



HQ Local Programs

DBE and FSBE Programs - Construction Phase

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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

Agencies shall request an FSBE goals for all projects. To initiate this review, the Local Agency must submit an engineer's estimate and working days for a construction project to the Region Local Programs Engineer when the contract work is determined. The estimate must show the bid items, quantities and costs for construction.

Commercially useful Function (CUF) and other Compliance Measures

DBE Program

- On Site Reviews are not required during the DBE certification re-evaluation period.



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- 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 (LAG 46.25-27 - See Appendix D for summary)

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 any bid must request concurrence from Local Programs.



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After the certification of bid tabs and verification of funding is complete, 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 for any partial or full termination. The Contracting Agency must submit Change Orders to Region Local Programs for concurrence by HQ Local Programs.

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 is the responsibility of the Contracting Agency as indicated in LAG



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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

Appendix D – Post Bid Opening Process for Federal Aid Contracts



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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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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 or (360) 705-7095.

Sincerely,

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



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Federal Small Business Enterprise Participation (November 14, 2025, APWA GSP Option D)

1-07.11 is supplemented with the following:

The Federal Small Business Enterprise (FSBE) Program is an element of the Disadvantaged Business Enterprise (DBE) in accordance with the requirements of 49 CFR Part 26.39. Failure to comply with the requirements of this Specification may result in sanctions as provided by the Contract.

FSBE Abbreviations and Definitions

Broker – A business firm that provides a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the Contract; or persons/companies who arrange or expedite transactions.

Certified Business Description – Specific descriptions of work the FSBE is certified to perform, as identified in the Certified Firm Directory, under the Vendor Information page.

Certified Firm Directory – A database of all Disadvantaged Business Enterprises, including those identified as a FSBE, currently certified by Washington State. The on-line Directory is available to Bidders for their use in identifying and soliciting interest from FSBE firms. The database is located under the Firm Certification section of the Diversity Management and Compliance System web page at: <https://omwbe.diversitycompliance.com>.

Firms certified by OMWBE as SBE, DBE can be used to fulfill the FSBE mandatory goal on a project.

Commercially Useful Function (CUF) – 49 CFR 26.55(c)(1) defines commercially useful function as: "A FSBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the FSBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a FSBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is performing and the DBE credit claimed for its performance of the work, and other relevant factors."

FSBE – A firm certified by OMWBE as meeting Federal requirements of a small business enterprise. All firms on the OMWBE Certified Firm Directory with the designation of SBE or DBE are FSBEs.

Good Faith Efforts – Efforts to achieve the FSBE Goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

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

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- 1 incorporated in the contract work by the FSBE will not be eligible for FSBE
2 credit.
3
4 The supplies, materials, and equipment purchased or leased from the
5 Contractor or its affiliate, including any Contractor's resources available to
6 FSBE subcontractors at no cost, shall not be credited.
7
8 FSBE credit will not be given in instances where the equipment lease includes
9 the operator. The FSBE is expected to operate the equipment used in the
10 performance of its work under the contract with its own forces. Situations
11 where equipment is leased and used by the FSBE, but payment is deducted
12 from the Contractor's payment to the FSBE is not allowed.
13
14 When the subcontractor is an FSBE, the following apply:
15
16 1. If a FSBE subcontracts a portion of the Work of its contract to another
17 firm, the value of the subcontracted Work may be counted toward the
18 FSBE Goal only if the lower-tier subcontractor is also a FSBE.
19
20 2. Work subcontracted to a non-FSBE does not count towards the FSBE
21 Goal nor FSBE participation.
22
23 **FSBE Subcontract and Lower Tier Subcontract Documents**
24 There must be a subcontract agreement that complies with 49 CFR Part 26
25 and fully describes the distinct elements of Work committed to be performed by
26 the FSBE.
27
28 **FSBE Service Provider**
29 The value of fees or commissions charged by a FSBE firm behaving in a
30 manner of a Broker, or another service provider for providing a bona fide
31 service, such as professional, technical, consultant, managerial services, or for
32 providing bonds or insurance specifically required for the performance of the
33 contract will only be credited as FSBE participation, if the fee/commission is
34 determined by the Contracting Agency to be reasonable and the firm has
35 performed a CUF.
36
37 **Temporary Traffic Control**
38 If the FSBE firm is being utilized in the capacity of only "Flagging", the FSBE
39 firm must provide a Traffic Control Supervisor (TCS) and flagger, which are
40 under the direct control of the FSBE. The FSBE firm shall also provide all
41 flagging equipment (e.g. paddles, hard hats, and vests).
42
43 If the FSBE firm is being utilized in the capacity of "Traffic Control Services",
44 the FSBE firm must provide a TCS, flaggers, and traffic control items (e.g.,
45 cones, barrels, signs, etc.) and be in total control of all items in implementing
46 the traffic control for the project.
47
48 **Trucking**
49 FSBE trucking firm participation may only be credited as FSBE participation for
50 the value of the hauling services, not for the materials being hauled unless the
51 trucking firm is also certified as a supplier of those materials. In situations
52 where the FSBE's work is priced per ton, the value of the hauling service must



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1 be calculated separately from the value of the materials to determine FSBE
2 credit for hauling
3
4 The FSBE trucking firm must own and operate at least one licensed, insured
5 and operational truck on the contract. The truck must be of the type that is
6 necessary to perform the hauling duties required under the contract. The FSBE
7 receives credit for the value of the transportation services it provides on the
8 Contract using trucks it owns or leases, licenses, insures, and operates with
9 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.
17
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.
21
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.
26
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
35 FSBE firms proposed to be used as a Regular Dealer must be approved
36 before being used on a project. The WSDOT Approved Regular Dealer list
37 published on WSDOT's Office of Equal Opportunity (OEO) web site must
38 include the specific project for which approval is being requested. For
39 purposes of FSBE Goal participation, the Regular Dealer must submit the
40 Regular Dealer Status Request form and receive approval prior to providing
41 any equipment or materials or the signing of a purchase order, invoice, or
42 subcontract.
43
44 Purchase of materials or supplies from a FSBE which is neither a
45 manufacturer nor a regular dealer, (i.e. Broker) only the fees or commissions
46 charged for assistance in the procurement of the materials and supplies, or
47 fees or transportation charges for the delivery of materials or supplies required
48 on a job site, can count as FSBE participation provided the fees are not
49 excessive as compared with fees customarily allowed for similar services.
50 Documentation will be required to support the fee/commission charged by the
51 FSBE. The cost of the materials and supplies themselves cannot be counted
52 toward as FSBE participation.

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Good Faith Effort Documentation

GFE is evaluated at Physical Completion when determining whether the Contractor has satisfied its FSBE Goal.

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

1. Solicited through all reasonable and available means the interest of all certified FSBEs who had the capability to perform the Work of the Contract. The Contractor must have solicited this interest within sufficient time to allow the FSBEs to respond to the solicitation. The Contractor must have determined with certainty that the FSBEs were interested in taking appropriate steps to follow up initial solicitations with potential FSBEs.
2. Selected portions of the Work to be performed by FSBEs to increase the likelihood that the FSBE Goal will be achieved. This includes, where appropriate, breaking out contract Work items into economically feasible units to facilitate FSBE participation, even when the Contractor might otherwise prefer to perform these Work items with its own forces.
3. Provided interested FSBEs with adequate information about the Plans, Specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.
 - a. Negotiated in good faith with interested FSBEs. It is the Contractor's responsibility to make a portion of the Work available to FSBE subcontractors and suppliers and to select those portions of the Work or material needs consistent with the available FSBE subcontractors and suppliers, to facilitate FSBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of FSBEs that were contacted; a description of the information provided regarding the Plans and Specifications for the Work selected for subcontracting; and evidence as to why additional agreements could not be reached for FSBEs to perform the Work.
 - b. A Contractor using good business judgment would consider a number of factors in negotiating with FSBE subcontractors, including taking the firm's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using FSBEs is not considered a sufficient reason for a Bidder's failure to meet the FSBE Goal, if such costs are reasonable. Also, the ability or desire of a Contractor to perform the Work of a Contract with its own organization does not relieve the Contractor of the responsibility to make Good Faith Efforts. Contractors are not, however, required to accept higher quotes from FSBEs if the price difference was excessive or unreasonable.

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

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

- The FSBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible for on the contract. The owner demonstrates business related knowledge, shows up on site and is determined to be actively running the business.
- The FSBE shall own and operate at least one fully licensed, insured, and operational truck used on the Contract. The drivers of the trucks owned and leased by the FSBE must be exclusively employed by the FSBE and reflected on the FSBE's payroll.
- Lease agreements for trucks shall indicate that the FSBE has exclusive use of and control over the truck(s). This does not preclude the leased truck from working for others provided it is with the consent of the FSBE, and the lease provides the FSBE absolute priority for use of the leased truck.
- Leased trucks shall display the name and identification number of the FSBE.

Truck Unit Listing Log

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

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

\$2\$

Joint Checking

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

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



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

Appendix B



HQ Local Programs

DBE and FSBE Programs - Construction Phase

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Date: August 14, 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



HQ Local Programs

DBE and FSBE Programs - Construction Phase

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Date: August 14, 2026

Post Bid Opening Process for Federal Construction Contracts, 23 CFR 635.113 and 114

LAG 46.25-27 (modified here-in)

Agency Procedures after bid opening: Following Agency bid opening, Agencies must follow Agency procedures, Federal, State and Local regulations and laws, to verify bidder responsibility. Check for:

- all forms,
- bid deposit/proposal bond,
- and other applicable documents.
- Determine if missing items are allowed as supplemental information within a certain time period following bid opening.

Disbarment: Check System for Award Management (SAM) [SAM.GOV](https://sam.gov) to ensure the apparent low bidder is not an excluded Contractor.

Bid Tabulations: Compile bids into a bid tabulation document. Corrections to the bid tabulations shall be made in accordance with Section 1-02, 1-03.1 SS and APWA 1-03.1 (as applicable). Once completed, check bids for unbalancing of unit prices. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded. When unbalancing has occurred, and the Agency still wishes to award the construction contract, the Agency must submit justification to proceed with contract award with their written request for concurrence to award.

Certification of Bid Tabulations – Sign and submit the bid tabulations with the following:

This certifies that the bid tabulations have been reviewed as presented for unbalanced bid items and reasonable costs and recommend approval to award to the apparent low responsive and responsible bidder: _____

Formal Request for Rejection of bid(s):

- a) When an Agency rejects, declines to read, or consider a low bid on the grounds that it is not responsive because of noncompliance with a requirement which was not clearly identified in the bidding documents, the Agency shall submit justification for its action and request concurrence from Local Programs. (23 CFR 635.114)
- b) If the Agency determines that the lowest bid is not responsive or the bidder is not responsible, the Agency shall so notify and obtain Local Programs concurrence.



HQ Local Programs

DBE and FSBE Programs - Construction Phase

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Date: August 14, 2026

- c) Any proposal by the Agency to reject all bids received for a Federal-aid contract shall be submitted to Local Programs for concurrence, accompanied by adequate written justification.

Formal Request for Concurrence – When an Agency has determined the apparent low responsive and responsible bidder, email the Region Local Programs office and provide the following:

- a) Request to award the contract to the apparent low responsive and responsible bidder;
- b) Certified Bid Tabulations;
- c) Bidder's Questionnaires; and
- d) When bid exceeds the available funding, written justification and a commitment for funding the shortfall of construction funds. The commitment for the additional funding may be an email from the funding manager (LP, MPO, TIB, etc.) or a commitment from the Agency to use local funding.

Agency Award – Once the Agency has received concurrence from HQ Local Programs they may send out their official award letter to the apparent low responsive and responsible bidder.