

**STAFF REPORT FOR CALENDAR ITEM NO.: 9  
FOR THE MEETING OF: April 11, 2013**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Approval of the draft Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL) for federal fiscal years 2013-14 through 2015-16 (FFY2014-16) and authorization of the release of the draft ADPL for a 30-day public review/45-day public comment process.

**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 a triennial target for DBE participation in all new contracts that are planned to be funded with Federal Transit Administration (FTA) 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 established in each state.
- In accordance with the public participation requirements of 49 CFR Part 26.45, the draft DBE target must be released for a 30-day review/45-day comment period.
- The draft FFY2014-16 Anticipated DBE Participation Level for FTA-funded contracts is 14.8%.
- TJPA will continue to implement its approved Small Business Enterprise (SBE) Program to supplement DBE participation, and staff recommends setting an overall SBE participation target, but this programwide SBE goal and participation would not be reportable to the FTA.

**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.

TJPA previously set its ADPL based on all contracts anticipated to be awarded in the relevant period because this is a federalized project, and previous ADPL’s were approved by FTA. However, as discussed at the September and November 2012 TJPA Board meetings, FTA has now directed TJPA to calculate its DBE target based upon only FTA-funded contracts.

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 2013-14 through federal fiscal year 2015-16 (October 1, 2013 – September 30, 2016). 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 FTA ADPL of 14.8% for FFY2014-16. 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 continue to seek DBE participation to the maximum extent possible on contracts, regardless of funding source, and consequently has also calculated a programwide DBE target for agency reference of 7.5% of a planned \$394,015,000 in contract awards.

### **Public Outreach**

In accordance with the public participation requirements of 49 CFR Part 26.45, the draft ADPL must be released for a 30-day review/45-day comment period. Comments received during the public participation process will be addressed and included as part of the final ADPL. The ADPL for FFY14-16 will be brought back to the TJPA Board in the summer for final adoption following the close of the public review/comment process. A public notice will be published in general circulation media and available minority-focused media and trade association publications, 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 will also be sent to Bay Area chambers of commerce, as well as to the TJPA's local partner agencies for review. The following local agencies will receive a copy for review:

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

In addition, the draft ADPL will be presented to the public as part of the Business Outreach Committee's public participation process and roundtable(s) at the TJPA. The Business Outreach Committee is a working group of Bay Area transit agencies focused on supporting disadvantaged and small business participation on contracts.

**RECOMMENDATION:**

1. Approve the draft ADPL for FFY2014-16
2. Authorize the release of the draft FTA ADPL for a 30-day public review/45-day public comment process.

**ATTACHMENTS:**

1. Resolution
2. Draft FFY2014-16 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 an triennial basis; and

WHEREAS, The Anticipated DBE Participation Level (ADPL) established for federal Fiscal Years 2013-14 through 2015-16 for DBE participation in the performance of contracts financed in whole or in part with U.S. DOT funds is proposed to be 14.8% and race neutral; and

WHEREAS, The TJPA plans to continue to take affirmative steps to achieve DBE participation through implementation of its separate Small Business Enterprise (SBE) Program; and has calculated a programwide target of 7.5% for DBE participation considering all contracts regardless of funding source; and

WHEREAS, A notice of the proposed overall participation percentage level must be published, informing the public that the proposed goal and its rationale are available for inspection for thirty days following the date of the notice and comments accepted on the proposed goal for forty-five days following the date of the notice; now, therefore, be it

RESOLVED, That the TJPA Board approves the draft FFY2014-16 ADPL; and be it further

RESOLVED, That the TJPA Board authorizes the release of the draft FFY2014-16 ADPL for a period of 30 days for public review and 45 days for public comments.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of April 11, 2013.

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

**FFY2014-16**  
**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 during federal fiscal years 2013-14 through 2015-16 (FFY2014-16). As part of this program, the TJPA must establish a triennial target for DBE participation in all new contracts that are planned to be funded with Federal Transit Administration (FTA) funds, so this calculation has been done for contracts expected to be awarded between October 1, 2013 and September 30, 2016.

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 an FTA ADPL of 14.8% for FFY2014-16 for the TJPA; see Attachment 2. This methodology is outlined below.

**Step One Process: Census Bureau Data and DBE Directory**

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 counties in the TJPA's market area consist of the nine (9) Bay Area counties:

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

Second, the work categories must be determined for the anticipated contracts. TJPA may award six federally-funded contracts in FFY2014-16: Independent Auditing Services, Specialized Legal Services (retail and/or federal counsel), Financial Services, Program Management/Program Controls, Public Relations & Outreach Services and Real Estate Economics Services.

The ratio of DBE firms to non-DBE firms must then be calculated by dividing the number of certified DBE firms ready, willing and able to work in the TJPA's market area by the total number of firms found in the same market area according to the US Census database (see Attachment 2.1, DBE Availability & Weighted Calculations (FTA Funded Contracts)). 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 estimated dollar amount for that category, and dividing the sum of those numbers by the total dollar amount estimated to be awarded.

$$\text{Step One Base Figure} = \frac{\text{Sum of DBE Ratio} * \text{Individual Contract Amount}}{\text{Total Contract Amount}} = 4.57\%$$

The Step One Base Figure, weighted by type of work to be performed, is 4.6%.

### **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.

TJPA has analyzed contracts that fall into the same NAICS work categories as those planned for award, and their average DBE participation levels through March of 2013:

Construction Management Oversight	21.1%
Financial Services	61.3%
Program Management/Program Controls	24.4%
Public Relations/Outreach	14.3%

The past participation levels can be applied to adjust the FFY2014-16 Base Figure by category, by averaging the availability ratio and the previous participation percentage. The adjusted percentages are then used to repeat the Step One calculation, as shown in the attachments.

$$\text{Step Two Adjusted Figure} = \frac{\text{Sum of Adjusted DBE Ratio} * \text{Individual Contract Amount}}{\text{Total Contract Amount}} = 14.82\%$$

The overall ADPL is consequently 14.8%.

Additionally, TJPA will continue to seek DBE participation to the maximum extent possible on contracts, regardless of funding source, and consequently has also calculated a programwide DBE target for agency reference of 7.5% of \$394,015,000 in planned contract awards (see attachments for calculations).



**ATTACHMENT 2.1  
FY 2013-16 DBE Availability Weighted Calculations  
(FTA Funded Contracts)**

**DBE Totals by County and Activity**

	<u>531390</u>	<u>54110</u>	<u>541211</u>	<u>541611</u>	<u>541820</u>
	Other Activities Related to Real Estate		Offices of Certified Public Accountants	Administrative Management, General Management	Public Relations Agencies
<b>Counties</b> <sup>(1,2)</sup>	Estate	Offices of Lawyers			
Alameda (510)	2	1	4	41	13
Contra Costa (925)	0	3	0	18	2
Napa, Solano, Sonoma (707)	0	3	0	11	2
San Francisco/Marin (415)	2	0	4	32	27
San Mateo (650)	0	0	0	1	0
Santa Clara (408)	1	0	0	9	3
<b>Totals</b>	<b>5</b>	<b>7</b>	<b>8</b>	<b>112</b>	<b>47</b>

**NAICS Totals by County and Activity**

	<u>531390</u>	<u>541110</u>	<u>541211</u>	<u>541611</u>	<u>541820</u>
	Other Activities Related to Real Estate		Offices of Certified Public Accountants	Administrative Management, General Management	Public Relations Agencies
<b>Counties</b> <sup>(1,3)</sup>	Estate	Offices of Lawyers			
Alameda (510)	62	733	199	304	30
Contra Costa (925)	64	527	226	245	17
Napa, Solano, Sonoma (707)	37	426	171	129	16
San Francisco/Marin (415)	129	1546	363	562	168
San Mateo (650)	34	331	145	215	22
Santa Clara (408)	87	981	329	432	43
<b>Totals</b>	<b>413</b>	<b>4544</b>	<b>1433</b>	<b>1887</b>	<b>296</b>

**Calculation of Step 1 Base Figure**

	<u>531390</u>	<u>541110</u>	<u>541211</u>	<u>541611</u>	<u>541820</u>
	Other Activities Related to Real Estate		Offices of Certified Public Accountants	Administrative Management, General Management	Public Relations Agencies
NAICS Code and Description	Estate	Offices of Lawyers			
DBE Totals for All Counties	5	7	8	112	47
NAICS Totals for All Counties	413	4544	1433	1887	296
DBE Totals/NAICS Totals	1.21%	0.15%	0.56%	5.94%	15.88%
Total Dollar Amount	\$500,000	\$600,000	\$250,000	\$1,000,000	\$350,000
DBE Participation Amount	\$6,053	\$924	\$1,396	\$59,353	\$55,574

**FY 2014-16 DBE Step One Base Figure** **\$123,301 / \$2,700,000 = 4.57%**

**Calculation of Step 2 Adjusted Figure**

Past DBE Participation	0%	0%	0%	61.3%	comparable
Adjusted Availability	-	-	-	33.61%	15.88%
DBE Participation Amount	\$6,053	\$924	\$1,396	\$336,113	\$55,574

**FY 2014-16 DBE Step Two Adjusted Figure** **\$400,060 / \$2,700,000 = 14.82%**

(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 2.3  
FY 2013-16 DBE Availability Weighted Calculation  
(All Contracts)**

<b>DBE Totals by County and Activity</b>											
	<u>238110</u>	<u>238120</u>	<u>238130</u>	<u>238140</u>	<u>238150</u>	<u>238160</u>	<u>238190</u>	<u>238210</u>	<u>238220</u>	<u>238290</u>	<u>238310</u>
<b>Counties <sup>(1,2)</sup></b>	Poured Concrete Foundation & Structure Contractors	Structural Steel & Precast Concrete Contractors	Framing Contractors	Masonry Contractors	Glass & Glazing Contractors	Roofing Contractors	Other Foundation, Structure & Building Exterior Contractors	Contractors and Other Wiring Installation Contractors	Plumbing, Heating and Air- Conditioning Contractors	Other Building Equipment Contractors	Drywall & Insulation Contractors
Alameda (510)	16	8	8	1	2	4	6	20	6	0	5
Contra Costa (925)	5	2	2	0	0	0	1	3	1	1	1
Napa, Solano, Sonoma (707)	3	3	0	2	1	1	1	0	0	2	0
San Francisco/Marin (415)	7	5	2	4	1	2	3	13	5	1	3
San Mateo (650)	3	1	1	1	1	1	2	2	0	1	1
Santa Clara (408)	1	2	0	0	0	0	0	5	3	0	0
<b>Totals</b>	<b>35</b>	<b>21</b>	<b>13</b>	<b>8</b>	<b>5</b>	<b>8</b>	<b>13</b>	<b>43</b>	<b>15</b>	<b>5</b>	<b>10</b>

<b>NAICS Totals by County and Activity</b>											
<b>Counties <sup>(1,3)</sup></b>											
Alameda (510)	51	18	29	45	31	127	12	312	300	28	67
Contra Costa (925)	49	13	21	38	17	81	11	187	225	15	52
Napa, Solano, Sonoma (707)	94	15	43	70	21	103	19	240	310	16	124
San Francisco/Marin (415)	29	8	15	26	21	85	16	256	242	13	54
San Mateo (650)	33	9	10	23	15	59	7	174	201	11	44
Santa Clara (408)	88	13	26	46	27	113	15	358	377	23	99
<b>Totals</b>	<b>344</b>	<b>76</b>	<b>144</b>	<b>248</b>	<b>132</b>	<b>568</b>	<b>80</b>	<b>1527</b>	<b>1655</b>	<b>106</b>	<b>440</b>

<b>Calculation of Step 1 Base Figure</b>											
DBE Totals for All Counties	35	21	13	8	5	8	13	43	15	5	10
NAICS Totals for All Counties	344	76	144	248	132	568	80	1527	1655	106	440
DBE Totals/NAICS Totals	10.17%	27.63%	9.03%	3.23%	3.79%	1.41%	16.25%	2.82%	0.91%	4.72%	2.27%
Dollar Amount	\$37,600,000	\$2,000,000	\$3,200,000	\$5,700,000	\$29,400,000	\$5,700,000	\$26,900,000	\$78,600,000	\$34,000,000	\$15,800,000	\$2,300,000
Participation Amount	\$3,825,581	\$552,632	\$288,889	\$183,871	\$1,113,636	\$80,282	\$4,371,250	\$2,213,360	\$308,157	\$745,283	\$52,273

<b>Calculation of Step 2 Adjusted Figure</b>											
Past DBE Participation	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Adjusted Availability	-	-	-	-	-	-	-	-	-	-	-
Participation Amount	\$3,825,581	\$552,632	\$288,889	\$183,871	\$1,113,636	\$80,282	\$4,371,250	\$2,213,360	\$308,157	\$745,283	\$52,273

(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 2.3  
FY 2013-16 DBE Availability Weighted Calculation  
(All Contracts)**

<b>DBE Totals by County and Activity</b>													
	<u>238320</u>	<u>238340</u>	<u>238350</u>	<u>238390</u>	<u>238990</u>	<u>561730</u>	<u>237990</u>	<u>531390</u>	<u>54110</u>	<u>541211</u>	<u>541511</u>	<u>541820</u>	<u>541611</u>
<b>Counties <sup>(1,2)</sup></b>	Painting & Wall Covering Contractors	Tile & Terrazzo Contractors	Finish Carpentry Contractors	Other Building Finishing Contractors	All Other Specialty Trade Contractors	Landscaping Services	Other Heavy Civil Engineering Construction	Other Activities Related to Real Estate	Offices of Lawyers	Offices of Certified Public Accountants	Custom Computer Programming Services	Public Relations Agencies	Administrative Management, General Management
Alameda (510)	6	4	11	3	30	4	2	2	1	4	13	13	41
Contra Costa (925)	2	0	0	0	6	4	16	0	3	0	9	2	18
Napa, Solano, Sonoma (707)	1	0	0	0	6	2	9	0	3	0	17	2	11
San Francisco/Marin (415)	3	0	2	1	22	1	3	2	0	4	2	27	32
San Mateo (650)	1	2	1	1	10	2	6	0	0	0	4	0	1
Santa Clara (408)	5	0	1	0	9	2	6	1	0	0	14	3	9
<b>Totals</b>	<b>18</b>	<b>6</b>	<b>15</b>	<b>5</b>	<b>83</b>	<b>15</b>	<b>42</b>	<b>5</b>	<b>7</b>	<b>8</b>	<b>59</b>	<b>47</b>	<b>112</b>

<b>NAICS Totals by County and Activity</b>													
<b>Counties <sup>(1,3)</sup></b>	146	40	76	39	85	260	11	62	733	199	682	30	304
Alameda (510)	146	40	76	39	85	260	11	62	733	199	682	30	304
Contra Costa (925)	148	31	56	19	78	304	16	64	527	226	258	17	245
Napa, Solano, Sonoma (707)	199	69	94	31	90	366	20	37	426	171	122	16	129
San Francisco/Marin (415)	203	39	71	18	59	222	7	129	1546	363	749	168	562
San Mateo (650)	131	36	40	22	59	261	3	34	331	145	351	22	215
Santa Clara (408)	222	73	99	42	133	419	9	87	981	329	1453	43	432
<b>Totals</b>	<b>1049</b>	<b>288</b>	<b>436</b>	<b>171</b>	<b>504</b>	<b>1832</b>	<b>66</b>	<b>413</b>	<b>4544</b>	<b>1433</b>	<b>3615</b>	<b>296</b>	<b>1887</b>

<b>Calculation of Step 1 Base Figure</b>													
DBE Totals for All Counties	18	6	15	5	83	15	42	5	7	8	59	47	112
NAICS Totals for All Counties	1049	288	436	171	504	1832	66	413	4544	1433	3615	296	1887
DBE Totals/NAICS Totals	1.72%	2.08%	3.44%	2.92%	16.47%	0.82%	63.64%	1.21%	0.15%	0.56%	1.63%	15.88%	5.94%
Dollar Amount	\$900,000	\$5,500,000	\$1,300,000	\$44,300,000	\$55,400,000	\$23,500,000	\$6,700,000	\$500,000	\$600,000	\$250,000	\$15,000	\$350,000	\$13,500,000
Participation Amount	\$15,443	\$114,583	\$44,725	\$1,295,322	\$9,123,413	\$192,413	\$4,263,636	\$6,053	\$924	\$1,396	\$245	\$55,574	\$801,272

**FY 2014-16 DBE Step One Base Figure: \$29,650,212 / \$394,015,000 = 7.53%**

<b>Calculation of Step 2 Adjusted Figure</b>													
Past DBE Participation	0%	0%	0%	0%	0%	0%	21.07%	0%	0%	0%	0%	comparable	24.4% PMPC
Adjusted Availability	-	-	-	-	-	-	42.36%	-	-	-	-	15.88%	61.3% Financial 15.2% PMPC
Participation Amount	\$15,443	\$114,583	\$44,725	\$1,295,322	\$9,123,413	\$192,413	\$2,837,819	\$6,053	\$924	\$1,396	\$245	\$55,574	33.61% Financial \$1,900,000 PMPC \$336,100 Financial

**FY 2014-16 DBE Step Two Adjusted Figure: \$29,659,223 / \$394,015,000 7.53%**