

Rules Governing Substitution of an MBE or WBE Firm

Prime contractors / vendors may not terminate an MBE/WBE subcontractor listed in their approved MBE plan without the prior written consent of the MBE Compliance Office. This includes, but is not limited to, instances in which a prime contractor / vendor seeks to perform work originally designated for an MBE/WBE subcontractor with its own forces or those of an affiliate, a non-M/WBE firm, or with another M/WBE firm.

The MBE Compliance Office will provide such written consent only if it agrees, for reasons stated in its concurrence document, that the prime contractor / vendor has good cause to terminate the M/WBE

Good cause includes the following circumstances:

- (i) The listed M/WBE subcontractor fails or refuses to execute a written contract;
- (ii) The listed M/WBE 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 M/WBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor / vendor;
- (iii) The listed M/WBE subcontractor becomes bankrupt or insolvent;
- (iv) The listed M/WBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to applicable federal or state law;
- (v) The listed M/WBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- (vi) The listed M/WBE is ineligible to receive MBE credit for the type of work required;
- (vii) An M/WBE owner dies or becomes disabled with the result that the listed M/WBE contractor is unable to complete its work on the contract;
- (ix) Other documented good cause that compels the termination of the M/WBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate an M/WBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the M/WBE contractor was engaged or so that the prime contractor can substitute another M/WBE or non-M/WBE contractor after contract award.

Before transmitting its request to terminate and/or substitute an M/WBE subcontractor, the prime contractor / vendor must give notice in writing to the M/WBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor / vendor must give the M/WBE five days to respond to the prime contractor's notice and advise the MBE Compliance Office and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the MBE Compliance Office should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the MBE Compliance Office may provide for a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for M/WBE firms put forward by offerors in negotiated procurements.

When an M/WBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor / vendor is mandated to make a good faith effort to find another M/WBE subcontractor to substitute for the original M/WBE. These good faith efforts shall be directed at finding another M/WBE to perform at least the same amount of work under the contract as the M/WBE that was terminated, to the extent needed to meet the M/WBE participation requirement established for the procurement.