



Indicate with (X) Acknowledgement and Included	DSBO MWBE Contractual Requirements Subcontractor Agreement Checklist
Counting MWBE Participation and Reporting, D.R.M.C., Section 28-57	
	<ul style="list-style-type: none"> Firms identified to count toward DSBO’s established participation goal must be certified by DSBO in that specified program and certified in the applicable NAICS code(s) to count toward the participation goal.
	<ul style="list-style-type: none"> Only the value of the work actually performed by the certified MWBE will count toward the MWBE participation goal
	<ul style="list-style-type: none"> DSBO reserves the right conduct site visits to ensure certified firm is performing a commercially useful function
Contractor Prompt Payment, D.R.M.C., Section 28-72	
	<ul style="list-style-type: none"> Requirement clause of “35 days of receipt of invoice regardless of primes payment from the City and County of Denver”
<p><u>Suggested Language for Subcontract:</u></p>	<p><i>The Contractor shall ensure that:</i></p> <p>(a) Each contractor on a city contract with certified MWBEs as subcontractors shall pay the respective subcontractors any invoiced and undisputed amounts for accepted and completed work within thirty (35) days of the contractor's receipt of the subcontractor's invoice. Payment to the subcontractor shall be timely made as required under this section regardless of whether the contractor has been paid for the same work or payment period. For the purposes of Chapter 28 of the Denver Revised Municipal Code (D.R.M.C.) section 28-72, any subcontractor, regardless of whether that subcontractor holds a city contract, may be required to make payments to MWBEs as set forth in this section.</p> <p>(b) Contractor is required to provide written notice to its subcontractor of either approval or rejection of the subcontractor's invoice within ten (10) days of receipt. If the invoice is rejected, the written notice to the subcontractor shall include the deficiencies or disputes regarding the invoice.</p> <p>(c) Failure to comply with the payment requirements in this section may be grounds for withholding of payment by the city to the contractor, and may be grounds for breach of the city contract.</p>



	<p>(d) The payment requirements under this section shall apply to MWE subcontractors regardless of tier.</p> <p>(e) This Chapter 28 of the Denver Revised Municipal Code (D.R.M.C.) section 28-72 shall apply only to city contracts in the amount of one million dollars (\$1,000,000.00) or more based on the original contract amount before amendments or changes.</p>
<p>Removal/Termination/Substitution for Good Cause from Contract D.R.M.C., Section 128-136</p>	
	<ul style="list-style-type: none"> • No “Termination for Convenience” clause
	<ul style="list-style-type: none"> • Requirement clause of “Removal/Termination/Substitution” of a MWBE contractor regardless of tier
	<ul style="list-style-type: none"> • Requires consent of DSBO and documentation of good cause
	<ul style="list-style-type: none"> • Agreement states the process to initiate a removal/termination/substitution
<p><u>Suggested Language:</u></p>	<p>(a) A contractor that has been awarded a contract based upon a given level of MWBE participation, or has duly added an additional or substitute MWBE subcontractor to the contract in accordance with, but intends to substitute or terminate an MWBE subcontractor must comply with), as directed by DSBO and the user department, regarding the intended substitution or termination. This includes, but is not limited to, instances in which a contractor seeks to perform work with its own forces or those of an affiliate, a non-MWBE firm, or with another MWBE as a substitution for an originally designated for an MWBE subcontractor.</p> <p>(b) In the event that a contractor or consultant intends to substitute or terminate an MWBE subcontractor, subconsultant, joint venturer, supplier, manufacturer, manufacturer's representative or broker, or otherwise modify or eliminate all or a portion of work attributable to an MWBE, except in cases where directed by the city, the following must be completed:</p> <p>(1) The contractor must provide notice in writing to the MWBE subcontractor, with a copy to the DSBO and user department, of its intent to request to terminate or substitute, and the reason for the request.</p> <p>(2) The contractor must give the MWBE subcontractor at least five (5) business days to respond to the contractor's notice.</p>



(3) The DSBO, in conjunction with the user department, must provide concurrence and the reasons therefor stated in a written notification that the prime contractor has good cause to substitute or terminate the firm.

(4) In determining good cause to substitute or terminate the DSBO will consider all circumstances as a whole based on the following factors:(i) **The MWBE subcontractor fails or refuses to execute a written contract;**

(ii) The MWBE subcontractor fails or refuses to perform the work consistent with normal industry standards; provided, however, that good cause does not exist if the failure or refusal of the MWBE subcontractor to perform its work results from the bad faith or discriminatory action of the contractor;

(iii) The MWBE subcontractor fails or refuses to meet the contractor's reasonable, nondiscriminatory bond requirements or insurance requirements;

(iv) The MWBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The MWBE subcontractor is or has become ineligible to work on city projects because of suspension or debarment;

(vi) The non-city owner or contractor has determined that the MWBE subcontractor is not a responsible contractor;

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

(viii) The MWBE's work cannot be counted toward participation in accordance with this article III and its divisions;

(ix) An MWBE owner dies or becomes disabled resulting in the MBE's inability to perform or complete its work on the contract; or

(x) Other documented good cause that the user department or DSBO determines requires termination of the MWBE subcontractor.

(5) The MWBE subcontractor shall be provided the opportunity to advise the DSBO, user department and the contractor of the reasons, if any, why it objects to the



	<p>proposed termination, and why the DSBO should not concur with the contractor's action. If required in a particular case as a matter of public necessity (<i>e.g.</i>, safety), the DSBO may provide a response period shorter than five (5) business days.</p> <p>(6) In addition to substitutions or terminations occurring during contract performance, the provisions of this section may apply to reductions in scope of work or substitutions of MWBE firms by bidders or proposer prior to contract execution.</p> <p>(c) If the DSBO and the user department concurs with the contractor's request to substitute, terminate or reduce the scope of work of the MWBE subcontractor, the contractor must comply with good faith efforts requirements to replace the terminated MWBE subcontractor with another MWBE firm certified to perform the scope of work.</p> <p>(d) If a contractor substitutes or terminates the MWBE subcontractor, or reduces the scope of work of the MWBE subcontractor, DSBO may find the contractor in violation of this division and the contractor may be subject to enforcement and sanctions.</p>
Scope of Work Changes, Amendments, Modifications	
	<ul style="list-style-type: none"> • States process for changes, amendments, change orders
<u>Suggested Language:</u>	<p>The MWBE Goals shall apply to the performance/value of all obligations under this Contract, including any Changes, Modifications, Amendments and Change Orders whether initiated by the contractor or City and County of Denver. D.R.M.C., Section 28-70</p>
Joint Venture between MWBE certified firm and/or Non-MWBE certified firm	
	<ul style="list-style-type: none"> • A joint check is a two-party check between a MWBE, a prime contractor and a regular dealer of materials/supplies. All joint check arrangements with MWBE subs must be pre-approved by DSBO and must strictly adhere to the joint check requirements set forth in USDOT guidance regarding same. At a minimum, the request must be initiated by the MWBE to remedy a financial hardship for a specific period of time. DSBO will closely monitor the use of joint checks to ensure that the independence of the MWBE firm is not compromised. Joint check usage will not be approved merely for the convenience of the prime contractor.
Concise and Completed Documentation Assurance (Letter of Intent, Subcontract Agreement, Change Orders, etc)	
	<ul style="list-style-type: none"> • Company Name, Signatures and Dated