

# HQ Local Programs

DBE and FSBE Programs -  
Construction Phase

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Date: January 6, 2026

## Purpose

This bulletin updates guidance for Local Programs' implementation of changes to the Disadvantaged Business Enterprises (DBE) program based on the USDOT Interim Final Rule (IFR) as it pertains to Construction contracts. In addition, it provides guidance for the Federal Small Business Enterprise (FSBE) program. This bulletin supersedes Local Programs Bulletin 2024-04-R4 – DBE Program Changes.

## Background

The United States Department of Transportation recently issued an Interim Final Rule (IFR) that took effect on October 3, 2025. The full text of the IFR is available in the [Federal Register](#). This rule change amends the federal DBE program (49 CFR part 26) and the Airport Concession DBE program (49 CFR part 23), removing race- and gender-based presumptions of social and economic disadvantage from the process of certifying businesses.

## Guidance

### Bidders' Questionnaire

The Interim Final Rule modified the information to be submitted at bid for federal-aid projects. The Bidders' Questionnaire (WSDOT form 272-022) has been updated; the most current version must be added to the Agency proposal package. Bidders must complete the Bidders' Questionnaire and return it at the time of Bid. Bidders may correct errors on this form for a period up to 48 hours after bid opening (WSDOT GSP 1-02.6.OPT7.GR1).

### DBE Goals

#### *FSBE Program*

Projects that have received a DBE goal but have not been advertised must request a reevaluation for an FSBE goal. Local Programs will issue revised determination letters rescinding the DBE goal and assigning an FSBE goal. An FSBE goal is not required at the time of obligation of federal funding, however the project cannot be advertised until an FSBE goal is assigned. Contact your Region Local Programs Engineer for a list of GSP changes and form deletions. If a project has received specifications approval, the package will require re-approval.

## Commercially useful Function (CUF) and other Compliance Measures

### *DBE Program*

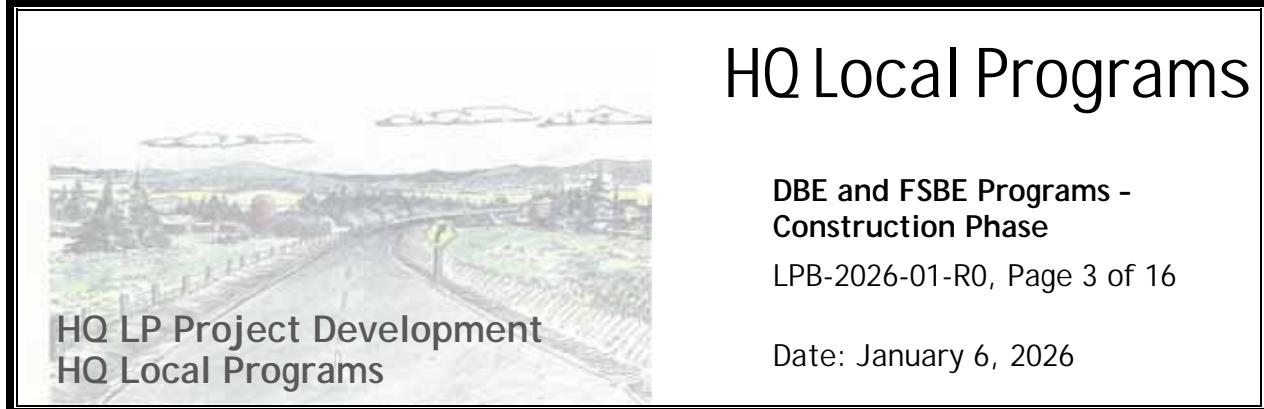
- On Site Reviews are not required during the DBE certification re-evaluation period.
- All payments must continue to be reported in WSDOT's Diversity Management and Compliance System (DMCS) and monitored for promptness.
- On existing contracts, DBE contract termination procedures continue to apply. Prime contractors and local agencies do not have the authority to remove DBEs without acknowledgment from the DBE and prior written consent of WSDOT Local Programs and OECR, which consent may be provided only if good cause exists to terminate the DBE.

### *FSBE Program*

- The FSBE program is not a condition of award and cannot be used to evaluate bidders at award.
- The FSBE goal is a contract requirement.
- All payments must continue to be reported in WSDOT's Diversity Management and Compliance System (DMCS) and monitored for promptness.
- Local Agency representatives must initiate an on-site CUF for each identified FSBE and upload the completed CUF to DMCS. WSDOT's Office of Equity and Civil Rights (OECR) will complete their portion of the CUF after notification of the upload. Participation will not be counted for an FSBE contractor when an on-site CUF was not conducted.
- At Physical completion, the Prime contractor must evaluate and determine if the project has satisfied the FSBE Goal. When the evaluation shows the Contractor has not satisfied the FSBE Goal, the Prime Contractor must submit a good faith effort (GFE) in accordance with the Special Provision (APWA 1-07.11 Option D).

### Concurrence to Award

After bid opening, Agencies must complete their internal processes to verify the bidder's responsibility and responsiveness. Agencies shall review bids for unbalancing of bids or material irregularities and document this review via bid tab certification. If the apparent low bid exceeds the authorized amount for the project, the Agency must verify that they have sufficient funding to construct the project. Verification may be an email from the funding manager (LP, MPO, TIB, etc) or a written commitment from the Agency to use local funding. The updated budget information or commitment must be provided to the Region Local Programs for funding verification.



Agencies seeking to reject all bids must request concurrence from Local Programs to reject all bids.

#### *CA Agencies*

After the certification of bids tabs and verification of funding is complete, CA Agencies are delegated authority to Award and Execute Contracts in accordance with LAG Chapter 13.2.

#### *Non-CA Agencies*

After the certification of bid tabs and verification of funding is complete, Non-CA Agencies must submit their request for award concurrence with a copy of the certified bid tabs to the Region Local Programs Office. The request for concurrence should identify the apparent low bidder, provide documentation for rejection of bidders, and include the bidders' questionnaires for all bidders.

#### **Award Data, Update to LAG 46.3**

All local agencies must submit the following information to the Region Local Programs Engineer within 30 days of award. Local Agencies will not be reimbursed until the award data is received.

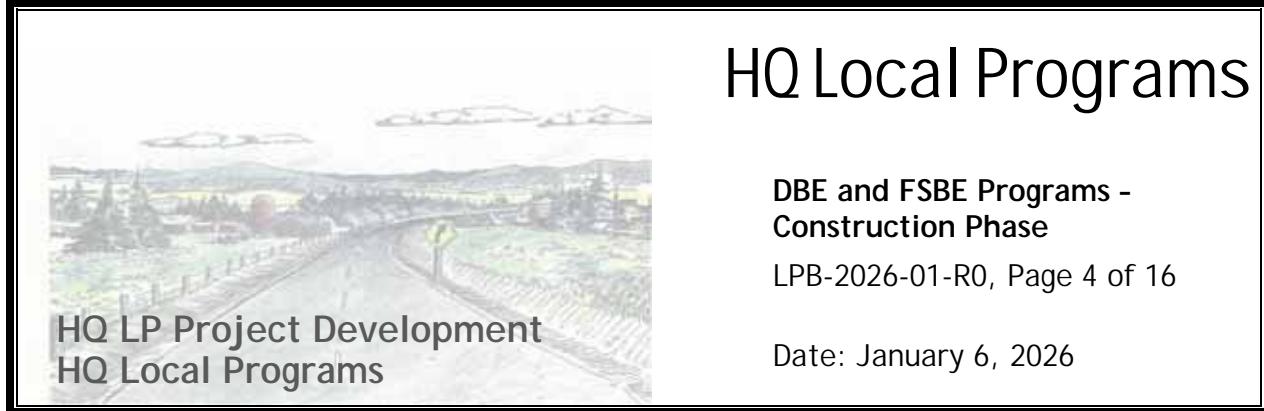
- Certified Tabulation of bids
- Bidders Questionnaires (if not provided at award)
- Award letter to the contractor
- Diversity Management & Compliance System (DMCS) contact information as follows,

Agency	Contractor
Name:	Name:
Title:	Title:
Phone:	Phone:
Email:	Email:

#### **Change Orders**

##### *DBE Program*

Projects containing DBE Goals are not required to zero out the goal, where the contract was executed prior to October 3, 2025. Changes to the work of a Condition of Award DBE shall be handled in accordance with the GSP, including any partial or full termination. Approval of DBE Change Orders shall be handled as outlined in the LAG 52.5.



### *FSBE Program*

The FSBE Goals are not a condition of award requirement. The local agency must place special emphasis on the FSBE specification at the preconstruction conference and subsequent progress meetings. For CA Agencies, Changes to Work assigned to an FSBE Contractor falls under the category of Contract Administration and are the responsibility of the Agency as indicated in LAG 13.2. For Non-CA Agencies Changes to Work assigned to an FSBE Contractor shall be approved as indicated in LAG Chapter 13.6 and the Local Agency Project Agreement (LOUPA) if applicable.

### **Closure –LAG 53.2**

#### *DBE Program*

There are no documentation requirements at closure. The requirements for CUFs and GFEs are suspended until further notice.

#### *FSBE Program*

Once the construction contract reaches physical completion, the Local Agency shall submit the FSBE GFE documentation. – A Good Faith Effort to achieve the FSBE Goal may be accomplished by either meeting the FSBE Goal or by documentation that the bidder made an adequate GFE to meet the FSBE Goal by following the GFE requirements of the 1-07.11 Option D - Federal Small Business Enterprise Participation.

### **Comments**

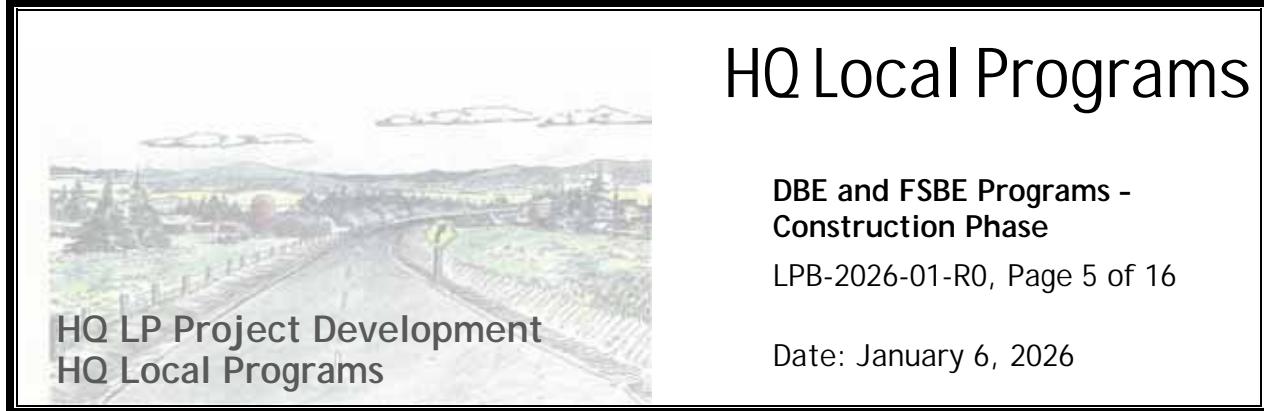
Local Programs will provide updated guidance as additional information becomes available from FHWA and OECR.

### **Appendices**

**Appendix A —Letter of Guidance from the Director of Equity & Civil Rights, Earl Key**

**Appendix B —APWA 1-07.11, Option D – Federal Small Business Participation**

**Appendix C — Award Letter**



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## Resources

[Local Agency General Special Provisions \(GSPs\) | WSDOT \(wa.gov\)](#)

[General Special Provisions \(GSPs\) | WSDOT \(wa.gov\)](#)

[Electronic forms | WSDOT \(wa.gov\)](#), See form 272-022

Federal Small Business flyer <https://wsdot.wa.gov/sites/default/files/2021-10/OEO-FSBE-DMCS-Search-Instructions.pdf>

## Contact Information

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Assistant State Local Programs Engineer

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## HQ LP Project Development HQ Local Programs

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Transportation Building  
811 Maple Park Avenue S.E.  
P.O. Box 47300  
Olympia, WA 98504-7300  
360-705-7000  
TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

December 17, 2025

Dear Local Agencies:

We are aware of the Interim Final Rule (IFR) and official Frequently Asked Questions (FAQs) that were issued by the U.S. Department of Transportation effective October 3, 2025, with the FAQ being updated on December 1, 2025, regarding the Disadvantaged Business Enterprise (DBE) Program, 49 CFR part 26. The purpose of this letter is to clarify what the IFR did and did not change and what steps WSDOT will be taking in response.

While the IFR makes changes to certain elements of the DBE program, the IFR did not eliminate the DBE Program. Subject to changes to the eligibility requirements to be considered a DBE, the DBE Program remains in effect. Specifically, the IFR:

- Removes race- and gender-based presumptions of disadvantage from the DBE program regulations set forth in 49 CFR Part 26. To be considered a DBE, applicants must now make an individualized showing of social and economic disadvantage, without regard to race and gender;
- Requires each Unified Certification Program (UCP) to reevaluate any currently certified DBE on race- and gender-neutral grounds, to recertify any DBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards; and
- Requires that no new DBE goals be set until such reevaluation process is completed. However, USDOT has clarified in subsequent guidance that contracts executed prior to the IFR taking effect need not be modified, provided that DBE participation on such contracts cannot be counted toward either contract or overall goals until the reevaluation process is complete.
- The IFR did *not* amend the requirement for a recipient's DBE program to foster race and gender-neutral participation, 49 CFR 26.39. While the IFR suspends the use of "contract goals" pending the reevaluation of currently certified DBEs, it places no such restrictions on "DBE-neutral means." DBE-neutral means are those that are, or can be, used to assist all small businesses, 49 CFR 26.5.

In 2019, WSDOT established, as an element of its DBE Program Participation Plan, a Federal Small Business Enterprise (FSBE) Program. The FSBE program was and continues to be authorized by the DBE regulations, as stated in 49 CFR 26.39 and explained by USDOT in its most recent FAQs on the DBE Program. WSDOT has already obtained prior approval from FHWA of its FSBE program, which allows WSDOT to set contractually required small business participation goals on federal-aid projects. As a program that assists all small businesses regardless of DBE status, the FSBE program is a DBE-neutral measure



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under the amended DBE program rules. The FSBE Program remains approved by USDOT and available for use at WSDOT.

In addition, after the IFR and October 3, 2025, Q&A were issued, WSDOT met with FHWA to discuss the Federal SBE Program. FHWA noted WSDOT continues to have the authority to establish FSBE goals after the IFR was issued because the FSBE Program is race- and gender-neutral and does not rely upon any presumption of disadvantage. This aligns with USDOT's interpretation of the DBE regulations in its most recent FAQs. Moving forward, WSDOT will evaluate all federal-aid projects for FSBE goals until the re-evaluation process for DBEs is complete. This includes local agency projects. Per Local Agency Guideline Manual Chapter 26, "a local agency, when participating in the programs funded in whole or in part with federal funds made available by the Washington State Department of Transportation (WSDOT), must adhere to WSDOT's DBE Program Participation Plan." Because the DBE Program Participation Plan includes the FSBE Program, and the FSBE Program is authorized by federal rule and approved by FHWA, local agencies are required to follow FSBE goals. This direction is fully consistent with the language of 49 CFR part 26 and with the newly released December 1, 2025, DBE Program Q&A.

If you have questions, please contact me at [Earl.Key@wsdot.wa.gov](mailto:Earl.Key@wsdot.wa.gov) or (360) 705-7095.

Sincerely,

Earl Key  
Senior Director of Transportation Equity  
Washington State Department of Transportation



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# HQ Local Programs

### DBE and FSBE Programs - Construction Phase

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1        **Federal Small Business Enterprise Participation**  
2        (November 14, 2025, APWA GSP Option D)  
3  
4        1-07.11 is supplemented with the following:  
5  
6        The Federal Small Business Enterprise (FSBE) Program is an element of the  
7        Disadvantaged Business Enterprise (DBE) in accordance with the requirements of 49  
8        CFR Part 26.39. Failure to comply with the requirements of this Specification may result  
9        in sanctions as provided by the Contract.  
10  
11      **FSBE Abbreviations and Definitions**  
12      **Broker** – A business firm that provides a bona fide service, such as  
13      professional, technical, consultant or managerial services and assistance in  
14      the procurement of essential personnel, facilities, equipment, materials, or  
15      supplies required for the performance of the Contract; or persons/companies  
16      who arrange or expedite transactions.  
17  
18      **Certified Business Description** – Specific descriptions of work the FSBE is  
19      certified to perform, as identified in the Certified Firm Directory, under the  
20      Vendor Information page.  
21  
22      **Certified Firm Directory** – A database of all Disadvantaged Business  
23      Enterprises, including those identified as a FSBE, currently certified by  
24      Washington State. The on-line Directory is available to Bidders for their use in  
25      identifying and soliciting interest from FSBE firms. The database is located  
26      under the Firm Certification section of the Diversity Management and  
27      Compliance System web page at: <https://omwbe.diversitycompliance.com>.  
28  
29      Firms certified by OMWBE as SBE, DBE can be used to fulfill the FSBE  
30      mandatory goal on a project.  
31  
32      **Commercially Useful Function (CUF)** – 49 CFR 26.55(c)(1) defines  
33      commercially useful function as: “A FSBE performs a commercially useful  
34      function when it is responsible for execution of the work of the contract and is  
35      carrying out its responsibilities by performing, managing, and supervising the  
36      work involved. To perform a commercially useful function, the FSBE must also  
37      be responsible, with respect to materials and supplies used on the contract, for  
38      negotiating price, determining quality and quantity, ordering the material, and  
39      installing (where applicable) and paying for the material itself. To determine  
40      whether a FSBE is performing a commercially useful function, you must  
41      evaluate the amount of work subcontracted, industry practices, whether the  
42      work it is performing and the DBE credit claimed for its performance of the  
43      work, and other relevant factors.”  
44  
45      **FSBE** – A firm certified by OMWBE as meeting Federal requirements of a  
46      small business enterprise. All firms on the OMWBE Certified Firm Directory  
47      with the designation of SBE or DBE are FSBEs.  
48  
49      **Good Faith Efforts** – Efforts to achieve the FSBE Goal or other requirements  
50      of this part which, by their scope, intensity, and appropriateness to the  
51      objective, can reasonably be expected to fulfill the program requirement.  
52

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### Appendix B



## HQ LP Project Development HQ Local Programs

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## DBE and FSBE Programs - Construction Phase

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1                   **Manufacturer (FSBE)** – A FSBE firm that operates or maintains a factory or  
2 establishment that produces on the premises the materials, supplies, articles,  
3 or equipment required under the Contract. A FSBE Manufacturer shall  
4 produce finished goods or products from raw or unfinished material or  
5 purchase and substantially alters goods and materials to make them suitable  
6 for construction use before reselling them.  
7  
8                   **Reasonable Fee (FSBE)** – For purposes of Brokers or service providers a  
9 reasonable fee shall not exceed 5% of the total cost of the goods or services  
10 brokered.  
11  
12                   **Regular Dealer (FSBE)** – A FSBE firm that owns, operates, or maintains a  
13 store, warehouse, or other establishment in which the materials or supplies  
14 required for the performance of a Contract are bought, kept in stock, and  
15 regularly sold to the public in the usual course of business. To be a Regular  
16 Dealer, the FSBE firm must be an established regular business that engages  
17 in as its principal business and in its own name the purchase and sale of the  
18 products in question. A Regular Dealer in such items as steel, cement, gravel,  
19 stone, and petroleum products need not own, operate or maintain a place of  
20 business if it both owns and operates distribution equipment for the products.  
21 Any supplementing of regular dealers' own distribution equipment shall be by  
22 long-term formal lease agreements and not on an ad-hoc basis. Brokers,  
23 packagers, manufacturers' representatives, or other people who arrange or  
24 expedite transactions shall not be regarded as Regular Dealers within the  
25 meaning of this definition.  
26  
27                   **FSBE Goal**  
28                   The Contracting Agency has established an FSBE Goal for this Contract in the  
29 amount of: \*\*\* \$1\$ \*\*\*  
30  
31                   **Crediting FSBE Participation**  
32                   All FSBE subcontractors shall be certified before the subcontract on which they are  
33 participating is executed.  
34  
35                   FSBE participation is only credited upon payment to the FSBE.  
36  
37                   The following are some definitions of what may be counted as FSBE participation.  
38  
39                   **FSBE Prime Contractor**  
40                   Only take credit for that portion of the total dollar value of the Contract equal to  
41 the distinct, clearly defined portion of the Work that the FSBE Prime Contractor  
42 performs with its own forces and is certified to perform.  
43  
44                   **FSBE Subcontractor**  
45                   Only take credit for that portion of the total dollar value of the subcontract that  
46 is equal to the distinct, clearly defined portion of the Work that the FSBE  
47 performs with its own forces and is certified to perform. The value of work  
48 performed by the FSBE includes the cost of supplies and materials purchased  
49 by the FSBE and equipment leased by the FSBE, for its work on the contract.  
50 Supplies, materials or equipment obtained by the FSBE that are not utilized or  
51

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### DBE and FSBE Programs - Construction Phase

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1 incorporated in the contract work by the FSBE will not be eligible for FSBE  
2 credit.  
3  
4

5 The supplies, materials, and equipment purchased or leased from the  
6 Contractor or its affiliate, including any Contractor's resources available to  
7 FSBE subcontractors at no cost, shall not be credited.  
8  
9

10 FSBE credit will not be given in instances where the equipment lease includes  
11 the operator. The FSBE is expected to operate the equipment used in the  
12 performance of its work under the contract with its own forces. Situations  
13 where equipment is leased and used by the FSBE, but payment is deducted  
14 from the Contractor's payment to the FSBE is not allowed.  
15  
16

17 When the subcontractor is an FSBE, the following apply:  
18  
19

- 20 1. If a FSBE subcontracts a portion of the Work of its contract to another  
21 firm, the value of the subcontracted Work may be counted toward the  
22 FSBE Goal only if the lower-tier subcontractor is also a FSBE.  
23  
24
- 25 2. Work subcontracted to a non-FSBE does not count towards the FSBE  
26 Goal nor FSBE participation.  
27  
28

#### FSBE Subcontract and Lower Tier Subcontract Documents

29 There must be a subcontract agreement that complies with 49 CFR Part 26  
30 and fully describes the distinct elements of Work committed to be performed by  
31 the FSBE.  
32  
33

#### FSBE Service Provider

34 The value of fees or commissions charged by a FSBE firm behaving in a  
35 manner of a Broker, or another service provider for providing a bona fide  
36 service, such as professional, technical, consultant, managerial services, or for  
37 providing bonds or insurance specifically required for the performance of the  
38 contract will only be credited as FSBE participation, if the fee/commission is  
39 determined by the Contracting Agency to be reasonable and the firm has  
40 performed a CUF.  
41  
42

#### Temporary Traffic Control

43 If the FSBE firm is being utilized in the capacity of only "Flagging", the FSBE  
44 firm must provide a Traffic Control Supervisor (TCS) and flagger, which are  
45 under the direct control of the FSBE. The FSBE firm shall also provide all  
46 flagging equipment (e.g. paddles, hard hats, and vests).  
47  
48

49 If the FSBE firm is being utilized in the capacity of "Traffic Control Services",  
50 the FSBE firm must provide a TCS, flaggers, and traffic control items (e.g.,  
51 cones, barrels, signs, etc.) and be in total control of all items in implementing  
52 the traffic control for the project.  
53  
54

#### Trucking

55 FSBE trucking firm participation may only be credited as FSBE participation for  
56 the value of the hauling services, not for the materials being hauled unless the  
57 trucking firm is also certified as a supplier of those materials. In situations  
58 where the FSBE's work is priced per ton, the value of the hauling service must  
59

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1 be calculated separately from the value of the materials to determine FSBE  
2 credit for hauling

The FSBE trucking firm must own and operate at least one licensed, insured and operational truck on the contract. The truck must be of the type that is necessary to perform the hauling duties required under the contract. The FSBE receives credit for the value of the transportation services it provides on the Contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs.

10  
11 The FSBE may lease additional trucks from another FSBE firm. The FSBE  
12 who leases additional trucks from another FSBE firm receives credit for the  
13 value of the transportation services the lessee FSBE provides on the Contract.

14  
15 The trucking Work subcontracted to any non-FSBE trucking firm will not  
16 receive credit for Work done on the project.

18 The FSBE may lease trucks from a truck leasing company (recognized truck  
19 rental center) but can only receive credit towards FSBE participation if the  
20 FSBE uses its own employees as drivers.

22 **FSBE Manufacturer and FSBE Regular Dealer**  
23 One hundred percent (100%) of the cost of the manufactured product obtained  
24 from a FSBE manufacturer can count as FSBE participation. If the  
25 manufacturer is an FSBE, participation may count towards the FSBE Goal.

27 Sixty percent (60%) of the cost of materials or supplies purchased from a  
28 FSBE Regular Dealer may be credited as FSBE Participation. If the role of the  
29 FSBE Regular Dealer is determined to be that of a Broker, then FSBE credit  
30 shall be limited to the fee or commission it receives for its services. Regular  
31 Dealer status and the amount of credit is determined on a Contract-by-  
32 Contract basis. If the regular dealer is a FSBE, participation may count  
33 towards the FSBE Goal.

34 FSBE firms proposed to be used as a Regular Dealer must be approved  
35 before being used on a project. The WSDOT Approved Regular Dealer list  
36 published on WSDOT's Office of Equal Opportunity (OEO) web site must  
37 include the specific project for which approval is being requested. For  
38 purposes of FSBE Goal participation, the Regular Dealer must submit the  
39 Regular Dealer Status Request form and receive approval prior to providing  
40 any equipment or materials or the signing of a purchase order, invoice, or  
41 subcontract.

43 Purchase of materials or supplies from a FSBE which is neither a  
44 manufacturer nor a regular dealer, (i.e. Broker) only the fees or commissions  
45 charged for assistance in the procurement of the materials and supplies, or  
46 fees or transportation charges for the delivery of materials or supplies required  
47 on a job site, can count as FSBE participation provided the fees are not  
48 excessive as compared with fees customarily allowed for similar services.  
49 Documentation will be required to support the fee/commission charged by the  
50 FSBE. The cost of the materials and supplies themselves cannot be counted  
51 toward as FSBE participation.  
52

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2  
3 **Good Faith Effort Documentation**  
4 GFE is evaluated at Physical Completion when determining whether the Contractor  
5 has satisfied its FSBE Goal.

6 The Contracting Agency will measure GFE using the guidance in 49 CFR Part 26,  
7 Appendix A. The following is a list of the types of actions which may be considered  
8 as part of the Contractor's GFE to achieve [FSBE] participation. It is not intended to  
9 be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other  
10 factors or types of effort may be relevant in appropriate cases.

11

12 1. Solicited through all reasonable and available means the interest of all  
13 certified FSBEs who had the capability to perform the Work of the  
14 Contract. The Contractor must have solicited this interest within sufficient  
15 time to allow the FSBEs to respond to the solicitation. The Contractor  
16 must have determined with certainty that the FSBEs were interested in  
17 taking appropriate steps to follow up initial solicitations with potential  
18 FSBEs.

19

20 2. Selected portions of the Work to be performed by FSBEs to increase the  
21 likelihood that the FSBE Goal will be achieved. This includes, where  
22 appropriate, breaking out contract Work items into economically feasible  
23 units to facilitate FSBE participation, even when the Contractor might  
24 otherwise prefer to perform these Work items with its own forces.

25

26 3. Provided interested FSBEs with adequate information about the Plans,  
27 Specifications, and requirements of the Contract in a timely manner to  
28 assist them in responding to a solicitation.

29

30 a. Negotiated in good faith with interested FSBEs. It is the Contractor's  
31 responsibility to make a portion of the Work available to FSBE  
32 subcontractors and suppliers and to select those portions of the Work  
33 or material needs consistent with the available FSBE subcontractors  
34 and suppliers, to facilitate FSBE participation. Evidence of such  
35 negotiation includes the names, addresses, and telephone numbers  
36 of FSBEs that were contacted; a description of the information  
37 provided regarding the Plans and Specifications for the Work selected  
38 for subcontracting; and evidence as to why additional agreements  
39 could not be reached for FSBEs to perform the Work.

40

41 b. A Contractor using good business judgment would consider a number  
42 of factors in negotiating with FSBE subcontractors, including taking  
43 the firm's price and capabilities into consideration. The fact that there  
44 may be some additional costs involved in finding and using FSBEs is  
45 not considered a sufficient reason for a Bidder's failure to meet the  
46 FSBE Goal, if such costs are reasonable. Also, the ability or desire of  
47 a Contractor to perform the Work of a Contract with its own  
48 organization does not relieve the Contractor of the responsibility to  
49 make Good Faith Efforts. Contractors are not, however, required to  
50 accept higher quotes from FSBEs if the price difference was  
51 excessive or unreasonable.

52

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- 1       4. Not rejecting FSBEs as being unqualified without sound reasons based on  
2       a thorough investigation of their capabilities. The Contractor's standing  
3       within its industry, membership in specific groups, organizations, or  
4       associations and political or social affiliations (for example union vs. non-  
5       union employee status) are not legitimate causes for the rejection or non-  
6       solicitation of bids in the Contractor's efforts to meet the FSBE Goal.
- 7       5. Made efforts to assist interested FSBEs in obtaining bonding, lines of  
8       credit, or insurance as required by the recipient or Contractor.
- 9       6. Made efforts to assist interested FSBEs in obtaining necessary  
10      equipment, supplies, materials, or related assistance or services.
- 11      7. Effectively used the services of available FSBE community organizations;  
12      FSBE contractors' groups; local, State, and Federal small business  
13      assistance offices; and other organizations as allowed on a case-by-case  
14      basis to provide assistance in the recruitment and placement of FSBEs.
- 15      8. Documentation of GFE must include copies of each FSBE and non-FSBE  
16      subcontractor quotes submitted to the Bidder when a non-FSBE  
17      subcontractor is selected over a FSBE for Work on the Contract.

#### Procedures after Execution

##### Commercially Useful Function (CUF)

The Contractor may only take credit for the payments made for Work performed by a FSBE that is determined to be performing a CUF. Payment must be commensurate with the work performed by the FSBE. This applies to all FSBEs performing Work on a project, if the Contractor wants to receive credit for their participation. The Engineer will conduct CUF reviews to ascertain whether FSBEs are performing a CUF. A FSBE performs a CUF when it is carrying out its responsibilities of its contract by performing, managing, and supervising the Work involved. The FSBE must be responsible for negotiating price; determining quality and quantity; ordering the material, installing (where applicable); and paying for the material itself. If a FSBE does not perform "all" of these functions on a furnish-and-install contract, it has not performed a CUF, and the cost of materials cannot be counted toward FSBE Goal. Leasing equipment from a leasing company is allowed. However, leasing/purchasing equipment from the Contractor is not allowed. Lease agreements shall be provided prior to the Subcontractor beginning Work. Any use of the Contractor's equipment by a FSBE may not be credited as countable participation.

The FSBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed to obtain the appearance of FSBE participation.

For a FSBE traffic control company to be performing a CUF, the FSBE must be in control of its work inclusive of supervision. The FSBE shall employ a Traffic Control Supervisor who is directly involved in the management and supervision of the traffic control employees and services.

## Appendix B



## HQ LP Project Development HQ Local Programs

# HQ Local Programs

### DBE and FSBE Programs - Construction Phase

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1        The following are some of the factors that the Engineer will use in determining  
2        whether an FSBE trucking company is performing a CUF:

3

4        • The FSBE shall be responsible for the management and supervision  
5        of the entire trucking operation for which it is responsible for on the  
6        contract. The owner demonstrates business related knowledge,  
7        shows up on site and is determined to be actively running the  
8        business.

9

10        • The FSBE shall own and operate at least one fully licensed, insured,  
11        and operational truck used on the Contract. The drivers of the trucks  
12        owned and leased by the FSBE must be exclusively employed by the  
13        FSBE and reflected on the FSBE's payroll.

14

15        • Lease agreements for trucks shall indicate that the FSBE has  
16        exclusive use of and control over the truck(s). This does not preclude  
17        the leased truck from working for others provided it is with the  
18        consent of the FSBE, and the lease provides the FSBE absolute  
19        priority for use of the leased truck.

20

21        • Leased trucks shall display the name and identification number of the  
22        FSBE.

23

24        **Truck Unit Listing Log**

25        In addition to the subcontracting requirements of Section 1-08.1, each FSBE  
26        trucking firm shall submit supplemental information consisting of a completed  
27        Primary DBE/FSBE Truck Unit Listing Log (WSDOT Form 350-077) and all  
28        Rental/Lease agreements (if applicable). The supplemental information shall  
29        be submitted in an electronic format to the Engineer prior to any trucking  
30        services being performed for FSBE credit. Incomplete or incorrect  
31        supplemental information will be returned for correction. The corrected Primary  
32        Truck Unit Listing Log and any Updated Primary Truck Unit Listing Logs shall  
33        be submitted and accepted by the Engineer no later than ten calendar days of  
34        utilizing applicable trucks. Failure to submit or update the DBE Truck Unit  
35        Listing Log may result in trucks not being credited as FSBE participation.

36

37        Each FSBE trucking firm shall complete a Daily Truck Unit Listing Log for each  
38        day that the FSBE performs trucking services for FSBE credit. The Daily Truck  
39        Unit Listing Log forms shall be submitted by Friday of the week after the Work  
40        was performed by email to the following email addresses:

41        **\*\*\*\*\*\$2\$\*\*\*\*\***

42        **Joint Checking**

43        A joint check is a check between a subcontractor and the Contractor to the  
44        supplier of materials/supplies. The check is issued by the Contractor as payer  
45        to the subcontractor and the material supplier jointly for items to be  
46        incorporated into the project. The FSBE must release the check to the supplier,  
47        while the Contractor acts solely as the guarantor.

48

49

50        A joint check agreement must be approved by the Engineer and requested by  
51        the FSBE involved using the DBE Joint Check Request Form (WSDOT Form

52

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## Appendix B



## HQ LP Project Development HQ Local Programs

# HQ Local Programs

### DBE and FSBE Programs - Construction Phase

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1       #272-053) prior to its use. The form must accompany the FSBE Joint Check  
2       Agreement between the parties involved, including the conditions of the  
3       arrangement and expected use of the joint checks.

4  
5       The approval to use joint checks and the use will be closely monitored by the  
6       Engineer. To receive FSBE credit for performing a CUF with respect to  
7       obtaining materials and supplies, a FSBE must "be responsible for negotiating  
8       price, determining quality and quantity, ordering the material, installing and  
9       paying for the material itself." The Contractor shall submit DBE Joint Check  
10      Request Form for the Engineer approval prior to using a joint check.

11  
12      Material costs paid by the Contractor directly to the material supplier are not  
13      allowed. If proper procedures are not followed or the Engineer determines that  
14      the arrangement results in lack of independence for the FSBE involved, no  
15      FSBE credit will be given for the FSBE's participation as it relates to the  
16      material cost.

17  
18      **Prompt Payment**  
19      Prompt payment to all subcontractors shall be in accordance with Section 1-  
20      08.1. Prompt payment requirements apply to progress payments as well as  
21      return of retainage.

22  
23      **Subcontracts**  
24      When FSBE is performing Work on the Contract, a copy of the executed  
25      subcontract between the Contractor and the FSBE subcontractor shall be  
26      submitted to WSDOT OECR. The executed subcontracts are submitted  
27      through the Diversity Management and Compliance System (DMCS) by  
28      uploading to the project documents tab.

29  
30      **Reporting**  
31      The Contractor and all subcontractors/suppliers/service providers that utilize  
32      FSBEs to perform work on the project, shall maintain appropriate records that  
33      will enable the Engineer to verify FSBE participation throughout the life of the  
34      project.

35  
36      Refer to Section 1-08.1 for additional reporting requirements associated with  
37      this contract.

38  
39      **Decertification**  
40      When a FSBE is "decertified" from the FSBE program during the Contract, the  
41      participation of that FSBE shall continue to count as FSBE participation if the  
42      subcontract with the FSBE was executed prior to the decertification notice. The  
43      Contractor cannot receive credit if a FSBE is decertified prior to having an  
44      executed subcontract agreement in place.

45  
46      **Payment**  
47      Compensation for all costs involved with complying with the conditions of this  
48      Specification and any other associated FSBE requirements is included in payment  
49      for the associated Contract items of Work, except otherwise provided in the  
50      Specifications.

### Appendix B



## HQ LP Project Development HQ Local Programs

# HQ Local Programs

## DBE and FSBE Programs - Construction Phase

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Date: January 6, 2026

Date

Principle, Title  
Company Name  
Address  
City, State, Zip

Contract Number  
Project Title  
Federal Aid Number

Dear:

This letter is to advise you that the contract for the above-mentioned project has been awarded to your firm on (Month/Day/Year) at your bid price of \$(total award amount).

Prior to submitting the signed contract for execution, (Awarded Contractor's Company Name) will provide the following items:

- Correct business name and mailing address and;
- Proof of licensure for Electrical, Plumbing, and HVAC contractors, if applicable.

Send this information to (Local Agency name and address). Failure to provide this information prior to execution will result in forfeiture of the bidder's proposal security.

The contract will be forwarded to you under separate cover. The contract must be signed and returned in accordance with the mailing instructions furnished with the contract documents. Please return these documents within 20 calendar days after the date of award.

Sincerely,

Local Agency

cc: Region Local Programs Engineer

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## Appendix C