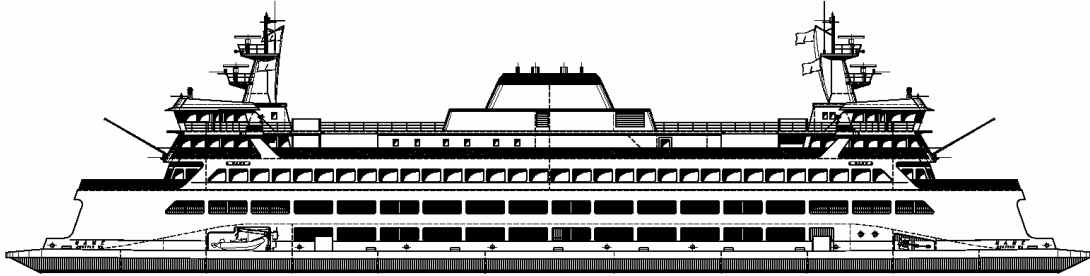


EXHIBIT 12



WASHINGTON STATE FERRIES
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

NEW 144 - AUTO FERRIES
DESIGN-BUILD CONTRACT NO. 00-6674

PART D
CONTRACT GENERAL CONDITIONS – SMALL BUSINESS
ENTERPRISE PARTICIPATION

8/3/21 Final Revision (001H)



1 **1. SMALL BUSINESS ENTERPRISE PARTICIPATION**

2
3 **1.1 General Statement**

4 The participation of Small Business Enterprises (SBEs) is an important strategic
5 objective for the State of Washington. Enforceable goals for Small Business
6 Enterprises are included in this Contract. The Contractor shall utilize SBEs in
7 accordance with this Exhibit and Chapter RCW 47.60.
8

9 **1.2 Non-Discrimination**

10 Contractors shall not create barriers to open and fair opportunities for all businesses,
11 including SBEs, to participate in the work on this Contract. This includes the
12 opportunity to compete for opportunities as sources of supplies, equipment,
13 construction, or services.
14

15
16 **1.3 Enforceable SBE Participation Goal**

17 A goal for enforceable SBE participation has been established as a percentage of the
18 Change Order value for the Part D scope of work covering the fifth Vessel under
19 the Contract, i.e., the first Hybrid Electric Olympic Class (HEOC) Vessel. This is
20 also the minimum required amount of SBE participation specified as a percentage
21 of the Contract amount for all Change Orders regarding the Part D scope of work
22 for the first HEOC Vessel.
23

24 **For the first HEOC Vessel, the Contracting Agency has established an**
25 **enforceable SBE Goal for the Part D scope of work (i.e., Detailed Design, Long**
26 **Lead Materials, and Construction phase(s) equal to an eight percent (8%) of**
27 **the aggregate value for all Change Orders regarding the Part D scope of work**
28 **for the Vessel. Subsequent HEOC Vessels will be evaluated for SBE project**
29 **goals once construction of such Vessels is authorized.**
30

31 **WSDOT has established the following guidelines to achieve the enforceable 8%**
32 **SBE goal:**
33

	SBE Goal Percent
Detailed Design	19%
Long Lead Materials	1%
Construction	10%

34
35 If the Contractor falls short in attainment of a SBE Goal Percent in one or more of
36 the above guidelines, the Contractor has the ability to make it up in one of the other
37 listed categories of work.
38

1 The Contractor is not required to provide documentation of goal attainment as a
2 condition of executing the initial Change Order to commence the Part D scope of
3 work. The Contractor is required to meet the SBE Goal during performance of the
4 Part D scope of work for the first HEOC Vessel or show a good faith effort was
5 made to meet the SBE Goal.
6
7

8 **1.4 SBE Participation Plan**

9 Within sixty (60) calendar days after execution of Contract Change Order, to
10 commencing Part D scope of work, the Contractor shall submit an SBE
11 Participation Plan to the WSDOT Project Manager for review and comment. The
12 Plan, to be developed in consultation with the SBE Task Force Committee, shall
13 include information on:

14 1.4.1) Identification of a Small Business Enterprise Inclusion Manager, whose
15 responsibilities shall include, at a minimum, implementing the SBE Participation
16 Plan on a day-to-day basis, providing technical assistance to SBEs, disseminating
17 information to SBEs on available business opportunities, and more.
18

19 1.4.2) A policy statement signed by Project Manager, expressing the Contractors
20 commitment to utilize SBEs, outlines the various levels of responsibility and
21 describes the objectives of the SBE Participation Plan. The Contractor shall obtain
22 the written commitment of all Contractors related entities to comply with and
23 advance the intent of the policy statement.
24

25 1.4.3) A description of proposed actions/strategies that will be used (on a regular
26 basis) by the Contractor to solicit interest and bids from SBE
27 Subcontractors/Subconsultants on work opportunities arising from this project. The
28 Contractor should include the use of community service organizations; contractors'
29 groups; local, State, Federal business assistance offices and other organizations.
30

31 1.4.4) A list of projected SBE bid opportunities (scopes of work, including a
32 projected schedule) and any SBE commitments to date.
33

34 1.4.5) A description of proposed efforts to identify contract work items normally
35 completed by the Contractor into economically feasible units (e.g., smaller tasks or
36 quantities) with flexible timeframes for performance and delivery to facilitate SBE
37 participation.
38

39 1.4.6) A description of efforts by the Contractor to provide SBEs with adequate
40 information about the plans, specifications, and requirements.
41

42 1.4.7) A description of efforts by the Contractor to help remove barriers to SBE
43 participation, such as waiving bonding requirements, Project Labor Agreements
44 requirements, etc.
45

1 1.4.8) A description of efforts by the Contractor to assist interested SBEs in
2 obtaining necessary equipment, supplies, materials, or related assistance or services.

3
4 1.4.9) A description of proposed procedures identifying how and why an SBE is
5 deemed unqualified.

6
7 1.4.10) Commitment by the Contractor to submit monthly reports on SBE
8 participation to date.

9
10 1.4.11) Identify potential SBE opportunities for the project, including work
11 description.

12
13 1.4.12) The Contractor needs to describe how it will negotiate in good faith with
14 interested SBEs. It is the Contractor's responsibility to make portions of the work
15 available to SBEs and to select those portions of the work and/or material needs to
16 be consistent with the SBE availability.

17
18 On an annual basis, the Contractor shall submit an updated SBE Participation Plan
19 for WSDOT Review and Comment, to be submitted on or near the anniversary date
20 of the original SBE Participation Plan. The Contractor shall provide a thirty (30)
21 calendar day review period for WSDOT Review and Comment on all SBE
22 Participation Plan submittals.

23 **1.5 Small Business Enterprise Inclusion Manager**

24 The Contractor's Inclusion Manager shall be responsible for developing and
25 implementing the SBE Participation Plan as noted above. This person shall be
26 responsible for fulfilling the requirements noted in the guidelines referenced herein.
27 These duties shall include at a minimum the following: administration of the
28 Participation Plan, oversight of SBE goal attainment efforts, outreach and
29 networking with the SBE community, developing strategies for including SBE
30 firms in the project, developing and assisting in the procurement processes to ensure
31 SBE firms are provided opportunities for consideration during subcontract
32 procurement, submitting required updates in WSDOT's Diversity Management and
33 Compliance System, and other administrative duties as required. The Contractor's
34 Inclusion Manager shall also be the primary Contractor liaison with WSDOT's
35 Office of Equal Opportunity.

36
37 The Inclusion Manager identified in the Contract may not at any time be removed
38 or replaced without the written approval of the Project Engineer with concurrence
39 of the Director of the Office of Equal Opportunity. Requests for removal or
40 replacements shall be submitted in writing to the Project Engineer. To qualify for
41 approval, the written request shall document how the proposed replacement will be
42 equal to or better qualified than the previous Inclusion Manager.

43
44 Specifically, the written request shall include a resume (limit to two pages per
45 person) for the Inclusion Manager and a side-by-side comparison of the original
46 previous Inclusion Manager and the proposed Inclusion Manager. This side-by-side

1 comparison shall relate relevant experience and demonstrate that the proposed
2 replacement is equal or better.

3
4 The Project Engineer will use the criteria specified in the Contract to evaluate all
5 requests for removal or replacement of the Inclusion Manger. If for any reason a
6 substitution of the Inclusion Manager, is either requested by the Contractor or
7 replacement is required by WSDOT after award of the Contract, the Contactor may
8 incur liquidated damages.

9
10 Resumes for the Inclusion Manager shall be provided to the Project Engineer.
11 Resumes shall not exceed two pages. Resumes shall highlight the following
12 information: Relevant education, training, licensing, certification, years of
13 experience performing similar work, examples of relevant work including projects,
14 contracting methods used, dates spent on the project, and duties performed.

15
16 For the Inclusion Manager, the Contractor shall list three references to be included
17 on the resume. All references shall be persons who are familiar with the work of an
18 Inclusion Manager, and who could best answer specific questions. Provide the
19 reference's name, email address, and phone number. The reference may be a
20 consultant who acted on behalf of an owner for a project. The references must not
21 work for the same company of the person they are referencing. It is important to
22 ensure that the references listed have specific knowledge of the person's experience
23 on a project. The Contractor shall include the contracting method for each project
24 listed. WSDOT reserves the right to contact references other than those identified
25 by the Contractor to evaluate past performance.

26 27 **1.6 SBE Abbreviations and Definitions**

28 **Broker** – A person who provides a bona fide service, such as professional,
29 technical, consultant, brokerage, or managerial services and assistance in the
30 procurement of essential personnel, facilities, equipment, materials, or supplies
31 required for performance of a contractor; or persons/companies who arrange or
32 expedite transactions.

33 34 **Commercially Useful Function (CUF)**

35 A SBE performs a Commercially Useful Function (CUF) when it is responsible
36 for execution of the work of the Contract and is carrying out its responsibilities
37 by actually performing, managing, and supervising the work involved. To
38 perform a CUF, the SBE must also be responsible, with respect to materials
39 and supplies used on the Contract, for negotiating price, determining quality
40 and quantity, ordering the material, and installing (where applicable) and
41 paying for the material itself.

42
43 The SBE does not perform a CUF if its role is limited to that of an extra
44 participant in a transaction, contract, or project through which the funds are
45 passed in order to obtain the appearance of SBE participation.

1 **Manufacturer (SBE)** – A SBE firm that operates or maintains a factory or
2 establishment that produces on the premises the materials, supplies, articles, or
3 equipment required under the Contract. A SBE Manufacturer shall produce
4 finished goods or products from raw or unfinished material or purchases and
5 substantially alter goods and materials to make them suitable for construction
6 use before reselling them.
7

8 **Pass-Through** – When the SBE firm participates as an extra participant in a
9 transaction, through which funds are passed in order to give the appearance of
10 participation by the SBE firm and an attempt to count toward the enforceable
11 SBE Goal. Pass-Throughs are not countable towards the SBE Goal and are a
12 Violation of CUF requirements.
13

14 **Small Business** – A Washington in-state business, including a sole
15 proprietorship, corporation, partnership, or other legal entity, that:

- 16 • Certifies, under penalty of perjury, that it is owned and operated
17 independently from all other businesses and has either:
 - 18 ○ Fifty (50) or fewer employees; or
 - 19 ○ A gross revenue of less than seven million dollars (\$7,000,000)
20 annually as reported on its federal income tax return or its return filed
21 with the department of revenue over the previous three (3) consecutive
22 years; or
 - 23 ○ Is certified with the Washington State Office of Minority and
24 Women’s Business Enterprises (OMWBE) under Chapter 39.19 RCW.
25

26 Project legislation for the HEOC Vessels requires participation by SBEs with a
27 principal office in Washington State (see RCW 47.60.835). The in-state
28 requirement is an element of the DES statutory definition of an SBE (see RCW
29 39.26.010).
30

31 Note: the OMWBE certifies SBEs (and other categories) on a broad scale, to
32 include SBEs that are based inside Washington state and SBEs that may be
33 based in other states. As such, for the HEOC Vessels, any search of the
34 OMWBE database for SBE firms must be further refined to review only SBEs
35 with a principal office in Washington state, in order to be compliant with the
36 project legislation for the HEOC Vessels.
37

38 As a potential additional SBE resource, the Department of Enterprise Services
39 (DES) certifies SBEs that have a principal office in Washington state, as
40 required by the DES statutory definition of an SBE (see RCW 39.26.010). The
41 Contractor is encouraged to consult with the OMWBE regarding possible
42 certification of any such SBEs listed in the DES database.
43
44

1
2 **Supplier (SBE)** – A SBE firm that owns, operates, or maintains a store,
3 warehouse, or other establishment in which the materials or supplies required
4 for the performance of a Contract are bought, kept in stock, and regularly sold
5 to the public in the usual course of business. To be a SBE Supplier, the SBE
6 firm must be an established business that engages in as its principal business
7 and in its own name the purchase and sale of the products in question. A SBE
8 Supplier in such items as asphalt, steel, cement, gravel, stone, and petroleum
9 products need not own, operate or maintain a place of business if it both owns
10 and operates distribution equipment for the products. Any supplementing of
11 suppliers’ own distribution equipment shall be by long-term formal lease
12 agreements and not on an ad-hoc basis. Brokers, packagers, manufacturers’
13 representatives, or other persons who arrange or expedite transactions shall not
14 be regarded as SBE Suppliers within the meaning of this definition.
15

16 **1.7 Crediting SBE Participation**

17 Subcontractors proposed as counting toward the SBE Goal must be performing a
18 CUF during the execution of the Contract work.
19

20 SBE participation cannot be counted toward the SBE Goal until the amount being
21 counted has actually been paid to the SBE.
22

23 The following are some examples of what may be counted as SBE participation:
24

25 **SBE Prime Contractor**

26 Only take credit for that portion of the total dollar value of the Contract equal
27 to the distinct, clearly defined portion of the work that the SBE Prime
28 Contractor performs with its own forces.
29

30 **SBE Subcontractor**

31 Only take credit for that portion of the total dollar value of the subcontract that
32 is equal to the distinct, clearly defined portion of the work that the SBE
33 performs with its own forces. The value of work performed by the SBE
34 includes the cost of supplies and materials purchased by the SBE and
35 equipment leased by the SBE, for its work on the Contract. Supplies,
36 materials, or equipment obtained by a SBE that are not utilized or incorporated
37 in the Contract work by the SBE will not be eligible for SBE credit unless the
38 SBE is certified by the OMWBE as a supplier or equipment leasing company.
39

40 The supplies, materials, and equipment purchased or leased from the
41 Contractor or its affiliate, including any Contractor’s resources available to
42 SBE subcontractors at no cost, shall not be credited toward the SBE Goal.
43

44 SBE credit will not be given in instances where the SBE leases equipment
45 along with its operator. The SBE is expected to operate the equipment used in
46 the performance of its work under the Contract with its own forces.

1
2 If a SBE subcontracts a portion of the work of its contract to another firm, the
3 value of the subcontracted work may be counted toward the SBE Goal only if
4 the SBE’s lower-tier subcontractor is also an SBE.
5

6 **SBE Subcontract and Lower Tier Subcontract Documents**

7 There must be a subcontract agreement that fully describes the distinct
8 elements of work committed to be performed by the SBE. The subcontract
9 agreement shall incorporate the applicable requirements of the Contract.
10 Subcontract agreements of all tiers, including lease agreements shall be readily
11 available at the Project site for the WSDOT Project Engineer’s review.
12

13 **SBE Service Provider**

14 When a SBE participates as a service provider or consultant and provides a
15 bona fide service such as professional, technical, consultant, or managerial
16 services and who is not acting as a broker, one hundred percent (100%) of the
17 total cost counts toward the SBE Goal if the firm performs a CUF.
18

19 **SBE Broker**

20 When a SBE participates as a broker (i.e., arranging a transaction or service but
21 does not provide a work product or enhancement), only the dollar value of the
22 fee or commission charged or twenty percent (20%) of the total dollar value of
23 expenditures by the SBE (whichever is greater) counts toward the SBE Goal if
24 the firm performs a CUF.
25

26 **Temporary Traffic Control**

27 If the SBE firm is being utilized in the capacity of only “Flagging”, the SBE
28 firm must provide a Traffic Control Supervisor (TCS) and flagger which are
29 under the direct control of the SBE. The SBE firm shall also provide all
30 flagging equipment (e.g., paddles, hard hats, and safety vests).
31

32 If the SBE firm is being utilized in the capacity of “Traffic Control Services”,
33 the SBE firm must provide a TCS, flagger, and all of the necessary traffic
34 control items needed to perform the traffic control services required by the
35 Contract (e.g., cones, barrels, signs, PCMS, etc.).
36

37 **Trucking**

38 A SBE trucking firm’s participation will only be credited to the SBE Goal if:
39 (1) the SBE trucking firm owns and operates at least one licensed, insured, and
40 operational truck working on the project at all times, (2) trucking is called for
41 under the SBE firm’s subcontract agreement, and (3) the SBE trucking firm
42 performs a CUF. SBE trucking companies may lease additional trucks with
43 drivers from other SBE firms and count this work toward the SBE Goal.
44 Additional trucks leased from non-SBE firms must be driven by employees of
45 the SBE firm as shown on the SBE payroll.
46

1 A SBE trucking firm that is also a supplier or manufacturer of the materials or
2 goods being transported can count one hundred percent (100%) of the dollar
3 value toward the SBE Goal. For a SBE that is not a supplier or manufacturer,
4 only the fee charged to deliver the goods or materials can be counted toward
5 the SBE Goal.
6

7 **SBE Manufacturer and SBE Supplier**

8 If materials or supplies are obtained from a SBE Manufacturer, one hundred
9 percent (100%) of the cost of materials or supplies can count toward the SBE
10 Goal.
11

12 One hundred percent (100%) of the cost of materials or supplies purchased
13 from a SBE Supplier may be credited toward meeting the SBE Goal. If the
14 role of the SBE Supplier is determined to be that of a pass-through, then no
15 SBE credit will be given for its services. If the role of the SBE Supplier is
16 determined to be that of a Broker, then SBE credit shall be limited to the fee or
17 commission it receives for its services or twenty percent (20%) of the total
18 dollar value of expenditures by the SBE (whichever is greater) if the firm
19 performs a CUF.
20
21

22 **Changes in Work Committed to SBE**

23
24 The Contractor shall utilize the SBEs to perform the work and supply the
25 materials for which each is committed through an executed contract unless
26 prior written approval by the Project Engineer has been received by the
27 Contractor. The Contractor shall not be entitled to any payment for work or
28 material completed by the Contractor or subcontractors that was committed to
29 be completed by an SBE.
30

31 **Owner Initiated Changes**

32
33 In instances where the Project Engineer makes changes that result in changes to
34 work that was committed to an SBE, the Contractor may be directed to other
35 remaining Contract work for possible SBE participation.
36

37 **Contractor Initiated Changes**

38
39 The Contractor cannot change the scope or reduce the amount of work
40 committed to an SBE without good cause. Reducing SBE commitment is
41 viewed as partial SBE termination, and therefore subject to the termination
42 procedures below.
43
44

1 **Original Quantity Underruns**
2

3 In the event that work committed to an SBE firm underruns the original
4 planned quantities, the Contractor may be required to substitute other
5 remaining work to another SBE.
6

7 **Contractor Proposed SBE Substitutions**
8

9 Requests to substitute an SBE must be for good cause (see SBE termination
10 process below) and requires prior written approval of the Project Engineer.
11 After receiving a termination with good cause approval, the Contractor may
12 only replace an SBE with another certified SBE unless approved by OEO.
13 When any changes result in a substitution of an SBE, the substitute shall not be
14 counted prior to SBE certification as described herein.
15

16 **SBE Termination**
17

18 Termination of a SBE (or an approved substitute SBE) is only allowed in
19 whole or in part for good cause and with prior written approval of the Project
20 Engineer. If the Contractor terminates an SBE without the prior written
21 approval of the Project Engineer, the Contractor shall not be entitled to
22 payment for work or material committed to, but not performed/supplied by the
23 SBE. In addition, sanctions may apply as described elsewhere in this
24 specification.
25

26 Prior to requesting approval to terminate an SBE, the Contractor shall give
27 notice in writing to the SBE with a copy to the Project Engineer of the
28 Contractor’s intent to request termination of the SBE work and the reasons for
29 doing so. The SBE shall have five (5) days to respond to the Contractor’s
30 notice. The SBE’s response shall either support the termination or advise the
31 Project Engineer and the Contractor of the reasons it objects to the termination
32 of its subcontract.
33

34 If the request for termination is approved, the Contractor is required to
35 substitute another SBE to perform at least the same dollar amount of work as
36 the SBE that was terminated (or provide documentation of GFE). A plan to
37 replace the SBE commitment amount shall be submitted to the Project
38 Engineer within two (2) days of the approval of termination.
39

40 As mentioned above, the Contractor must have good cause to terminate an
41 SBE. Good cause typically includes situations where the SBE is unable or
42 unwilling to perform the work of its subcontract.
43
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Good cause may exist if:

- The SBE fails or refuses to execute a written contract.
- The SBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.
- The SBE fails or refuses to meet the Contractor’s reasonable nondiscriminatory bond requirements.
- The SBE becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The SBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal law or applicable State law.
- The SBE is ineligible to receive credit for the type of work involved.
- The SBE voluntarily withdraws from the project and provides written notice of its withdrawal.
- The SBE’s work is deemed unsatisfactory by the Project Engineer and not in compliance with the Contract.
- The SBE’s owner dies or becomes disabled with the result that the SBE is unable to complete its work on the Contract.

Good cause does not exist if:

- The Contractor seeks to terminate an SBE so that the Contractor can self-perform the work.
- The Contractor seeks to terminate an SBE so the Contractor can substitute another SBE contractor or non-SBE contractor after the contract has been awarded to the SBE.
- The failure or refusal of the SBE to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor (e.g., the failure of the Contractor to make timely payments or the unnecessary placing of obstacles in the path of the SBE’s work).

1 **Good Faith Effort (GFE) Documentation**

2 GFE is evaluated prior to the WSDOT Project Engineer granting Physical
3 Completion of the Part D scope of work to determine whether the Contractor
4 has satisfied its SBE commitments.
5

6 The following is a list of the types of actions which would be considered as
7 part of the Contractor’s GFE to achieve SBE participation. It is not intended
8 to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.
9 Other factors or types of efforts may be relevant in appropriate cases.
10

- 11 1. Contractor solicited through all reasonable and available means,
12 the interest of all certified SBEs who had the capability to perform
13 the work of the Contract. The Contractor must have solicited this
14 interest with sufficient time to allow SBEs to respond to the
15 solicitation. The Contractor must have determined with certainty
16 that the SBEs were interested by taking appropriate steps to follow
17 up initial solicitations with potential SBEs.
18
- 19 2. Selected portions of the work to be performed by SBEs in order to
20 increase the likelihood that the SBE Goal would be achieved. This
21 includes, where appropriate, breaking out the Contract work items
22 into economically feasible units to facilitate SBE participation;
23 even when the Contractor might otherwise prefer to perform these
24 work items with its own forces.
25
- 26 3. Provided interested SBEs with adequate information about the
27 Plans, Specifications, and requirements of the Contract in a timely
28 manner to assist them in responding to a solicitation.
29
 - 30 a. Negotiated in good faith with the interested SBEs. It was the
31 Contractor’s responsibility to make a portion of the work
32 available to SBE subcontractors and suppliers, and to select
33 those portions of the work or material needs consistent with the
34 available SBE subcontractors and suppliers, so as to facilitate
35 SBE participation. Evidence of such negotiation includes the
36 names, addresses, and telephone numbers of SBEs that were
37 contacted; a description of the information provided regarding
38 the Plans and Specifications for the work selected for
39 subcontracting; and evidence as to why additional agreements
40 could not be reached for SBEs to perform the work.
41
 - 42 b. A Contractor using good business judgment would consider a
43 number of factors in negotiating with subcontractors, including
44 SBE subcontractors, and would take a firm’s price and
45 capabilities as well as the SBE goal into consideration. The
46 fact that there may have been some additional costs involved in

1 finding and using SBEs is not, in itself, sufficient reason for a
2 Contractor's failure to meet the SBE Goal, as long as such
3 costs were reasonable. Also, the ability or desire of a
4 Contractor to perform the work with its own forces does not
5 relieve the Contractor of the responsibility to meet the SBE
6 Goal or make Good Faith Efforts to do so. The Contractor is
7 not required to accept higher quotes from SBEs if the price
8 difference was excessive or unreasonable, but may do so
9 voluntarily as a means to achieve all of the required technical
10 specifications, including the enforceable SBE Goal.

- 11
- 12 4. Not rejecting SBEs as being unqualified without sound reasons
13 based on a thorough investigation of their capabilities. The
14 Contractor's standing within its industry, membership in specific
15 groups, organizations, or associations and political or social
16 affiliations (i.e., union vs. non-union employee status) are not
17 legitimate causes for rejection of or non-solicitation of bids in the
18 Contractor's efforts to meet the SBE Goal.
- 19
- 20 5. Made efforts to assist interested SBEs in obtaining bonding, lines
21 or credit, or insurance as required by WSDOT or the Contractor.
- 22
- 23 6. Made efforts to assist interested SBEs in obtaining necessary
24 equipment, supplies, materials, or related assistance or services.
- 25
- 26 7. Effectively used the services of available community
27 organizations; contractor's groups; local, State, and Federal small
28 business assistance offices; and other organizations to provide
29 assistance in recruitment and placement of SBEs.
- 30
- 31 8. Documentation of GFE must include copies of each SBE and non-
32 SBE subcontractor quotes submitted to the Contractor when a non-
33 SBE subcontractor is selected over a SBE for work on the
34 Contract.
- 35

36 **1.8 SBE Task Force Committee**

37 The Contractor shall work with WSDOT to form a SBE Task Force Committee
38 including members of both WSDOT and the Contractor. The SBE Task Force
39 Committee is not authorized to make decisions for the Contractor or to direct the
40 Contractor in its subcontracting process; rather, the SBE Task Force Committee is a
41 consultative and advising committee. The Contractor will still be responsible for
42 ensuring that the Contract requirements for SBE participation are met.

43 **Purpose:** As a consultative and advising committee, the purpose of the SBE Task
44 Force Committee is to work in collaboration with the Contractor to ensure the SBE
45 Participation Plan submitted by the Contractor will continue to provide Good Faith

1 Efforts in SBE inclusion and opportunities.

2 **Goals:** The goals of the SBE Task Force Committee are to:

- 3 • Ensure that the Contractor aggressively and proactively reaches the Contract
4 requirement for SBE participation.
- 5 • Ensure that the Contractor and lower tier subcontractors are complying with
6 these specifications, and related laws and agency rules.
- 7 • Ensure achievable success by maximizing SBE participation in the
8 subcontracting process through teamwork and collaboration.

9 **Objectives:** The objectives of the SBE Task Force Committee are to:

- 10 • Confirm that SBE firms, selected for subcontract solicitation, are qualified,
11 capable, and ready to perform the scope of work.
- 12 • Confirm that the Contractor’s procurement process is followed in soliciting,
13 bidding, and awarding subcontracts.

14
15 **1.9 Procedures after Execution**

16 **Commercially Useful Function (CUF)**

17 The Contractor may only take credit for the payments made for work
18 performed by a SBE that is determined to be performing a CUF. Payment must
19 be commensurate with the work actually performed by the SBE. If a SBE does
20 not perform “all” of its responsibilities on a contract, it has not performed a
21 CUF, and their work cannot be counted toward the SBE Goal. Leasing of
22 equipment from a leasing company is allowed. However, leasing/purchasing
23 equipment from the Contractor will result in non-countable participation
24 toward the SBE Goal for the dollar value of the equipment lease/purchase.
25 Lease agreements shall be readily available for review by the WSDOT Project
26 Engineer.

27
28 To determine whether a SBE is performing a CUF, the WSDOT Project
29 Engineer shall conduct CUF reviews. A SBE performs a CUF when it is
30 carrying out its responsibilities of its subcontract by actually performing,
31 managing, and supervising the work involved. The SBE must be responsible
32 for negotiating price; determining quality and quantity; ordering the material,
33 installing (where applicable); and paying for the material itself. If a SBE does
34 not perform “all” of the aforementioned functions on a furnish-and-install
35 contract, it has not performed a CUF and the SBE participation cannot be
36 counted toward the SBE Goal.

37
38 **Leasing of Equipment**

39 Leasing of equipment from a leasing company is allowed. However,
40 leasing/purchasing equipment from the Contractor will result in non-
41 countable participation for the leased/purchased equipment toward the

1 SBE Goal. Lease agreements shall be readily available for review by
2 the WSDOT Project Engineer.
3

4 **Traffic Control**

5 In order for a SBE traffic control company to be considered to be
6 performing a CUF, the SBE must be in control of its work inclusive of
7 supervision. The SBE shall employ a Traffic Control Supervisor who
8 is a regular, full-time employee of the SBE firm and is directly
9 involved in the management and supervision of the traffic control
10 employees and services. The SBE traffic control firm may utilize
11 temporary employees hired through a union hiring hall, but
12 supervision of the SBE employees must be performed by the SBE
13 owner or a designee who is a normal, full-time employee of the SBE
14 firm.
15

16 **Trucking**

17 The SBE shall be responsible for the management and supervision of
18 the entire trucking operation for which it is responsible on the
19 Contract, which includes providing on-site supervision of the SBE
20 trucking operations being performed on the Contract.
21

22 The SBE itself shall own and operate at least one fully licensed,
23 insured, and operational truck used on the Contract any time SBE
24 subcontract work is being performed. The drivers of trucks owned or
25 leased by the SBE must be exclusively employed by the SBE as
26 reflected on the SBE firm's payroll.
27

28 Additional trucks may be leased by the SBE firm to fulfill its
29 subcontract work on the Contract. Trucks cannot be leased from the
30 Contractor. Trucks leased from a non-SBE firm must be driven by
31 employees of the SBE firm.
32

33 **Joint Checks**

34 A joint check is a check between a Subcontractor and the Contractor to the
35 supplier of materials/supplies. The check is issued by the Contractor as payer
36 to the Subcontractor and the material supplier jointly for items to be
37 incorporated into the project. The SBE must release the check to the supplier,
38 while the Contractor acts solely as the guarantor.
39

40 A joint check agreement must be approved by the WSDOT Project Engineer
41 and requested by the SBE involved using the Joint Check Request Form (form
42 #272-053) prior to its use. The form must accompany the SBE Joint Check
43 Agreement between the parties involved, including the conditions of the
44 arrangement and the expected use of the joint checks.
45

1 The approval to use joint checks and their use will be closely monitored by the
2 WSDOT Project Engineer. To receive SBE credit for performing a CUF with
3 respect to obtaining materials and supplies, a SBE must “be responsible for
4 negotiating price, determining quality and quantity, ordering the material,
5 installing and paying for the material itself.” The Contractor shall submit the
6 Joint Check Request Form to the WSDOT Project Manager for approval prior
7 to using a joint check.
8

9 The Contractor shall not directly pay the materials supplier for materials used
10 by the SBE. If proper procedures are not followed or the WSDOT Project
11 Engineer determines that the arrangement results in a lack of independence for
12 the SBE involved, no SBE credit will be given for the SBE’s participation as it
13 relates to the material cost.
14

15 **Prompt Payment**

16 Prompt payment to all subcontractors shall be in accordance with Section 1-
17 08.1 in the current WSDOT Standard Specifications for Road, Bridge and
18 Municipal Construction (“WSDOT Standard Specifications”). Prompt
19 payment requirements apply to progress payments as well as return of
20 retainage.
21

22 Refer to Section 1-08.1 in the WSDOT Standard Specifications for additional
23 reporting requirements associated with this Contract.
24

25 **Removal from SBE Program**

26 When a SBE is “removed” from the SBE program during the course of the
27 Contract, all prior participation of that SBE shall continue to count towards the
28 SBE Goal as long as the subcontract with the SBE was executed prior to the
29 removal notice.
30

31 **1.10 SBE Reporting**

32 The Contractor shall report payments to all firms that were used as Subcontractors,
33 lower tier Subcontractors, manufactures, suppliers, brokers, or service providers on
34 the Contract Work each month between commencement of the Part D scope of
35 Work and when the Contract final estimate is processed, per Vessel, using the
36 application available at <https://wsdot.diversitycompliance.com>. The monthly report
37 is due twenty (20) calendar days following the end of the month, whether payments
38 were made or work occurred.
39

40 The monthly report shall include payments to all businesses regardless of their
41 listing status as an SBE. If the Contractor is an SBE, the amounts paid by WSDOT
42 for work performed by the certified Contractor shall also be reported.
43

44 After commencement of the Part D scope of work, the Contractor shall send an
45 email to CRP@wsdot.wa.gov containing the following information: the first and
46 last name, email address, title, and phone number of the person who will be

1 submitting the above reports for their company. The email shall include the
2 WSDOT contract number they will be reporting on. After receipt of this
3 information by WSDOT, the Contractor will receive an email providing information
4 about their assignment. Training and instructions are available in the application.
5

6 Refer to Section 1-08.1 in the WSDOT Standard Specifications for additional
7 reporting requirements associated with this Contract.
8

9 **1.11 SBE Payment**

10 All costs for implementation of the requirements for enforceable SBE participation
11 shall be included in the associated items of Contract work.
12

13 **1.12 Sanctions**

14 If it is determined that the Contractor's failure to meet all or part of the SBE Goal is
15 due to the Contractor's inadequate good faith efforts throughout the life of the
16 Contract, including failure to submit timely, required Good Faith Effort information
17 and documentation, the Contractor will be required to pay a penalty equal to 1% of
18 the total change order value for each 1% of the SBE Goal the Contractor was unable
19 to obtain (i.e. if SBE participation was obtained for 4% of the 8% SBE Goal, it will
20 result in a penalty equal to 4% of the total change order value).
21

22 If it is determined that the Contractor's failure to meet all or part of the SBE Goal is
23 due to some other breach of contract involving the fraudulent use or reporting of
24 SBE participation, or other such violation of the provisions of the SBE participation
25 requirements, the Contractor will be required to pay a penalty of 1% of the total
26 change order value compounded for each instance of fraudulent use or reporting of
27 SBE participation, or other such violation of the SBE participation provisions.
28
29
30

31 (END)