

**STAFF REPORT FOR CALENDAR ITEM NO.: 10  
FOR THE MEETING OF: November 19, 2012**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Approval of the revised Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL) of 8.3 percent for federal fiscal years 2010-11 through 2012-13 (FFY 2011-2013).

**SUMMARY:**

- In accordance with Title 49 of the Code of Federal Regulations, Part 26 (49 CFR Part 26), the TJPA implements a Disadvantaged Business Enterprise (DBE) Program to ensure nondiscrimination in the award of federally funded contracts. As part of this program, the TJPA must establish a triennial target for DBE participation in all contracts that are to be funded with Federal Transit Administration (FTA) funds.
- For federal fiscal years (FFY) 2010-11 through 2012-13, TJPA set a DBE target of 18.5 percent in 2010, based on planned contracting activity that was federally-*eligible*. Earlier this fall, TJPA recalculated its DBE target for the three year period at the request of FTA, based only on contracts planned to be funded by FTA. The revised Anticipated DBE Participation Level (ADPL) is 8.3 percent.
- On September 13, 2012, the TJPA Board authorized the release of the draft ADPL of 8.3 percent for a 30-day review/45-day comment period. No comments were received.

**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 set triennial DBE participation targets.

Since 2006, TJPA has been setting its ADPL based on all contracts anticipated to be awarded in the relevant period because this is a federalized project. TJPA has submitted its DBE target to FTA as required and our targets have always been approved. However, as discussed at the September TJPA Board meeting, following an FTA Office of Civil Rights DBE compliance review the FTA Region IX Civil Rights Officer directed TJPA to calculate its DBE target based upon only FTA-funded contracts.

TJPA will continue to seek small and disadvantaged business participation to the maximum extent possible on contracts, regardless of funding source. Nonetheless, to comply with the FTA request, staff has calculated a new DBE target of 8.3 percent for only those contracts planned to be funded all or in part with FTA funds for the remainder of this triennial period.

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 contracts to be awarded in the period. 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 8.3 percent for FFY 2011-13. 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 posted on the TJPA website and 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
- Sing Tao Daily
- Small Business Exchange
- Thoi Bao
- World Journal

The TJPA's draft ADPL was sent to 124 Bay Area chambers of commerce, and also sent to the TJPA's local partner agencies for review. The following local agencies received a notice announcing the release of the draft revised FY 2011-13 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 as a result of the above outreach; however, on October 26, TJPA hosted a small roundtable discussion of twelve representatives of disadvantaged and small

businesses and business organizations. While the participants did not have comments on the revised goal itself, the group had several suggestions regarding outreach efforts that TJPA will incorporate into its procurement processes.

Once approved by the TJPA Board, the revised ADPL will be submitted to FTA.

**RECOMMENDATION:**

Approve the Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL) of 8.3 percent for FY 2011-13.

**ATTACHMENTS:**

1. Resolution
2. FY 2011-13 ADPL Methodology

**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 revised to be 8.3% 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 124 Bay Area chambers of commerce of the proposed ADPL for review and comment; and

WHEREAS, Notices were sent to the TJPA's local partner agencies of the availability of the ADPL for review and comment; and

WHEREAS, A consultative roundtable discussion regarding the ADPL and the methodology for setting the ADPL was held with representatives from the disadvantaged and small business community; and

WHEREAS, No comments were received during the public comment period that warrant any changes to the ADPL; now, therefore, be it

**RESOLVED**, That the TJPA Board approves the FY 2011-13 ADPL of 8.3 percent.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of November 19, 2012.

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Secretary, Transbay Joint Powers Authority

## **FY 2011-13**

### **REVISED ANTICIPATED DBE PARTICIPATION LEVEL (ADPL) METHODOLOGY**

The methodology to calculate an agency's 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 federally-funded contracts to be awarded in the upcoming three Federal Fiscal Years (October 1 – September 30). This calculation has been done for contracts expected to be awarded between October 1, 2010 and September 30, 2013. The calculation was originally performed in 2010 and resulted in an ADPL of 18.5%, but is being revised at the direction of FTA in the summer of 2012.

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 agency'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 a revised ADPL of 8.3% for FY 2011-13 for the TJPA. This methodology is outlined below.

#### **Step One Process: Development of Base Figure**

The initial step in developing an ADPL is to determine the market area for consultants who have demonstrated an interest or are anticipated to participate in TJPA contracts. The TJPA's market area consists of the nine Bay Area counties:

- Alameda
- Contra Costa
- Marin
- Napa
- San Francisco
- San Mateo
- Santa Clara
- Solano
- Sonoma

The Transbay Transit Center will be a visionary multi-modal transportation station serving the San Francisco Bay Area Region. It will be a hub for the transit systems from the surrounding counties that already bring thousands of workers into San Francisco daily. The San Francisco Bay Area Region is made up of the following nine Bay Area counties: Alameda, Contra Costa, Marin, Napa, San Mateo, San Francisco, Santa Clara, Solano and Sonoma. The Metropolitan Transportation Commission—the state designated regional transportation agency—defines its transportation planning and financing area as the nine-county Bay Area, and California Department of Transportation (Caltrans) District 4 is also made up of the nine-county Bay Area. MTC and Caltrans are funders of the Transbay Transit Center project, and the nine counties are represented in some fashion on the TJPA Board, each with an expectation of project benefits including work on the project during the design and construction phases. The nine-county San Francisco Bay Area is the most appropriate market area for TJPA to use in its goal-setting methodology. 58 percent of past and current TJPA vendors are from the Bay Area.

Second, the work categories must be determined for the anticipated contracts, and each work category is weighted according to its percentage of the total amount of the contracts planned for award. TJPA awarded or plans to award six federally-funded contracts in FYs 2011-13: Public Relations & Outreach, Independent Auditing Services, Outside Legal Services (two contracts), Supplemental EIR/EIS Preparation, and Financial & Grant Management. These activities were matched with their respective North American Industry Classification System (NAICS) codes, which are used to identify firms in the California Unified Certification Program (CUCP) DBE and U.S. Census Bureau's County Business Patterns databases.

Both databases are searched for the number of firms in the relevant NAICS code in the TJPA market area (see Attachment 2.1). The ratio of DBE firms to non-DBE firms is then calculated, by dividing the number of certified DBE firms ready, willing and able to work in the TJPA's market area, according to the CUCP database, by the total number of firms found in the same market area according to the U.S. Census database (see Attachment 2.1). This is performed for each county and each type of activity.

Finally, the Step One Base Figure results from multiplying the DBE ratios for each work category by the corresponding weights for each work category, and summing the results for each activity. The calculation of the Step One Base Figure is shown in Attachment 2.1.

Step One Base Figure = SUM ((Weight \* Ratio) for each activity) = 2.84%.

**The Step One Base Figure, weighted by type of work to be performed, is 2.8%.**

<b>AWARDED OR PLANNED TO BE AWARDED – REVISED 2012 CALCULATION</b>				
<b>Award Date</b>	<b>FY 2011-13 Federally Funded Contracts</b>	<b>NAICS</b>	<b>Contract Amt.</b>	<b>% of Total</b>
Feb 2013	Public Relations & Outreach	541820 - Public Relations Agencies	\$ 750,000	4.00%
Nov 2012	Supplemental EIR/EIS Preparation	541620 - Environmental Consulting Svcs	\$ 1,240,000	6.62%
Sep 2012	Outside Legal Services	541110 - Offices of Lawyers	\$ 8,000,000	42.69%
Jan 2011	Independent Auditing Services	541211 - Offices of CPAs	\$ 250,000	1.33%
Oct 2010	Outside Legal Services	541110 - Offices of Lawyers	\$ 5,000,000	26.68%
Oct 2010	Financial & Grant Management	541611 - Administrative Management & General Management Services	\$ 3,500,000	18.68%
		<b>Total</b>	<b>\$ 18,740,000</b>	<b>100.0%</b>

<b>AWARDED OR PLANNED TO BE AWARDED – REVISED 2012 CALCULATION</b>			
<b>FY 2011-13 Federally Funded Contracts</b>	<b>No. DBE Firms / No. Total Firms</b>	<b>% of Total</b>	<b>Weighted Average</b>
Public Relations & Outreach	32 / 264 = 12.12%	4.00%	0.49%
Supplemental EIR/EIS Preparation	60 / 341 = 17.6%	6.62%	1.16%
Outside Legal Services	6 / 4660 = 0.13%	42.69%	0.06%
Independent Auditing Services	7 / 1478 = .47%	1.33%	0.01%
Outside Legal Services	6 / 4660 = 0.13%	26.68%	0.03%
Financial & Grant Management	104 / 1775 = 5.86%	18.68%	1.09%
	<b>Total</b>	<b>100%</b>	<b>2.84%</b>

PLANNED TO BE AWARDED – ORIGINAL 2010 CALCULATION				
Award Date	FY 2011-13 Federally Funded Contracts	NAICS	Contract Amt.	% of Total
Feb 2013	Public Relations & Outreach	541820 - Public Relations Agencies	\$ 750,000	2.91%
2012-13	Bus Storage Construction	Various 23 series	\$ 17,300,000	67.05%
Sep 2012	Bus Storage Construction Mgmt	237990 - Other Heavy/Civil Engineering Construction	\$ 1,000,000	3.88%
Jan 2011	Independent Auditing Services	541211 - Offices of CPAs	\$ 250,000	0.97%
Oct 2010	Outside Legal Services	541110 - Offices of Lawyers	\$ 5,000,000	11.63%
Oct 2010	Financial & Grant Management	541611 - Administrative Management & General Management Services	\$ 3,500,000	13.57%
		<b>Total</b>	<b>\$ 25,800,000</b>	<b>100.0%</b>

PLANNED TO BE AWARDED – ORIGINAL 2010 CALCULATION			
FY 2011-13 Federally Funded Contracts	No. DBE Firms / No. Total Firms	% of Total	Weighted Average
Public Relations & Outreach	32 / 264 = 12.12%	2.91%	0.35%
Bus Storage Construction	Varying by NAICS	67.05%	18.93%
Bus Storage Construction Management	30 / 82 = 36.59%	3.88%	1.42%
Independent Auditing Services	7 / 1478 = .47%	0.97%	0.00%
Outside Legal Services	6 / 4660 = 0.13%	11.63%	0.01%
Financial & Grant Management	86 / 1775 = 4.85%	13.57%	0.66%
	<b>Total</b>	<b>100.0%</b>	<b>21.38%</b>

### **Step Two Process: Adjustment to the Base Figure**

The purpose of the Step Two analysis is to determine if an upward or downward adjustment to the base ADPL is justified, based on relevant evidence available to TJPA. The TJPA's DBE participation history can assist in determining whether an adjustment to the Step One Base Figure is warranted.

Attachments 2.2 and 2.3 analyze those TJPA contracts that fall into the same NAICS work categories as those planned for award, and their DBE participation levels through March 2012.

The past participation levels can be applied to adjust the FY 2011-13 Base Figure by category, by calculating the average of the two figures. The DBE percentages for the legal and auditing contracts are adjusted slightly downward as TJPA has had no DBE participation in these categories in the past. The financial consulting and public relations contract percentages are revised upwards, on the other hand, given previous DBE participation of 61 percent and 18 percent respectively. The environmental services contract percentage was not adjusted as TJPA does not have a similar contract opportunity in the past. These adjustments result in a total adjusted percentage of 8.3 percent. Thus the revised DBE participation level is 8.3 percent.

**The overall ADPL, or the Step Two Adjusted Figure, is 8.3%.**

<b>AWARDED OR PLANNED TO BE AWARDED – REVISED 2012 CALCULATION</b>			
<b>Contract</b>	<b>Historical DBE Participation</b>	<b>Weighted Average (from above)</b>	<b>Adjusted DBE %</b>
Public Relations & Outreach	17.9%	0.49%	9.22%
Supplemental EIR/EIS Preparation	n/a	1.16%	1.16%
Outside Legal Services	0%	0.06%	0.03%
Independent Auditing Services	0%	0.01%	0.00%
Outside Legal Services	0%	0.03%	0.01%
Financial & Grant Management	60.6%	1.09%	30.87%
		<b>2.84%</b>	<b>8.3%</b>

<b>PLANNED TO BE AWARDED – ORIGINAL 2010 CALCULATION</b>			
<b>Contract</b>	<b>Historical DBE Participation</b>	<b>Weighted Average (from above)</b>	<b>Adjusted DBE %</b>
Public Relations & Outreach	20%	0.35%	10.18%
Bus Storage Construction	31%	18.93%	24.96%
Bus Storage Construction Mgmt	94%	1.42%	47.71%
Independent Auditing Services	0%	0.00%	0.00%
Outside Legal Services	0%	0.01%	0.01%
Financial & Grant Management	56%	0.66%	28.33%
		<b>21.38%</b>	<b>18.5%</b>

**Conclusion**

**The Revised Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL) for FY 2011-13 is 8.3%.**

**ATTACHMENT 2.1  
FY 2011-13 DBE Base Figure Calculation**

<b>DBE Totals by County and Activity</b>					
	<u>541820</u>	<u>541211</u>	<u>541110</u>	<u>541611</u>	<u>541620</u>
<b>Counties</b> <sup>(1,2)</sup>	Public Relations Agencies	Offices of Certified Public Accountants	Offices of Lawyers	Administrative Management, General Management	Environmental Consulting Services
Alameda (510)	10	2	2	39	18
Contra Costa (925)	1	0	0	16	12
Napa, Solano, Sonoma (707)	0	0	0	12	9
San Francisco/Marin (415)	19	4	3	26	16
San Mateo (650)	0	0	0	1	2
Santa Clara (408)	2	1	1	10	3
<b>Totals</b>	<b>32</b>	<b>7</b>	<b>6</b>	<b>104</b>	<b>60</b>

<b>NAICS Totals by County and Activity</b>					
	<u>541820</u>	<u>541211</u>	<u>541110</u>	<u>541611</u>	<u>541620</u>
<b>Counties</b> <sup>(1, 3)</sup>	Public Relations Agencies	Offices of Certified Public Accountants	Offices of Lawyers	Administrative Management, General Management	Environmental Consulting Services
Alameda (510)	20	224	752	289	85
Contra Costa (925)	17	226	520	240	74
Napa, Solano, Sonoma (707)	17	186	426	122	37
San Francisco/Marin (415)	130	156	1616	517	73
San Mateo (650)	26	325	341	210	12
Santa Clara (408)	54	361	1005	397	60
<b>Totals</b>	<b>264</b>	<b>1478</b>	<b>4660</b>	<b>1775</b>	<b>341</b>

<b>Calculation of Step 1 Base Figure</b>					
	<u>541820</u>	<u>541211</u>	<u>541110</u>	<u>541611</u>	<u>541620</u>
NAICS Code and Description	Public Relations Agencies	Offices of Certified Public Accountants	Offices of Lawyers	Administrative Management, General Management	Environmental Consulting Services
DBE Totals for All Counties:	32	7	6	104	60
NAICS Totals for All Counties:	264	1478	4660	1775	341
DBE Totals/NAICS Totals:	12.12%	0.47%	0.13%	5.86%	17.60%
Weight Values:	4.00%	1.33%	69.37%	18.68%	6.62%
	0.49%	0.01%	0.09%	1.09%	1.16%

<b>FY 2011-13 DBE Step One Base Figure</b>	<b>2.84%</b>
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(1) Nine Bay Area Counties are 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 2010 County Business Patterns.

**ATTACHMENT 2.2  
FY 2011-13 DBE Base Figure Adjustment Calculation**

**DBE Past Participation for Contracts by NAICS: FY 2004-05 to FY 2011-12 (through March 2012)**

<b>Contract</b>	<b>NAICS</b>	<b>TJPA DBE %</b>
Outside Legal Services	541110	0%
Independent Auditing Services	541211	0%
Financial Consulting Services	541611	60.6%
SEIS/EIR Preparation Services	541620	0%
Public Relations	541820	17.9%

**Adjustment of DBE Base Figure for FY 2011-13 Contracts**

<b>NAICS</b>	<b>Base Goal</b>	<b>TJPA DBE %</b>	<b>Adjusted DBE %</b>
541110 - Offices of Lawyers	0.09%	0.0%	0.04%
541211 - Offices of CPAs	0.01%	0.0%	0.00%
541611 - Administrative/Gen Mgmt	1.09%	60.6%	30.87%
541620 - Environmental Consulting Services	1.16%	n/a	1.16%
541820 - Public Relations Agencies	0.49%	17.9%	9.22%
<b>Total</b>	<b>2.84%</b>		<b>8.3%</b>

<b>FY 2011-13 Anticipated DBE Participation Level</b>	<b>8.3%</b>
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ATTACHMENT 2.3  
Past DBE Participation on Similar TJPA Contracts

**Financial Consultant (NAICS 541611) DBE Participation History**

	<b>Total</b>	<b>non-DBE</b>	<b>DBE</b>
FY 2011-12	255,935.06	89,118.12	166,816.94
FY 2010-11	700,681.49	242,341.83	459,688.67
FY 2009-10	1,028,716.44	505,982.43	522,734.01
FY 2008-09	985,184.32	429,349.90	555,834.42
FY 2007-08	936,163.88	361,750.02	574,413.86
FY 2006-07	566,953.01	264,138.64	302,814.37
FY 2005-06	352,579.80	94,502.96	258,076.84
FY 2004-05	387,806.83	54,694.53	333,112.30
<b>Total</b>	<b>4,958,085.77</b>	<b>1,952,760.31</b>	<b>3,006,674.47</b>
		39.4%	60.6%

**Public Relations (NAICS 541820) DBE Participation History**

	<b>Total</b>	<b>non-DBE</b>	<b>DBE</b>
FY 2011-12	105,000.00	105,000.00	-
FY 2010-11	282,147.71	272,347.71	9,800.00
FY 2009-10	402,714.90	354,105.18	48,609.72
FY 2008-09	207,040.86	165,172.11	41,868.75
FY 2007-08	295,105.04	221,665.04	73,440.00
FY 2006-07	128,833.96	90,083.96	38,750.00
FY 2005-06	174,527.85	149,369.11	25,158.74
FY 2004-05	51,623.35	38,644.92	12,978.43
<b>Total</b>	<b>1,646,993.67</b>	<b>1,396,388.03</b>	<b>250,605.64</b>
		84.8%	17.9%