

The School Board of Broward County, Florida
Economic Development & Diversity Compliance Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351

(754) 321-0505

Prime/Subcontractor Contract Terms & Conditions

General:

The Economic Development & Diversity Compliance Department (EDDC) primary focus is to spur economic development and support the emerging, small, minority, and women-owned business enterprises (E/S/M/WBE) to expand in the tri-county marketplace successfully. EDDC manages the SBBC's Supplier Diversity Outreach Program (SDOP) to assist the E/S/M/WBEs to participate in school district procurement and contract activities.

SBBC has adopted School Board Policy 3330 - Supplier Diversity Outreach Program. The provisions of the Policy shall apply to all competitive solicitations for construction, professional services, commodities, and other contractual services and any resulting contract documents, including change orders and amendments.

In keeping with the objective of Policy 3330 and Chapters 9 and 13 of the Standard Operating Procedures, SBBC requires the terms and conditions that are included in the Prime Contractor or Prime Consultant or Prime Vendor's (prime) Agreement between the prime and SBBC be extended in similar or equal capacity in the contracts between the prime and all lower tier subcontractors.

- Modification of subcontractor's scope shall require written agreement by both the Prime and all lower tier subcontractors and Sub-Suppliers.
- Subcontractor contracts shall include a schedule displaying the anticipated duration of each activity to be performed by the subcontractor.
- **Invoice and Payment**
 - Prime shall submit an invoice to the Owner no less frequently than once per month.
 - Invoices submitted by the prime shall include all unpaid line items from subcontractor invoices that are not in dispute.
 - The prime shall raise any dispute of subcontractor invoice within five (5) business days after receipt to Owner; otherwise, the invoice shall be deemed approved as-is. The SBBC shall be notified of any dispute before withholding payment.
 - The prime shall deliver payment to subcontractor within five (5) business days after receiving payment from the Owner.
- **Retainage**
 - All retainage of subcontractor fees shall be released no later than three (3) months after (i) work completed and (ii) final invoice submitted by subcontractor unless there is an open dispute related to work covered by retainage.
 - Retainage amount shall be reduced by half after the subcontractor's work is certified as reaching fifty percent (50%) completion.
- The prime shall identify any back-charges to be applied to subcontractor in writing within three (3) business days of occurrence. Associated costs must be calculated within thirty (30) calendar days after the original notice.
- The subcontractor shall be given at least ten (10) calendar days to cure defaults after receiving written notice outlining default in reasonable detail. EDDC shall be copied on the notification to the subcontractor.
- Notices of Delay

The School Board of Broward County, Florida
Economic Development & Diversity Compliance Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351

(754) 321-0505

Prime/Subcontractor Contract Terms & Conditions

- The subcontractor shall have the right to deliver a Notice of Delay to the prime in the event of a delay due to no fault of subcontractor that extends beyond two (2) business days.
- The prime shall communicate Notice of Delays to the Owner no later than five (5) business days after receipt from subcontractor.
- **Insurance Provisions**
 - Insurance limits required of the subcontractor shall be no greater than those required by the prime.
 - The length of coverage required of the subcontractor shall be no greater than required by the prime.
 - There shall be no requirement for subcontractor's liability policy to be "noncontributory."
 - Subcontract shall not be required to name the prime as a "loss payee."
- **Change Orders**
 - The subcontractor shall be given at least seven (7) business days to generate final pricing after receiving change order details in writing.

The subcontractor shall not be required to perform work outside of contractually agreed scope until Change Order is mutually agreed to in writing. A copy of the agreed Change Order shall be sent to EDDC within three (3) business days of execution by both parties and before the subcontractor executes any new work. Failure to comply with this requirement will subject the prime to liability for the cost of the subcontractor's services/expenses.

- **Termination, Substitution, Addition or Reduction of Scope**
 - The prime shall not terminate, substitute, replace, reduce the scope of work or otherwise remove an E/S/M/WBE without good cause and EDDC's prior written approval. This includes any instance where the prime seeks to perform work originally designated for an E/S/M/WBE with its own work force; affiliates work force, a non-E/S/M/WBE, or another E/S/M/WBE. E/S/M/WBEs listed on the prime's Schedule of Participation shall be used on the contract as proposed except for good cause.
 - SBBC **considers for a good cause** to be:
 - 1) The E/S/M/WBE fails/refuses to execute a written contract, or
 - 2) The E/S/M/WBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided the prime has not acted in bad faith or a discriminatory manner that prevented such non-performance, or
 - 3) The E/S/M/WBE fails or refuses to meet the prime's reasonable nondiscriminatory bond requirements, or
 - 4) The E/S/M/WBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness, or
 - 5) The E/S/M/WBE is ineligible to work on public SBBC/public works projects because of debarment or suspension proceedings under local or state law, or
 - 6) The E/S/M/WBE voluntarily withdraws from the project and provides SBBC written notice of its withdrawal and the prime is without fault, or
 - 7) SBBC has determined that the E/S/M/WBE is not a responsible contractor, or
 - 8) The listed E/S/M/WBE is ineligible to receive E/S/M/WBE participation credit for the type of work required, or
 - 9) The E/S/M/WBE owner dies or becomes disabled with the result that the listed E/S/M/WBE is unable to complete its work on the contract, or
 - 10) Other documented good cause SBBC determines compels the termination, removal, replacement, substitution, or reduction in the scope of work of the E/S/M/WBE. Provided that good cause does not exist if the prime seeks to terminate, remove, replace or substitute an E/S/M/WBE it relied upon to obtain the contract so that the prime can self-perform the work for which the

**The School Board of Broward County, Florida
Economic Development & Diversity Compliance Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351**

(754) 321-0505

Prime/Subcontractor Contract Terms & Conditions

E/S/M/WBE sub-contractor and/or sub-supplier was engaged or so that the prime can substitute another E/S/M/WBE contractor after contract award.

- 11) Before requesting EDDC approval to terminate, remove, replace or substitute a E/S/M/WBE, the prime must give written notice to the E/S/M/WBE with a copy to EDDC of its intention and the reason for the request.
 - 12) The prime must give the E/S/M/WBE five (5) business days to respond to the notice and advise the prime of the reasons, if any, why it objects to the proposed termination of its subcontract and why SBBC should not approve the prime's request. If public necessity requires (i.e. safety), SBBC will approve a shorter period than the five (5) business days.
- **Duty to Cooperate**
 - The prime and all subcontractors and sub-suppliers must cooperate with any audit or review by the SBBC or its designee.