

## **POLICY ON SUBCONTRACTOR AND SUB-CONSULTANT SUBSTITUTION**

The New Jersey Schools Development Authority (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 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 Form A**

A contractor/consultant shall make no substitution of any subcontractor or sub consultants named in its bid proposal or identified by the contractor as a participating SBE subcontractor/sub consultants in SBE Form A, *Schedule of SBE Participation for Contractors/Consultant*, without first submitting a request for substitution in writing to the SDA with complete justification for the request **prior** to the substitution. Additionally, a contractor must have the written approval of the SDA **before** such a substitution can be made, regardless of the reason for the substitution.

Contractors shall not substitute the subcontractor/consultant named in its bid proposal subcontractor, except upon a determination by the SDA that just cause exists to support the substitution (again, providing documentation substantiating proposed change). Furthermore, a contractor shall not terminate for convenience SBE subcontractor/subconsultant named in its bid proposal or an SBE subcontractor and perform the work of the terminated subcontractor with its own forces or those of an affiliate, without the SDA's prior written consent.

If a contractor must substitute an SBE subcontractor, the contractor shall make a good faith effort to find another SBE subcontractor to perform the same contract dollar amount (or a greater amount) of work as had been allocated to the original SBE subcontractor.

### **Subconsultant Substitution - For Vendors on Form B**

A vendor shall make no substitution of any vendor named in its proposal or identified by the consultant as a participating SBE vendor in SBE Form B, *Schedule of SBE Participation*, without first submitting a request for substitution in writing to the SDA with complete justification for the request **prior to** the substitution. The consultant must have the written approval of the SDA **before** such a substitution can be made, regardless of the reason for the substitution.

Vendors shall not substitute a vendors named in its proposal, except upon a determination by the SDA that just cause exists to support the substitution.. Furthermore, a vendor shall not terminate for convenience a sub-vendor, an SBE subconsultant and supply the goods and services of the terminated sub-vendor with its own forces or those of an affiliate, without the SDA's prior written

consent. If a vendor must substitute an SBE sub-vendor, the vendor shall make a good faith effort to find another SBE sub-vendor to perform at least the same dollar amount of work as had been allocated to the original SBE sub-vendor.

### **Sanctions**

Failure to follow the proper substitution procedures 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 contractor's or consultant'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 contractor or consultant upon contract completion. NJSDA may also exercise any and all other remedies available to it under the terms of its contract with the contractor, including its option to declare the contract in breach and terminate said contract. The performance evaluation of a contractor or consultant will also be adversely and negatively affected by noncompliance with the hiring and subcontracting requirements set forth in its contract with the NJSDA and the substitution procedures outlined above.

### **Review of Request for Substitution**

All subcontractor and sub-vendors substitutions will be reviewed to ensure compliance with contractual obligations. Substitution of SBE's will receive additional review by the SDA's Contractor and Workforce Compliance Division to ensure that contractors and consultant continue to meet the 25% set-aside goals of the SBE program.

### **Reporting of Improper Substitution**

To help the NJSDA ensure that its program goals are met and to ensure fairness to all project subcontractors and sub-vendors, we request that anyone with information regarding the improper substitution of any subcontractor or sub-vendor notify the SDA Project Manager. Information should also be submitted to Karon Simmonds, NJSDA Risk Management & Vendor Services Unit at, (609) 858-5360.



**NJSDA RISK MANAGEMENT & VENDOR SERVICES UNIT  
REQUEST FOR SBE SUBCONTRACTOR/SUB-CONSULTANT SUBSTITUTION**

Prime Contractor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact Name \_\_\_\_\_ Tel No.: \_\_\_\_\_

NJSDA Contract Number: \_\_\_\_\_

\_\_\_\_\_, hereby requests the substitution of  
Prime Contractor  
\_\_\_\_\_, 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

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  
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