

**STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: July 1, 2013**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approval of the Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL) Program for federal fiscal years 2013-14 through 2015-16.

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.
- On April 11, 2013, the TJPA Board authorized the release of the draft ADPL of 14.8% for a 30-day review/45-day comment period. No comments were received.
- 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 of 21% covering all contracting activity.

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 previous 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 SBE target for agency reference of 21% of a planned \$394,015,000 in contract awards. This target is based on the anticipated contracts to be let in the next three years weighted against the availability of SBEs and the level of SBE participation that has been achieved on similar TJPA contracts in the past. The bulk of upcoming contracts will be related to construction and we have worked with Webcor/Obayashi's small business team to forecast their anticipated SBE participation level on the various packages. The calculation of the goal is shown in Attachment 3.

Public Outreach

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 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 was also sent to Bay Area chambers of commerce, as well as to the TJPA's local partner agencies for review. The following local agencies received a copy for review:

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

Additionally, the draft ADPL was presented to the public as part of a Business Outreach Committee April 23, 2013 event. The Business Outreach Committee is a working group of Bay Area transit agencies focused on supporting disadvantaged and small business participation on contracts.

TJPA also hosted a small roundtable discussion of representatives of disadvantaged and small businesses and business organizations. While the participants did not have comments on the goal itself, the group did feel that it was a useful meeting and would like to have additional meetings in the future to apprise them of contract opportunities.

RECOMMENDATION:

Approve the ADPL of 14.8% for FFY2014-16 for FTA-funded contracts, and an agency SBE goal of 21%.

ATTACHMENTS:

1. Resolution
2. FFY2014-16 ADPL Methodology
3. SBE Participation Level 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 FTA 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 21% for SBE participation considering all contracts regardless of funding source; 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 notice and that comments were accepted on the proposed ADPL for forty-five days following the date of notice; and

WHEREAS, Letters were sent notifying 122 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, The TJPA participated as a part of the Business Outreach Committee's April 23, 2013 Public Participation Meeting for Goal Setting and Meeting with Resource Agencies; 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 FFY2014-16 ADPL of 14.8 percent.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of July 1, 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.

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

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.

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

The overall ADPL is consequently 14.8%.

Small Business Enterprise Goal Calculation

Additionally, TJPA will continue to seek SBE participation to the maximum extent possible on contracts, regardless of funding source, and consequently has also calculated a programwide SBE target for agency reference of 21% of \$394,015,000 in planned contract awards.

The Step One base figure was derived from reviewing the relative availability of SBEs for the upcoming contract opportunities. TJPA staff reviewed the databases for the certifications accepted under TJPA’s SBE Program: the California Unified Certification Program (DBE), California Department of General Services (SBE), and the San Francisco Human Rights Commission (SBE). The availability percentages are multiplied by the estimated dollar amount for that category, and the sum of those numbers is divided by the total dollar amount estimated to be awarded.

$$\text{Step One Base Figure} = \frac{\text{Sum of (SBE Ratio*Individual Contract Amount)}}{\text{Total Contract Amount}} = 27.38\%$$

Step Two relies on the agency's knowledge of its contracting markets and previous history of SBE participation to determine what adjustment to the base figure is needed. This step also considers that there is duplication amongst the databases as firms may hold more than one type of certification, and "apples-to-apples" comparison across the databases is difficult as the California Department of General Services does not use NAICS codes to categorize businesses but instead utilizes key words.

These factors allow TJPA to arrive at an adjusted SBE availability percentage for each of the anticipated contracts. The adjusted SBE availability percentage is then multiplied by the anticipated contract value.

$$\text{Step Two SBE Target} = \frac{\text{Sum of (Adjusted DBE Ratio*Individual Contract Amount)}}{\text{Total Contract Amount}} = 20.98\%$$

The overall SBE goal is therefore 21%.

**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
Counties ^(1,2)	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
Totals	5	7	8	112	47

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
Counties ^(1,3)	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
Totals	413	4544	1433	1887	296

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.

