



U.S. Small Business
Administration

Presenters

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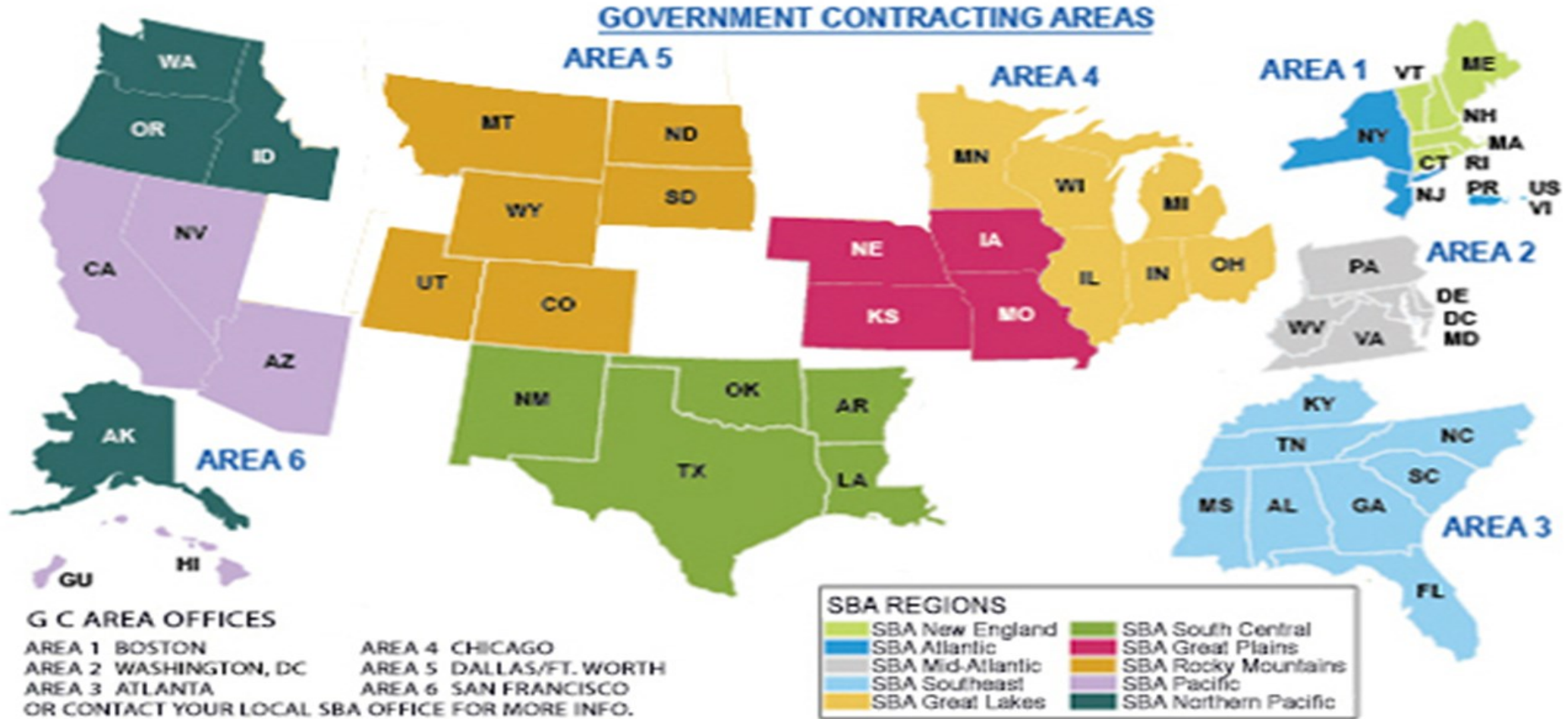
Office of Government Contracting

Our Mission

The Office of Government Contracting (GC) works to create an environment for maximum participation by small, disadvantaged, HUBZone, veteran and service-disabled veteran and woman-owned businesses in federal government contract awards and large prime subcontract awards. GC advocates on behalf of small business in the federal procurement world.

GC Area Offices – covers multiple Regions

Federal Contracting | U.S. Small Business Administration ([sba.gov](https://www.sba.gov))



Area Offices

What Do We Do:

- Prime Contracting
- Subcontracting
- Certificate of Competency Program
- Small Business Size Determinations
- Natural Resources Assistance Program
- Waivers of the Nonmanufacturer Rule
- Women-Owned Small Business Program
- Surveillance Reviews
- GC also plays a major role in the formulation of federal procurement policies that affect small businesses

Who Are We:

- GC headquarters staff and field staff positions
- Procurement Center Representatives (PCRs)
- Commercial Market Representatives (CMRs)
- Certificate of Competency (COC) Specialists
- Size Determination Specialists
- Industrial Specialists (IS)
- To locate an SBA Area Office go to Contracting area directors | U.S. Small Business Administration (sba.gov)



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Role of the PCR

Procurement Center Representative

www.sba.gov



PCR Responsibilities

- Review upcoming acquisitions, help with acquisition planning, advocate for maximum use of SBs, advise against consolidation & bundling
- Recommend methods to increase SB prime participation, enhance SB teaming or subktg. opportunities, encourage use of SB participation factors in RFPs
- Investigate issues raised by SBs
- Assist Procurement Centers in finding qualified SBs
- Appeal CO decisions deemed adverse to SBs
- Assist in resolution of Show Cause, Cure Notices & Terminations for Default
- Provide training to agency contracting staff, SBA District Offices, SBA Resource Partners & SBs.



Procurement Center Representatives

Key Authorizing Regulations

- [Small Business Act](#), as amended (15 USC 631, et. seq.)
- [FAR \(48 CFR\) Part 19](#): Small Business Programs
- [13 CFR 125.2](#): SBA & Procuring Agency Responsibilities When Providing contracting Assistance to SBs

Contact a PCR for concerns about:

- Agency set-aside decisions
- Size or affiliation issues, potential size/status protests
- Certificates of Competency process
- Subcontracting Plan requirements
- Potential Termination of a SB contract (PCR will contact firm and agency to offer assistance)
- Non-Manufacturer Rule, Limitations on Subcontracting
- Strategic marketing/outreach methods between Agencies, SBs and Large Primes

PCR may refer matters to other Office of Govt. Contracting specialists such as Size Specialists, Commercial Market Representatives, etc.



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The Limitations on Subcontracting Requirement

Limitations on Subcontracting

Background

- **Percentage of work requirement in the FAR since 1989 required the SB prime contractor to perform a minimum percentage of the work with its own workforce.**
- **Beginning in late 2018, agencies began issuing class deviations to the FAR implementing the new requirement in which a SB cannot exceed subcontracting a certain percentage of the contract to any subcontractor that is not a similarly situated entity. The FAR was eventually revised to reflect this change in September 2021.**

Benefits

- **Promotes a level-playing field**
- **Supports the integrity of the SB program**
- **Continue to grow, develop and maintain a competent SB industrial base**

Limitations on Subcontracting (LOS)

LOS Applies to:

- **SB set-asides and CO discretionary set-aside orders above the SAT**
- **All 8(a), HUBZone SB, SDVOSB and WOSB Program actions at any dollar value**
- **F&OC actions where HUBZone SB displaces a LB using the price preference**

LOS Does Not Apply to:

- **SB reserves at the contract level, but does apply to subsequent orders above the SAT that are set aside by the CO**
- **Sole source SB actions based on a non-FAR Part 19 related authority**
- **Items furnished by a SB non-manufacturer**
- **Set-asides based on an individual or class NMR waiver**

LOS is an Element of Responsibility

- **Must refer non-responsibility determination to SBA for a Certificate of Competency**

Limitations on Subcontracting

What is a Similarly Situated Entity (SSE)?

- **A first-tier subcontractor**
- **Has the same SB program status as that which qualified the prime contractor for the award**
- **Is a SB to the size standard under the NAICS code assigned by the prime**

LOS Credit:

- **Prime contractor can only get credit for the work it performs and the work its SSE's perform.**
- **All other work performed counts against the prime with the exception of:**
 - **Cost of materials always excluded from the calculations**
 - **For services, certain other direct costs are excluded – see class deviation/SBA regs**
 - **Only apply one LOS requirement to a contract, e.g., exclude services and any construction work on a contract assigned a supply NAICS code**

Limitations on Subcontracting

What are the percentage requirements that cannot be exceeded?

- **Services: Prime will not pay more than 50% of the amount paid to it by the government to firms that are not similarly situated**
- **Supplies: 50%**
- **General construction: 85%**
- **Special trades construction: 75%**

Example:

A \$3M contract with a \$2.5M supply portion and a \$500K services portion is assigned a supply NAICS code. The cost of materials is \$500K. Excluding the services and cost of materials, the work requirement is \$2M, so the prime may not subcontract more than \$1M (50%) to non-similarly situated entities, and the prime and/or similarly situated entities must perform at least \$1M (50%).

Limitations on Subcontracting

Compliance Period

- For contracts that are set aside, compliance period either at contract level or order level
- CO should select period by checking off the appropriate box in the FAR clause
- If not checked, default period is at contract level from date of award to end of the base term, then date of award to end of first option, etc.
- For multi-agency set-aside contracts where more than one agency can issue orders, ordering agency must use period of performance for each order to determine compliance (new SBA regulation effective May 30, 2023)
- For any set-aside order where the base contract is not set-aside, SB must be compliant by the end of the period of performance

Past Performance Evaluation

- New SBA regulation effective May 30, 2023, requires the CO to determine at conclusion of contract/order performance whether the SB satisfied the LOS requirement. If not compliant, CO must provide SB the opportunity to explain extenuating circumstances and determine whether or not the mitigating factors were beyond the control of the SB.

Questions?

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