

WAC 468-19-030 Termination and substitution. (1) The prime contractor cannot change the scope or reduce the amount of work committed to an MWBE without good cause. Reducing MWBE commitment is considered termination, and therefore subject to the termination procedures, described herein.

(2) In the event that work committed to an MWBE firm underruns the original planned quantities, the prime contractor may be required by WSDOT to substitute other remaining work to another MWBE.

(3) In instances where WSDOT makes changes that result in reductions to work that was committed to an MWBE, the prime contractor may be directed to subcontract other remaining contract work for possible MWBE participation.

(4) Termination of a MWBE is only allowed in whole or in part for good cause and with prior written approval of WSDOT. If the prime contractor terminates or substitutes a MWBE without the prior written approval of WSDOT, the prime contractor may not be entitled to payment for work committed to, but not performed/supplied by the MWBE.

(5) Prior to requesting approval to terminate or substitute a MWBE, the prime contractor shall give notice in writing to the MWBE with a copy to WSDOT of their intent to terminate the MWBE and the reasons for doing so. The MWBE shall have five days to respond to the prime contractor's notice. The MWBE's response shall either support the termination or advise WSDOT and the prime contractor of the reasons it objects to the termination of its subcontract or MWBE commitment.

(6) If the request for termination is approved, the prime contractor is required to make a good faith effort (GFE) to find another MWBE to perform at least the same dollar amount of work under the contract as the MWBE that was terminated. A plan to replace the MWBE commitment or GFE shall be submitted to WSDOT within seven calendar days of the approval of termination.

(7) Good cause typically includes situations where the MWBE is unable or unwilling to perform the work of its subcontract.

(a) Good cause may exist if:

(i) The MWBE fails or refuses to execute a written contract.

(ii) The MWBE fails or refuses to perform the work of its contract in a way consistent with normal industry standards.

(iii) The MWBE fails or refuses to meet the prime contractor's reasonable nondiscriminatory bond requirements.

(iv) The MWBE becomes bankrupt, insolvent, or fails to pay their suppliers, unions, other creditors, or employees.

(v) The MWBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal law or applicable state law.

(vi) The MWBE is ineligible to receive credit for the type of work involved.

(vii) The MWBE voluntarily withdraws from the project and provides written notice of its withdrawal.

(viii) The MWBE's work is deemed unsatisfactory by the agency and not in compliance with the contract.

(ix) The MWBE's owner dies or becomes disabled, with the result that the MWBE is unable to complete its work on the contract.

(b) Good cause does not exist if:

(i) The prime contractor seeks to terminate an MWBE so that the prime contractor can self-perform the work.

(ii) The prime contractor seeks to terminate an MWBE so the prime contractor can substitute another MWBE or non-MWBE after the contract has been awarded to the MWBE.

(iii) The failure or refusal of the MWBE to perform its work on its contract results from the bad faith or discriminatory action of the prime contractor (e.g., the failure of the contractor to make timely payments or the unnecessary placing of obstacles in the path of the MWBE's work).

[Statutory Authority: RCW 39.04.155, 43.19.727, 47.01.101, 47.28.030, and chapter 39.19 RCW. WSR 24-05-030, § 468-19-030, filed 2/12/24, effective 3/14/24.]