

# MEMORANDUM OF UNDERSTANDING

between

DEFENSE CONTRACT MANAGEMENT AGENCY

and the

THE U.S. SMALL BUSINESS ADMINISTRATION

November 12, 2009

*WHEREAS* the Defense Contract Management Agency (DCMA) and the Small Business Administration (SBA) both perform compliance reviews as a joint collaborative effort to evaluate prime contractor subcontracting programs supporting specific Department of Defense (DOD) Contracts administered by DCMA and all other Federal contracts with subcontracting plans under the oversight of SBA, including those of civilian agencies and DOD agencies not under the cognizance of DCMA, to determine an overall performance rating;

*WHEREAS* DCMA and SBA strongly support the Administration's efforts to streamline Government and to eliminate duplication in evaluation procedures;

*THEREFORE* DCMA and SBA agree to the following:

## **SUMMARY:**

By means of this Memorandum of Understanding (MOU), DCMA and SBA agree to work as cooperative and collaborative partners to strengthen their respective roles jointly in administering and enforcing Section 8(d) of the Small Business Act.

## **BACKGROUND:**

SBA derives its authority for the subcontracting program from Section 8(d) of the Small Business Act (15 U.S.C. 637(d)). This statutory authority is implemented in the Code of Federal Regulations (CFR) for SBA (13 CFR 125.3) and the Federal Acquisition Regulation (FAR) (48 CFR, Subpart 19.7 and clauses 52.219-8 and 52.219-9). Additional guidance is provided to SBA's field staff in the Standard Operating Procedures (SOP) for the subcontracting assistance program (SOP 60 03 6) and in various checklists and forms contained in the Appendices to this SOP, including those mentioned below under "Details of the Agreement."

Pursuant to C.F.R. § 125.3(e), SBA performs three types of compliance reviews of other-than-small businesses, which include foreign and non-profit prime contractors and subcontractors: Small Business Program Compliance Reviews (SBPCR), which include Follow-up Reviews and Performance Reviews (also known as Desk Reviews); Subcontracting Orientation and Assistance Reviews (SOAR); which allows prime contractors, under certain circumstances, to submit self-assessments; and Joint Reviews, whereby SBA is authorized to enter into agreements with other Federal agencies or entities to conduct compliance reviews. SBA reviews contractors of both DOD and civilian agencies, including both prime contractors and large business subcontractors (the latter under the flow-down requirement). SBA's compliance reviews consist of the following elements:

- (A) Sourcing and Assistance;
- (B) Validation of the prime contractor's methodology for preparing and submitting the Individual Subcontract Report (ISR) and Summary Subcontract Report (SSR) in the Electronic Subcontracting Reporting System (eSRS). This to include formal validation (Hard copy Self-certification) of Small Businesses being utilized by the Other-than-Small Business;<sup>1</sup>
- (C) Five-year trend analysis;
- (D) Overall evaluation of the prime contractor's small business Programs;
- (E) Analysis of Subcontracting Plan Goal Attainment (sampling);
- (F) Sampling of purchase orders to large business;
- (G) Follow-up on previous recommendations

Reviews performed by DCMA include the elements performed by SBA, except for the Sourcing area and the follow-up on prior SBA recommendations.

In accordance with FAR 42.302 (a)(51),(52),(53),(54) and (55), DCMA performs reviews on DoD prime contractor compliance with their subcontracting plan requirements over which it has delegated contract administration authority. DCMA reviews prime contractors only since it has no privity of contract with subcontractors.

#### **DETAILS OF THE AGREEMENT:**

1. DCMA and SBA agree to continue using, respectively, the *DCMA Review of Contractor Subcontracting Program Report* and the *SBA Subcontracting Program Compliance Review Checklist*, along with any supplemental forms as needed.
2. DCMA and SBA agree to expand all checklists and worksheets as may be needed to include all socioeconomic categories (the current categories include: Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business, Veteran-Owned Small Business (VOSB), and Service-Disabled Veteran-Owned Small Business (SDVOSB). In accordance with current FAR and eSRS requirements, the worksheets must also include columns or fields for (a) Alaska Native Corporations (ANC) and Indian tribes that have not been certified by SBA as small disadvantaged businesses;

<sup>1</sup> In accordance with the rules set forth in 13 CFR 121.404(e), 121.410, and 121.411.

and (b) Alaska Native Corporations and Indian tribes that are not small businesses. DCMA and SBA also agree to continue strengthening their review procedures (checklist and forms) by validating the dollars and percentages reported on the latest ISR and SSR reports. This will be accomplished by utilizing the contractors' purchase list to perform a random sample and ask the contractor to provide self-certifications on each Small Business they are reporting in their numbers. A sample self-certification format may be obtained from the SBA Small Business Liaison Officer (SBLO) handbook.

3. In cases where a contractor has contracts with both DOD and civilian agencies, if either agency finds the contractor is not complying with the requirements of its subcontracting plans and has a compelling reason to believe that the company is not making a good-faith effort, they will immediately bring it to the attention of the other agency and discuss a plan of action.
4. DCMA and SBA agree to enforce the flow-down requirement (FAR 19.704(a)(9) and 52.219-9(d)(9)) as follows: (a) If the subcontractor is a participant in DOD's *Test Program for Comprehensive Subcontracting Plans*, the prime contractor may satisfy this requirement by verifying that the subcontractor is a current participant and documenting the file accordingly;<sup>2</sup> (b) if the subcontractor has a *Commercial Plan* approved by a Government agency for the current year, the prime contractor may satisfy this requirement by obtaining a hard copy of the *Commercial Plan* with the signature of the approving official; or (c) if the subcontractor is not a participant in DOD's *Test Program for Comprehensive Subcontracting Plans* and does not have a *Commercial Plan*, the prime contractor must obtain an *individual subcontracting plan* (FAR 19.701) for the instant subcontract and obtain assurances from the subcontractor that the subcontractor will submit required ISRs and SSRs in eSRS.
5. In cases where a prime contractor has active contracts containing subcontracting plans with both DOD and civilian agencies, the DCMA and SBA field personnel shall attempt to do a joint review whenever possible. However, either agency may decline to participate in the review, but the declining agency would not normally conduct another review during the remainder of the fiscal year unless there is a compelling reason to do so.
6. Other guidelines that apply to joint reviews are as follows:
  - a. Such reviews may be scheduled by either DCMA or SBA, but adequate notice (at least 35 calendar days) must be provided to the other agency.
  - b. DCMA and SBA may use their own forms and procedures for the review.
  - c. DCMA shall limit its sampling of contracts and subcontracting plans to those over which it has delegated contract administration authority. DCMA shall focus on DOD contracts and the SBA shall focus on the remaining Federal contracts. However this

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<sup>2</sup> A list of participants may be found on the Internet at <http://www.acq.osd.mil/osbp/programs/csp/participants.html> or by contacting the Program Manager in the DOD OSD OSBP at (703) 604-0157.

does not preclude SBA from assisting DCMA in reviewing DOD contracts.

- d. In order to gain greater insight into the contractor's purchasing cycles and socio-economic trends, SBA and DCMA may analyze the contractor's Five-Year Trend data. This data is available in eSRS but until data covering five years is available in eSRS, SBA and DCMA will request this information from the contractor. Accordingly, the contractors may be asked to provide separate data, to the extent possible, to accommodate each reviewer's requirements. DCMA will examine the trend for DOD contracts, and SBA will do the same for all Federal contracts.
  - e. In accordance with 13 C.F.R. § 125.3(f)(7), SBA is the lead agency on all joint compliance reviews with other agencies.
  - f. Where practical, DCMA and SBA should try to agree on the contractor's rating. However, if DCMA and SBA cannot reach agreement on the overall rating, either reviewer may request a ruling from its headquarters, or, alternatively, the two agencies may issue separate ratings.
  - g. For joint reviews, in most cases, each agency will generate their own separate letter addressing individual contracts they are responsible for or have reviewed; however, if agreed upon by the reviewers, one letter can be generated from both agencies. Each letter should demonstrate that it was a joint review between the two agencies, DCMA and SBA. DCMA will provide a copy of its final report of DOD contracts to the SBA Commercial Marketing Representative (CMR). The SBA CMR will provide a copy of its report to its DCMA counterpart whenever the prime contractor has contracts with DOD. Each agency will be responsible for distributing final reports to the respective contracting officers and small business officials having a vested interest within their agencies.
7. SBA has sole authority to perform compliance reviews of prime contractors of civilian agencies. When DCMA is tasked by a civilian agency to perform a compliance review, the civilian agency should be redirected to SBA headquarters. DCMA will not enter into any formal or informal agreements with civilian agencies to perform compliance reviews of civilian contractors.

#### **RATINGS:**

DCMA and SBA agree to use standard criteria for determining the contractors' ratings for all reviews (see Attachment 1).

#### **CONTACTS:**

SBA contact information for their CMRs is set forth at [www.sba.gov/gc](http://www.sba.gov/gc), click on "Contacts and Representatives" and open up the "GC Field Staff Directory" to get the listing of all the CMR's nationwide. DCMA Small Business Center contact information is provided at Attachment 2.

**DURATION OF THE AGREEMENT:**

This agreement is intended to be permanent; however, it should be treated as a living document. The parties agree that it will be beneficial to review this agreement periodically to consider possible improvements. Such a review may be initiated by either party.

This agreement may be canceled by either party at any time upon written notification to the other party.

**RESPONSIBLE PARTIES:**

Each of the parties to this agreement has designated the following officials to be responsible for its implementation:

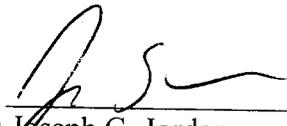
SBA:

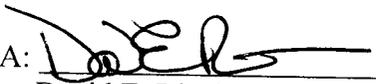
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DCMA

Name: Mary A. Seabolt  
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SIGNATURES:

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DCMA:   
Name: David E. Ricci  
Title: Executive Director, Contracts

Date: 10/30/09

Date: 11-12-09

Attachment 1: Rating Criteria

Attachment 2: DCMA Organization chart

(SBA CMR contacts: [www.sba.gov/gc](http://www.sba.gov/gc) under "Contacts and Representatives" and "GC Field Staff Directory")

## RATINGS

The Defense Contract Management Agency (DCMA) and the U.S. Small Business Administration (SBA) agree to use the following criteria for determining the contractor's rating:<sup>1</sup>

**Outstanding** – **Exceeds** the negotiated small business goal and 2 additional category goals on 90% or more of the subcontracting plans reported for the fiscal year under review. Has exceptional success with numerous specific initiatives to assist, promote and utilize Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone), Veteran-Owned Small Business (VOSB), Service-Disabled Veteran Own Small Business (SDVOSB); Alaska Native Corporations (ANC's) and Tribal Native American concerns, except in instances where the Large Prime Contractor (LPC) can provide a reason the Commercial Marketing Representative (CMR) or DCMA representative deems justifiable as to why the LPC has not had exceptional success in those categories.

Examples of such initiatives include, but are not limited to, participating in a Mentor-Protégé program, performing compliance reviews at subcontractors' sites, administering a buyer incentive program, participating in trade fairs, promoting registration in Dynamic Small Business Search (DSBS) portion of the Central Contractor Registration (CCR), and contacting suppliers to encourage SDB and HUBZone certification.

Verification of promoting small business opportunities includes the following:

- Fiscal year Summary Subcontract Report demonstrates performance improvement in 2 or more categories from the previous fiscal year;
- The contractor has significantly expanded their supplier base in categories where goal achievement and performance has not been successful;
- To minimize the impacts of suppliers that lose their small business status through acquisition/merger or successfully growing in excess of applicable size standards; the contractor has shifted significant direct or indirect subcontract dollars historically placed with large business to small business resulting in a performance increase in applicable categories from the previous fiscal year;
- The contractor is an active and extensive participant in the DoD Mentor-Protégé program that indicates significant or sustained subcontracting activity with current and prior protégés contributing to performance improvement in one or more categories;

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<sup>1</sup> For rating purposes, the sample should include all contracts completed during the past 12 months, or, for companies with a Commercial Plan or in the DOD *Test Program for Comprehensive Subcontracting Plans*, it should include the results of the most recent fiscal year ended September 30<sup>th</sup> (or other period ending date, if so authorized). Note: If a contractor with individual plans has no contracts that were completed during the past 12 months, the rating will be determined by contracts that are active, giving greater weight to those that are nearest to completion.

- The contractor executes subcontracting plan flow-down requirements that demonstrates sustained commitment to small business;
- The contractor demonstrates existing policies and processes that ensure 95% on-time submission of required reports in eSRS as a prime contractor and 90% on-time submission of subcontract reports. An outstanding rating signifies that the company has an exemplary program that could be used as a model by other contractors in similar industries

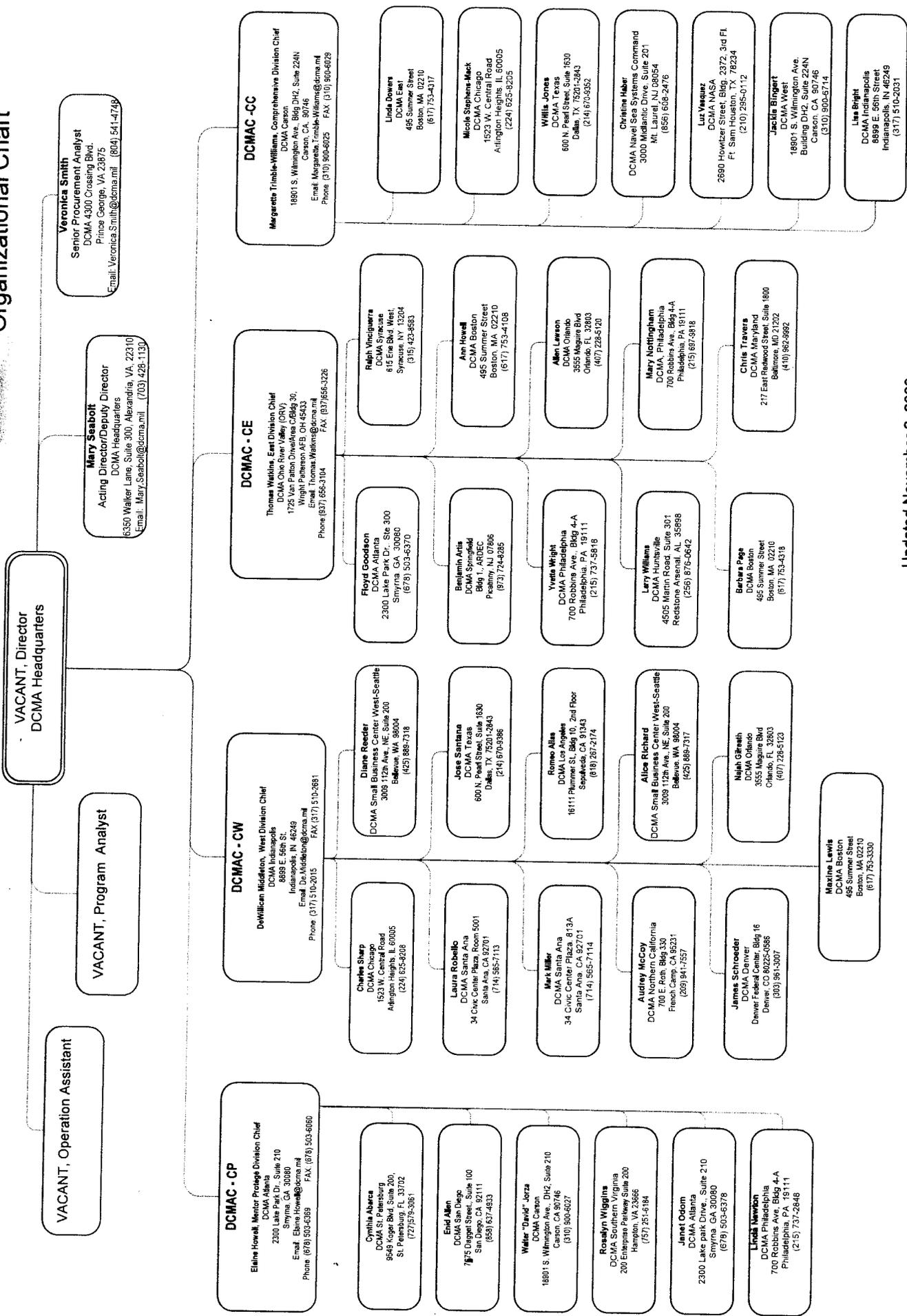
Highly Successful – **Met or exceeded** the negotiated goals in three small business categories on 80% of the subcontracting plans reported for the fiscal year under review. Has moderate success with some initiatives to assist, promote and utilize SB, SDB, WOSB, HUBZone , VOSB, and SDVOSB as described above in the criteria for a rating of Outstanding. Demonstrates focused efforts to go above and beyond the required elements of the subcontracting program and provides documentation of achievements and success stories to support such efforts. The contractor demonstrates existing policies and process that ensures 85% on-time and accurate submission of required reports in eSRS as a prime contractor and 80% on-time submission of reports from their subcontractors.

Acceptable – **Always** demonstrates a good-faith effort to meet **all** of its goals on subcontracting plans reported for the fiscal year being reviewed, but falls short of thresholds to receive a rating of Highly Successful. Provides reasonable and supportable explanations why certain goals could not be achieved. Demonstrates compliance with the mandatory elements of their subcontracting plans and implementing regulations. ISRs and SSRs submitted are submitted accurately within 30 days after to end of applicable reporting periods 70% of the time.

Marginal – **Deficient** in meeting key subcontracting plan elements or the contractor has failed to satisfy one or more requirements of a corrective action plan from the prior review. Fail to comply with the submission requirements in eSRS on the majority of their contracts with subcontracting plans and no evidence of flow-down to applicable subcontractors. There is evidence of corporate and/or senior management commitment to bring their subcontracting program to an acceptable level and has demonstrated a commitment to apply the necessary resources to do so. A corrective action plan is required, and the Administrative Contracting Officer(s) (ACO) and SBA CMR(s) must be notified.

Unsatisfactory – **Noncompliant** with the contractual requirements of DFARS and FAR 52.219-8 and 52.219-9. Contractor's management shows little interest in bringing its program to an acceptable level or is generally uncooperative. For example, recommendations made by SBA or DCMA on previous reviews have never been implemented. A corrective action plan is required, and the ACO(s) and SBA CMR(s) must be notified.

# Small Business Center Organizational Chart



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