



MAY THE CLAUSE BE WITH YOUSM

**FAR 52.219-9 SMALL BUSINESS
SUBCONTRACTING PLANS**

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Topics: 52.219-9 Small Business Subcontracting Plan (SBSP)

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Clause Introduction

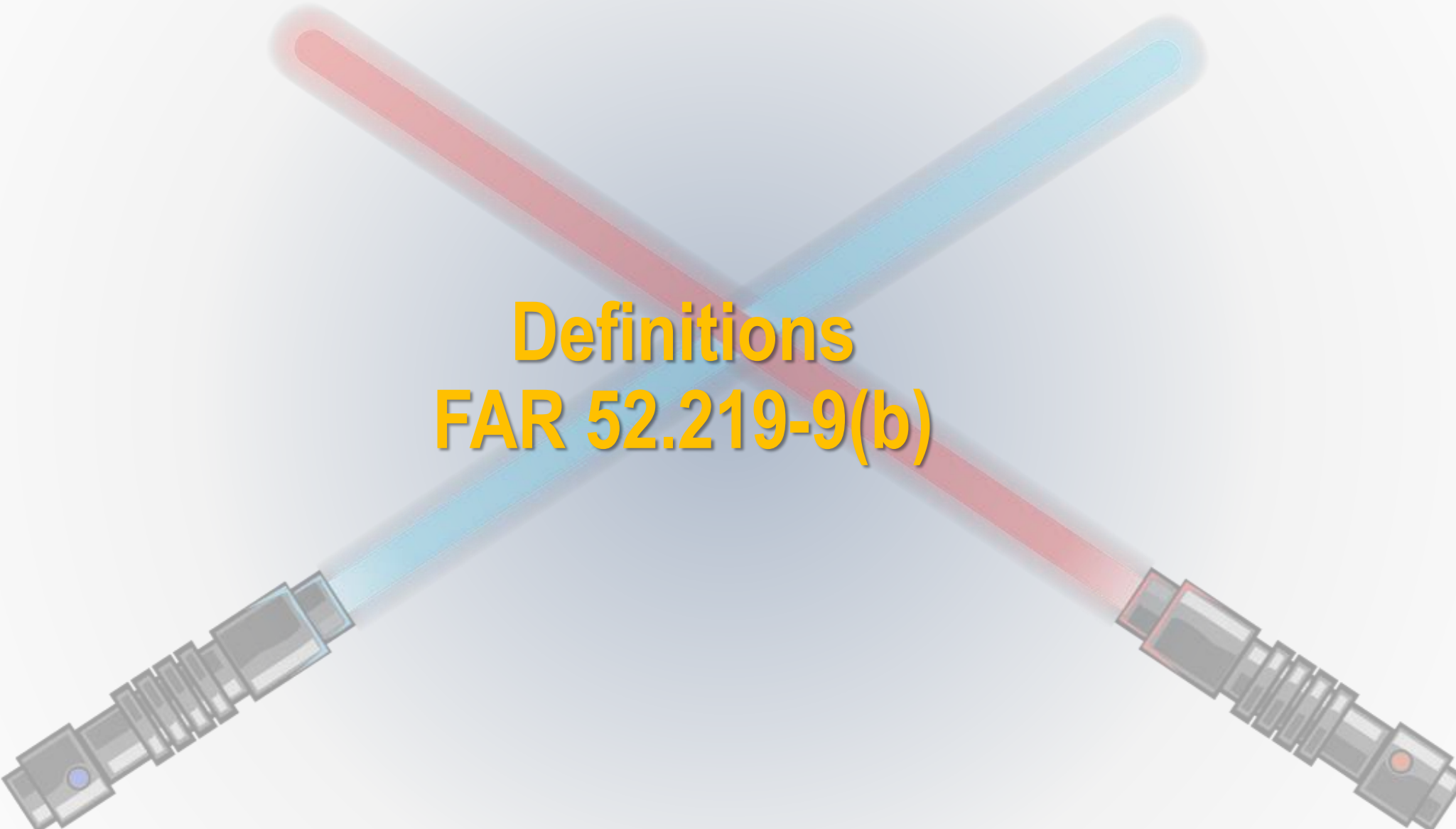
52.219-9 Small Business Subcontracting Plan (SBSP)

Why?

- Public policy – support small businesses as the engine of our national economy
- Regulations and carve-outs are intentional about how and when they apply and when they do not.

Application

- When the contract exceeds Simplified Acquisition Threshold (\$250K)
- Except:
 - personal services contracts (FAR 37.104) or
 - performed entirely OCONUS
 - FAR 52.219-9(a): does not apply to Small Business Concerns (SBCs)
 - FAR 52.219-9(j): does not apply when FAR 52.212-5 or 52.244-6 contracts and subcontracts for commercial items and commercial services



Definitions FAR 52.219-9(b)

52.219-9(b): clause-specific definitions

(b) *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 plan* means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial products and commercial services sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).
- *Commercial product* means a product that satisfies the definition of "commercial product" in Federal Acquisition Regulation (FAR) [2.101](#).
- *Commercial service* means a service that satisfies the definition of "commercial service" in FAR [2.101](#).
- *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. 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 subcontracting plan* means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.
- *Master subcontracting plan* means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.
- *Reduced payment* means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.
- *Subcontract* means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.
- *Total contract dollars* means the final anticipated dollar value, including the dollar value of all options.
- *Untimely payment* means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.



Types of Companies Tracked FAR 52.219-9(c), Alt I, and Alt II

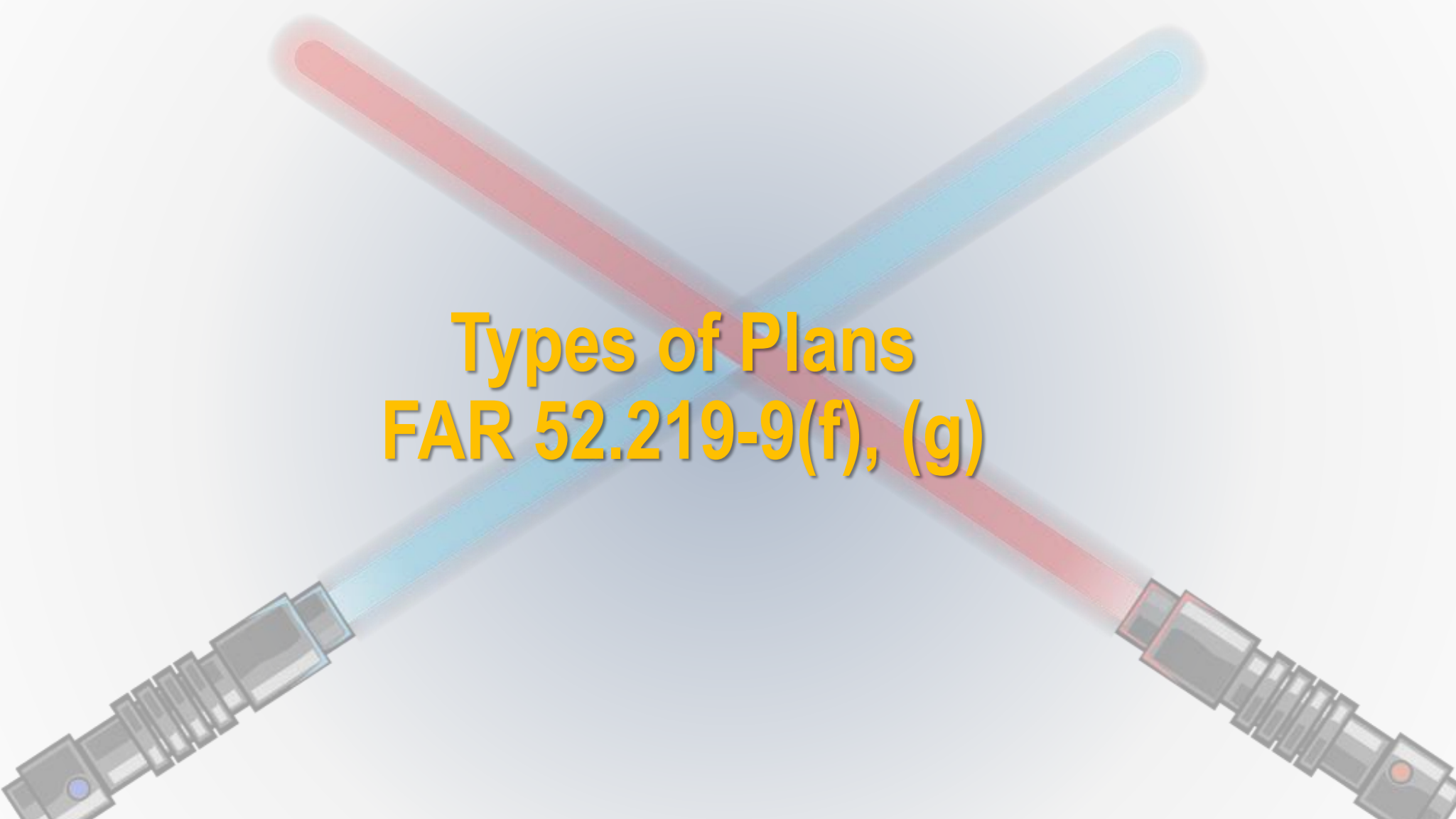
52.219-9(c): Types of Companies Tracked

- Offeror, upon request of Contracting Officer, shall submit a SBSP with separate goals for subcontracting with:
 - small business,
 - veteran-owned small business (VOSB),
 - service-disabled veteran-owned small business (SDVOSB),
 - HUBZone small business,
 - small disadvantaged business (SDB), and
 - women-owned small business (WOSB) concerns
- If an Individual Subcontracting Plan, the goals are by base and options.
- May rely on SAM.gov or a written representation of subcontractor's size/status.
 - Cannot require SAM.gov

52.219-9 Alt I and Alt II: Types of Companies Tracked

- Alt I (c)(1): If in a Sealed Bidding (FAR Part 14) procurement, the low bidder will be required to submit an SBSP.
- Alt II (c)(2): if in a Negotiated Procurement (FAR Part 15), initial proposals will require an SBSP.





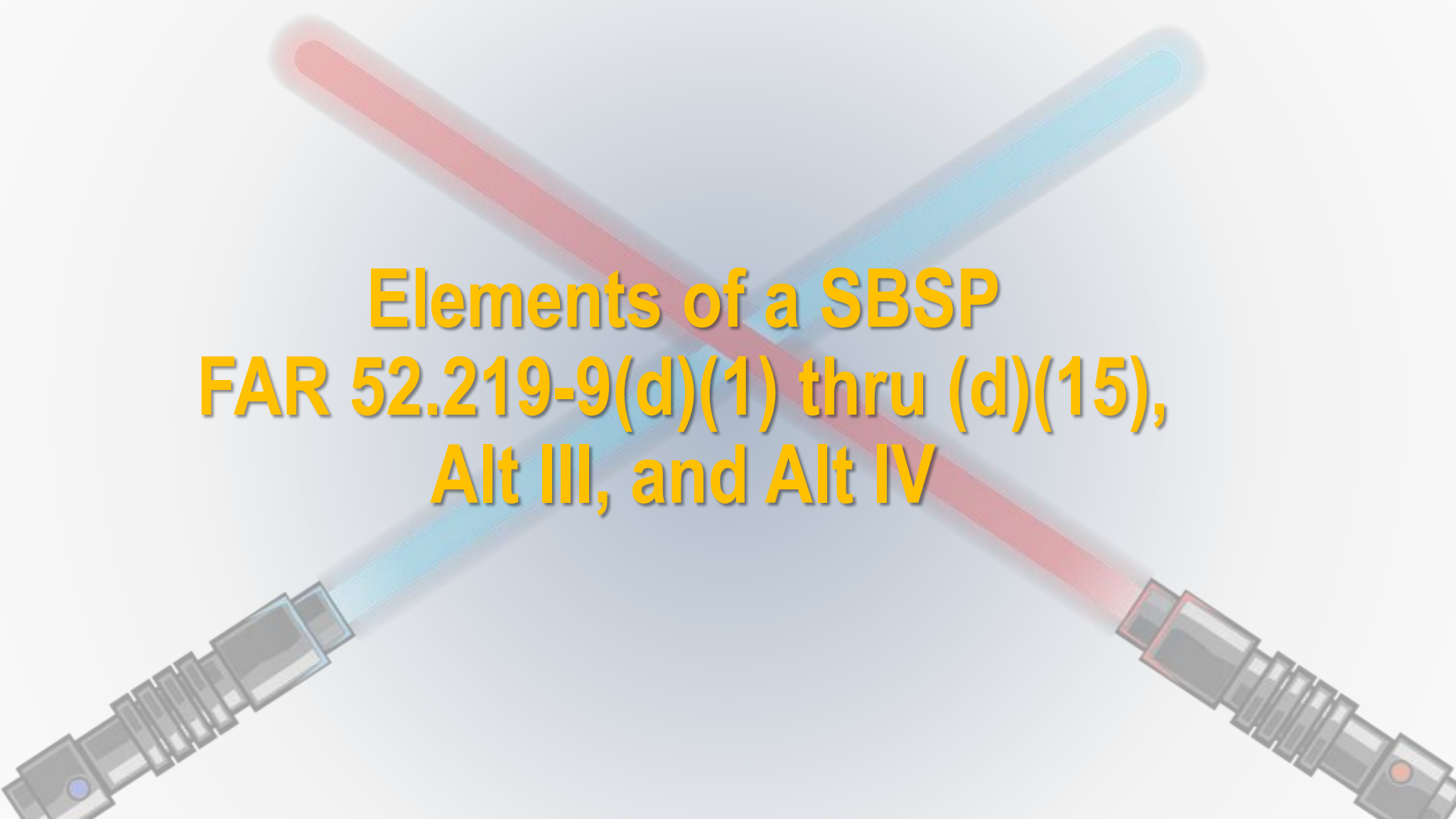
Types of Plans FAR 52.219-9(f), (g)

52.219-9(f): Master Subcontracting Plans

- (f) A master subcontracting plan is prepared on a plant or division-wide basis
 - has all the same elements, except goals,
 - may be incorporated by reference as a part of the subcontracting plan required of the Offeror provided that:
 - (1) the master subcontracting plan has been approved by CACO/DACO/KO;
 - (2) the Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer (KO); **and**
 - (3) goals and any deviations from the master subcontracting plan deemed necessary by the KO to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

52.219-9 (g): Commercial Plans

- (g) A commercial plan is the **preferred** type of subcontracting plan for contractors furnishing commercial products and commercial services.
- relate to the planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract.
 - More subcontracting to small businesses in the commercial side of the company
- Once approved, the plan remains in effect until the product or service being provided by the Contractor no longer meets the definition of a commercial product or commercial service.
- A Contractor with a commercial plan shall comply with the reporting requirements by submitting one SSR in eSRS for all contracts covered by its commercial plan.
 - shall include in its subcontracting goals and in its SSR all indirect costs, with the exception of those such as the following:
 - Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions.
 - SSR report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan.
 - SSR report shall be submitted within 30 days after the end of the Government's fiscal year. October 30 (NOT October 31st).



**Elements of a SBSP
FAR 52.219-9(d)(1) thru (d)(15),
Alt III, and Alt IV**

52.219-9 (d): Elements

The Written Plan, reviewed FAR 52.219-9(d) when drafting:

- (1) Separate Goals in total dollars and percentage of total planned subcontracting dollars to each type of company by size/status
- (2) Statement of total dollars planned to be subcontracted by co. type
- (3) Description of types of services/supplies from each co. type
- (4) Description of method for developing subcontracting goals
- (5) Description of method to identify potential sources of small businesses
- (6) Statement if indirect costs are used to determine the percentage
- (7) Named individual at the company responsible for administering the plan (SBLO)
- (8) Description of efforts to assure SMC have equitable opportunity to compete
- (9) Assurances that Ktr will flow down Utilization of SBCs clause
- (10) Assurances related to reporting requirements
- (11) Description of types of records that will be maintained
- (12) Assurances that Ktr will make good faith efforts to use SBCs listed in proposal
- (13) Assurances that Ktr will provide a written statement to the KO if it fails at #12
- (14) Assurances that Ktr will not prohibit a subcontractor from discussing payment matters with the KO
- (15) Assurances that Ktr will pay its subcontractors IAW the terms of subcontract



Reporting FAR 52.219-9(I)

52.219-9 (I): Reporting in eSRS


- (I) shall submit 2 reports
 - ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>.
- Exclude intercompany transfers (purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor).
 - Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor.
- Do not take credit for lower-tier subcontractors, unless the subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.
- Generally only U.S.-based and U.S. outlying areas-based performance.
 - Exception: State Department or any other agency that has statutory or regulatory authority

52.219-9 (I): Reporting in eSRS

- (I)(1) ISR: Individual Subcontracting Report, formerly the SF-294
 - Applies to Prime and Subcontractors
 - Required for each contract subject to an individual SBSP
 - Does not apply to Commercial Plans
 - Submitted for 6-month periods ending March 31 and Sept. 30 and due within 30 days
 - KO reviews and can accept or reject
 - Rejections give the Contractor 30 days to correct
 - Typically reports the sum of base and each in-performance or completed option, cumulatively

52.219-9 (I): Reporting in eSRS

- (I)(2) SSR: Summary Subcontract Report
- Applies to both Individual (and complements the ISR) and Commercial Subcontracting Plans
 - Aggregates the actual subcontracted funds and reports the percentage to small businesses.
 - May be on a company, corporate, or subdivision basis
 - Reports the prior government Fiscal Year and is due October 30th
- COMMERCIAL plan reports are slightly different
 - All subcontract awards plus indirect costs, on an agency-wide basis
- Review: the KO that approved the plan (individual plans apply to contract's KO, commercial plans usually a CACO or DACO)

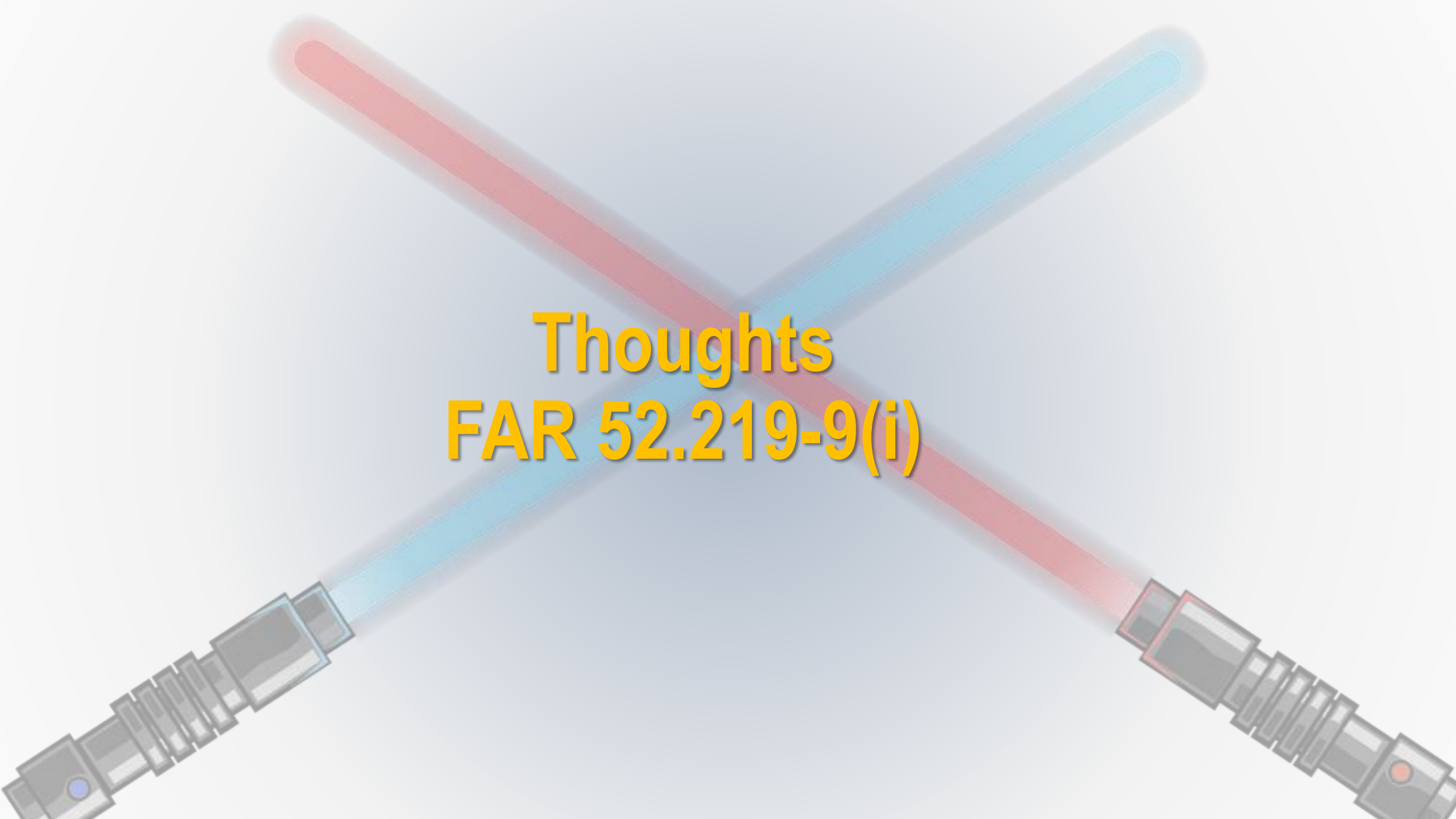


Failure and Penalties

FAR 52.219-9(h), (k), and FAR 52.219-16

52.219-9 (h), (k), and FAR 52.219-16: Failure and Penalties

- (h) **Responsibility determinations** under FAR Subpart 9.1 for future award: KO will consider prior compliance of the offeror with other such subcontracting plans under previous contracts.
- (k) the failure of the Contractor or subcontractor to comply in good faith shall be a **material breach** of the contract and may be considered in any **past performance** evaluation of the Contractor.
- FAR 52.219-16 **Liquidated Damages** – Subcontracting Plan
 - Failure to make a good faith effort to comply with the subcontracting plan” – willful or intentional failure to perform



Thoughts FAR 52.219-9(i)

52.219-9 (i): only 1 Plan at a Time

- A contract may have no more than one subcontracting plan.
- When a contract modification or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities.
- When the goals in a subcontracting plan are amended, these goal changes **do not** apply retroactively.
 - Annual reporting





QUESTIONS?

COMMENTS?

THOUGHTS?

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