



Expires – Upon Issuance of LPP

Disadvantaged Business Enterprise (DBE) Updates

I. BACKGROUND

The Federal Highway Administration (FHWA) and Caltrans came together in December 2020 for a technical assistance visit. A FHWA Technical Assistance Report was issued in April 2021 after the visit. The report contained several observations and recommendations to improve how the Disadvantaged Business Enterprise (DBE) Program is carried out. Led by Caltrans Office of Civil Rights, Caltrans will revise the current DBE practice. Statewide, Caltrans will have the same voice on the DBE program. Caltrans Division of Construction will publish a new version of the Standard Specifications with revisions on portions of the DBE practice.

The Division of Local Assistance (DLA) will align with the Division of Construction and update the Local Assistance Procedures Manual (LAPM) accordingly. Specifically, the revision to the LAPM includes “Termination and Replacement of DBE firms” and “Commercially Useful Function”. These revisions are also necessitated by the [Notice of Proposed Rulemaking released by FHWA on July 21, 2022](#).

II. POLICY

For federally-funded projects advertised after the publication date of this Office Bulletin, Local Public Agencies (LPAs) are required to follow the procedures described in LAPM Chapter 9 and related exhibits for termination and replacement of DBE firms for any justifiable reason. LPAs must evaluate every DBE firm that participates in a federally-funded project for Commercially Useful Function.

III. PROCEDURE

The following documents are created/updated to incorporate the revised policy and procedures associated with this Office Bulletin:

Chapter / Exhibit	Changes that supersede current publications
LAPM Chapter 9 Civil Rights and DBE	Section 9.7: DBE Participation on Contract <ul style="list-style-type: none"> • Commercially Useful Function revised Section 9.8: Good Faith Efforts <ul style="list-style-type: none"> • Termination and Substitution of DBE Subcontractors revised
LAPM Chapter 16 Administer Construction Contracts	Section 16.9: DBE subsection revised



Exhibit 10-R A&E Boilerplate Agreement Language	Article XVIII DBE Participation revised
Exhibit 12-G Required Federal-Aid Contract Language	DBE Section revised
LAPM 9-J DLA Disadvantaged Business Enterprise Commercially Useful Function Evaluation	New form
LAPM 9-K DLA Disadvantaged Business Enterprise (DBE) Joint Check Agreement Request	New form

DLA and LPAs must follow the new updated LAPM and related exhibits upon publication of this Office Bulletin.

IV. APPLICABILITY/IMPACTS

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

Recommended:	<u>Original signature on file</u>	<u>May 1, 2023</u>
	Wenyi Long, Senior Transportation Engineer Office of Guidance & Oversight	Date
Approved:	<u>Original signature on file</u>	<u>May 1, 2023</u>
	Mack Yenjai, Chief (Acting) Office of Guidance & Oversight	Date

Chapter 9 Civil Rights & DBE
OFFICE BULLETIN #23-01

9.7 DBE Participation on the Contract

Commercially Useful Function

~~Count expenditures to a DBE contractor, only if the DBE is performing a commercially useful function on that contract. The following examples explain what is considered to be performing a commercially useful function:~~

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additionally, the DBE 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.

- ~~• A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE 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 DBE is performing a commercially useful function, the LPA 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 actually performing and the DBE credit claimed for its performance of the work; and other relevant factors.~~

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the LPA must examine similar transactions, particularly those in which DBEs do not participate.

- ~~• The prime contractor has the responsibility to ensure a DBE firm performs a commercially useful function. At the same time, LPAs are required by federal and state regulations to monitor worksites to make sure work committed to a DBE is performed by the respective firms and ensure a commercially useful function. For additional information on how to monitor the worksite, refer to LAPM Chapter 16 (Section 16.9: Disadvantaged Business Enterprises).~~

If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.

- ~~• When a DBE is presumed not to be performing a commercially useful function, as provided in the previous bullet, the DBE may present evidence to rebut this presumption.~~
- ~~• The LPA's determination as to whether the firm is performing a commercially useful function to accurately credit DBE services should be based upon the amount and type of work involved and normal industry practices. A resident engineer should certify CUF in writing, and a signed and documented CUF review would meet the monitoring requirement of the agency.~~

The prime contractor must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. This also includes DBE truckers, suppliers, and other vendors where a subcontract is not required. For contracts between the first-tier DBE and the second-tier DBE, the first-tier DBE must perform the CUF evaluation on the second-tier DBE following the same procedure described in this section. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

The prime contractor must provide written notification to the LPA at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, the contractor must submit to the LPA the initial evaluation and validation of DBE performance of a CUF using LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

The prime contractor must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using LAPM 9-J: DBE Commercially Useful Function Evaluation. The contractor must submit to the LPA these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

The contractor must notify the LPA immediately if the contractor believes the DBE may not be performing a CUF.

The LPA will verify DBE's performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LPA evaluations. The LPA must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LPA will provide written notice to the contractor and DBE at least two (2) business days prior to any evaluation. The contractor and the DBE must participate in the evaluation. Upon completing the evaluation, the LPA must share the evaluation results with the contractor and the DBE. An evaluation could include items that must be remedied upon receipt. If the LPA determines the DBE is not performing a CUF, then the contractor must suspend performance of the noncompliant work.

The prime contractor and DBEs must submit any additional CUF related records and documents within five (5) business days of LPA's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If the contractor and/or the LPA determine that a listed DBE is not performing a CUF in performance of their DBE committed work, immediately suspend performance of the noncompliant portion of the work. The LPA may deny payment for the noncompliant portion of the work. The LPA will ask the contractor to submit a corrective action plan (CAP) to the LPA within five (5) days of the noncompliant CUF determination. The CAP must identify how the contractor will correct the noncompliance findings for the remaining portion of the DBE's work. The LPA has five (5) days to review the CAP in conjunction with the prime contractor's review. The contractor must implement the CAP within five (5) days of the LPA's approval. The LPA will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a CUF on the Contract, then the contractor may have good cause to request termination and replacement of the DBE.

LPA decisions on CUF matters are subject to review by the DLAE. CUF determinations are not subject to administrative appeal to the LPA, Caltrans and USDOT.

Use of Joint Checks

A joint check may be used between the Contractor or lower-tier subcontractor and a DBE subcontractor purchasing materials from a material supplier if the contractor obtains prior approval from the LPA for the proposed use of joint check upon submittal of the LAPM 9-K: DLA Disadvantaged Business Enterprises (DBE) Joint Check Agreement Request form.

To use a joint check, the following conditions must be met:

- All parties, including the Contractor, must agree to the use of a joint check
- Entity issuing the joint check acts solely to guarantee payment
- DBE must release the check to the material supplier
- LPA must authorize the request before implementation
- Any party to the agreement must provide requested documentation within 10 days of the LPA's request for the documentation
- Agreement to use a joint check must be short-term, not to exceed 1 year, allowing sufficient time needed to establish or increase a credit line with the material supplier

A request for a joint check agreement may be initiated by any party.

If a joint check is used, the DBE remains responsible for all elements of 49 CFR 26.55(c)(1).

Failure to comply with the above requirements disqualifies DBE participation and results in no credit and no payment to the Contractor for DBE participation.

A joint check may not be used between the Contractor or subcontractor and a DBE regular dealer, bulk material supplier, manufacturer, wholesaler, broker, trucker, packager, manufacturer's representative, or other persons who arrange or expedite transactions.

9.8 Good Faith Efforts

Termination and **Substitution Replacement** of DBE Subcontractors

~~After a contract, which specified goals for the DBE participation, has been executed, adequate Good Faith Efforts (GFEs) are required for any necessary substitution of DBE subcontractors to the extent needed to meet the DBE contract goal.~~

~~LPA's must require a prime contractor not to terminate for convenience a DBE subcontractor listed in or Exhibit 15-G: Construction Contract DBE Commitment or an approved substitute DBE subcontractor in order to perform the work of the terminated subcontract with its own forces or those of an affiliate without the LPA's prior written consent.~~

A prime contractor cannot terminate or perform any work of a DBE listed on Exhibit 15-G: Construction Contract DBE Commitment or Exhibit 10-O2: Consultant Contract DBE Commitment neither can it substitute any work for a DBE subcontractor without the written consent of the LPA prior to any replacement taking place. Unless the LPA's prior written consent is provided, the contractor is not entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 15-G or Exhibit 10-O2. After affording the DBE due process (see Termination of DBE Subcontractors below), when a prime contractor receives written permission from the LPA to terminate it must then make adequate Good Faith Efforts (GFEs) for any necessary replacement of a DBE subcontractor to the extent needed to meet the DBE commitment.

Termination of DBE Subcontractors

The LPA must include in each prime contract a provision stating that the contractor must utilize the specific DBEs listed to perform the work and supply the materials for ~~which~~ each ~~is~~ item listed in the contract unless the contractor obtains the LPA's written ~~permission. consent due to the following, but not limited to, good reasons such as:~~

After a contract with a specified DBE goal has been executed, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LPA:

- The listed DBE subcontractor fails or refuses to execute a written contract
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law
- Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law or is not properly registered with the California Department of Industrial Relations as a public works contractor.
- The LPA has determined that the listed DBE subcontractor is not a responsible contractor
- The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal

- The listed DBE is ineligible to receive DBE credit for the type of work required
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract
- Other documented good cause that the LPA determines compels the termination of the DBE subcontractor

~~Before transmitting to the LPA its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the LPA, of its intent to request to terminate and/or substitute, and the reason for the request.~~

~~The prime contractor must give the DBE five days to respond to the prime contractor's notice. The DBE shall advise the LPA and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the LPA should not approve the prime contractor's action.~~

~~When a DBE subcontract is terminated or when a DBE subcontractor fails to complete its work on the contract for any reason, the LPA must require the prime contractor to make GFEs to find another DBE subcontractor to substitute for the original DBE subcontractor. These GFEs must be directed at finding another DBE subcontractor to perform at least the same amount of work under the contract as the DBE subcontractor that was terminated to the extent needed to meet the DBE contract goal.~~

To terminate a DBE or to terminate a portion of a DBE's work, the contractor must use the following procedures:

1. Send a written notice to the DBE of the contractor's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LPA. The written notice to the DBE must request they provide any response within five (5) business days to both the contractor and the LPA by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, the contractor may move forward with the request as if the DBE had agreed to the contractor's written notice.
3. Submit the DBE termination request by written letter to the LPA and include:
 - One or more above listed justifiable reasons along with supporting documentation.
 - The contractor's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of the contractor's written notice
 - The DBE's response to the contractor's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LPA must respond in writing to contractor's DBE termination request within five (5) business days.

Replacement of DBE Subcontractors

After receiving the LPA's written authorization of DBE termination request, the contractor must obtain the LPA's written agreement for DBE replacement. The contractor must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures must be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LPA which must include:
 - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
 - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
 - Quote for bid item work and description of work to be performed
 - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
 - Revised Subcontracting Request form
 - Revised Exhibit 10-O2: Consultant Contract DBE Commitment or a revised Exhibit 15-G: Construction Contract DBE Commitment
2. If contractor has not identified a DBE replacement firm, submit documentation of GFEs to use DBE replacement firms within seven (7) days of LPA's authorization to terminate the DBE. The contractor may request the LPA's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
 - Search results of certified DBEs available to perform the original DBE work identified and or other work the contractor had intended to self-perform, to the extent needed to meet the DBE commitment
 - Solicitations of DBEs for performance of work identified
 - Correspondence with interested DBEs that may have included contract details and requirements
 - Negotiation efforts with DBEs that reflect why an agreement was not reached
 - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
 - Copies of each DBE's and non-DBE's price quotes for work identified, as the LPA may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
 - Additional documentation that supports the good faith effort

The LPA must respond in writing to the contractor's DBE replacement request within five (5) business days. The Contractor must submit a revised Subcontracting Request form if the replacement plan is authorized by the LPA.

Monitoring and Enforcement Mechanism for DBE Termination and ~~Substitution~~ Replacement

LPAs are required to implement appropriate mechanisms to ensure compliance with the requirements related to the termination and ~~substitution~~ replacement of subcontractors by all program participants.

The LPA needs to stipulate legal and contractual remedies available under federal, state and local law in the contract and must set forth these mechanisms in the LPA's DBE program.

The LPA's DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that the LPA has reviewed contracting records and monitored work sites in the LPA's jurisdiction for this purpose (for example, a resident engineer certifies CUF in writing).

Chapter 16 Administer Construction Contracts

OFFICE BULLETIN #23-01

16.9 EMPLOYMENT PRACTICE: LABOR COMPLIANCE, EEO, DBE

Disadvantaged Business Enterprise

Federal regulations define DBE as firms ~~owned and controlled by individuals who are either socially or economically disadvantaged, or both.~~ that are for-profit small business concerns where at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

This section presents the requirements for administration of the DBE requirements of the contract. These guidelines apply to all federally funded projects.

The DBE requirements comes from 49 CFR 26, Form FHWA-1273, Disadvantaged Business Enterprises, Part 1, and [Exhibit 12-G: Required Federal-Aid Contract Language](#).

49 CFR 26 requires that bidders take all necessary and reasonable steps to achieve a DBE goal, which by their scope, intensity, and appropriateness to the objective, could reasonably expected to obtain sufficient DBE participation, even if they were not fully successful (49 CFR 26 Appendix A). The required federal-aid contract language in [Exhibit 12-G](#) requires the contractor meet the DBE goal shown in the project special provisions or submit documents that demonstrate adequate good faith efforts were made to meet the goal.

DBE “goal”

The DBE goal is a percentage of the total contract value that must be performed by certified DBE contractors. The DBE program is designed to increase DBE participation on federally funded contracts by ensuring nondiscrimination in the award and administration of Department of Transportation assisted contracts, creating a level playing field on which DBEs can compete fairly, and by helping remove barriers to the participation of DBEs.

DBE Commitment Form

[Exhibit 15-G: Construction Contract DBE Commitment](#) provides the RE with a listing of specific work to be done or materials to be furnished by specific DBEs and is based on information the contractor submitted during the bidding process. The commitment is the percentage of work on the contract that the bidder has committed to perform using certified DBE contractors or suppliers. The commitment may be less than, equal to, or greater than the goal depending on the bidder. However, the contractor must meet the DBE commitment, regardless of the contract goal, or submit documents that demonstrates adequate good faith efforts were made to meet the goal. The RE will receive the approved DBE commitment form in the award package.

Role of the RE

The RE is responsible for monitoring and enforcing the DBE provisions of the contract. Therefore, the RE and support staff must have a working knowledge of ~~the~~ 49 CFR 26 requirements. A good place to start is a complete review of Part 1, Disadvantaged Business Enterprises, of the [Exhibit 12-G: Required Federal-aid Contract Language](#), found in your special provisions and the DBE section of the Standard Specifications.

Prevention of DBE violations is preferable to imposing penalties for non-compliance; to accomplish this, the RE must perform or delegate the following activities:

Before the Work

Activity 1: Review the DBE Provisions of the Contract and the DBE Commitment Form with the Contractor and Construction Staff at the Pre-Construction Meeting

Include DBE Utilization Requirements as a topic on the pre-construction meeting agenda. The Federal-Aid Contract Prejob Checklist found on the [Caltrans Labor Compliance](#) website is a helpful tool for developing a discussion outline. Portions of the checklist require modification to conform to your contract provisions, form numbers and LPA policies. Ensure the field staff knows who should be performing DBE work. Be sure to emphasize the requirements for a DBE ~~substitution~~ **replacement**, especially the requirement that written approval must be obtained prior to performing the work or payment will be withheld.

Activity 2: Compare the DBE Commitment Form (Exhibit 15-G) and the Contractor's Subcontracting Request (LAPM 16-B) prior to Approving the Subcontracting Request

Do not construe the DBE Commitment form as a request to subcontract as required by the contract specifications. The contractor must still submit a Subcontracting Request form listing the DBEs for approval. For details on approving the Subcontracting Request, see Item 2, under Approval of Subcontractors Prior to Starting Contracted Work in Section 16.7: Subcontracting, earlier in this Chapter. If the value of the DBE subcontractor's work exceeds the dollar figure threshold (half of one percent of the total bid, or \$10,000, whichever is greater) specified in the Fair Practices Act, the DBE must also be listed on the subcontractor list.

Activity 3: Be sure any DBE subcontractor who wants to begin work has been approved on LAPM 16-B: Subcontracting Request (See Activity 2 above)

During the Work

Activity 4: Verify the DBE Performs a Commercially Useful Function (CUF)

A DBE performs a commercially useful function when it does all of the following (as per CFR 26.55[c]):

- Performs at least 30 percent of the total cost of its contract with its own work force and does not subcontract out portions of its contract work that are greater than normal industry practices for the type of work performed.
- Performs, manages, and supervises the work involved.
- Negotiates prices, determines quantity and quality, orders materials and supplies, pays for the materials and supplies, and installs the materials where applicable.
- The listed trucking DBE must own and operate at least one fully licensed, insured operational truck used on the contract.

A DBE firm does not perform a CUF if its role on the contract is limited to being an extra participant in a transaction or contract; through which funds are passed in order to obtain the appearance of participation.

The prime contractor ~~is ultimately responsible for ensuring~~ **must ensure** that a DBE performs a CUF **by performing periodic CUF evaluations as detailed and outlined in LAPM Chapter 9, Section 9.7: DBE Participation on the Contract. FHWA tips for evaluating CUF are available at: <https://www.fhwa.dot.gov/federal-aidessentials/commusefunction.pdf>.**

At the same time, State and Federal regulations require LPAs ensure work committed to a DBE is being performed by the correct firm, and that firm is performing a CUF.

Administer Construction Contracts

- If the DBE is a subcontractor, document in the daily reports when the firm works. Include all details required in Section 16.8 of this Chapter: Engineer's Daily Reports. Cross-check the reports against the DBE Commitment form Exhibit 15-G to ensure the appropriate firm is performing the work or providing the materials.
- Confirm that certified payroll records have been received for the DBE. Refer to Task 4: Check all Certified Payrolls under "Resident Engineer's Role" in Section 16.9 of this Chapter: Employment Practice: Labor Compliance, EEO, DBE.
- If the DBE firm is a materials supplier, request the contractor provide documents such as delivery confirmation reports and canceled payment checks to confirm the DBE supplied the materials.
- If the trucking is part of the contractor's DBE commitment, identify trucking firms and drivers and associated items of work for each trucking firm on daily inspection reports. In addition, ensure the contractor submits Exhibit 16-Z1: Monthly DBE Trucking Verification by the 15th of the month for the previous month's trucking activities. If the prime contractor fails to submit the form, hold an administrative deduction for missing documents on the progress pay estimate. Randomly confirm the information on these forms by requesting copies of weighmaster certificates and canceled payment checks from the contractor. Cross-check the information against daily inspection reports as well.
- Do not pay for work unless it is performed or supplied by the DBE listed on the DBE Commitment form, unless a **substitution replacement** has been authorized prior to performance of the work. For information on the substitution process, refer to LAPM Chapter 9, Section 9.8: Termination and **Substitution Replacement** of DBE Sub-Contractors.
- **Review CUF evaluation forms, LAPM 9-J and LAPM 9-K, submitted by the prime contractor as detailed in LAPM Chapter 9, Section 9.7.**
- **Verify the accuracy of data provided by the prime contractor for CUF non-compliance.**

If a DBE fails to perform a CUF, the LPA ~~should~~ **must** take actions to enforce the contract. These actions can include:

- Deny or limit credit towards the contract DBE goal
- Require the prime contractor to **terminate and make Good Faith Effort to** replace the DBE to meet the goal on remaining work **in accordance with LAPM Chapter 9, Section 9.8**
- Withhold progress payments

For additional information on CUF and failure to comply go to [the US DOT website https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise](https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise) and FHWA website [Federal-Aid Essentials for Local Public Agencies](#).

Activity 5: Ensure Submittal of Exhibit 9-F: Monthly Disadvantaged Business Enterprise (DBE) Payment by the 10th of the month for the previous month's activities by the Prime Contractor

This form documents payments made the previous month to DBEs, regardless of tier including contractors, material suppliers, truckers, or service providers. If the prime fails to submit the form, take a payment withhold. Confirm the information on Exhibit 9-F using documents such as Exhibit

Administer Construction Contracts

15-G, LAPM 16-B, daily inspection reports, or other documentation. (Exhibit 9-F is submitted by the Prime Contractor directly to business.support@dot.ca.gov with a copy to the LPA).

Activity 6: Ensure Prompt Payments to DBEs

If contractor fails to promptly pay DBE firms or other subcontractors within 7 days of receiving a progress **payment** relating to that **subcontractor's** work notify your Labor Compliance Officer and take a performance failure withhold **and do not release retainage owed to the prime contractor** until corrected.

After the Work**Activity 7: Ensure Submittal of Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change**

This form notifies the LPA if a DBE becomes decertified or a business entity becomes certified as a DBE before completing its work. The contractor must submit this form even if there were no changes in DBE certification.

Activity 8: Obtain and Verify the Accuracy of Exhibit 17-F: Final Report – Utilization of DBEs

Be sure the contractor submits the Final Report. If the form is not submitted within 90 days of contract acceptance withhold \$10,000 on the next progress pay estimate per the federal requirements. Release the money only upon submission of the completed form. Confirm the form is complete and correct. The description of the work performed, the company performing the work, and the date the work was completed can be checked using the contract records. The contractor is to list the actual dollar amount paid to each entity and the date of the final payment to the entity. If actual DBE utilization (or item of work) was different than that approved at award, the contractor must provide an explanation. Examples of items the contractor would need to explain in writing includes why the names of subcontractors, work items, or dollar figures do not match the contractor's initial plan.

Activity 9: Compare the Final Report – Utilization of DBE to the DBE Commitment Form

Compare the contractor's original dollar commitment with the amount shown on the final DBE report. Review the contractor's calculations to verify the appropriate amount is credited for participation of DBE suppliers and truckers. Table 16-1 lists the criteria for crediting DBE supplier and trucker participation.

Activity 10: Withhold Payment if DBE Commitments were not met

If the contractor does not meet the DBE commitment, hold only the amount of contract funds necessary to meet the original DBE contract goal. If the contractor does not attain the original goal for reasons beyond their control, then no funds should be withheld. Examples of issues beyond the contractor's control are: if a change order eliminates a portion of an item originally designated to be performed by a DBE, or if the Engineer's Estimate overestimated the work shown on the plans. The subcontractor refusing to show up or not coordinating with the Prime contractor's schedule does not qualify as "beyond the contractor's control," as the contractor should have requested a substitution. If there is a change order, then the contract goal applies to the change order as well as the original contract. The Prime Contractor must make GFE to obtain additional work for the DBE participation. If no issues with the final utilization reports are identified, sign the final report. For federally funded contracts, the signature of the RE provides written certification of DBE participation through onsite

monitoring and record review activities. Additional information regarding DBE enforcement, ~~substitutions~~ replacements, violations and penalties see [Section 16.7: Subcontracting](#) for more information pertaining to Approval of Subcontractors Prior to Starting Subcontracted Work.

Consult with your DBE liaison officer for questions on implementing enforcement activities.