

WAC 326-40-080 Substitutions in contracts requiring participation of certified businesses. (1) PRIME CONTRACTOR, VENDOR, OR CONSULTANT SUBSTITUTION.

(a) Prior to award of the contract: Where a certified business that is the apparent low bidder is decertified or indicates it is unable or unwilling to perform the contract prior to the award of the contract, the state agency or educational institution may follow its usual procedures for awarding to the next apparent low bidder, require the contractor to meet goals by obtaining other certified businesses, or rebid.

(b) After award of the contract to a certified prime contractor, vendor, or consultant, but prior to the start of the work: Where the business is decertified or indicates that it is unable or unwilling to perform the work after award of the contract, the agency or educational institution may follow its usual procedures for awarding to the next apparent low bidder, require the contractor to meet goals by obtaining other certified businesses, or rebid. The agency or educational institution, may, in its discretion, determine whether an increase in the amount of the contract will be allowed based on the substitution.

(c) After start of work by a certified prime contractor, vendor, or consultant, but prior to completion:

(i) Where the business is decertified after commencing the work and the agency or educational institution determines that substitution is impractical, the decertified contractor may continue to perform the work.

(ii) Where a certified prime contractor is unable or unwilling to complete the work, the agency or educational institution shall follow its usual procedures to seek performance of the contract, including the imposition of penalties or sanctions authorized by the contract and may pursue all other remedies allowed by law.

(2) SUBCONTRACTOR OR SUBCONSULTANT SUBSTITUTION.

(a) Prior to award of the contract: Where a certified business, selected as a subcontractor or subconsultant to meet the bid specifications, is decertified or indicates it is unable or unwilling to perform the work, the agency or educational institution shall require the contractor or consultant to substitute another certified business in the appropriate category, to meet the contract specifications. The replacement firm may perform the same work or a different part of the work.

(b) After award of the contract but prior to start of work by the prime contractor or consultant: Where a certified business, selected as a subcontractor or subconsultant to meet the bid specifications, is decertified or indicates it is unable or unwilling to perform the work, the agency or educational institution may require the contractor or consultant to substitute another certified business in the appropriate category to meet the contract specifications as stated in the original bid. The replacement firm may perform the same work or a different part of the work. The agency or educational institution, may, in its discretion, determine whether an increase in the amount of the contract will be allowed based on the substitution.

(c) After start of the work but prior to completion by the prime contractor or consultant: Where a certified business, selected as a subcontractor or subconsultant to meet the bid specifications, is decertified or indicates it is unable or unwilling to complete the work after the work has been started by the prime contractor or consultant, and the agency or educational institution determines it to be imprac-

tical to substitute another certified business to perform that work or any other portion of the work at that point, then the contractor or consultant shall not be required to substitute.

(3) REMEDIES. In the event of default by a bidder or contractor, the educational institutions and agencies retain the right to pursue appropriate legal remedies. Nothing herein shall be construed to give any business the right to unilaterally withdraw its bid or terminate the contract.

[Statutory Authority: RCW 39.19.030(7). WSR 92-20-079, § 326-40-080, filed 10/6/92, effective 11/6/92.]