

STAFF REPORT FOR CALENDAR ITEM NO.: 18
FOR THE MEETING OF: May 12, 2016

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approval of the draft Anticipated Disadvantaged Business Enterprise (DBE) Participation Level for federal fiscal years 2016-17 through 2018-19 (FFY2017-19) and authorization of the release of the draft ADPL for a 30-day public review/30-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, at the discretion of the recipient agency, the draft DBE target may be released for a 30-day review/30-day comment period. Following this period, the final DBE target will be brought to the TJPA Board for approval.
- TJPA’s FTA funds are largely expended, and no new contracts are currently anticipated to be funded with the remaining funds. FTA recipients that will spend less than \$250,000 in FTA funds to award contracts in a fiscal year are not required to have a DBE program. TJPA’s remaining funds will likely be spent on administrative costs over the remainder of the project such as salaries, benefits, insurance, office rent, and office supplies and equipment. While purchase of office supplies and equipment could be considered a contract opportunity, TJPA will not spend \$250,000 on such costs, and because there is no opportunity for DBE participation in these categories in any case the draft FFY2017-19 Anticipated DBE Participation Level (ADPL) for FTA-funded contracts is 0%.
- 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 14.3% 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.

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 any anticipated new contracts to be awarded in the period, which in this case is federal fiscal years 2016-17 through 2018-19 (October 1, 2016 – September 30, 2019). 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 prescribed methodology results in an FTA ADPL of 0% for FFY2017-19. 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 and other 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 14.3% of a planned \$11.3 million in contract awards through the remainder of the project. 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 calculation of the goal is shown in Attachment 2.

Public Outreach

In the past, in order to comply with 49 CFR Part 26.45, the draft ADPL was required to be released and published in general circulation media for a 30-day review/45-day comment period. In changes to the regulation implemented in 2014, FTA no longer mandates media publication of the proposed overall goal for a 45-day comment period. Instead, FTA has provided discretion to the recipient agencies as to whether or not the goal is published outside of the agency's website and whether or not to offer a public comment period. The elimination of the publication requirement was meant to reduce the administrative burden, expense, and delay that is borne by recipient agencies and often led to few, if any, comments. TJPA has previously advertised in the following publications:

- 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 total cost of advertising the ADPL in these 11 publications in 2014 was just over \$2,000. TJPA received no comments in response to these advertisements, and has never actually received any comments on its proposed DBE target in response to publishing it. Thus staff recommends publishing the ADPL on the TJPA website only, for a 30-day comment period. Any comments received will be reviewed and brought to the Board for consideration when the final ADPL is brought for approval at a later Board meeting.

In addition to posting on the TJPA website, public comments were sought at the Business Outreach Committee’s Consultation Meeting and Public Participation Meeting, both of which were held at the Alameda County Transportation Commission’s offices on April 12. The Business Outreach Committee is a working group of Bay Area transit agencies (including AC Transit and SF Municipal Transportation Agency) focused on supporting disadvantaged and small business participation on contracts. Staff from TJPA and the other Bay Area transportation agencies explained the goal-setting process described above, and TJPA staff presented information about its SBE Program, noting that our federal funds were largely expended and that a DBE goal was largely inapplicable. There were no comments from the public at either meeting specific to TJPA’s goal or contracting opportunities.

Past History

In 2013, the TJPA Board approved an ADPL for FFY 2014-16 of 14.8%. This was based on the following anticipated contracting activity:

Opportunity	DBE Availability
Independent Auditor	0.56%
Legal Services	0.15%
Financial Services	33.6%
Public Relations & Outreach	15.9%
Real Estate Economics	1.2%

Of these awards planned in 2013, only a new Independent Auditor contract has been awarded, with no DBE participation. Legal, financial, and real estate economics services are being provided through contracts that have been or are planned for extension; public relations and community outreach services have been taken over in-house. Thus TJPA has not truly had contracting opportunities to match the goal. There has been, however, continued DBE and SBE participation on the contracts in place:

Contract	DBE %	SBE %
Independent Auditor (previous contract)	0%	20%
Legal Services	0%	54%
Financial Services	19%	72%
Public Relations & Outreach	0%	100%
Real Estate Economics	0%	47%

Overall for FFY 2014-16, counting all funding sources, TJPA awarded 3% of contracts to DBEs and 19% to SBEs.

RECOMMENDATION:

Approve the draft Anticipated Disadvantaged Business Enterprise (DBE) Participation Level of 0% for federal fiscal years 2016-17 through 2018-19 (FFY2017-19) and authorize the release of the draft ADPL for a 30-day public review/30-day public comment process via the TJPA website.

ATTACHMENTS:

1. Resolution
2. FFY2017-19 ADPL Methodology

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Federal Transit Administration (FTA) approved the Transbay Joint Powers Authority (TJPA) as 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, TJPA has largely expended its FTA and FHWA funds and does not anticipate awarding contracts with the remaining funds but rather plans to expend the funds on administrative-type costs such as salaries, benefits, office rent, insurance, and office supplies, where there are no opportunities for DBE participation; and

WHEREAS, Accordingly, the Anticipated DBE Participation Level (ADPL) established for federal Fiscal Years 2016-17 through 2018-19 for DBE participation in the performance of contracts financed in whole or in part with U.S. DOT funds is proposed to be 0%; and

WHEREAS, The TJPA plans, however, to continue to take affirmative steps to achieve DBE participation through implementation of its separate Small Business Enterprise (SBE) Program, and staff recommends setting an overall SBE participation target of 14.3% considering all contracts to be awarded during the triennial period regardless of funding source; and

WHEREAS, A notice of the proposed overall participation percentage level must be posted to the agency's website, and a 30-day public comment period is optional; now, therefore, be it

RESOLVED, That the TJPA Board approves the draft ADPL for FFY2017-19 of 0%; and be it further

RESOLVED, That the TJPA Board authorizes the publication of the draft ADPL for FFY2017-19 on the TJPA website for a period of 30 days for public review and comments.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of May 12, 2016.

Secretary, Transbay Joint Powers Authority

FFY2017-19
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 2016-17 through 2018-19 (FFY2017-19). 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, 2016 and September 30, 2019.

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 0% for FFY2017-19 for the TJPA. This methodology, rationale and calculations are 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

The Transbay Transit Center will be a multi-modal transportation station serving the San Francisco Bay Area Region, which is made up of the nine counties above. It will be a hub for the transit systems from the surrounding counties that already bring thousands of workers into San Francisco daily. 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.

Secondly, the work categories must be determined for the anticipated contracts. TJPA's FTA funds are largely expended, and no new contracts are currently anticipated to be funded with the

remaining funds; remaining funds will likely be spent on administrative costs over the remainder of the project such as salaries, benefits, insurance, office rent, and office supplies and equipment. Purchasing office supplies can be considered a contracting opportunity, and staff anticipates potentially spending up to an estimated \$60,000 on office supplies through the remainder of the project, based on historical spending.

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.

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.

$$\text{Step One Base Figure} = \frac{\text{Sum of (DBE Ratio*Individual Contract amount)}}{\text{Total Contract Amount}} = 0\%$$

The Step One Base Figure, weighted by type of work to be performed, is 0%.

This calculation is shown in Attachments 2 and 2.1. While there are a handful of office supply companies certified as DBEs in Southern California, there currently are none in Northern California according to the California Unified Certification Program (CUCP) database, which is updated daily with certification information from certifying agencies statewide. TJPA staff notes, however, that it purchases most of its office supplies and equipment from a local firm, Give Something Back, based in Oakland, with a mission of improving the quality of life in the communities it serves. Give Something Back has donated an average of \$250,000 in profits to local non-profit organizations over its 24 years in business.

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 assists in determining whether an adjustment to the Step One Base Figure is warranted.

TJPA has analyzed contracts that fall into the NAICS work category of office supplies. As noted above, there are no DBEs available in the market area in this category, and TJPA's past participation level is 0% for this category.

The past participation levels would typically be applied to adjust the base figure by category, by looking at the median percentage of past participation. However, with no DBEs available in this category, no adjustment to the base figure is necessary. Therefore, the overall ADPL is 0%.

Small Business Enterprise Goal Calculation

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 14.3% of \$11.3 million in planned contract awards. The same methodology is used to calculate the SBE goal.

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 (S/DVBE), and the Contract Management Division of the Office of the City Administrator (formerly SF HRC) (L/M/W-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.

$$\text{Step One Base Figure} = \frac{\text{Sum of (SBE Ratio*Individual Contract Amount)}}{\text{Total Contract Amount}} = 13.1\%$$

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.

Where there is previous participation by SBEs, the median percentage from that past participation is averaged with the Step One Base Figure for that particular contracting category. That results in an adjusted availability percentage that is included in the calculation. TJPA anticipates contracting for various services through the Master Lessee related to operating the Transit Center, and has thus made an adjustment based on past SBE participation on the contract for operating the Temporary Terminal.

$$\text{Step Two SBE Target} = \frac{\text{Sum of (Adjusted SBE Ratio*Individual Contract Amount)}}{\text{Total Contract Amount}} = 14.3\%$$

The overall SBE goal is therefore 14.3%. These calculations are shown in Attachments 2.2 through 2.4.

ATTACHMENT 2
FFY 2016-17 Through FFY 2018-19
Anticipated Federally Funded Contracts

FY 2017-19 Federally Funded Awards	NAICS	NAICS Description	A Contract Amt.	B DBE Avail.	C Step 1 DBE (A*B)	D Adjusted Avail.	E Step 2 DBE (A*D)
Administrative Support	424120	Office Supplies	\$ 60,000	0.00%	\$ -	n/a	\$ -
Total			\$ 60,000		\$ -		\$ -

Step 1 DBE Base Figure

$$\frac{\$ -}{\$ 60,000} = 0.00\%$$

Step 2 DBE Adjusted Figure

$$\frac{\$ -}{\$ 60,000} = 0.00\%$$

**ATTACHMENT 2.1
FFY 2017-19 DBE Availability Weighted Calculations
(FTA Funded Contracts)**

DBE Totals by County and Activity

Counties ^(1,2)	424120	424130
	Stationery & Office Supplies	Industrial & Personal Service Paper Merchants
Alameda (510)	0	0
Contra Costa (925)	0	0
Napa, Solano, Sonoma (707)	0	0
San Francisco/Marin (415)	0	0
San Mateo (650)	0	0
Santa Clara (408)	0	0
Totals	0	0

NAICS Totals by County and Activity

Counties ^(1,3)	424120	424130
	Stationery & Office Supplies	Industrial & Personal Service Paper Merchants
Alameda (510)	24	39
Contra Costa (925)	5	13
Napa, Solano, Sonoma (707)	14	14
San Francisco/Marin (415)	16	12
San Mateo (650)	21	11
Santa Clara (408)	19	22
Totals	99	111

Calculation of Step 1 Base Figure

NAICS Code and Description	424120 Stationery & Office Supplies	424130 Industrial & Personal Service Paper Merchants
DBE Totals for All Counties	0	0
NAICS Totals for All Counties	99	111
DBE Totals/NAICS Totals	0.00%	0.00%
Total Dollar Amount	\$60,000	
DBE Participation Amount	\$0	

FY 2017-19 DBE Step One Base Figure 0.0%

Calculation of Step 2 Adjusted Figure

Past DBE Participation	0%
Adjusted Availability ⁽⁴⁾	n/a
DBE Participation Amount	\$0

FY 2017-19 DBE Step Two Adjusted Figure 0.0%

(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/GetLicenseForm.do>

(3) NAICS data is from the U.S. Census Bureau's 2014 County Business Patterns.

(4) Adjusted Availability, if applicable, would be the average of the Step One Base Figure and the Past DBE Participation.

**ATTACHMENT 2.2
FFY 2016-17 Through FFY 2018-19
All Anticipated Contracts**

FY 2017-19 All Contracts	NAICS	NAICS Description	A Contract Amt.	B DBE Avail.	C Step 1 DBE (A*B)	D Adjusted Avail.	E Step 2 DBE (A*D)
Building Maintenance (Master Lessee)	561210	Facilities Support Services	\$ 1,600,000	19.61%	\$ 313,725		\$ 313,725
Grounds Services (Master Lessee)	561730	Landscaping Services	\$ 775,000	3.52%	\$ 27,263		\$ 27,263
Janitorial Services (Master Lessee)	561720	Janitorial Services	\$ 1,825,000	5.04%	\$ 91,957		\$ 91,957
IT Services (Master Lessee)	541513	Computer Facilities Management Services	\$ 820,000	31.58%	\$ 258,947		\$ 258,947
Transit Center Security Services	561612	Security Guards and Patrol Services	\$ 6,250,000	12.63%	\$ 789,474		\$ 789,474
Administrative Support (Office Supplies)	424120	Office Supplies	\$ 60,000	0.00%	\$ -		\$ -
Total			\$11,330,000		\$ 1,481,367		\$1,481,367

Step 1 DBE Base Figure

$$\frac{\$ 1,481,367}{\$ 11,330,000} = 13.07\%$$

Step 2 DBE Adjusted Figure

$$\frac{\$ 1,481,367}{\$ 11,330,000} = 13.07\%$$

ATTACHMENT 2.3
FFY 2017-19 SBE Availability Weighted Calculations
(All Contracts)

SBE Totals by County and Activity

	<u>561210</u>	<u>561730</u>	<u>561720</u>	<u>541513</u>	<u>561612</u>	<u>424120</u>	<u>424130</u>
Counties ^(1,2)	Facilities Support Services	Landscaping Services	Janitorial Services	IT Services	Security Guards and Patrol Services	Office Supplies	Industrial & Personal Service Paper Merchants
Alameda (510)	9	13	23	20	9	0	0
Contra Costa (925)	0	14	7	15	3	0	0
Napa, Solano, Sonoma (707)	3	18	8	3	6	0	0
San Francisco/Marin (415)	6	5	9	13	11	0	0
San Mateo (650)	0	8	4	5	0	0	0
Santa Clara (408)	2	10	14	22	7	0	0
Totals	20	68	65	78	36	0	0

NAICS Totals by County and Activity

	<u>561210</u>	<u>561730</u>	<u>561720</u>	<u>541513</u>	<u>561612</u>	<u>424120</u>	<u>424130</u>
Counties ^(1,3)	Facilities Support Services	Landscaping Services	Janitorial Services	IT Services	Security Guards and Patrol Services	Office Supplies	Industrial & Personal Service Paper Merchants
Alameda (510)	21	250	215	54	62	63	39
Contra Costa (925)	11	302	170	30	24	18	13
Napa, Solano, Sonoma (707)	6	387	172	16	27	28	14
San Francisco/Marin (415)	18	227	200	54	65	28	12
San Mateo (650)	9	279	179	22	33	32	11
Santa Clara (408)	26	411	334	71	74	41	22
Totals	91	1856	1270	247	285	210	111

**ATTACHMENT 2.3
FFY 2017-19 SBE Availability Weighted Calculations
(All Contracts)**

Calculation of Step 1 Base Figure							
<u>NAICS Code and Description</u>	<u>561210</u>	<u>561730</u>	<u>561720</u>	<u>541513</u>	<u>561612</u>	<u>424120</u>	<u>424130</u>
	Facilities Support Services	Landscaping Services	Janitorial Services	IT Services	Security Guards and Patrol Services	Office Supplies	Industrial & Personal Service Paper Merchants
SBE Totals for All Counties	20	68	65	78	36	0	0
NAICS Totals for All Counties	102	1933	1290	247	285	99	111
SBE Totals/NAICS Totals	19.61%	3.52%	5.04%	31.58%	12.63%	0.00%	0.00%
Total Dollar Amount	\$1,600,000	\$775,000	\$1,825,000	\$820,000	\$6,250,000	\$60,000	
SBE Participation Amount	\$313,725	\$27,263	\$91,957	\$258,947	\$789,474	\$0	\$0
FY 2017-19 DBE Step One Base Figure					\$1,481,367 / \$11,330,000 = 13.1%		

Calculation of Step 2 Adjusted Figure							
Past SBE Participation		13.2%		0%	0%	0%	0%
Adjusted Availability ⁽⁴⁾		13.1%		-	-	-	-
SBE Participation Amount	\$209,838	\$101,640	\$239,347	\$258,947	\$789,474	\$0	\$0
FY 2017-19 DBE Step Two Adjusted Figure					\$1,599,246 / \$11,330,000 = 14.3%		

(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/GetLicenseForm.do>

(3) NAICS data is from the U.S. Census Bureau's 2014 County Business Patterns.

(4) Adjusted Availability is the average of the Step One Base Figure and the Past DBE Participation.

ATTACHMENT 2.4
Past DBE and SBE Participation on Similar TJPA Contracts

Temp Terminal Facility Management SBE Participation History

Not FTA-funded; not included in calculation of DBE target

	Total	non-SBE	SBE	non-SBE %	SBE %
FY 2014-15	991,475.87	842,408.57	149,067.30	85.0%	15.0%
FY 2013-14	1,059,974.06	940,460.32	119,513.74	88.7%	11.3%
Total	2,051,449.93	1,782,868.89	268,581.04		
Median Past Participation				86.8%	13.2%