

VIA METROPOLITAN TRANSIT DBE SUBCONTRACTOR TERMINATION/SUBSTITUTION POLICY BULLETIN
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To: All Prime Contractors

From: Disadvantaged Business Enterprise Liaison Officer (DBELO)
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Subject: DBE Subcontractor Termination & Substitution Procedures

Date Initiated: 08-13-2020

Revised: 04-28-2022

Policy #: 002

This policy bulletin sets forth procedures to be followed by all Prime Contractors.

The Prime Contractor cannot terminate for convenience, in whole or part, a DBE subcontractor listed on the Contractor Utilization Plan (CUP) without the written concurrence of VIA's Office of Diversity & Federal Compliance (ODFC). This includes, but is not limited to, instances in which a Prime Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE subcontractor, or with another DBE subcontractor. Unless consent is provided, the Prime Contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE subcontractor.

Good cause for termination of the DBE includes, but is not limited to, the following circumstances:

- The listed DBE subcontractor fails or refuses to execute a written contract.
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor.
- The listed DBE subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The Prime Contractor has determined that the listed DBE subcontractor is not a responsible contractor.
- The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal.
- The listed DBE subcontractor is ineligible to receive DBE credit for the type of work required.
- A DBE subcontractor owner dies or becomes disabled with the result that the listed DBE subcontractor is unable to complete its work on the contract.
- Other documented good cause that the Prime Contractor determines may compel the termination of the DBE subcontractor.

Good cause does not exist if the Prime Contractor seeks to terminate a DBE subcontractor it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the DBE subcontractor was engaged or so that the Prime Contractor can substitute another DBE or non-DBE subcontractor after contract award.

Commitment Reductions

A Prime Contractor cannot reduce the amount of work committed to a DBE subcontractor at contract award without good cause. A reduction is considered a partial termination of the DBE's contract with the Prime Contractor.

Termination Procedures

Step 1: The Prime Contractor is required to issue a Notice of Intent to Terminate/Substitute to the DBE subcontractor of its intent to terminate and the reason for the termination.

- The Prime Contractor is required to copy VIA's Procurement and ODFC in the correspondence.
- The DBE subcontractor must be given five (5) business days to respond to the Prime Contractor's notice and will advise the Prime Contractor and VIA of the reasons, if any, why it objects to the proposed termination of its subcontract and why VIA should not approve the Prime Contractor's request for termination.

Step 2: The Prime Contractor must submit a DBE Termination/Substitution Request Form to ODFC. VIA will review the request and related information and if necessary, seek additional information to formulate its response.

Step 3: VIA will provide a written response to the request within seven (7) business days. VIA may provide a shorter response time if required.

- If VIA approves the request, the Prime Contractor has good cause to terminate the DBE subcontractor.
- If VIA denies the request, the Prime Contractor must continue to use the committed DBE subcontractor in accordance with the contract.

Substituting a DBE Subcontractor

When a termination of a DBE subcontractor or voluntary withdrawal of a DBE subcontractor results in a shortfall, the Prime Contractor must make good faith efforts to find, as a substitute for the original DBE subcontractor, another DBE subcontractor to perform, at least to the extent needed to meet the established contract goal. The Prime Contractor will document its good faith efforts to find and secure a substitute DBE subcontractor within seven days of approval of the termination/substitution request. The Prime Contractor will request, in writing, approval from VIA to utilize the substitute DBE subcontractor.

VIA will respond in writing to the Prime Contractor's request to use the substitute DBE subcontractor and may seek additional information, as necessary, to formulate a response.

If the substitution request is approved, the Prime Contractor will process the DBE substitution in Diversity Compliance Reporting System, and provide an updated Contractor Utilization Plan, Intent to Perform, and Business Questionnaire for each substitute DBE subcontractor.

The substitute DBE subcontractor cannot work on the contract without written approval from VIA.

Process When a Contractor Fails to Secure a Substitute DBE

If the substitution of a DBE subcontractor results in a DBE goal shortfall, the Prime Contractor must submit good faith efforts documenting the steps taken to meet the goal.

Such documentation should include, but not be limited to, the following:

- Copies of written notification soliciting DBEs.
- Efforts to negotiate with DBEs to include at a minimum:
 - The names, addresses, and telephone numbers of DBEs who were contacted.
 - A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
 - A list of reasons why DBEs quotes were not accepted.

VIA will provide the Prime Contractor with a written response either accepting or rejecting the Prime Contractor's good faith efforts. If the Prime Contractor's good faith efforts are rejected, VIA may assess whether administrative remedies are appropriate.