

VIA METROPOLITAN TRANSIT SBE 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: SBE Subcontractor Termination & Substitution Procedures

Date Initiated: 08-13-2020

Revised: 04-28-2022

Policy #: 003

This policy bulletin sets forth procedures to be followed by all Prime Contractors. When referencing SBEs subcontractors in the procedures stated below, DBE subcontractors may be used interchangeably as SBE subcontractors to satisfy the SBE commitment.

The Prime Contractor cannot terminate for convenience, in whole or part, a SBE 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 SBE subcontractor with its own forces or those of an affiliate, a non-SBE subcontractor, or with another SBE 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 SBE subcontractor.

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

- The listed SBE subcontractor fails or refuses to execute a written contract.
- The listed SBE 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 SBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor.
- The listed SBE subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
- The listed SBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The Prime Contractor has determined that the listed SBE subcontractor is not a responsible contractor.
- The listed SBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal.
- The listed SBE subcontractor is ineligible to receive SBE credit for the type of work required.
- A SBE subcontractor owner dies or becomes disabled with the result that the listed SBE 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 SBE subcontractor.

Good cause does not exist if the Prime Contractor seeks to terminate a SBE subcontractor it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the SBE subcontractor was engaged or so that the Prime

Contractor can substitute another SBE or non-SBE subcontractor after contract award.

Commitment Reductions

A Prime Contractor cannot reduce the amount of work committed to a SBE subcontractor at contract award without good cause. A reduction is considered a partial termination of the SBE'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 SBE 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 SBE 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 SBE 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 SBE subcontractor.
- If VIA denies the request, the Prime Contractor must continue to use the committed SBE subcontractor in accordance with the contract.

Substituting a SBE Subcontractor

When a termination of a SBE subcontractor or voluntary withdrawal of a SBE subcontractor results in a shortfall, the Prime Contractor must make good faith efforts to find, as a substitute for the original SBE subcontractor, another SBE 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 SBE 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 SBE subcontractor.

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

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

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

Process When a Contractor Fails to Secure a Substitute SBE

If the substitution of a SBE subcontractor results in a SBE 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 SBEs.
- Efforts to negotiate with SBEs to include at a minimum:
 - The names, addresses, and telephone numbers of SBEs who were contacted.
 - A description of the information provided to SBEs regarding the plans and specifications for portions of the work to be performed.
 - A list of reasons why SBEs 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.