

MWBE Replacement Request Form

It is the policy of Winston-Salem and the City/County Utilities Commission (an agency of the City of Winston Salem), that minority and women owned business enterprises shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with the City and/or Commission funds.

In accordance with the Minority Utilization Commitment Form "Affidavit E", no subcontractor who is identified and listed on Affidavit E may be replaced, substituted, or supplemented; nor can their scope of work be modified to include a different subcontractor unless: (A) The subcontractor's bid is later determined by the contractor to be non-responsible or non-responsive, or the listed sub-contractor refuses to enter into a contract for the complete performance of the bid work or; (B) With the approval of the City of Winston-Salem M/WBE office, good cause has been demonstrated. Prior to substituting, supplementing, replacing, or modifying a subcontractor, the Contractor shall identify the substitute subcontractor and inform the City of Winston-Salem M/WBE office of its good faith efforts; including the M/WBE Replacement Request Form. In order to meet the terms stated above, an M/WBE Replacement Request Form must be completed. *Replacement of an M/WBE without written approval from the City of Winston Salem MWBE office is a violation of contract provisions and may result in the Contractor being disqualified from bidding on future City and/or Commission projects.*

If a committed MWBE subcontractor is terminated for a good cause, the Contractor will make a Good Faith Effort to find another M/WBE subcontractor to substitute for the M/WBE who has been terminated or impacted. This Good Faith Effort 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 contract goal established for the project.

Replacement/Additional M/WBE: _____

Amount of Subcontract: _____

Work to be performed: _____

New Committed M/WBE Signature: _____ **Date:** _____

By signing this document, the Contractor, M/WBE, and City of Winston Salem M/WBE office acknowledges that the 5 days to respond was given, and concurs with the process of replacing the named M/WBE subcontractor.

Original MWBE Signature Date

Contractor Signature Date

MWBE Staff Signature Date

INSTRUCTIONS FOR SUBMITTAL OF M/WBE REPLACEMENT REQUEST FORM

IN ADDITION TO SUBMITTING THIS FORM, THE CONSULTANT MUST ENSURE THAT THE FOLLOWING STEPS ARE SATISFIED.

1. Prior to starting the replacement process, the contractor is responsible for coordinating with the M/WBE subcontractor to see if they are willing and able to perform the work as indicated in their contract. If the Contractor notices a reoccurring issue with an M/WBE subcontractor, the Contractor shall notify the City of Winston Salem M/WBE staff and keep them abreast of the issues.

2. If the M/WBE subcontractor cannot perform the work or if the Contractor shows good cause for replacement, M/WBE staff will coordinate with the Contractor to begin the M/WBE replacement process. M/WBE staff will coordinate with other City departments as appropriate.

(Examples of good cause include: M/WBE fails or refuses to execute a written contract; M/WBE fails or refuses to perform the work of its subcontract consistent with normal industry standards; M/WBE fails to meet reasonable, nondiscriminatory bond requirements; M/WBE becomes bankrupt, insolvent, or exhibits credit unworthiness; M/WBE is ineligible to work because of suspension and debarment proceedings; M/WBE voluntarily withdraws from the project and provides written notice; M/WBE owner dies or becomes disabled and is unable to complete its work; or other documented good cause that compels termination. Good cause does not exist where the Contractor terminates a committed M/WBE for failure or refusal to perform the work of the subcontract results from bad faith or discriminatory action of the prime contractor.)

3. Before requesting the City of Winston Salem's consent for the proposed termination/replacement of an M/WBE, the Contractor shall give written notice of the proposal, including the reason for termination/replacement, to the M/WBE firm with a copy to the City of Winston Salem M/WBE staff. The M/WBE shall be given **five days** to respond unless the five day requirement needs to be reduced, due to public necessity (e.g. safety).

4. After the notice period has passed, the M/WBE staff will ensure the Contractor has submitted all supporting documentation for the M/WBE replacement. Letters, phone logs, emails or any other correspondence between the Contractor, the M/WBE subcontractor, and/or City staff will be considered supporting documentation. This documentation must provide valid reason(s) for replacement as well as the opportunity to correct the issue. Contractors cannot replace for convenience or perform the work with its own forces or those of an affiliate.

5. Once the Contractor is given approval by the City of Winston Salem M/WBE staff to replace an M/WBE subcontractor, M/WBE staff will send notification to the City project manager and the City/County Purchasing Department for informational purposes.

6. The Contractor shall be made aware that he/she needs to make a Good Faith Effort to replace an M/WBE with another M/WBE. Good Faith Efforts shall be made to replace a MBE with a MBE, and a WBE with a WBE.

7. Signature lines on form: Ideally, the form should contain the signature of the original M/WBE Subcontractor being replaced, supplemented, or modified. However, if this is not possible (i.e. the M/WBE will not sign), the documentation supporting the decision and acknowledgement of the reasons for replacement of the M/WBE subcontractor should be attached. The form shall also be signed by the replacement/additional M/WBE to show their participation on the project as the new/additional committed M/WBE.