

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SMALL BUSINESS PROGRAMS OFFICE
NOTIFICATION TO PRIME CONTRACTORS AND SUB-CONTRACTORS
OF FEDERAL GUIDANCE ON DBE REPLACEMENT
49 CFR 26.53**



A prime contractor shall not terminate a DBE subcontractor (or an approved substitute DBE firm) without the prior written consent of the Contract Administrator and the Small Business Programs Office. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. The Prime Contractor must make all reasonable efforts to avoid termination, substitution, and reduction in scope of a DBE listed on the DBE Letter of Intent. All terminations, substitutions and reduction in scope must be approved in writing by the Chief Procurement Officer or designee. Approval will only be granted if the prime contractor has good cause to terminate the DBE firm.

Good cause includes the following circumstances:

- The listed DBE subcontractor fails or refuses to execute a written contract;
- The listed DBE 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 DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- A determination made that the listed DBE subcontractor is not a responsible contractor;
- The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- Other documented good cause that compels the termination of the DBE subcontractor.

Good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

The process for termination and substitution is as follows:

**Washington
Metropolitan Area
Transit Authority**

600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

*By Metrorail:
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and
Yellow Lines*

*A District of Columbia
Maryland and Virginia
Transit Partnership*

- Submit a written notice on the attached form to the Contracting Officer (CO) and a copy to the DBE vendor;
- The DBE vendor has ten (10) days to respond to the CO and forward a copy to the prime contractor;
- A copy of the termination request and the DBE vendor response is forwarded to the DBE Liaison (DBELO) or designee;
- Meeting with the CO and DBELO;
- A Written approval of the termination or denial;
- If approved, Good Faith Effort (GFE) and other supporting documentation; and
- Prepare DBE Letter of Intent, if applicable

When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. In addition to post-award terminations, this applies to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

The prime contract must ensure that all existing and future DBE subcontract agreements do not conflict with the requirements do not conflict with the requirements found at 49 CFR Part 26.53(f)(1) (i).

**Washington Metropolitan Area Transit Authority
Small Business Programs Office
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