



# DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Butte County Association of Governments  
& Butte Regional Transit

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# DRAFT

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## 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 DBEs are defined as required in 49 CFR Part 26 and 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 DBEs 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 DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Transportation Analyst has been delegated as the DBE Liaison Officer. The delegate 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. Any changed in the DBELO delegate role will be defined during the DBE annual review process.

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.

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Andy Newsum, Executive Director

8/22/2024  
Date

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# 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. (Linked here: <https://www.ecfr.gov/current/title-49/subtitle-A/part-26/subpart-A/section-26.5>)

## 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

Per Sections 26.11 (a) and (b), BCAG will report DBE participation to FTA on a semi-annual basis, using DOT Excel File Uniform Report of DBE Commitments/Awards and Payments (Form 508, effective 5/9/2024). These reports will reflect payments made to DBEs on DOT-assisted contracts and will include information on specific DBE contractors used. Such information, per the Final Rule, should include:

- Names and contact information of DBE contractors that performed work
- Work categories / trades performed, including NAICS codes
- Dollar value of contracts
- Number of firms listed at commitment but replaced (including explanation)
- Number of firms decertified during the reporting period

The Uniform Report and Contractor Payment/Work information items are due December 1<sup>st</sup> and June 1<sup>st</sup> of each FFY and uploaded to the FTA website. The data is entered into an online form and back-up documentation is uploaded on that same form.

### **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, contact information, DBE/non-DBE status, fields of work bid, related North American Industry Classification System (NAICS) codes, age, and annual gross receipts of firms.

To collect this information, BCAG will request the bidder to report the information via the Bidders List Information form included in procurement solicitation packages. Bidders will be required to complete the information for any proposed subcontractors, including the percentage proposed by all subcontractors, inclusive of DBE's.

The Bidders List will be submitted to the FTA via the regular reporting form no later than December 1<sup>st</sup> of the fiscal year after a contract is awarded. For design-build contracts, where subcontracts are solicited throughout the contract period, data will be entered no later than December 1<sup>st</sup> following the federal fiscal year in which the contractor awards the relevant subcontract(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 subcontractor’s 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.”

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## **ADMINISTRATIVE REQUIREMENTS**

**Section 26.21 DBE Program Updates**

As defined in Section 26.5, BCAG is considered as Tier I recipient because it has received a grant and/or will award a prime contract of \$670,000 or more in FTA planning capital and/or operating assistance in a federal fiscal year. As such, BCAG will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide 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)

Effective in 2022, BCAG has designated the following individual as the Disadvantaged Business Enterprise Liaison Officer (DBELO):

Amy White  
DBE Liaison Officer  
Butte County Association of Governments  
326 Huss Drive, Suite 150  
Telephone: (530) 809-4616 x1135 - Fax: (530) 879-2444  
Email: [awhite@bcag.org](mailto:awhite@bcag.org)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that BCAG complies with all provisions 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 1](#) 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 following:

- **Executive 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 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.
2. Prepares and submits to FTA and other agencies semi-annual DBE reports, triennial overall DBE goals and related analysis such as prompt payment adherence.
3. Reviews third party contracts and purchase requisitions for compliance with this program.
4. Works with all departments to best foresee future projects for BCAG and to set overall annual goals.



5. Conducts annual goal review for presentation to Board in August/September as consent item.
6. Develops a DBE availability list for procurements.
7. Reviews FTA-assisted contracts and procurements to ensure the Overall Goal is included in the solicitations.
8. Analyzes BCAGs progress toward attainment and identifies ways to improve progress.
9. Advises the Executive Director\governing body on DBE matters and goal achievement.
10. Provides Local Small Businesses with information on how to certify as a DBE and assist with contract opportunities.
11. Participates in DBE training seminars.
12. 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 1<sup>st</sup> 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, 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 utilize a running tally comparison of payments made to listed DBEs performing work to monitor the following:
  1. Performance of committed work by the prime contractor
  2. Prompt payments are completed (including return of retainages and payments to all subcontractors)
  3. Performance of commercially useful functions
  4. Contractor's progress
2. We will bring to the attention of the Department of Transportation (DOT) 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 Section 26.109.
3. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
4. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBE's. This will be accomplished by attending project status meetings and including payment progress and work completed with monthly invoices. Unannounced work-site visits may also occur to verify DBE work.
5. We will monitor the prime contractor to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.
6. We will keep a final DBE Utilization Report if there is DBE participation.
7. We will maintain a DBE Log of activity related to enforcement and outreach under the DBE Program.

### 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 DBEs for three years (per Section 26.109) 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 via a running tally of contract payments to DBE's. The audit will include calling DBEs 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 payments made to DBE's.

### **Section 26.39 Fostering Small Business Participation Monitoring**

BCAG partners with the following to encourage development and opportunity awareness to small businesses, including minority and women owned businesses and certified DBE's.

- 3CORE ([www.3coreedc.org](http://www.3coreedc.org))
- SBDC at Butte College ([www.buttecollegesbdc.com](http://www.buttecollegesbdc.com))
- Butte County Economic and Community Development ([www.buttecounty.net/191/Economic-Development](http://www.buttecounty.net/191/Economic-Development))
- North State Planning and Development Collective at Chico State ([www.nspdc.csuchico.edu](http://www.nspdc.csuchico.edu))
- Jurisdiction Economic Development Departments and Chambers of Commerce within BCAG's Geographic Market Area
- North State Hispanic Chamber of Commerce
- Valley Contractors Exchange
- DBEGoodFaith.com
- Caltrans

Partners and agencies offer one-stop technical assistance through one-on-one business consulting, training, referrals and a wide variety of information and guidance to small business owners and entrepreneurs throughout the Geographic Market Area.

They can assist with startup, development, management and expanding small businesses, and access to capital.

Information regarding small business assistance may be found on BCAGs website at <https://www.bcag.org/Regulations/DBE-Program/index.html> .

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## 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. The DBE overall goals of the program will be updated on a triennial 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 and present to the BCAG Board as a consent item in August or September.

Before establishing the overall three-year goal, BCAG will consult with the appropriate staff and our transit contractor to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and BCAG's efforts to establish a level playing field for the participation of DBEs. BCAG will also consult with the agencies listed in Section 26.39 of this document and, depending on the project, with other specific minority- or women-focused group organizations 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 the jurisdictions Chambers of Commerce and the SBDC at Butte College.

This notice will go out in May or June 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 period, such as during the annual review process. 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 reporting form accessible from the following web sites:

<https://www.surveymonkey.com/r/vehicleawardreportsurvey>  
<https://www.transit.dot.gov/TVM>

### **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 the DBE Goal Methodology document located in [Attachment 4](#) 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 using 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 DBEs to perform a specific type of work.)

We will express our contract goals as a percentage of the 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 BCAG’s 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 the concurrence document, that the prime contractor has good cause to terminate the DBE firm.

For purposes of this paragraph, good cause on the part of the prime contractor 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 BCAG 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. This information applies to proposals that are not design-build projects (see Section 26.53 (e)).

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  
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 good faith efforts 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 (e) – Design-Build Projects & Open-Ended Performance Plans**

Section 26.53 (e) came into effect with the Final Rule in May 2024. This section applies only to design-build projects that have extended time frames where a DBE entity used to complete the project may not be known to the bidder/contractor when submitting proposals prior to contract award. Use of an Open-Ended Performance Plan provides flexibility to address changing conditions common for this type of project not previously available under Section 26.53 (b).

Proposers in this category must meet good faith efforts by submitting a DBE Open-Ended Performance Plan (OEPP) with their proposal. An example OEPP is included in [Attachment 3](#). OEPPs must include the following for the proposal to be considered responsive:

- Commitment to use good faith efforts to meet the goal
- Details of each type of subcontracting work/services (anticipated work type)
- Anticipated timeframe of that work

- Anticipated dollar value of these work opportunities
- OEPP elements that add up to the dollar value of the goal percentage
- A narrative detailing how the OEPP plan was formulated and how it will be successfully implemented.

Additionally, the BCAG must provide ongoing monitoring and oversight as to whether the design-builder is using good faith efforts to comply with the OEPP and schedule. BCAG and the design-builder may agree to make written revisions to the OEPP during the life of the project as long as the design-builder continues to use good faith efforts to meet the DBE goal. DBEs sign subcontracts when details are known.

If the goal cannot be achieved and no subcontracting opportunities remain in the contract, the prime contractor can submit documentation of their unsuccessful efforts for BCAG's review and approval.

### **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 DBEs in contract-specific goal contracts separately from the participation of DBEs in contracts without contract goals. The DBELO will not count towards the overall goal that portion of a DBEs participation that is achieved after the certification of the DBE has been removed during the performance of a contract.

Prime contractors may add work or extend a completed contract with a decertified firm

only if it obtains prior, written consent from BCAG. 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.

Continued credit toward a contract goal is disallowed if the DBE's ineligibility after the subcontract is signed is the result of a purchase by, or merger with, a non-DBE firm. In that case, the prime contractor is required to use good faith efforts to replace the DBE if additional credit is needed to meet the contract goal.

Expenditures may only be counted if the DBE is performing a commercially useful function (CUF) 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 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 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.

### **Section 26.55 (d) Trucking**

Trucking will be counted in accordance with the provisions of 49 CFR Section 26.55 (d).

### **Section 26.55 (e) – Manufacturers, Distributors and Dealers**

If materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost will be counted. Manufacturers that make minor material modifications cannot be counted as a manufacturer for DBE goal purposes.

If the materials and supplies are purchased from a DBE regular dealer (defined in Section 26.55(e)(2)(ii)), 60 percent of the cost will be counted. Per Section 26.55 (2)(iv)(D), packagers, brokers, manufacturer's representatives, or other persons who

arrange, facilitate, or expedite transactions are not regular dealers within the definition of the previous mentioned section of this regulation.

If materials and supplies are purchased from a DBE distributor (defined in Section 26.55(e)(3)), 40 percent of the cost of materials is allowed to be credited. Credit is limited to fees or commissions when the distributor “drop ships” materials without assuming risk or does not operate in accordance with its distributor agreement. If BCAG determines the distributor neither maintains sufficient inventory nor uses its own distribution equipment, 40 percent of the costs of materials or supplies, including transportation costs, can be counted.

Determination of a proposer’s status as a manufacturer, regular dealer or distributor must be determined prior to award by BCAG. For this process, BCAG will accept the tool provided by the U.S. Department of Transportation shown in [Attachment 3](#) and available at the following web address:

<https://www.transportation.gov/sites/dot.gov/files/2024-06/DBE%20Regular%20Dealer-Distributor%20Affirmation%20Form-%20OMB%20Control-508v3.pdf>.

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## **CERTIFICATION STANDARDS & PROCEDURES**

**Section 26.61 - 26.73 Certification Process**

**Section 26.81 Unified Certification Programs**

**Section 26.83 Procedures for Certification**

**Section 26.87 Decertification**

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 14<sup>th</sup> Street  
Sacramento, CA 95811  
Certification Officer: (916) 324-0900

Decertification procedures are outlined in Section 26.87, which can be accessed here:

<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/final-rule->

## COMPLIANCE AND ENFORCEMENT

### Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclosure to third parties any 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.

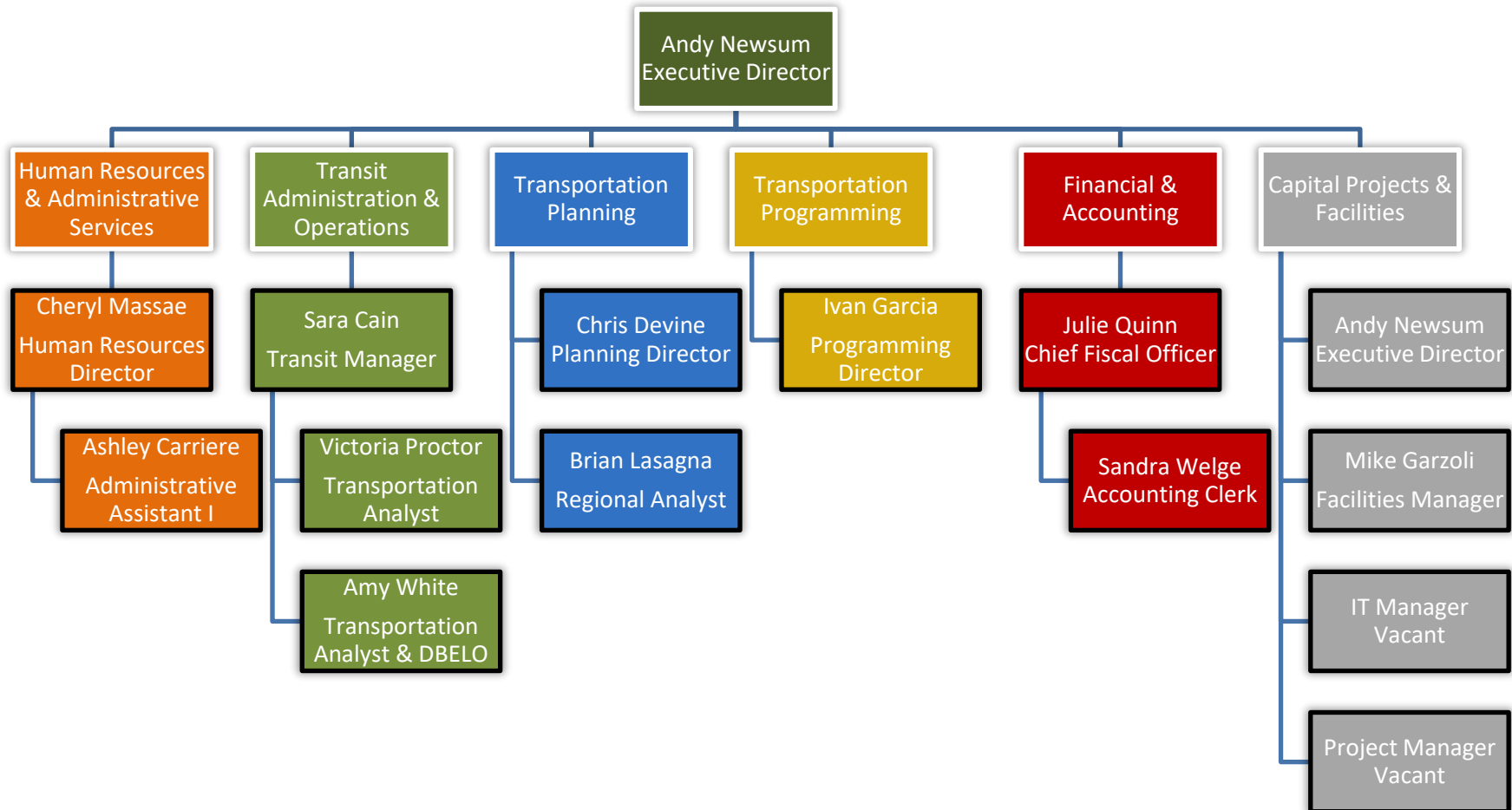
*Cooperation:* All participants in the BCAGs DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and BCAG compliance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

**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](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 DBE. BCAG will provide a hard copy of such directory upon request.

### Attachment 3

#### DBE Forms Required for Procurement/Bidding Process/Good Faith Efforts

These forms will be provided as part of solicitation documents. The form number designation denotes the number used for that form within the BCAG procurement package that must be returned to be considered a responsive proposal.

#### Form 9A: Local Agency Proposer / Operator-DBE Information

This information shall be provided by the successful Proposer/Operator/Bidder with the award document.

- Preliminary Engr.   
  Studies   
  Environmental Document   
  Prelim Design   
  Professional Services   
  Final Design Right of Way   
  Right of Way Engineering   
  Right of Way Utility Relocation   
  Construction   
  Construction Engineering   
  Construction Management   
  Contractor/Transit Services

AGENCY: **Butte County Association of Governments/Butte Regional Transit**  
 LOCATION: **Chico, Butte County**  
 PROJECT DESCRIPTION: **Administration and Operation of Butte Regional Transit**  
 BCAG Work Element Number: \_\_\_\_\_  
 FEDERAL-AID PROJECT NUMBER: \_\_\_\_\_  
 TOTAL CONTRACT AMOUNT: \_\_\_\_\_  
 FEDERAL SHARE (For local agency to complete): \_\_\_\_\_  
 PROPOSAL/BID DATE: \_\_\_\_\_  
 PROPOSER/OPERATOR'S/BIDDER'S NAME: \_\_\_\_\_

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs <sup>1</sup> (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are helpful. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.  1. Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own DBE forces.  2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.			Total Claimed Participation \$ _____ _____%	
<b>Revised: 4/28/06</b>			_____ Signature of Proposer/Operator Date: _____ Tel. #: _____ Person to Contact: _____	



## Form 9D: BIDDER'S LIST INFORMATION/NOTICE OF INTENT/AFFIRMATION STATEMENTS

This form will be provided as part of solicitation documents. **This form must be completed for ALL entities** included in a bidder's proposal response, whether or not they are a DBE qualified entity, including the prime responder. A notice of intent is submitted for each DBE subcontractor. A proposer may choose to submit this form in a table or excel format, however all elements must be included in such a document, or the submission will be deemed unresponsive. North American Industry Classified System (NAICS) codes must be provided for all entities described within a submitted proposal, even if not a DBE. Codes can be obtained at this federal website:

<https://www.census.gov/naics/>.

- 1) Name of Bidder's Firm: \_\_\_\_\_  
 2) Physical Address: \_\_\_\_\_  
 3) Mailing Address: \_\_\_\_\_  
 4) Bidder Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Email Address: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 4) Is this the **Primary** bidder/proposer?  Yes  No  
 \*If no, continue to Question #7.

- 5) If Primary, is the proposer a **DBE-qualified** firm in good standing?  Yes  No  
 5a) If DBE-qualified, what is the firm's **active DBE certification number**? \_\_\_\_\_

- 6) If **Primary**, what are the fields of work and the related NAICS codes that will be completed by the Primary and not by any sub-contractor?

Work Type / Description	Federal NAICS Code	Estimated \$\$ Value
	Total Estimated Value	

- 7) Name of **Sub-contractor's** Firm: \_\_\_\_\_  
 8) Physical Address: \_\_\_\_\_  
 9) Mailing Address: \_\_\_\_\_  
 10) Sub-contractor's Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Email Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

- 11) Is the sub-contractor a **DBE-qualified** firm in good standing?  Yes  No  
 11a) If DBE-qualified, what is the firm's **active DBE certification number**? \_\_\_\_\_

- 12) If **Sub-contractor**, what are the fields of work and the related NAICS codes that will be completed by the Sub-contractor and not by the Primary?

Work Type / Description	Federal NAICS Code	Estimated \$\$ Value
	Total Estimated Value	

13) **AFFIRMATION STATEMENT/NOTICE OF INTENT (Primary)**

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described. The estimated dollar value of this work is \$\_\_\_\_\_. The above-named DBE firm has affirmed to the primary proposer that it will perform the portion of the contract designated in Item #12 above.

Signed: \_\_\_\_\_ Printed Name: \_\_\_\_\_ 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.

## Form 9E: RECORD OF GOOD FAITH EFFORTS

In order to reflect required Good Faith Efforts (GFE) throughout the bidding and contract process, proposers should provide a written statement describing the steps taken toward submitting a proposal inclusive of this DBE goal and any outcomes. This step is to be completed whether the firm was or was not successful in obtaining a commitment from a DBE for any work involved with the project.

Items to address in this GFE statement include:

- Names and dates of any publications, notices or outreach that were completed in relation to this project. Include supporting documentation/copies.
- Description of any written notices sent to specific DBE's and any related responses or follow-up completed by the bidder.
- A consolidated list of items of work made available to DBE firms including:
  - Items of work
  - Does proposer normally perform the work item?
  - Breakdown of work items by percentage of total contract
  - Estimated dollar amount for each work item
  - Percentage of project dollar amount for each work item
- Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs.
- Description of any efforts made to assist DBEs in obtaining more information related to the project or any other additional assistance given to DBEs.
- Contact information and results for any outside agencies, organizations or groups the proposer contacted to provide further assistance to DBEs.
- Any additional data to support demonstration of GFE for this proposal process.

For a sample format, please refer to Caltrans Exhibit 15-H, linked here:

<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/c15/15hw.docx>

## Form 9F: OPEN-ENDED PERFORMANCE PLAN (OEPP) (Good Faith Efforts)

The form below is a sample of an Open-Ended Performance Plan (OEPP) that includes the required elements per Section 26.53 (e). Submittal of the required information by the bidder is a condition of a responsive proposal. This is required for Design-Build projects only.

DBE Planned Work Activities / DBE Contractor	Time Frame	Estimated Dollar Value for DBE Participation	Anticipated DBE %
Surveying	Year 1, Q1	\$7,500	0.20%
Design Support	Year 1, Q1, Q2 Year 2, Q2, Q4	\$10,000	1.05%
Excavation	Year 1 Q2, Q3	\$50,000	0.10%
Totals		\$67,500	1.35%

This is based on a total project cost of \$5,000,000 and a DBE overall goal of 1.35%.

Other samples and guidance information on OEPPs is available on the following DBE related websites:

FTA OEPP Presentation (includes samples):

<https://www.transportation.gov/sites/dot.gov/files/2024-06/Final%20-%20DBE%20Final%20Rule%20Open%20Ended%20Performance%20Plans%20%28OEPP%29%20for%20DesignBuild%20Contracts%206.18.24.pdf>

FTA Final Rule Guidance:

<https://www.transportation.gov/DBEFinalRule>

In-depth Sample OEPP (California):

<https://dot.ca.gov/-/media/dot-media/programs/design/documents/f0005177-dbe-sample-a11y.pdf>

# Form 9G: Manufacturer/Regular Dealer/Distributor Determination Form

This fillable form is available online here:

[https://www.transportation.gov/sites/dot.gov/files/2024-04/DBE%20Regular%20Dealer-Distributor%20Affirmation%20Form\\_0.pdf](https://www.transportation.gov/sites/dot.gov/files/2024-04/DBE%20Regular%20Dealer-Distributor%20Affirmation%20Form_0.pdf). This form (or a similar signed document including all information in this form) must be completed and submitted for any prime or subcontractors identifying as manufacturer, regular dealer or distributor and is a DBE.

OMB Control #2105-0586 (Exp. 5/31/2027) **DBE Regular Dealer/Distributor Affirmation Form**

U.S. Department of Transportation

Bidder Name: \_\_\_\_\_  
Contract Name/Number: \_\_\_\_\_

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name: \_\_\_\_\_ Total Subcontract/Purchase Order Amount: \_\_\_\_\_  
Authorized DBE Representative (Name and Title): \_\_\_\_\_ NAICS Code(s) Related to the Items to be Sold/Leased: \_\_\_\_\_

1. Will all items sold or leased be provided from the on-hand inventory at your establishment?  YES  NO  
(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?  YES  NO (If "YES," Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?  YES  NO\* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

\*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?  YES  NO<sup>1</sup>  
(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)  
<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)?  YES<sup>2</sup>  NO<sup>3</sup>

a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased?  YES<sup>2</sup>  NO<sup>3</sup>

<sup>2</sup> If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

<sup>3</sup> If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative: \_\_\_\_\_

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative: \_\_\_\_\_

## **Attachment 4 Regulation & Goal Methodology**

The BCAG/B-Line DBE Program document includes all elements required by the Code of Federal Regulations, Title 49 Part 26, including updates due to the related Final Rule, effective May 9, 2024. This document 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](https://www.ecfr.gov/cgi-bin/text-idx?SID=53cd5c89e0e9bdcfc93bae3ae3efb10c&mc=true&node=pt49.1.26&rgn=div5#_top)

Additionally, the goal methodology specific to BCAG is described on the agency web page and within the triennial goal methodology document. The goal methodology document contains the breakout of race-neutral and race-conscious participation. Both are accessible on the BCAG web site and/or by following this link:

<https://www.bcag.org/Regulations/DBE-Program/index.html>