NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY

32 E. FRONT STREET
P.O. BOX 991
TRENTON, NJ 08625-0991
609-943-5955

POLICY ON SUBCONTRACTOR AND SUB-CONSULTANT SUBSTITUTION

The New Jersey Schools Development Authority (the "SDA") takes seriously its commitment to ensuring fairness to all project subcontractors and sub-consultants. As such, the subcontractors and sub-consultants identified in bids and proposals may only be replaced for legitimate business reasons and in accordance with SDA procedures and the procedures outlined below. In addition, contractors and consultants shall not substitute a small business enterprise ("SBE") unless the substitution is for legitimate business reasons and in accordance with the SDA's rules, *Affirmative Action and Set Asides in Authority-Financed School Facility Projects*, N.J.A.C. 19:39-4 and the procedures adopted in accordance therewith.

Subcontractor Substitution - For Sub Contractors/Sub Consultants named on SBE Form A

A General Contractor/Prime Consultant (the "Prime") shall make no substitution of any subcontractor or sub-consultant named in its bid proposal or of those identified by the Prime as participating SBE subcontractors/sub-consultants in SBE Form A, *Schedule of SBE Participation for General Contractors and Prime Consultants,* without first submitting a request for substitution via NJSDA FORM RFS (Seen below titled "REQUEST FOR SBE SUBCONTRACTOR/SUB-CONSULTANT SUBSTITUTION") to the SDA with complete justification for the request **prior** to the substitution. Additionally, the Prime must have the written approval of the SDA **before** such a substitution can be made, regardless of the reason for the substitution.

If the Prime must substitute an SBE subcontractor/sub-consultant named in its bid proposal or a vendor identified by the Prime as a participating SBE subcontractor/sub-consultant in SBE Form A, the Prime shall make a good faith effort to find and hire another SBE subcontractor/sub-consultant to perform the same contract dollar amount (or a greater amount) of work as had been allocated to the originally identified SBE subcontractor/sub-consultant.

Furthermore, the Prime shall not terminate for convenience any SBE subcontractor/subconsultant named in its bid proposal or an SBE subcontractor/sub-consultant contracted at any point during the entire life cycle of the SDA contract in order to have the work of the terminated SBE subcontractor/subconsultant performed by its own workforce or that of an affiliate without the SDA's prior written consent following a review of the Prime's completed NJSDA FORM RFS wherein it proposes termination of the contracted SBE subcontractor/sub-consultant.

Vendor Substitution - For Goods and & Services Vendors named on SBE Form B

A prime vendor shall make no substitution of any vendor named in its proposal or of those identified by the prime vendor as participating SBE vendors in SBE Form B, *Schedule of SBE Participation For Goods & Services Vendors*, without first submitting a request for substitution via NJSDA FORM RFS to the SDA with complete justification for the request **prior to** the substitution. The prime vendor must have the written approval of the SDA **before** such a substitution can be made, regardless of the reason for the substitution.

Prime vendors shall not substitute any vendor named in its proposal or of those identified by the prime vendor as participating SBE vendors in SBE Form B, except upon a determination by the SDA that just cause exists to support the substitution.

Furthermore, a prime vendor shall not terminate for convenience an SBE sub-vendor/sub-consultant in order to supply the goods and services of the terminated SBE sub-vendor with its own forces or those of an affiliate, without the SDA's prior written consent. If a prime vendor must substitute a terminated SBE sub-vendor, the prime vendor shall make a good faith effort to find another SBE sub-vendor to perform at the very least the same dollar amount of work as had been allocated to the terminated SBE sub-vendor.

Sanctions

Failure to follow the substitution procedures outlined above will result in the imposition of sanctions by the SDA. Because the SDA cannot and will not pay contractual services that are not performed, or contractual obligations that are not met, the SDA shall reduce the Prime's compensation by a maximum of one and a half percent of the contract price by either withholding all or part of future payments or by reducing the amount of retainage otherwise due for release to the Prime upon contract completion. The SDA may also exercise any and all other remedies available to it under the terms of its contract with the Prime, including its option to declare the contract in breach and terminate said contract. The performance evaluation of the Prime will also be adversely and negatively affected by noncompliance with the hiring and subcontracting requirements set forth in its contract with the SDA and the substitution procedures outlined above.

Review of Request for Substitution

All SBE subcontractor, SBE sub-consultant and SBE sub-vendor substitutions will be reviewed to ensure compliance with contractual obligations. Substitution of SBEs will receive additional review by the SDA's EEO, AA and Contracting Accountability Division to ensure that Primes continue to meet the 25% set-aside goals of the SBE program.

Reporting of Improper Substitution

To help the SDA ensure that its program goals are met and to ensure fairness to all project subcontractors, sub-consultants and sub-vendors, the SDA requests that anyone with information regarding the improper substitution of any subcontractor, sub-consultant or sub-vendor notify the SDA Project Director associated with the particular project and Manuel Castillo, SDA EEO, AA and Contracting Accountability Division, at (609) 858-2959.

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REQUEST FOR SBE SUBCONTRACTOR/SUB-CONSULTANT SUBSTITUTION
NJSDA DIVISION OF EEO, AA & CONTRACTING ACCOUNTABILITY

Prime Contractor/Consultant Name: _____

Address: _____

_____

Contact Name _____ Tel No.: _____

NJSDA Contract Number:

_____ , hereby requests the substitution of
Prime Contractor/Consultant

_____ , the designated/actual SBE subcontractor/
Current SBE Firm

sub-consultant, and a Category _____ Small Business Enterprise firm (SBE)

with offices at: _____

_____

with

_____ , a new SBE subcontractor/
New SBE Firm

sub-consultant, and a Category _____ Small Business Enterprise firm (SBE)

with offices at: _____

_____

I have attached the replacement designee's valid SBE Certificate and signed NJSDA Form C - Confirmation Statement of SBE Status and Bid Price. I have read the NJSDA Policy on Subcontractor and Sub-Consultant Substitution. In accordance therewith, the reason(s) for this SBE substitution request is (are) as follows:

CERTIFICATION

_____ , understands that the NJSDA will
Prime Contractor/Consultant

verify the reasons provided for replacement of the SBE subcontractor/sub-consultant, which is the object of substitution. _____ also understands that the NJSDA
Prime Contractor/Consultant

will base its decision upon all the facts presented from all sources and will render its decision within seven (7) days of receipt of all documents and information pertinent to this matter.

NOTE: Contradictory, incomplete or inadequate information will require such further review, attestation, certifications and other documentation as deemed necessary by the NJSDA to render its decision

I hereby certify that the foregoing statements made by me, and/or the documents and information provided with this Request for SBE Subcontractor/Sub-Consultant Substitution, are true and accurate. I am aware that if any of the foregoing statements made by me, and/or documents or information provided with this Request for SBE Subcontractor/Sub-Consultant Substitution are false, I am subject to punishment, pursuant to applicable Statutes and Regulations.

Contractor Signature: _____ Date _____

Printed name & Title: _____

SDA Approval Yes ☐ No ☐

Signed: _____ Date _____

Printed Name: _____

_____
Email Address