

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 8  
FOR THE MEETING OF: July 15, 2010**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Approval of the Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL) Program for federal fiscal years 2010-11 through 2012-13.

**SUMMARY:**

- In accordance with Title 49 of the Code of Federal Regulations, Part 26 (49 CFR Part 26), the TJPA implements a DBE Program to ensure nondiscrimination in the award of federally funded contracts. As part of this program, the TJPA must establish an annual target for DBE participation in all new contracts that are eligible to be funded with federal funds. A DBE firm is defined as a for-profit “small business concern” that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. DBE firms are certified as such through Unified Certification Programs (UCPs) established in each state.
- On April 22, 2010, the TJPA Board authorized the release of the draft ADPL of 18.5% for a 30-day review/45-day comment period. No comments were received.

**ATTACHMENTS:**

1. Resolution
2. FY 2010-13 ADPL Methodology

**EXPLANATION:**

**Development of ADPL Percentage**

As an eligible recipient of federal-aid funding, TJPA is required to comply with 49 CFR Part 26, which states that grantees must establish and implement a DBE program and, until now, annually set DBE participation targets. Under the new Final Rule issued this spring, participation targets will now be set for three-year time periods. The TJPA establishes its participation target, an Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL), as part of its approved DBE Program.

The methodology to calculate the DBE participation target is a two-step process described in 49 CFR Part 26. Step One of the methodology establishes a base figure for the anticipated new contracts to be awarded in federal Fiscal Year 2010-11 through federal Fiscal Year 2012-13 (October 1, 2010 – September 30, 2013). The base figure is derived from the relative availability of DBEs that are ready, willing, and able to participate on these anticipated contracts. Step Two relies on the TJPA’s knowledge of its contracting markets and previous history of DBE participation to determine if an adjustment to the base figure is needed. The calculation using the two-step methodology results in an ADPL of 18.5% for FY 2010-13. This methodology is outlined in Attachment 2.

The overall DBE goal is typically split into race-neutral and race-conscious components. Race-neutral participation occurs when a DBE obtains a contract or subcontract through customary procurement procedures where there was no contract goal or its DBE status was not considered in making the award. Race-conscious DBE participation is the portion of the overall goal that focuses on assisting only DBEs, where a contract's DBE goal is explicitly stated to encourage DBE participation. TJPA will continue to operate a race-neutral DBE program. TJPA will also continue to supplement its DBE program with a Small Business Enterprise (SBE) program.

### **Outreach/Public Comment Period**

In accordance with the public participation requirements of 49 CFR Part 26.45, the draft ADPL was released for a 30-day review/45-day comment period. A public notice was published in general circulation and minority-focused media, including the following:

- China Press
- El Mensajero
- La Oferta Review
- Philippine News
- San Francisco Bay View
- San Francisco Chronicle
- San Francisco Examiner
- Small Business Exchange
- Thong Bao

The TJPA's draft ADPL was also be sent to the TJPA's local partner agencies for review. The following local agencies received a letter announcing the release of the draft FY 2010-13 ADPL for review:

- San Francisco Municipal Transportation Agency (MTA)
- Caltrain/SamTrans
- AC Transit
- San Francisco County Transportation Authority (SFCTA)
- Metropolitan Transportation Commission (MTC)

There were no comments received from the general public or the TJPA partner agencies during the outreach period. Once approved by the TJPA Board, FTA will be notified of the TJPA ADPL for FY 2010-13.

### **RECOMMENDATION:**

Approve the Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL) of 18.5% for FY 2010-13.

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, The Federal Transit Administration (FTA) authorized TJPA to become an eligible grantee for Federal financial assistance in January 2006; and

WHEREAS, In order to obtain federal funds for transportation projects from either the FTA or the Federal Highway Administration (FHWA), both operating administrations within the United States Department of Transportation (U.S. DOT), TJPA must implement an approved Disadvantaged Business Enterprise (DBE) Program in compliance with federal requirements (Title 49 Code of Federal Regulations Part 26) and update its DBE participation target on a triennial basis; and

WHEREAS, The Anticipated DBE Participation Level (ADPL) established for federal fiscal years 2010-11 through 2012-13 for DBE participation in the performance of contracts financed in whole or in part with U.S. DOT funds shall be 18.5% and shall be Race-Neutral; and

WHEREAS, Notice of the ADPL was published in several media outlets and on the TJPA website, informing the public that the ADPL and its methodology were available for inspection for thirty days following the date of the notice and that comments were accepted on the proposed ADPL for forty-five days following the date of the notice; and

WHEREAS, Letters were sent notifying the TJPA's local partner agencies of the proposed ADPL for review and comment; and

WHEREAS, No comments were received by the general public or the TJPA's local partner agencies during the public comment period; now, therefore, be it

RESOLVED, That the TJPA Board approves the FY 2010-13 ADPL of 18.5%.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of July 15, 2010.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

**ATTACHMENT 2.1**  
**FY 2010-11 Through FY 2012-13**  
**Anticipated Federally Funded Contracts**

<b>Award Date</b>	<b>FY 2010-13 Project/Contract</b>	<b>NAICS</b>	<b>NAICS Description</b>	<b>Contract Amt.</b>	<b>Federally Eligible Portion of Contract (80%)</b>	<b>% of Total</b>
Sept 2012	Bus Storage CM	237990	Other Heavy & Civil Engineering Construction	\$ 1,000,000	\$ 800,000	3.88%
	Bus Storage Construction	236220	Commercial & Institution Building Construction	\$ 700,000	\$ 560,000	2.71%
	Bus Storage Construction	237110	Water and Sewer Line and Related Structures	\$ 300,000	\$ 240,000	1.16%
	Bus Storage Construction	237130	Power & Communication Lines/Related Structures	\$ 500,000	\$ 400,000	1.94%
	Bus Storage Construction	238110	Poured Concrete Foundation & Structure	\$ 1,100,000	\$ 880,000	4.26%
	Bus Storage Construction	238140	Masonry Contractors	\$ 300,000	\$ 240,000	1.16%
	Bus Storage Construction	238910	Site Preparation (including Demolition)	\$ 2,200,000	\$ 1,760,000	8.53%
	Bus Storage Construction	237710	Highway, Street & Bridge Construction	\$ 12,200,000	\$ 9,760,000	47.29%
Feb 2013	Public Relations & Outreach	541820	Public Relations Agencies	\$ 750,000	\$ 600,000	2.91%
Jan 2011	Independent Auditing Services	541211	Offices of Certified Public Accountants	\$ 250,000	\$ 200,000	0.97%
Oct 2010	Outside Legal Services	541110	Offices of Lawyers	\$ 3,000,000	\$ 2,400,000	11.63%
Oct 2010	Financial & Grant Management	541611	Administrative Mgmt & General Mgmt Svcs	\$ 3,500,000	\$ 2,800,000	13.57%
			<b>Total</b>	\$ 25,800,000	\$ 20,640,000	100.0%

**ATTACHMENT 2.2**  
**FY 2010-13 DBE Base Figure Calculation**

<b>DBE Totals by County and Activity</b>												
	<u>236220</u>	<u>237310</u>	<u>237990</u>	<u>237110</u>	<u>237130</u>	<u>238110</u>	<u>238140</u>	<u>238910</u>	<u>541820</u>	<u>541211</u>	<u>541110</u>	<u>541611</u>
<b>Counties</b> <sup>(1,2)</sup>	Commercial & Institutional Building Construction	Highway, Bridge & Street Construction	Other Heavy Civil Eng Construction	Water & Sewer Line	Power & Communication Lines/Related	Poured Concrete Foundation	Masonry	Site Preparation / Demolition	Public Relations Agencies	Offices of Certified Public Accountants	Offices of Lawyers	Administrative Management, General Management
Alameda (510)	5	23	5	4	3	12	1	10	10	2	2	34
Contra Costa (925)	5	12	5	2	1	4	1	5	1	0	0	15
Napa, Solano, Sonoma (707)	3	7	3	1	0	5	1	4	0	0	0	6
San Francisco/Marin (415)	13	20	13	4	1	10	2	7	19	4	3	21
San Mateo (650)	2	6	2	2	0	3	1	3	0	0	0	2
Santa Clara (408)	2	4	2	2	3	2	0	1	2	1	1	8
<b>Totals</b>	<b>30</b>	<b>72</b>	<b>30</b>	<b>15</b>	<b>8</b>	<b>36</b>	<b>6</b>	<b>30</b>	<b>32</b>	<b>7</b>	<b>6</b>	<b>86</b>
<b>NAICS Totals by County and Activity</b>												
	<u>236220</u>	<u>237310</u>	<u>237990</u>	<u>237110</u>	<u>237130</u>	<u>238110</u>	<u>238140</u>	<u>238910</u>	<u>541820</u>	<u>541211</u>	<u>541110</u>	<u>541611</u>
<b>Counties</b> <sup>(1,3)</sup>	Commercial & Institutional Building Construction	Highway, Bridge & Street Construction	Other Heavy Civil Eng Construction	Water & Sewer Line	Power & Communication Lines/Related	Poured Concrete Foundation	Masonry	Site Preparation / Demolition	Public Relations Agencies	Offices of Certified Public Accountants	Offices of Lawyers	Administrative Management, General Management
Alameda (510)	171	41	16	34	14	57	52	84	20	224	752	289
Contra Costa (925)	144	31	18	25	17	71	53	87	17	226	520	240
Napa, Solano, Sonoma (707)	147	47	25	57	25	115	89	169	17	186	426	122
San Francisco/Marin (415)	177	13	11	18	3	32	31	41	130	156	1616	517
San Mateo (650)	93	19	4	15	3	42	29	39	26	325	341	210
Santa Clara (408)	176	42	8	30	18	104	69	71	54	361	1005	397
<b>Totals</b>	<b>908</b>	<b>193</b>	<b>82</b>	<b>179</b>	<b>80</b>	<b>421</b>	<b>323</b>	<b>491</b>	<b>264</b>	<b>1478</b>	<b>4660</b>	<b>1775</b>
<b>Calculation of Step 1 Base Figure</b>												
	<u>236220</u>	<u>237310</u>	<u>237990</u>	<u>237110</u>	<u>237130</u>	<u>238110</u>	<u>238140</u>	<u>238910</u>	<u>541820</u>	<u>541211</u>	<u>541110</u>	<u>541611</u>
NAICS Code and Description	Commercial & Institutional Building Construction	Highway, Bridge & Street Construction	Other Heavy Civil Eng Construction	Water & Sewer Line	Power & Communication Lines/Related	Poured Concrete Foundation	Masonry	Site Preparation / Demolition	Public Relations Agencies	Offices of Certified Public Accountants	Offices of Lawyers	Administrative Management, General Management
DBE Totals for All Counties:	30	72	30	15	8	36	6	30	32	7	6	86
NAICS Totals for All Counties:	908	193	82	179	80	421	323	491	264	1478	4660	1775
DBE Totals/NAICS Totals:	3.30%	37.31%	36.59%	8.38%	10.00%	8.55%	1.86%	6.11%	12.12%	0.47%	0.13%	4.85%
Weight Values:	2.71%	47.29%	3.88%	1.16%	1.94%	4.26%	1.16%	8.53%	2.91%	0.97%	11.63%	13.57%
	0.09%	17.64%	1.42%	0.10%	0.19%	0.36%	0.02%	0.52%	0.35%	0.00%	0.01%	0.66%
<b>FY 2010-13 DBE Step One Base Figure</b>			<b>21.38%</b>									

(1) Nine Bay Area Counties include Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma.

(2) Source of DBE Query Data: <http://www.dot.ca.gov/ucp/QuerySubmit.do>

(3) NAICS data is from the U.S. Census Bureau's 2007 County Business Patterns.

**ATTACHMENT 2.3  
FY 2010-13 DBE Base Figure Adjustment Calculation**

<b>DBE Past Participation for Active Contracts by NAICS: FY 2004-05 to FY 2009-10 (through January 2010)</b>				
<b>Contract</b>	<b>NAICS</b>	<b>NAICS Description</b>	<b>TJPA DBE %</b>	
Temp Terminal CM	237990	Heavy & Civil Engineering, including CM	94%	
Temp Terminal Construction	23---	Construction	31%	
Outside Legal Services	541110	Offices of Lawyers	0%	
Independent Auditing Services	541211	Offices of CPAs	0%	
Financial Consulting Services	541611	Administrative Mgmt and General Mgmt Services	56%	
Public Relations	541820	Public Relations Agencies	20%	
<b>Adjustment of DBE Base Figure for FY10-13 Contracts</b>				
<b>NAICS</b>	<b>Base Goal</b>	<b>Base Goal (by work category)</b>	<b>NAICS Past DBE Participation Level</b>	<b>NAICS Adjustment</b>
236220	0.09%	18.93%	31.00%	24.96%
237110	0.10%			
237130	0.19%			
237310	17.64%			
238110	0.36%			
238140	0.02%			
238910	0.52%			
237990	1.42%	1.42%	94.00%	47.71%
541110	0.01%	0.01%	0.0%	0.01%
541211	0.00%	0.00%	0.0%	0.00%
541611	0.66%	0.66%	56.0%	28.33%
541820	0.35%	0.35%	20.0%	10.18%
	21.38%	21.38%	<b>DBE % =</b>	<b>18.5%</b>
<b>FY 2010-13 Anticipated DBE Participation Level</b>				<b>18.5%</b>