

### White Paper: Reduce Small Business Subcontracting Reporting Burden

**Recommendation:** Amend the laws and regulations governing the frequency of federal contractor small business subcontracting reporting to institute across-the-board annual reporting governmentwide.

- Moving from semi-annual to annual reporting would reduce the time and cost of reporting roughly by half, and reduce the administrative burden for government
- Annual reporting would still provide the required information needed by federal agencies
- Estimated savings of over \$50 million a year for contractors and government
- This paper includes details on the requirements and potential savings

**Background:** As part of its overall objective of providing small business concerns with “the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency,”<sup>1</sup> and of meeting federal goals for small business prime and subcontracting, the Small Business Act requires most successful contract offerors to negotiate and submit to the contracting agency a subcontracting plan specifying how they intend to utilize subcontractors in each socioeconomic category as part of their performance of the contract.<sup>2</sup> 15 U.S.C. 2323 specifies that the Federal Acquisition Regulation (FAR) shall provide guidance and procedures for negotiation, submission and reporting of prime contractor subcontracting plans.<sup>3</sup> Accordingly, FAR 52.219-9(l) requires semi-annual submission of Individual Subcontract Reports (ISRs) for all federal agencies, as well as Summary Subcontract Reports (SSRs) for DoD and NASA, and annual submission of SSRs for civilian agencies. In addition to the submissions required during performance of a covered contract, ISRs are required to be submitted within 30 days of contract completion.<sup>4</sup>

Additionally, Section 834 of the National Defense Authorization Act (NDAA) for Fiscal Years 1990 and 1991 (Pub. L. 101–189) established the DoD Comprehensive Subcontracting Test Plan Program (the “Test Program”), authorizing the negotiation, administration, and reporting of subcontracting plans on a plant, division, or company-wide basis. The purpose of the test program is to determine whether comprehensive subcontracting plans will result in increased subcontracting opportunities for small businesses while reducing the administrative burden on prime contractors.<sup>5</sup> The Test Program has subsequently been amended and extended, most recently by the FY15 NDAA (Pub. L. 113-291) until December 31, 2017.<sup>7</sup> Twelve large DoD prime contractors enrolled in the Test Program, with eleven currently participating.<sup>8</sup> 15 U.S.C. 637 directs reporting of first-tier subcontract dollars awarded every six months<sup>9</sup> and, as part of the regulatory implementation of the Test Program, the responsibilities and requirements of participation in the program are further described in DFARS 219.7,<sup>10</sup> with the clause at

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<sup>1</sup> See [15 U.S.C. 637\(d\)\(1\)](#)

<sup>2</sup> See [15 U.S.C. 637\(d\)\(4\)\(B\)](#)

<sup>3</sup> <https://www.law.cornell.edu/uscode/text/10/2323>

<sup>4</sup> [https://www.acquisition.gov/sites/default/files/current/far/html/52\\_217\\_221.html](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html)

<sup>5</sup> <http://www.acq.osd.mil/osbp/sb/initiatives/subcontracting/>

<sup>6</sup> See also GAO-16-27: <http://www.gao.gov/products/GAO-16-27>

<sup>7</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-113publ291/pdf/PLAW-113publ291.pdf>

<sup>8</sup> <http://www.acq.osd.mil/osbp/sb/initiatives/subcontracting/participants.shtml>

<sup>9</sup> <https://www.law.cornell.edu/uscode/text/15/637>

<sup>10</sup> [http://www.acq.osd.mil/dpap/dars/dfars/html/current/219\\_7.htm](http://www.acq.osd.mil/dpap/dars/dfars/html/current/219_7.htm)

DFARS 252.219-7004 requiring semi-annual submission of subcontracting plans via the Electronic Subcontracting Reporting Systems (eSRS).<sup>11</sup>

In a related action, the Small Business Administration (SBA) published a proposed rule in the *Federal Register* on October 6, 2015, proposing to extend credit for small business subcontracting beyond the first tier, implementing section 1614 of the FY14 NDAA (Pub. L. 113–66).<sup>1213</sup> Comments were due on December 7, 2015, and the rule has yet to be finalized, and companion FAR or DFARS rulemaking has yet to take place. While these regulations concern subcontracting plan reporting generally, they are outside of the scope of this paper. The Council of Defense and Space Industry Associations (CODSIA), which PSC co-chairs, separately raised concerns with the SBA proposed rule in December 7 comments to SBA.<sup>14</sup>

(Notably, the SBA proposed rule states that: “For purposes of the Paperwork Reduction Act [PRA], SBA has determined that this proposed rule, if adopted in final form, would not impose new government-wide reporting and record keeping requirements on other than small prime contractors and subcontractors. When this rule is implemented in the FAR, there may be a requirement to amend or create an information collection. Thus, any PRA implications as part of any proposed rulemaking implementing an SBA final rule in the FAR will be addressed in the FAR rule.”)

**Proposed solution(s): Amend the FAR, at a minimum, and the DFARS, the underlying statutes, and any related legislation and regulations to implement annual subcontract reporting across the board.** While we recognize the necessity of subcontracting plan and award reporting, doing so twice a year still represents a significant compliance burden for contractors. Notwithstanding any other changes to governmentwide reporting requirements driven by NDAA implementation, SBA, or other sources, moving from twice-yearly to annual reporting would reduce the administrative cost of collecting and reporting the information, and create consistency with existing requirements for civilian agency SSRs, as well as agencies’ annual reporting obligations to SBA. To ease phase-in and ensure compliance, semi-annual reporting could be retained for the first year of implementation and/or performance on a given contract, and transitioned to annual reporting thereafter. Doing so would reduce the time and cost associated with compliance not just for contractors, but also for the government personnel charged with reviewing contractor submissions. According to the most recently approved Information Collection Requests (ICRs) associated with the ISRs (OMB Control No. 9000-0006<sup>15</sup>) and SSRs (OMB Control No. 9000-0007<sup>16</sup>), the government estimates the annual cost for contractors to complete ISRs at nearly \$99 million, and SSRs at about \$16 million. The cost for government employees to review these submissions is estimated at \$11.6 and \$1.7 million per year, respectively. Even by these estimates, which we believe significantly understate the time and cost associated with reporting, moving to semi-annual reporting would save industry over \$50 million per year, and government would directly save over \$7 million annually, along with countless hours that could be devoted to other tasks, and indirect savings as a result of the reduced compliance costs for industry. Additionally, in 2014 comments to DoD regarding their review of statutory and regulatory requirements and the accompanying compliance burden for industry, members of CODSIA estimated savings per company of as much as \$20,000 per year by

<sup>11</sup> <http://www.acq.osd.mil/dpap/dars/dfars/html/current/252219.htm#252.219-7004>

<sup>12</sup> <https://www.federalregister.gov/articles/2015/10/06/2015-25234/credit-for-lower-tier-small-business-subcontracting>

<sup>13</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-113publ66/html/PLAW-113publ66.htm>

<sup>14</sup> [http://www.pscouncil.org/PolicyIssues/SmallBusiness/CODSIA Comments on Credit for Lower Tier Small Business Subcontracting SBA Proposed Rule.aspx](http://www.pscouncil.org/PolicyIssues/SmallBusiness/CODSIA%20Comments%20on%20Credit%20for%20Lower%20Tier%20Small%20Business%20Subcontracting%20SBA%20Proposed%20Rule.aspx)

<sup>15</sup> [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201207-9000-008](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201207-9000-008)

<sup>16</sup> [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201510-9000-005](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201510-9000-005)

eliminating the semi-annual submission for the Test Program<sup>17</sup> (irrespective the benefits for Test Program participants of consolidated versus individual contract reporting), and significantly more companies are impacted by the governmentwide reporting requirements. Any such savings are ultimately passed on to government customers in reduced contractor overhead and indirect costs leading to lower labor rates.

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**About the Authors:** The Smart Contracting Working Group within PSC’s Acquisition and Business Policy Council (ABPC) was formed to look for opportunities to improve the federal procurement system that would benefit both government and industry. Commonsense policies and consistently applied procedures for how and when the government acquires services can greatly enhance the effectiveness and efficiency of the federal acquisition system. In many areas, improvements to government business and buying policy—whether through statute, regulations, or agency guidance—will lead to positive outcomes that far exceed the magnitude of the changes themselves.

**Rationale for Change:** The regulatory bodies of our U.S. government have imposed ever-increasing reporting requirements on federal contractors seemingly without regard for the benefits to taxpayers and costs incurred in order for compliance to be achieved. While the White House, Congress and many agencies may look at a reporting requirement through the singular lens of meeting their own need for information, they apparently do not take into consideration the broad swath of mandatory reporting required by other agencies—or even within a single agency. Reporting of various information is said to be in the best interest of contractor “transparency” and ensuring compliance. While we agree with that goal, the reality is that many reporting requirements are duplicative, the information already exists within the government, or the information obtained is not being utilized. We seek a balance where the information desired is reasonable, valuable, useful, and beneficial to the served public, thereby achieving a return on the investment of resources required to obtain and report it. Reducing redundant reporting requirements, standardizing reporting processes, and leveraging existing information would enable more cost effective data collection. Each reporting request costs time and money to comply with, costs that are ultimately borne by the government via increased contractor labor rates and the expenditure of additional government man hours and resources. Furthermore, the government-unique reporting requirements are a non-value-added burden that will do little more than deter new commercial item providers from entering the federal market.

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<sup>17</sup>[https://www.pscouncil.org/PolicyIssues/AcquisitionPolicy/AcquisitionPolicyIssues/CODSIA\\_Comments\\_on\\_DPAP\\_Review\\_of\\_Statutory\\_and\\_Regulatory\\_Impacts.aspx](https://www.pscouncil.org/PolicyIssues/AcquisitionPolicy/AcquisitionPolicyIssues/CODSIA_Comments_on_DPAP_Review_of_Statutory_and_Regulatory_Impacts.aspx)