



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Butte County Association of Governments
& Butte Regional Transit

Prepared by: Butte County Association of Governments
326 Huss Drive, Suite 150
Chico, CA 95928
(530) 809-4616
Fax (530) 879-2444
www.bcag.org
www.blinetransit.com

Approved by the BCAG Board of Directors: December 12, 2019

BCAG DBE Program

Table of Contents

GENERAL REQUIREMENTS	4
Section 26.1 Objectives.....	4
Section 26.3 Applicability	4
Section 26.5 Definitions.....	4
Section 26.7 Non-discrimination Requirements	4
Section 26.11 Record Keeping Requirements	4
Section 26.11 (c) Bidders List	5
Section 26.13 Federal Financial Assistance Agreement	5
Section 26.13(a) Assurance	5
Section 26.13(b) Nondiscrimination Assurance Contract Requirement:	6
Section 26.29 Prompt Payment Mechanisms Contract Requirement:.....	6
ADMINISTRATIVE REQUIREMENTS.....	6
Section 26.21 DBE Program Updates	6
Section 26.23 Policy Statement.....	6
Section 26.25 DBE Liaison Officer (DBELO).....	6
Section 26.27 DBE Financial Institutions.....	8
Section 26.31 Directory	8
Section 26.33 Overconcentration	8
Section 26.35 Business Development Programs.....	8
Section 26.37 Monitoring and Enforcement Mechanisms	9
Section 26.39 Fostering Small Business Participation Monitoring	10
GOALS, GOOD FAITH EFFORTS, AND COUNTING	11
Section 26.43 Set-asides or Quotas.....	11
Section 26.45 Overall Goals.....	11
Section 26.47 Failing to meet overall goals	12
Section 26.49 Transit Vehicle Manufacturers Goals	12
Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation.....	13
Section 26.51(d-g) Contract Goals	13
Section 26.53 Good Faith Efforts Procedures DBE Substitution and/or Termination Contract Requirement.....	13
Section 26.53 (a) & (c) Demonstration of good faith efforts	15
Section 26.53 (b) Information to be submitted.....	15

Section 26.53 (d) Administrative reconsideration..... 15

Section 26.53 (f) Good Faith Efforts when a DBE is replaced on a contract..... 16

Section 26.55 Counting DBE Participation..... 16

CERTIFICATION STANDARDS & PROCEDURES 18

Section 26.61 - 26.73 Certification Process..... 18

Section 26.81 Unified Certification Programs 18

Section 26.83 Procedures for Certification..... 18

COMPLIANCE AND ENFORCEMENT 18

Section 26.109 Information, Confidentiality, Cooperation..... 18

Attachment 1 Organizational Chart 20

BUTTE COUNTY ASSOCIATION OF GOVERNMENTS 20

Attachment 2 DBE Directory..... 21

Attachment 3 Forms Demonstrating Good Faith Efforts 22

Attachment 4 Regulation: 49 CFR Part 26..... 24



Policy Statement



Section 26.1, 26.23 Objectives / Policy Statement

The Butte County Association of Governments (BCAG) and Butte Regional Transit (BRT) have established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. BCAG has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, BCAG has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of BCAG and BRT to ensure that DBE's are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
2. To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's;
5. To help remove barriers to the participation of DBE's in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Human Resources Manager, has been delegated as the DBE Liaison Officer. In that capacity, the Human Resources Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by BCAG in its financial assistance agreements with the Department of Transportation.

BCAG and BRT have disseminated this policy statement to the BCAG Board of Directors, and all of the components of our organization.

This policy statement is posted on the BCAG and BRT website, posted at the BCAG office and mailed to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts, are listed within Butte County and the Small Business Development Department at Butte College.



Jon Clark, Executive Director

9-4-19
Date

[Back to Top](#)

GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

BCAG is the recipient of federal -aid highway funds authorized under MAP and any other authorizing source for highways.

BCAG is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

BCAG will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

BCAG will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, BCAG will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

BCAG will report DBE participation to DOT as follows:

We will report DBE participation to FTA on a semi-annual basis, using DOT Excel File Uniform Report of DBE Commitments/Awards and Payments; Form 4630. These reports will reflect payments actually made to DBE's on DOT-assisted contracts. These reports are due December 1st and June 1st of each FFY and uploaded to the FTA website.

Section 26.11 (c) Bidders List

BCAG will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following way:

We request the bidder to report the information included on the Bidders List and the percentage proposed by all subcontractors, including DBE's.

Section 26.13 Federal Financial Assistance Agreement

BCAG has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Section 26.13(a) Assurance

BCAG shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. BCAG shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to BCAG of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear verbatim as it is stated in 26.13(a) in financial assistance agreements with sub-recipients.

Section 26.13(b) Nondiscrimination Assurance Contract Requirement:

BCAG will ensure that the following assurance will be in each DOT-assisted contract and subcontract:

“The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

Section 26.29 Prompt Payment Mechanisms Contract Requirement:

BCAG will include the following assurance in each DOT-assisted prime contract:

“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from BCAG. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of BCAG. This clause applies to both DBE and non-DBE subcontracts.”

[Back to Top](#)

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since BCAG has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

BCAG has designated the following individual as the Disadvantaged Business

Enterprise Liaison Officer (DBELO):

Cheryl Massae
DBE Liaison Officer
Butte County Association of Governments
326 Huss Drive, Suite 150
Telephone: (530) 809-4616; Fax: (530) 879-2444
Email: cmassae@bcag.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that BCAG complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has support from three key staff members of BCAG that include the;

- **Deputy Director** who assists with project management, reporting, contract bids, requests for proposals, reporting requirements, subcontractor information and contract compliance.
- **Chief Fiscal Officer** who assists with financial information such as funding amounts paid out and the type of funds used on the project, if the contract is closed or open and what if any DBE firms were paid during the reporting period.
- **Transit Planning Staff** who assist with reporting requirements by BCAGs transit contractor, other assigned contractors and FTA funded projects as well as other duties as assigned.

The DBELO's and/or designee's duties include, but are not limited to, the following activities:

1. Gathers and reports statistical data and other information as required by DOT, including preparation of semi-annual DBE reports and overall DBE goals and related analysis for submission to the FTA.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to best foresee future projects for BCAG and to set overall annual goals.
4. Develop a DBE availability list for procurements.
5. Reviews FTA-assisted contracts and procurements to ensure the Overall Goal is included in the solicitations.
6. Analyzes BCAGs progress toward attainment and identifies ways to improve

progress.

7. Advises the CEO\governing body on DBE matters and achievement.
8. Provides Local Small Businesses with information on how to certify as a DBE and assist with contract opportunities.
9. Participates in DBE training seminars.
10. BCAG utilizes the CUCP to search for DBE's.

Section 26.27 DBE Financial Institutions

It is the policy of BCAG to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions.

There are currently no financial institutions, credit unions or savings institutions that are certified as a DBE in Butte County. There are however, local smaller banking institutions such as Banner Bank, Tri-Counties Bank, Mechanics Bank, Golden Valley Bank and California National Bank. Local small Credit Unions include Sierra Central Credit Union, Self-Help Federal Credit Union and Members 1st Credit Union. BCAG utilizes Mechanics Bank to administer our Section 125 Flex Spending Account for employees.

Section 26.31 Directory

BCAG utilizes the California Uniform Certification Program (CUCP) to access lists of certified DBE firms and is used to identify potential DBE prime contractors and subcontractors and suppliers. The DBE Directory is published on the California Department of Transportation's (Caltrans) website.

Section 26.33 Overconcentration

During the preparation of the DBE Overall Goal and Methodology, BCAG has not identified any types of work that have an overconcentration of DBE participation. If BCAG determines that DBE firms are overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, BCAG will revise its goals to be reflective of the overconcentration.

Section 26.35 Business Development Programs

BCAG does not have the resources to establish a formal Business Development Program. However, BCAG partners with the Small Business Development Center at Butte College and refers all firms requesting business development to BCSBDC. Butte College Small Business Development Center (SBDC) offers one-stop technical assistance through one-on-one business consulting, trainings, referrals and a wide variety of information and guidance to small business owners and entrepreneurs throughout Butte, Glenn, and Tehama Counties. The Center helps businesses start, develop, manage and grow and get access to capital.

Section 26.37 Monitoring and Enforcement Mechanisms

Monitoring

BCAG will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBE's at contract award is actually performed by the DBE's. This will be accomplished by attending project status meetings and include payment progress and work completed with monthly invoices. Unannounced work-site visits may also occur to verify DBE work.
4. We will monitor the prime contractor to return retainage payments to each subcontractor within thirty (30) days after the subcontractors work is satisfactorily completed.
5. We will keep a final DBE Utilization Report if there was DBE participation.

Enforcement Mechanisms

BCAG has several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to California Civil Code §3300, et seq.;
3. Any other enforcement mechanism in law or equity allowable in California.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

We will require prime contractors to maintain records and documents of payments to DBE's for three years following the performance of the contract. These records will be available for inspection upon request by any authorized representative of BCAG or DOT. This reporting requirement also extends to any certified DBE subcontractor. During our semi-annual reporting of Uniform Reports to FTA, we will perform an informal audit of contract payments to DBE's. The audit will include calling DBE's on a periodic basis to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amount stated in the monthly invoice of payments made for DBE

participation.

We require prime contractors to include with their monthly invoice a report on a payments made to DBE's.

Section 26.39 Fostering Small Business Participation Monitoring

BCAG partners with the following to encourage small businesses which includes minority and women owned businesses and certified DBE's;

- SBDC
- Butte County Economic
- Caltrans
- Chico State
- Jurisdiction City Chambers

The partners offer one-stop technical assistance through one-on-one business consulting, trainings, referrals and a wide variety of information and guidance to small business owners and entrepreneurs throughout Butte, Glenn, and Tehama Counties. They offer assistance with startup, development, management and expanding small businesses, and access to capital.

Information regarding small business assistance may be found on BCAGs website under Resources.

[Back to Top](#)

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

BCAG does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated on a triennially basis.

In accordance with Section 26.45(f) BCAG submits its overall goal to DOT by August 1 at three-year intervals. BCAG reviews their overall goal on an annual basis and may adjust our three-year overall goal during the three-year period in order to reflect changed circumstances. If there is an adjustment made, BCAG will submit to the applicable DOT operating administration for review and approval.

Before establishing the overall three-year goal, BCAG will consult with the appropriate staff and our transit contractor Transdev to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBE's, and BCAG's efforts to establish a level playing field for the participation of DBE's.

BCAG will consult with the Butte County Economic Development Corp, the Butte College Small Business Development Center, the surrounding jurisdictions Chambers of Commerce and organizations through the California State University, Chico. Depending on the project, BCAG will reach out to more specific minority or women's groups to advise of contracting opportunities and provide the benefits of registering as a DBE, if the business is not a DBE already.

Following this consultation, we will publish a notice of the proposed overall goal on the BCAG website, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our office for 30 days following the date of the notice, and informing the public that BCAG will accept comments on the goals. The notice is sent to all of the jurisdictions Chambers of Commerce and the SBDC at Butte College.

This notice will go out in June or July of the year we are due to submit a new overall goal to DOT. The notice includes the addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of the year we are due to submit a new overall goal to DOT, unless we have received other instructions from DOT or if an adjustment is made to the goal within the three-year time period. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Failing to meet overall goals

BCAG strives in good faith to meet our overall DBE goals, however, if DBE participation falls short on a project(s) and the goal is not met, BCAG will take steps to understand the reasons the goal was not met and take corrective action to meet the goal in the upcoming year.

If the awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the DOT as implementing our DBE program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems we have identified in our analysis to fully meet our goal for the new fiscal year;
3. BCAG will try to identify any means available to increase DBE participation to achieve the DBE goal in the next fiscal year and ensure compliance with the DBE rule;
4. DBE Participation on fiscal year FTA-assisted projects
5. Race-conscious/race-neutral breakdown
6. Race-neutral measures
7. Specific reasons for shortfall

Section 26.49 Transit Vehicle Manufacturers Goals

BCAG regularly participates in piggy-back contracts for transit vehicle acquisition.

Should BCAG not participate in a piggy-back contract, BCAG will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-

assisted transit vehicle procurements, to certify that it has complied with the requirements of this section, including the establishment of an annual overall DBE participation goal that has been submitted to the FTA and either approved, or not disapproved, by that agency. BCAG shall not include the amount of FTA assistance used in transit vehicle procurements in the base amount from which BCAGs overall annual goal is established. BCAG will notify FTA office of Civil Rights of the TVM purchase within 30 days of award by submission of the survey monkey form.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated every three years when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

BCAG will use contract goals to meet any portion of the overall goal BCAG does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBE's to perform the particular type of work.)

We will express our contract goals as a percentage of total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures DBE Substitution and/or Termination Contract Requirement

BCAG requires that prime contractors do not terminate a DBE subcontractor (or an approved substitute DBE firm) without BCAGs prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

BCAG will include the following assurance in each DOT-assisted prime contract:

“The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains BCAGs written consent as provided in this paragraph; and that, unless your consent is provided

under this paragraph, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.”

BCAG may provide such written consent only if it agrees with the prime contractor, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

For purposes of this paragraph, good cause includes the following circumstances:

- 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. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- 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 1,200 or applicable state law;
- You have 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 you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to BCAG 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 BCAG, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise BCAG and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five

days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Section 26.53 (a) & (c) Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The DBELO will work with the Reconsideration Official to determine whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Section 26.53 (b) Information to be submitted

BCAG treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Section 26.53 (d) Administrative reconsideration

Within 5 days of being informed by BCAG that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Reconsideration Official
Deputy Director or Executive Director
Butte County Association of Governments
326 Huss Drive, Suite 150
Telephone: (530) 809-4616; Fax: (530) 879-2444

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. BCAG may have an employee familiar with GFE from another agency to fill in as the Reconsideration Official or a BCAG employee not involved in the procurement process.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate

Section 26.53 (f) Good Faith Efforts when a DBE is replaced on a contract

BCAG will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Section 26.55 Counting DBE Participation

Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted.

DBE participation will not be counted toward the prime contractor's achievements or the overall goal until the DBE has been paid. In accordance with 49 CFR Section 26.51(g), The DBELO will track the participation of DBE's in contract-specific goal contracts separately from the participation of DBE's in contracts without contract goals. The DBELO will not count towards the overall goal that portion of a DBE's participation that is achieved after the certification of the DBE has been removed during the performance of a contract. If the DBE's ineligibility is caused solely by its having exceeded the applicable size standard during the performance of the contract, BCAG will continue to count its participation on that contract toward overall and contract goals.

Expenditures may only be counted if the DBE is performing a commercially useful function on the contract. 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 prices, determining quality and quantity, ordering the material, and installing and paying for the material itself to determine whether a DBE is performing a commercially useful function, BCAG will 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, as well as other relevant factors.

A DBE does not perform a commercially useful function if its role in the contract is limited to that of an extra participant through which funds are passed in order to obtain the appearance of DBE participation. If the DBE does not perform or exercise responsibility for at least 51 % 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, the DBE is presumed not to be performing a commercially useful function.

If materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, 60 percent of the cost will be counted. If the materials and supplies are purchased from a DBE broker or a manufacturer's representative, the entire amount of the fees or commissions charged for assistance in the procurement of the materials or supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site will be counted towards the DBE goal provided that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

Trucking will be counted in accordance with the provisions of 49 CFR Section 26.55

[Back to Top](#)

CERTIFICATION STANDARDS & PROCEDURES

Section 26.61 - 26.73 Certification Process
Section 26.81 Unified Certification Programs
Section 26.83 Procedures for Certification

BCAG is not a DBE certifying agency. BCAG posts information on how to become DBE certified firm with the California Unified Certification Program (CUCP), including criteria which must be satisfied, BCAG refers potential DBE's to this link to the Caltrans website to assist with the DBE certification process.

<https://dot.ca.gov/programs/business-and-economic-opportunity>

The closest Certifying Agency to BCAG is located at:

California Department of Transportation (Caltrans)
Civil Rights Program – MS #79
1823 14th Street
Sacramento, CA 95811

Certification Officer
(916) 324-0900

[Back to Top](#)

COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclosing to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

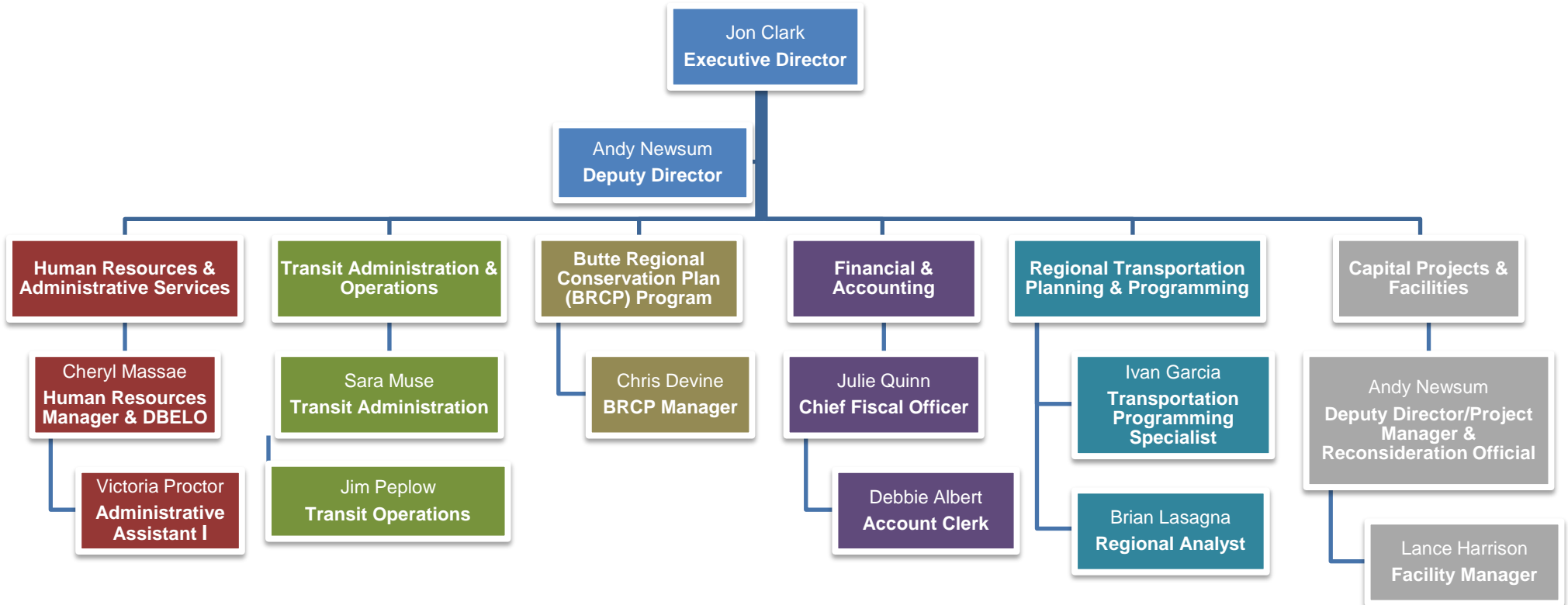
Cooperation: All participants in the BCAGs DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and BCAG compliance reviews, certification reviews, investigations, and other requests for information.

Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

Intimidation and retaliation: If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

Attachment 1 Organizational Chart

**BUTTE COUNTY ASSOCIATION OF GOVERNMENTS
ORGANIZATIONAL CHART**



Attachment 2

DBE Directory

See the CUCP directory, found at: http://www.dot.ca.gov/hq/bep/find_certified.htm

BCAG encourages prime contract bidders to search this directory when seeking subcontractors that are certified as a DBE. BCAG will provide a hard copy of such directory upon request.

**Attachment 3 Forms
Demonstrating Good Faith
Efforts**

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

Print Name _____

(Signature & Title)

FORM 2 LETTER OF INTENT

Name of bidder's firm: _____

Address: _____

City: _____ State: _____

Zip Code: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____

Zip Code: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$_____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

Print Name _____

(Signature & Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

**Attachment 4 Regulation:
49 CFR Part 26**

The Electronic Code of Federal Regulations, Title 49 Part 26 can be found at the following link.

https://www.ecfr.gov/cgi-bin/text-idx?SID=53cd5c89e0e9bdcfc93bae3ae3efb10c&mc=true&node=pt49.1.26&rgn=div5#_top