Policy Update

#26-03: Disadvantaged Business Enterprise Program

Purpose

Office Bulletin(OB) #26-03 updates Chapter 9.5, Disadvantaged Business Enterprise (DBE) Program, of the Local Assistance Procedures Manual (LAPM) to reflect revisions to the federal DBE Program. In October 2025, the U.S. Department of Transportation (USDOT) issued an Interim Final Rule (IFR) amending 49 CFR Part 26 and substantially revising DBE program requirements. OB #26-03 provides guidance to Local Public Agencies (LPAs) for implementing these changes in compliance with the revised federal requirements and other applicable regulations in effect at the time of publication.

Policy Update

This policy update provides LPAs with contract administration practices and procedures that align with updated federal requirements and clarifies implementation of the revised DBE Program. These changes reflect the modifications established by the IFR, as well as subsequent Frequently Asked Questions (FAQs) published to clarify implementation of the DBE Program. LPA responsibilities are outlined in revised LAPM Chapter 9.5.

This Office Bulletin is effective upon issuance and supersedes OB #25-07 Revision 3 to align with the current regulations of the DBE Program.

Contract goals and goal-based compliance monitoring and enforcement activities related to overall DBE participation remain suspended pending completion of DBE certification evaluations and acceptance of Caltrans' DBE Program Plan by the Federal Highway Administration (FHWA).

For questions regarding OB #26-03 or the updated LAPM 9, please contact your District Local Assistance Engineer (DLAE) or District DBE Coordinator. A current list of contacts is available at: https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/risk-assessment/dlae-dbe-coordinators-current-list.pdf.

Publication Changes

The table below outlines specific LAPM changes relevant to updated DBE policies.

Chapter Section / Exhibit	Changes that Supersede Current Publication
Chapter 3.2 Prior to Federal Authorization	The DBE-related information in this section is superseded by OB#26-03; collection of Exhibits 9-A & LAPM 9-B are currently paused.

Chapter Section / Exhibit	Changes that Supersede Current Publication
Chapter 9.5 DBE Program	Updated section 9.5 DBE Program requirements to align with the IFR (see attached). Exhibits 9-A, 9-B, 9-D, 9-E, 9-F, 9-G, 9-H, LAPM 9-I, LAPM 9-J, LAPM 9-K remain suspended.
Chapter 9.6 LPA Responsibilities under Caltrans DBE Program Plan	This section is removed with republished LAPM Chapter 9.
Chapter 9.7 DBE Participation on the Contract	This section is removed with republished LAPM Chapter 9. Contract goals and goal-based compliance monitoring and enforcement activites related to overall DBE participation remain suspended.
Chapter 9.8 Good Faith Efforts (GFE)	This section is removed with republished LAPM Chapter 9.
Exhibit 9-P Prompt Payment Certification	Exhibit 9-P is updated to align with OB #26-03 and removes the "first-tier" term from the exhibit. Prompt Payment Certification applies to subcontractors/subconsultants regardless of tier. List all subcontractors/subconsultants whether or not the firms were originally listed in Exhibit 10-O2 or Exhibit 15-G as a DBE Commitment.
Chapter 10.1.2 Identifying & Defining a Need for Consultants	Exhibit 17-F/F-1 Final Report of Utilization is currently paused.
Chapter 10.1.5-10.1.7 Consultant Selection Using RFQ/RFP Method	The DBE-related information in this section is superseded by OB#26-03. Exhibit 10-I and Exhibit 10-O1 are currently paused.
Chapter 10.1.8 Documentation of DBE Participation	The DBE-related information in this section is superseded by OB#26-03.

Chapter Section / Exhibit	Changes that Supersede Current Publication
	Exhibits 10-O1,10-O2, 10-G, 17-F, 17 F-1, and 17-O are currently paused.
Chapter 10.3 DBE Consideration for Federally-Funded Non-A&E Contracts	The DBE-related information in this section is superseded by OB#26-03. Contract goals and goal-based compliance monitoring and enforcement activities related to overall DBE participation remain suspended.
Exhibit 10-R A&E Boilerplate Agreement Language	Exhibit 10-R is republished and removes previous redlined content from OB #25-07 R3.
Exhibit 12-B Bidder's List of Subcontractors	Exhibit 12-B to be retired on October 1, 2026.
Exhibit 12-G Required Federal-aid Contract Language	The interim form remains in effect; a republished version will be released with an upcoming Buy America update later this fall.
Chapter 15 Advertise and Award Project	The DBE-related information in this section is superseded by OB#26-03. Exhibits 15-G and 15-H remain suspended.
Chapter 16.3.1 Organization of Project Records	The DBE-related information in bullet point#12: DBE Records is superseded by OB#26-03. Contract goals and goal-based compliance monitoring and enforcement activities related to overall DBE participation remain suspended.
Chapter 16.9.3 Disadvantaged Business Enterprise	The information in this section is superseded by OB #26-03. Exhibit 16 Z-1 remains suspended.

Chapter Section / Exhibit	Changes that Supersede Current Publication
Chapter 17.3 Final Report of Expenditures	Exhibits 17-F, 17-F1 and 17-O remain suspended.

Issued August 2026 by the Office of Local Civil Compliance (LCC)

Attachment

Revised Chapter 9.5: DBE Program

Chapter 9 **Civil Rights & Disadvantaged Business Enterprise**

OFFICE BULLETIN #26-03

9.5. Disadvantaged Business Enterprise (DBE) Program

The Disadvantaged Business Enterprise (DBE) Program is a federal initiative designed to ensure equitable access to transportation-related contracting opportunities for small businesses that are socially and economically disadvantaged. Its purpose is to remove barriers to participation, create a level playing field, and foster a competitive environment in which DBE firms can grow and succeed. In alignment with federal regulations and statewide guidance, the program promotes nondiscrimination in the award and administration of federal-aid contracts, encourages meaningful participation by disadvantaged businesses, and supports their long-term development. Through consistent implementation, monitoring, and collaboration with state and local agencies, the DBE Program strengthens local economies, upholds the U.S. Department of Transportation's (USDOT's) commitment to fairness, and broadens the pool of qualified firms contributing to transportation projects statewide while maintaining the integrity and intent of the DBE framework.

The DBE Program operates under a clearly defined federal regulatory framework established by the USDOT. Its primary authority is found in Title 49 of the Code of Federal Regulations Part 26 (49 CFR 26). These regulations mandate nondiscrimination, set expectations for DBE participation, and require states and local agencies to maintain compliant policies, procedures, and oversight systems.

9.5.1 Required DBE Procedures for Consultant Contracts

LPAs that receive federal transportation funding as subrecipients and administer federally funded consultant contracts are required to implement and enforce the DBE Program in accordance with applicable federal and state requirements, LAPM Chapter 9 and the DBE Program Plan. Because the State delegates project administration responsibilities to LPAs, each LPA is responsible for ensuring compliance with all DBE program requirements on its federally assisted contracts. This responsibility extends throughout the entire project lifecycle, including project development, procurement, contract award, contract administration, construction, and project closeout.

Consultant Contract: Advertisement & Award

Required Consultant Contract Language

Exhibit 10-R: A&E Boilerplate Agreement Language contains required federal DBE provisions which must be incorporated in the final negotiated contract (refer to LAPM Chapter 10 for more information). By incorporating DBE language from Exhibit 10-R in the final contract between the LPA and prime consultant, the following agreements related to DBE program are made:

- The prime consultant, subrecipient or subconsultant will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.
- The prime consultant will carry out applicable requirements of 49 CFR 26 in the administration of federal-aid contracts.
- The prime consultant or subconsultant will follow all prompt payment and retainage procedures as required by 49 CFR 26.29, California Civil Code §3321, and California Business and Professions Code §7108.5.

Proposer's List

To comply with 49 CFR 26.11, LPAs must collect proposer information for all federal-aid contracts by requiring each proposer to submit Exhibit 9-L: Bidder's/Proposer's List with its proposal. The Bidder's/Proposer's List must identify all firms—both DBE and non-DBE—that submitted a proposal to the proposer for the contract, including subcontractors, subconsultants, and suppliers, regardless of whether the firm was selected to participate.

The information collected on Exhibit 9-L is used for DBE reporting purposes and should not be used by the LPA to determine the responsiveness of a proposal.

LPAs are required to submit Exhibit 9-L to the DLAE within sixty (60) days of contract award.

Consultant Contracts: Contract Administration

During consultant contract administration, the LPA's primary role is active project oversight and enforcement once the work begins. DBE responsibilities and procedures range from ensuring prompt payment to all subconsultants to monitoring DBE termination.

Prompt Payment

Prompt Payment from the LPA to the Consultant

California Civil Code §3329 requires that LPAs must make all project progress payments within 30 days after receipt of an undisputed and properly submitted payment request from a consultant on a professional service contract. If the LPA fails to pay promptly, the LPA must pay interest to the consultant, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied and pro-rated as necessary. Upon receipt of the payment request, the LPA must act in accordance with both of the following:

1. The LPA must review each payment request as soon as feasible after receipt to verify it is a proper payment request.
2. The LPA must return any payment request deemed improper by the LPA to the consultant as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph must include documentation setting forth in writing the reasons why it is an improper payment request.

Prompt Progress Payment to Subconsultants

California Civil Code §3321 requires prime design professionals (prime consultants directly in contract with a public agency) to pay any subconsultant no later than fifteen (15) days after receipt of each progress payment or final retention payment. The payment cannot be delayed because of disagreements on other contracts. This requirement applies to both DBE and non-DBE firms.

Prompt Payment of Withheld Funds to Subconsultants

49 CFR 26.29 requires one of the following three methods be used in Federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime consultant or subconsultant to a subconsultant:

1. The LPA may decline to hold retainage from prime consultants and prohibit prime consultants and subconsultants from holding retainage from subconsultants.
2. The LPA may decline to hold retainage from prime consultants and include a contract clause, obligating the prime consultant and subconsultants to make prompt and full

payment of any retainage kept by the prime consultant or subconsultants to all subconsultants within the following timeframe:

For consultant contracts, retainage must be paid no later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (California Civil Code §3321).

3. The LPA may hold retainage from the prime consultant and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime consultants based on the acceptances, and include a contract clause obligating the prime consultant and subconsultants to pay all retainage owed to all subconsultants within the following timeframe:

   For consultant contracts, retainage must be paid no later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (California Civil Code §3321).

In the above methods, a subconsultant's work is satisfactorily completed when all tasks called for in the subcontract have been accomplished and documented as required by the LPA. The work of a subconsultant covered by that acceptance is deemed to be satisfactorily completed, when the LPA has made an incremental acceptance of a portion of the contract work.

Prompt Payment Certification

LPAs must collect Exhibit 9-P: Prompt Payment Certification from the prime consultants by the 15th of every month which includes all subconsultants, regardless of DBE status, and must be submitted regardless if any payments have been made. The LPA must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving Exhibit 9-P from the prime consultant.

LPAs must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any prompt payment issues until the end of the contract.

Termination Procedures for DBE Subconsultants

LPAs must require prime consultants to obtain the LPAs written consent before terminating a DBE subcontractor or reducing the scope, value, or quantity of work committed to the DBE, unless the LPA directs or causes the termination or reduction.

For purposes of this requirement, a termination includes any reduction in or underrun of the work committed to a DBE that is not the result of an LPA-directed material change to the prime contract through a change order/contract amendment. This requirement applies in all circumstances, including when a prime consultant proposes to perform work originally committed to a DBE using its own workforce, the workforce of an affiliate, a non-DBE firm, or another DBE firm.

Unless written consent is provided by the LPA for termination, the prime consultant is not entitled to any payment for work or materials unless it is performed to, supplied by, the listed DBE in accordance with 49 CFR 26.53(f)(1)(ii)(B)

Partial terminations of credit towards the DBE's commitment may be requested for reasons including, elimination of work, reduction or underrun of work, or overestimation before award under 49 CFR 26.53(f)(1).

The following procedure must be followed when terminating a DBE on a federal-aid contract:

1. Identification of Good Cause

   The intent to terminate a DBE, or to terminate a portion if the DBE's work, must be justified by one or more of the ten good cause reasons identified in 49 CFR 26.53(f)(3). Good cause includes the following circumstances:

   - The listed DBE fails or refuses to execute a written contract.
   - The listed DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE to perform its work on the subcontract results from the bad faith or discriminatory action of the prime consultant.
   - The listed DBE fails or refuses to meet the prime consultant's reasonable, nondiscriminatory bond requirements.
   - The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness.
   - The listed DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR 180, 2 CFR 215, and 2 CFR 1200 or applicable State law.
   - The LPA or the prime consultant has determined that the listed DBE is not a responsible firm.
   - The listed DBE voluntarily withdraws from the project and provides 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 consultant is unable to complete its work on the contract.
   - Other documented good cause determined to compel the termination of the DBE.

2. Written Notice of Intent to Terminate

   The prime consultant must issue written notice of their intent to terminate a DBE. The notice must be transmitted to the DBE and copied to the LPA. The notice must describe the proposed good cause termination. The notice must describe the proposed good cause termination and allow a five (5) business day period for the DBE to respond. The prime consultant must maintain proof of transmission.

3. DBE Response Period

   The DBE may submit a written response within five (5) business days.

   - If the DBE firm agrees to the termination, the prime consultant may move forward with submission of the termination request to the LPA.
   - If the DBE firm objects to the termination, the prime consultant may move forward with submission of the termination request to the LPA and include the DBE firm's response.
   - If the DBE firm does not respond after five (5) business days, the prime consultant

may move forward with submission of the termination request of the DBE to the LPA.

4. Submission of Formal Termination Request

After the DBE response period, the prime consultant must submit a formal termination request to the LPA. The request must include the documented good cause reason, the written notice issued to the DBE with proof of transmission, and the DBE's response or a statement that no response was received.

5. Local Public Agency Review

If the DBE has agreed or has not responded, and the termination request complies with a justifiable reason, the LPA must issue written consent within five (5) business days of receipt of the request.

If the DBE has objected to the termination, the LPA must schedule a hearing and notify the consultant and DBE of the date and time. The hearing must be scheduled at least five (5) days after the written notice is issued. The LPA must issue findings within five (5) business days of the hearing.

If the termination request is approved, the LPA must issue a written decision statement to that effect to the prime contractor and DBE.

If the request for termination is incomplete or there are identified deficiencies with the request, the LPA must provide written response within five (5) business days outlining the required actions needed by the prime consultant to complete the request.

9.5.2 Required DBE Procedures for Construction Contracts

LPAs that receive federal transportation funding as subrecipients and administer federally funded construction contracts are required to implement and enforce the DBE Program in accordance with applicable federal and state requirements, LAPM Chapter 9 and the DBE Program Plan. Because the State delegates project administration responsibilities to LPAs, each LPA is responsible for ensuring compliance with all DBE program requirements on its federal-aid contracts. This responsibility extends throughout the entire project lifecycle, including project development, procurement, contract award, contract administration, construction, and project closeout.

Construction Contract: Advertisement & Award

Required Contract Language

Exhibit 12-G: Required Federal-Aid Contract Language contains all required federal DBE contract provisions which must be incorporated into a construction contract (refer to LAPM Chapter 12.8 for more information). By incorporating Exhibit 12-G language in the final contract between the LPA and prime contractor, the following agreements related to the DBE program are made:

- The prime contractor, subrecipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of the contract.
- The prime contractor will carry out applicable requirements of 49 CFR 26 in the administration of federal-aid contracts.
- The prime contractor or subcontractor will follow all prompt payment and retainage

procedures as required by 49 CFR 26.29, California Public Contract Code §10262, California Business and Professions Code §7108.5.

Bidder's List

To comply with 49 CFR 26.11, LPAs must collect bidder information for all federal-aid contracts by requiring each bidder to submit Exhibit 9-L: Bidder's/Proposer's List with its bid.

The Bidder's/Proposer's List must identify all firms—both DBE and non-DBE—that submitted a quote or proposal to the bidder for the contract, including subcontractors, subconsultants, truckers, and suppliers, regardless of whether the firm was selected to participate.

The information collected on Exhibit 9-L is used for DBE reporting purposes and should not be used by the LPA to determine the responsiveness of a bid.

LPAs are required to submit the Exhibit 9-L to the DLAE with the award package (within 60 days of contract award)

Construction Contract: Contract Administration

During contract administration, the LPA's primary role is active project oversight and enforcement once construction begins. DBE responsibilities include ensuring prompt payment to all subcontractors regardless of DBE status and if applicable, ensuring any DBEs participating on existing contracts are terminated in alignment with 49 CFR 26.53.

Prompt Payment

Prompt Payment from the LPA to the Contractor

California Public Contract Code §20104.50 requires that LPAs pay contractors no more than 30 days after receipt of the contractor's undisputed and properly submitted request for payment. If the LPA fails to make a timely payment the penalty is assessed on the balance owed at 10% per annum. Section 7107 of California Public Contract Code provides that the LPA must pay the prime contractor within 60 days after the date of completion (retention payment due). The penalty for failing to comply with this statute is the assessment of 2% per month on the balance owed in lieu of interest. In the event a lawsuit is filed, the prevailing party is entitled to attorneys' fees and costs.

Prompt Progress Payment to Subcontractors

The contractor must pay its subcontractors within seven (7) days of receiving a progress payment from the LPA, regardless of their status as a DBE. All materials suppliers, brokers, and other business entities must be paid no later than 30 days from receipt of each payment the LPA makes to the prime contractor unless a shorter time is specified in writing.

Prompt Payment of Withheld Funds to Subcontractors

49 CFR 26.29 requires one of the following three methods be used in Federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor:

1. The LPA may decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
2. The LPA may decline to hold retainage from prime contractors and include a contract clause obligating the prime contractor and subcontractors to make prompt and full

payment of any retainage kept by the prime contractor or subcontractor to all subcontractors within the following timeframe:

For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (California Business and Professions Code §7108.5 and California Public Contract Code §10262).

3. The LPA may hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances, and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to all subcontractors within the following timeframe:

   For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (California Business and Professions Code §7108.5 and California Public Contract Code §10262).

In the above methods, a subcontractor's work is satisfactorily completed when all tasks called for in the subcontract have been accomplished and documented as required by the LPA. The work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed when the LPA has made an incremental acceptance of a portion of the contract work.

Prompt Payment Certification

LPAs must collect Exhibit 9-P: Prompt Payment Certification from the prime contractor by the 15th of every month, which includes all subcontractors, regardless of DBE status and must be submitted whether or not any payments have been made. The LPA must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving Exhibit 9-P from the prime contractor.

LPAs must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any prompt payment issues until the end of the contract.

If the contractor fails to promptly pay their subcontractors within seven (7) days of receiving a progress payment relating to that subcontractor's work, LPA Labor Compliance staff should be notified, and the agency take a performance failure withhold (see LAPM Chapter 16).

Termination Procedures for DBE Subcontractors

LPAs must require prime contractors to obtain the LPAs written consent before terminating a DBE subcontractor or reducing the scope, value, or quantity of work committed to the DBE, unless the LPA directs or causes the termination or reduction.

For purposes of this requirement, a termination includes any reduction in or underrun of the work committed to a DBE that is not the result of an LPA-directed material change to the prime contract through a change order/contract amendment. This requirement applies in all circumstances, including when a prime contractor proposes to perform work originally committed to a DBE using its own workforce, the workforce of an affiliate, a non-DBE firm, or another DBE firm.

Unless written consent is provided by the LPA for termination, the prime contractor is not entitled to any payment for work or materials unless it is performed to, supplied by, the listed DBE in accordance with 49 CFR 26.53(f)(1)(ii)(B)

Partial terminations of credit towards the DBE's commitment may be requested for reasons including, elimination of work, reduction or underrun of work, or overestimation before award under 49 CFR 26.53(f)(1).

The following procedure must be followed when terminating a DBE on a federal-aid contract:

1. Identification of Good Cause

   The intent to terminate a DBE, or to terminate a portion if the DBE's work, must be justified by one or more of the ten good cause reasons identified in 49 CFR 26.53(f)(3). Good cause includes the following circumstances:

   - The listed DBE fails or refuses to execute a written contract.
   - The listed DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
   - The listed DBE fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
   - The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness.
   - The listed DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR 180, 2 CFR 215, and 2 CFR 1200 or applicable State law.
   - The LPA or the prime contractor has determined that the listed DBE is not a responsible contractor.
   - The listed DBE voluntarily withdraws from the project and provides 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 determined to compel the termination of the DBE.

2. Written Notice of Intent to Terminate

   The prime contractor must issue written notice of their intent to terminate a DBE. The notice must describe the proposed good cause termination. The notice must describe the proposed good cause termination and allow a five (5) business day period for the DBE to respond. The notice must be transmitted to the DBE and copied to the LPA. The prime contractor must maintain proof of transmission.

3. DBE Response Period

   The DBE may submit a written response within five (5) business days.

   - If the DBE firm agrees to the termination, the prime contractor may move forward with submission of the termination request to the LPA.

- If the DBE firm objects to the termination, the prime contractor may move forward with submission of the termination request to the LPA and include the DBE firm's response.
- If the DBE firm does not respond after 5 (five) business days, the prime contractor may move forward submission of the termination request of the DBE to the LPA.

4. Submission of Formal Termination Request

   After the DBE response period, the prime contractor must submit a formal termination request to the LPA. The request must include the documented good cause reason, the written notice issued to the DBE with proof of transmission, and the DBE's response or a statement that no response was received.

5. Local Public Agency Review

   If the DBE has agreed or has not responded, and the termination request complies with a justifiable reason, LPAs must issue written consent within 5 (five) business days of receipt of the request.

   If the DBE has objected to the termination, the LPA must schedule a hearing and notify the prime contractor and DBE of the date and time. The hearing must be scheduled at least five (5) days after the written notice is issued. The LPA must issue findings within five (5) business days of the termination hearing.

   If the termination request is approved, the LPA must issue a written decision statement to that effect to the prime contractor and DBE.

   If the request for termination is incomplete or there are identified deficiencies with the request, LPAs must provide written response within five (5) business days outlining the required actions needed by the prime contractor to complete the request.