

SMALL BUSINESS SUBCONTRACTING PLAN

55.1 This clause does not apply to small business concerns.

55.2 DEFINITIONS AS USED IN THIS CLAUSE:

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“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 (including goals) 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).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a sub-subcontracting plan that covers the entire subcontract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned sub-subcontracting in support of the specific subcontract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the subcontract.

“Master plan” means a sub-subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual subcontract plans, provided the master plan has been approved.

“Sub-subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Subcontractor or sub-subcontractor calling for supplies or services required for performance of the subcontract or sub-subcontract.

55.3 The Subcontract-offeror, upon request by Fermilab, shall submit and negotiate a sub-subcontracting plan, where applicable, that separately addresses sub-subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the Subcontract-offeror is submitting an individual subcontract plan, the plan must separately address sub-subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic subcontract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant subcontract. The sub-subcontracting plan shall be negotiated within the time specified by Fermilab. Failure to submit and negotiate the sub-subcontracting plan shall make the Subcontract-offeror ineligible for award of a subcontract.

55.4 The Subcontract-offeror's sub-subcontracting plan shall include the following:

(a) Goals, expressed in terms of percentages of total planned sub-subcontracting dollars, for the use 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 sub-subcontractors. The Subcontract-offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Sub-subcontracts awarded to an ANC or Indian tribe shall be counted towards the sub-subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more sub-subcontractors are in the sub-subcontract tier between the Subcontractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate sub-subcontractor(s) to count the sub-subcontract towards its small business and small disadvantaged business sub-subcontracting goals.

(A) In most cases, the appropriate Subcontractor is the Subcontractor that awarded the sub-subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Subcontractor to count the sub-subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total sub-subcontract award to each Subcontractor. The sum of the amounts designated to various Subcontractors cannot exceed the total value of the sub-subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to Fermilab, the Subcontractor, and the sub-subcontractors in between the Subcontractor and the ANC or Indian tribe within 30 days of the date of the sub-subcontract award.

(D) If Fermilab does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the sub-subcontract award, the Subcontractor that awarded the sub-subcontract to the ANC or Indian tribe will be considered the designated subcontractor.

(b) A statement of—

(i) Total dollars planned to be sub-subcontracted for an individual subcontract plan; or the Subcontract-offeror's total projected sales, expressed in dollars, and the total value of projected sub-subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be sub-subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be sub-subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be sub-subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be sub-subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be sub-subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be sub-subcontracted to women-owned small business concerns.

(c) A description of the principal types of supplies and services to be sub-subcontracted, and an identification of the types planned for sub-subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(d) A description of the method used to develop the sub-subcontracting goals in paragraph 55.4(a) of this clause.

(e) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(f) A statement as to whether or not the Subcontract-offeror included indirect costs in establishing sub-subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(g) The name of the individual employed by the Subcontract-offeror who will administer the Subcontract-offeror's sub-subcontracting program, and a description of the duties of the individual.

(h) A description of the efforts the Subcontract-offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for sub-subcontracts.

(i) Assurances that the Subcontract-offeror will include the clause of this subcontract entitled "Utilization of Small Business Concerns" in all sub-subcontracts that offer further sub-subcontracting opportunities, and that the Subcontract-offeror will require all sub-subcontractors (except small business concerns) that receive sub-subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further sub-subcontracting possibilities to adopt a sub-subcontracting plan that complies with the requirements of this clause.

(j) Assurances that the Subcontract-offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government or Fermilab can determine the extent of compliance by the Subcontract-offeror with the subcontracting plan;
- (iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
- (iv) Ensure that its sub-subcontractors with sub-subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
- (v) Provide its subcontract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and
- (vi) Require that each sub-subcontractor with a sub-subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the sub-subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its sub-subcontractors with sub-subcontracting plans.

(k) 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 business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and

women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
- (iii) Records on each sub-subcontract solicitation resulting in an award of more than \$150,000, indicating—
 - (A) Whether small business concerns were solicited and, if not, why not;
 - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
 - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
 - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
 - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
 - (G) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact—
 - (A) Trade associations;
 - (B) Business development organizations;
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
 - (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through—
 - (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a subcontract-by-subcontract basis, records to support award data submitted by the Subcontract-offeror to the Fermilab, including the name, address, and business size of each subcontractor. Subcontractors having commercial plans need not comply with this requirement.

55.5 In order to effectively implement this plan to the extent consistent with efficient contract performance, the Subcontractor shall perform the following functions:

- (a) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(b) Provide adequate and timely consideration of the potentialities 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 in all “make-or-buy” decisions.

(c) Counsel and discuss sub-subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(d) Confirm that a sub-subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(e) Provide notice to sub-subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a sub-subcontract that is to be included as part or all of a goal contained in the Subcontractor’s sub-subcontracting plan.

(e) For all competitive sub-subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract Subcontract-offeror, the Subcontractor must inform each unsuccessful small business sub-subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the subcontract.

55.6 A master plan on a plant or division-wide basis that contains all the elements required by paragraph 55.4 of this clause, except goals, may be incorporated by reference as a part of the sub-subcontracting plan required of the Subcontract-offeror by this clause; provided—

- (a) The master plan has been approved;
- (b) The Subcontract-offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to Fermilab; and
- (c) Goals and any deviations from the master plan deemed necessary by Fermilab to satisfy the requirements of this subcontract are set forth in the individual sub-subcontracting plan.

55.7 A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the Subcontract-offeror’s planned sub-subcontracting generally, for both commercial and Fermilab business, rather than solely to the Fermilab subcontract. Once the Subcontractor’s commercial plan has been approved, Fermilab will not require another sub-subcontracting plan from the same Subcontractor while the plan remains in effect, as long as the product or service being provided by the Subcontractor continues to meet the definition of a commercial item. A Subcontractor with a commercial plan shall comply with the reporting requirements stated in paragraph 55.4(x) of this clause by submitting one SSR in eSRS for all subcontracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by Fermilab. This report shall be submitted within 30 days after the end of Fermilab’s fiscal year.

55.8 Prior compliance of the Subcontract-offeror with other such sub-subcontracting plans under previous subcontracts will be considered by Fermilab in determining the responsibility of the Subcontract-offeror for award of the subcontract.

55.9 A subcontract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing sub-subcontract plan.

55.10 Sub-subcontracting plans are not required from sub-subcontractors when the subcontract contains the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the sub-subcontractor provides a commercial item subject to the clause at [52.244-6](#), Subcontracts for Commercial Items, under a subcontract.

55.11 The failure of the Subcontractor or sub-subcontractor to comply in good faith with—

- (a) The clause of this subcontract entitled “Utilization Of Small Business Concerns;” or
- (b) An approved plan required by this clause, shall be a material breach of the subcontract.

55.12 The Subcontractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime subcontractor or sub-subcontractor are not included in these reports. Sub-subcontract award data reported by prime Subcontractors and sub-subcontractors shall be limited to awards made to their immediate next-tier sub-subcontractors. Credit cannot be taken for awards made to lower tier sub-subcontractors, unless the Subcontractor or sub-subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe. Only sub-subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of sub-subcontracts under a subcontract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(a) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of 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 the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

- (A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(b) SSR.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$650,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its

subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.