - ▶ “Small business” means a business that is at least 51% independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has **250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years**. One or more of these individual owners shall control both the management and daily business operations of the small business.
 - ▶ Used by Virginia Schools, Virginia Higher Ed, Commonwealth of Virginia and Virginia Department of Transportation (VDOT)

Balfour Beatty

GRUNLEY

Small Business Eligibility (Virginia)

- ▶ Virginia Small Business Enterprise Program (VSBE)
 - ▶ Personal net worth can not exceed \$1.32M (excludes owner's equity in primary residence and ownership interest in the firm)
 - ▶ Eligible to use an expedited process to apply for certification in other states (through the state's department of transportation)
 - ▶ Used by Virginia Department of Transportation (VDOT)

Small Business Eligibility (District of Columbia)

- ▶ Disadvantaged Business Enterprise (DBE) Certification
 - ▶ Does not need to be a small business
 - ▶ Personal net worth not to exceed \$1.32M (excludes ownership interest in the firm, retirement fund assets, and equity value of primary residence)
 - ▶ Eligible to use an expedited process to apply for certification in other states (through the state's department of transportation)
 - ▶ Used by the District Department of Transportation (DDOT) on federally funded highway projects

Balfour Beatty

GRUNLEY

Small Business Eligibility (District of Columbia)

- ▶ Certified Business Enterprise (CBE)
 - ▶ Does not need to be a small business
 - ▶ Categories include Local Business Enterprise, Disadvantaged Business Enterprise, Longtime Resident Business, Veteran Owned Business, Small Business Enterprise, Development Enterprise Zone, Residence Owned Business, Local Manufacturing Business Enterprise
 - ▶ Must be located in the District of Columbia
 - ▶ Used by District Government Agencies

Balfour Beatty

GRUNLEY

Small Business Eligibility (Maryland)

- ▶ [MDOT Directory of Certified MBE, DBE, SBE and SCDBE Firms](#)
 - ▶ Does not need to be a small business to be an MBE and/or DBE
 - ▶ Personal net worth for the MBE Program is \$1,771,564 and for the DBE Program is \$1.32M (excludes personal residence and the value of the applicant's business)
 - ▶ Used on State contracts, by the Maryland Department of Transportation, Maryland State Highway Administration, Maryland Aviation Administration and the Maryland Transit Administration

Balfour Beatty

GRUNLEY

Small Business Eligibility (Local)

- ▶ Local Disadvantaged Business Enterprise (LDBE) Certification for Certified Business Enterprise (CBE) Firms
 - ▶ Must be a small business within 100-mile radius of Washington, DC's Zero Mile Marker
 - ▶ Used by the Dulles, Reagan and BWI Airports

Utilize These Free Resources:

- ▶ Local agency advocates such as:
 - ▶ D.C. Department of Small and Local Business Development (CBE)
 - ▶ SBA Procurement Center Representatives
 - ▶ Virginia Department of Small Business and Supplier Diversity (SWaM)
 - ▶ Maryland Office of Minority Business Enterprise
- ▶ Free Websites that post upcoming Opportunities such as:
 - ▶ SBA Sub-Net
 - ▶ beta.SAM.gov
 - ▶ eVA
 - ▶ DC Office of Contracting and Procurement
 - ▶ eMaryland
 - ▶ Local Procurement Technical Assistance Centers (PTAC)

Balfour Beatty

GRUNLEY

Question + Answer with Layli and Carrie



DIVERSITY DIRECTOR
Balfour Beatty Construction
Layli Pietri
(703) 218-1338
lpietri@balfourbeattyus.com



SB COMPLIANCE MANAGER
Grunley Construction Company
Carrie Lieberman
(240) 399-0409
carielieberman@grunley.com

Balfour Beatty

GRUNLEY