



Expires – Upon Issuance of LPP

DBE Procedure Updates for LAPM Chapter 9 and Related Exhibits

I. BACKGROUND

The local Disadvantaged Business Enterprises (DBE) Program was identified as a potential area of risk for non-compliance with the Code of Federal Regulations (CFR). A [DBE Evaluation Report](#) published by Caltrans in May 2020 indicated that the average compliance in the California local DBE program was only 43%. Compliance for the majority of Federal Regulations were below the average compliance rate, such as DBE goal setting, prompt payment, and performance monitoring. In order to improve the performance compliance of the local DBE program, it is necessary to update the Local Assistance Procedures Manual Chapter 9: Civil Rights and Disadvantaged Business Enterprise (LAPM Chapter 9) and related exhibits to reflect the requirements of 49 CFR 26 more clearly.

II. POLICY

Upon the publication of this Office Bulletin, local agencies are required to submit the updated Exhibit 9-A to the District Local Assistance Engineer (DLAE), and follow the updated DBE procedures in LAPM Chapter 9 and related exhibits for all Federal-Aid projects that have sub-contracting opportunities.

III. PROCEDURE

LAPM Chapter 9, Exhibit 9-A (DBE Implementation Agreement for Local Agencies), Exhibit 9-B (Local Agency DBE Annual Submittal Form), Exhibit 10-R (AE Sample Contract Language), Exhibit 12-G (Required Federal-Aid Contract Language) were updated on DBE policies and regulations.

1. LAPM Chapter 9

- (1) Section 9.6: Local Agency Responsibilities under Caltrans DBE Program Plan
 - Revised subsection of Race-Neutral Component
 - Added a section of Prompt Payment of the Agency to Contractors
 - Revised the section of Prompt Progress Payment to Subcontractors to include the fifteen (15) days requirement of California Civil Code to subconsultant after receipt of each progress payment
 - Revised the section of Prompt Payment of Withheld Funds to Subcontractors to include the regulations of California Laws.
 - Added a new section of Monitoring and Enforcement Mechanism for Prompt Payment



- (2) Section 9.7: DBE Participation on Contract
 - More explanations were added into the Section of Setting the DBE Contract Goal
 - Revised the subsection of Commercially Useful Function
 - Revised the subsection of Decertification
- (3) Section 9.8: Good Faith Efforts
 - A link to sample GFE procedures was listed
 - A new subsection of Bidder/Offeror's Requirements for Good Faith Efforts was added
 - The subsection of "Substitution" was renamed as "Termination and Substitution of DBE Subcontractors" and the context was revised
 - A link to sample reconsideration procedures was listed to the section of Administrative Review and Reconsideration
 - A new subsection of Monitoring and Enforcement Mechanism for DBE Termination and Substitution was added
2. Exhibit 9-A: DBE Implementation Agreement for Local Agencies
 - Revision was made to include California Regulations for Prompt Progress Payment to Subcontractors
 - Revised the section of Prompt Payment of Withheld Funds to Subcontractors to include requirements of California Laws
 - Added a new section of Prompt Payment from the Agency to the Contractors
3. Exhibit 9-B: Local Agency DBE Annual Submittal Form
 - Revised the Prompt Payment of Withheld Funds to subcontractors to include California regulations.
4. Exhibit 10-R: A&E Sample Contract Language
 - (1) Article X: Subcontracting
 - A new section of Prompt Progress Payment was added
 - A new section of Prompt Payment of Withheld Funds to Subconsultants was added
 - (2) Article XVI: Non-Discrimination Clause and Statement of Compliance
 - A new section I was added
 - (3) Under the Article XVIII Disadvantaged Business Enterprises (DBE) Participation
 - Deleted a portion of how to count DBE participation
 - Deleted subsection Nondiscrimination Statement
 - Added a subsection Contract Assurance
 - Deleted the subsection Prompt Progress Payment
 - Deleted the subsection of Prompt Payment of Withheld Funds to Subconsultants
 - Added a subsection of Termination and Substitution of DBE Subconsultants
 - Added a subsection of Commitment and Utilization
 - Deleted existing subsections I and F



- (4) Article XXXI Retention of Funds was deleted
- (5) Added an Article XXXI Prompt Payment of The Agency to Consultant
- 5. Exhibit 12-G
 - (1) Section of Disadvantaged Business Enterprises (DBE)
 - Added a subsection of Nondiscrimination Statement
 - Added a subsection of Contract Assurance
 - Added a subsection of Prompt Progress Payment
 - Added a subsection of Prompt Payment of Withheld Funds to Subcontractors
 - Added a subsection of Termination and Substitution of DBE Subcontractors
 - Added a subsection of Commitment and Utilization
 - (2) Deleted the previous section of Prompt Payment of Funds Withheld to Subcontractors
 - (3) Added a section of Prompt Payment of the Agency to the Contractors
 - (4) Revised the section of Federal Trainee Program
- 6. A sample procedure for Good Faith Efforts was developed.
- 7. A sample procedure for Reconsideration Hearing was developed.

DLA and local agencies will follow the new updated LAPM and related exhibits upon the OB's publication.

IV. APPLICABILITY/IMPACTS

This Office Bulletin applies to all Federal-aid projects that have sub-contracting opportunities.

	Original Signature By	09/04/2020
Recommended:	Wenyi Long, DBE Oversight Engineer Office of Guidance & Oversight	Date

	Original Signature By	09/04/2020
Approved:	Felicia Haslem, Chief (Acting) Office of Guidance & Oversight	Date

- Attachments
- 1) LAPM Chapter 9, Sections 9.6 to 9.8
 - 2) Exhibit 9-A, Revised September 2020
 - 3) Exhibit 9-B, Revised September 2020
 - 4) Exhibit 10-R, Revised September 2020
 - 5) Exhibit 12-G, Revised September 2020