

STAFF REPORT FOR CALENDAR ITEM NO.: 8.4
FOR THE MEETING OF: June 12, 2025

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approval of amendment to Board Policy No. 010, the Disadvantaged Business Enterprise (DBE) Program Plan.

SUMMARY:

Pursuant to Title 49 of the Code of Federal Regulations, Part 26 (49 CFR Part 26) §26.3, the Transbay Joint Powers Authority (TJPA), a recipient of federal financial assistance from the United States Department of Transportation (U.S. DOT), is required to implement and maintain a DBE Program. The DBE Program applies to all TJPA contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance.

The TJPA's DBE Program was established in 2006 and last updated in 2013. In anticipation of new federally funded contracts for The Portal, also known as the Downtown Rail Extension project, and to remain compliant with federal requirements, staff have conducted a full update of the policy with the most recent and significant changes of 49 CFR Part 26 regulations.

Under 49 CFR Part 26, grantees must establish and implement a DBE program and set triennial DBE participation goals. TJPA will continue to implement a race-neutral DBE program, meaning DBE participation is encouraged through broad-based outreach and procurement strategies without setting race-conscious contract goals. Strategies include participation in the Bay Area Business Outreach Committee (BOC), targeted outreach, unbundling of contracts, and support of the TJPA's Small Business Enterprise (SBE) Program.

The latest amendments to the federal regulations improves program implementation in major areas, including by updating the personal net worth and program size thresholds for inflation; modernizing rules for counting of material suppliers; incorporating procedural flexibilities enacted during the coronavirus (COVID-19) pandemic; adding elements to foster greater usage of DBEs and Airport Concession DBEs (ACDBEs) with concurrent, proactive monitoring and oversight; updating certification provisions with less prescriptive rules that give certifiers flexibility when determining eligibility; revising the interstate certification process to provide for reciprocity among certifiers; and making technical corrections to commonly misinterpreted rules.

In updating this policy, clarifications were made throughout the document to align with revised federal guidance, references to outdated procedures and contact information were updated, and the DBE Liaison Officer designation and role are reaffirmed with current staffing and contact details.

Amendments to the federal regulations occur from time to time. When these edits are substantial in nature, the TJPA will incorporate them into the Board Policy to continue compliance with the requirements of the program.

RECOMMENDATION:

Approve amendment to the Board Policy No. 010 – Disadvantaged Business Enterprise (DBE) Program Plan for continuing compliance with federal regulations.

ENCLOSURES:

1. Resolution
2. Board Policy No. 010 – Disadvantaged Business Enterprise (DBE) Program Plan – clean and redline versions

**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 goal on a triennial basis; and

WHEREAS, The TJPA originally adopted a DBE Program in July 2006, which was last amended in April 2013; and

WHEREAS, The TJPA has updated the DBE Program to incorporate the amendments to the Federal Regulations and revised administrative details; now, therefore, be it

RESOLVED, That the Transbay Joint Powers Authority Board approves the amendment to Board Policy No. 010 – Disadvantaged Business Enterprise (DBE) Program Plan.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 12, 2025.

Secretary, Transbay Joint Powers Authority

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 010

Category: Financial Matters

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PLAN

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DBE Program – Policy No. 010

Originally Adopted: 7/29/06

Amended: 9/20/07, 8/14/08, 6/11/09, 7/15/10, 9/13/12, 4/26/13, 6/12/25

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SUBPART A – GENERAL REQUIREMENTS

Objectives (§26.1)

The objectives are found in the policy statement on page one of this DBE Program.

Applicability (§26.3)

Pursuant to 49 CFR §26.3, the TJPA, a recipient of federal financial assistance from the United States Department of Transportation (U.S. DOT), is required to implement a DBE Program in accordance with 49 CFR Part 26 (Regulations). The requirements of the Regulations are incorporated by reference. In the event of any conflicts or inconsistencies between the Regulations and the DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail. The DBE Program outlined herein applies to all TJPA contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance.

Definitions of Terms (§26.5)

The TJPA will adopt the definitions contained in §26.5 for this DBE Program. §26.5 definitions are outlined in Attachment 1.

Nondiscrimination (§26.7)

The TJPA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering its DBE Program, the TJPA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

Record Keeping Requirements (§26.11)

1) Reporting to U.S. DOT (§26.11)(a)

The TJPA will report DBE participation on a semi-annual basis to FTA containing all information described in the Uniform Report. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

- DBE participation from October 1 through March 31 (submitted by June 1).
- DBE participation from April 1 through September 30 (submitted by December 1).

2) Reporting to U.S. DOT (§26.11)(b)

The TJPA will continue to report DBE participation and overall goal-setting methods to FTA as directed. Statistical data will be maintained as advised to provide reports to DOT reflecting DBE participation in federally assisted procurement activities.

3) **Bidders List (§26.11)(c)**

The TJPA will obtain bidders list information to compile as accurate data as possible about the universe of DBE and non-DBEs who seek to work on TJPA's federally assisted contracts for use in helping set its overall goals, and to provide FTA with data for evaluating the extent to which the objectives of §26.1 are being achieved.

The TJPA will obtain the bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each federally assisted contract. The bidders list information will be submitted with the bid or initial response to negotiated procurements. The bidders list information will include:

- 1) Firm name;
- 2) Firm address including ZIP code;
- 3) Firm's status as a DBE or non-DBE;
- 4) Race and gender information for the firm's majority owner;
- 5) NAICS code applicable to each scope of work the firm sought to perform in its bid;
- 6) Age of the firm; and
- 7) The annual gross receipts of the firm.

The TJPA will enter this data in the centralized DOT database no later than December 1 following the fiscal year in which the relevant contract was awarded. In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the data will be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s). The TJPA will maintain the confidentiality of any proprietary information in accordance with applicable Federal, state, and local laws.

TJPA collects this information in the following ways:

The TJPA has incorporated a "Bidders/Proposers Information Request Form" (Attachment 2) into its solicitation documents, requiring that bidders/proposers provide all requested information for themselves and all firms who bid, quote, or provide a proposal to perform work, provide labor, render services or provide supplies in connection with the contract.

Assurance (§26.13)

The TJPA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance (§26.13)(a)

The TJPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The TJPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The TJPA's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this Program is a legal

obligation, and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the TJPA of its failure to carry out its approved Program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).

Contract Assurance (§26.13)(b)

The TJPA ensures that the following clause is placed in every DOT-assisted sub-recipient agreement, each contract the TJPA signs with a contractor and in each subcontract the prime contractor signs with a subcontractor:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the TJPA deems appropriate; but it is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

All TJPA contractors must place the above clause in any subcontract. Additionally, the contractor must provide TJPA a copy of each subcontract within 10 days of contractor receipt of a Notice To Proceed.

Enforcement:

If a contractor, subcontractor, or sub-recipient fails or refuses to include the §26.13(a) and/or §26.13(b) assurances verbatim in all the DOT-assisted contracts, subcontracts, or sub-recipient agreements, the TJPA may impose penalties and administrative sanctions for non-compliance as documented in “Enforcement Actions for Noncompliance of Participants” on page 10.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

DBE Program Updates (§26.21)(a)(2)(i)

The TJPA intends to be an FTA Tier 1 recipient that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year. The TJPA will have a DBE Program meeting all of the requirements of §26.21.

(§26.21)(b)(1)(2)

The TJPA will submit a conforming DBE Program to the FTA. The TJPA will submit an updated DBE Program to FTA when the DBE Program has significant changes, including those required by regulatory updates.

(§26.21)(c)

The TJPA will carry out its DBE Program until all funds from DOT financial assistance have been expended.

Policy Statement (§26.23)

The Policy Statement is on page one and two of this DBE Program. The Policy Statement is signed and dated by the TJPA's Executive Director.

DBE Liaison Officer (DBELO) (§26.25)

The TJPA has designated the following individual as the DBE Liaison Officer :

Procurement & Contract Compliance Manager
Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
(415) 597-4620

In this capacity, the DBE Liaison Officer is responsible for implementing all aspects of the DBE Program and ensuring that the TJPA complies with all provisions of Title 49 CFR Part 26. The DBE Liaison Officer has direct, independent access to the TJPA Executive Director concerning DBE Program matters.

The DBE Liaison Officer is responsible for developing, implementing, monitoring, and reporting the DBE Program.

DBE Financial Institutions (§26.27)

It is the policy of the TJPA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. Information on the availability of such institutions can be obtained on the Federal Reserve website at <http://www.federalreserve.gov/releases/mob/>. TJPA will consult the latest release of the list whenever it is seeking proposals for services from financial institutions, and will encourage TJPA vendors and contractors to do the same in its annual fiscal year billing deadline letter to vendors and contractors.

Prompt Payment Mechanisms (§26.29)

The TJPA requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local laws. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with §26.29, the TJPA will include the following clause in each DOT-assisted prime contract:

Prompt Progress Payment to Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than ten (10) days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The ten (10) days is applicable unless a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that Section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days of receipt of each payment may take place only for good cause and with the TJPA's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE/SBE and non-DBE/SBE prime contractors and subcontractors.

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the TJPA.

When the TJPA has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The TJPA ensures prompt and full payment of retainage from the prime contractor to the subcontractor. Pursuant to §26.29, the TJPA has selected the following method to comply with this requirement:

- For construction procurements: The TJPA will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after the TJPA's payment to the prime contractors.
- For professional services procurements: The TJPA will decline to hold retainage and prohibit prime contractors from holding retainage from subcontractors.

The TJPA will include the following clause in each DOT-assisted prime contract:

Prompt Payment of Withheld Funds to Subcontractors. If the TJPA requires retainage from the prime contractor and prompt and regular incremental acceptances of portions, as determined by the TJPA of the contract work and retainage is paid to the prime contractor based on these acceptances, then the prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the TJPA. Any delay or postponement of payment may take place only for good cause and with the TJPA's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE/SBE and non-DBE/SBE subcontractors.

If the TJPA determines that the prime contractor has failed to comply with the prompt payment provisions set forth above, the TJPA may give written notice to the prime contractor and the prime contractor's surety that, if the default is not remedied within 30 days, the contract may be terminated. The TJPA may also impose penalties and sanctions for non-compliance with the prompt payment clause contained in §26.37, Monitoring and Enforcement Mechanisms.

Directory (§26.31)

The TJPA is a non-certifying member of the California Unified Certification Program (CUCP). The TJPA uses the CUCP DBE Directory that is jointly maintained and updated by the CUCP certifying member agencies statewide and is hosted by the California Department of Transportation (Caltrans). The directory is updated in real time, as changes are made to the directory. The DBE database is available on the Caltrans' Disadvantaged Business Enterprise Program website at <https://caltrans.dbesystem.com/>. The TJPA will use the DBE directory as a primary resource in developing overall goals and conducting outreach and other activities to promote DBE participation in DOT-assisted contracts.

The directory is an online system that permits the public to search and/or filter for DBEs by:

- 1) Physical location;
- 2) NAICS code(s);
- 3) Work descriptions; and
- 4) All optional information added pursuant to paragraph (c) of §26.31, which includes additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, prequalifications, and bonding capacity.

The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

Over-concentration (§26.33)

TJPA will compare DBEs in certain types of work to non-DBEs in the same type of work on a regular triennial basis when setting its Program DBE goal, in order to determine if an over-concentration is occurring.

To address overconcentration, TJPA’s measures may include the use of incentives, technical assistance, business development programs, and/or other appropriate measures designed to assist DBEs in performing work outside of the specific field in which it has been determined that non-DBEs are unduly burdened. TJPA may also consider varying contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

If an over-concentration is determined to exist, TJPA will submit this concern to DOT for concurrence and provide FTA with a proposal to address the over-concentration. If concurrence is received, the measures will become part of the DBE Program.

Business Development Programs (§26.35)

The TJPA does not have a business development or mentor-protégé program. If the TJPA identifies the need for a business development or mentor-protégé program in the future, the rationale for adopting such a program and a comprehensive description of it will be submitted to DOT.

The TJPA is a member of the Business Outreach Committee (BOC). The BOC represents the nine Bay Area counties, assisting DBEs and other small businesses with expansion of their businesses through training, technical assistance, and relationship building with Bay Area transportation agency staff and the contracting community.

Monitoring (§§26.37, 26.55)

The TJPA requires prime contractors to maintain records and documents of payments to DBEs for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the TJPA’s financial assistance agreement, whichever is longer, following the performance of the contract. These records shall be made available for inspection upon request by any authorized representative of the TJPA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

The TJPA’s DBE Program includes a monitoring and enforcement mechanism to ensure that work subcontracted to all DBEs at contract award or subsequently is performed by the DBEs to which the work was committed or subcontracted to, and such work is counted according to the requirements of §26.55.

The TJPA monitors and tracks the actual DBE participation through contractor and subcontractor reports of payments, by requiring a “Progress Payment Report” (Attachment 4) be completed and submitted by the prime contractor with every invoice. The TJPA will

require a “Subcontractor Payment Declaration” (Attachment 5) be completed and submitted by the prime contractor for all subcontractors for every invoice submitted to the TJPA within 5 days following actual payment to subcontractor. The TJPA will also require a “Final Expenditure Report” (Attachment 6) be completed and submitted by the prime contractor at the end of the contract. Data collected from contractors may include copies of cancelled checks.

To determine the Commercially Useful Function of a DBE, the TJPA completes the “Record of Commercially Useful Function Report” (Attachment 7) for all DBEs on each DOT-assisted contract. This is accomplished by conducting field reviews and DBE contractor interviews. The TJPA’s Project Manager or DBE Liaison Officer is responsible for completing the “Record of Commercially Useful Function Report” and for monitoring the DBE firm to provide a written certification that Commercially Useful Function requirements are being met.

Prompt Payment Dispute Resolution

The TJPA will take the following step to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

- The TJPA will hold a dispute resolution meeting between the prime contractor and subcontractor, along with TJPA’s Project Manager, DBE Liaison Officer, or representative from the TJPA as appropriate. The meeting will include those individuals who are authorized to bind each interested party and a representative from the TJPA with authority to take enforcement action.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- Subcontractors are to contact the prime contractor to discuss payment discrepancies. If a resolution is not reached regarding the payment discrepancies, then the affected subcontractor may escalate the complaint to TJPA’s Project Manager or DBE Liaison Officer. The TJPA will investigate and follow up with both the subcontractor and prime contractor involved in the complaint resolution within 10 days. If filing a complaint with The TJPA does not result in timely and meaningful action by the TJPA, the affected subcontractor may contact FTA:

Region 9 Office
Federal Transit Administration
888 S Figueroa St, Ste 440
Los Angeles, CA 90017 213-757-5999

- If a subcontractor is not comfortable contacting the prime contractor directly regarding payment discrepancies, the subcontractor may contact TJPA’s Project Manager or DBE Liaison Officer. The TJPA will investigate and follow up with both the subcontractor and prime contractor involved in the complaint resolution within 10 days. If

filing a complaint with the TJPA does not result in timely and meaningful action by the TJPA, the affected subcontractor may contact FTA:

Region 9 Office
Federal Transit Administration
888 S Figueroa St, Ste 440
Los Angeles, CA 90017 213-757-5999

Enforcement Actions for Noncompliance of Participants

The TJPA will provide appropriate means to enforce the requirements of §26.29. These means include:

- The TJPA will bring to the attention of the United States Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109.
- In the event of non-compliance with the DBE regulation by a participant in TJPA's procurement activities, including prompt payment and retainage requirements, under 49 C.F.R. §26.13 (b), the penalties imposed by the TJPA may include, but are not limited to, the following:
 - (a) Liquidated damages;
 - (b) Suspension of payment to the contractor of any monies held by the TJPA as retained on contract;
 - (c) The denial to the contractor of right to participate in future TJPA contracts for a specified time;
 - (d) Contract termination.

Fostering Small Business Participation (§26.39)

In 2009, the TJPA Board adopted the TJPA Small Business Enterprise (SBE) Program to facilitate participation by small business concerns. Steps the TJPA takes to eliminate obstacles to SBE participation include, but are not limited to, unbundling contracts, establishing race-neutral small business set-asides for contracts as appropriate, and placing enforceable contract goals on prime contracts for SBE participation.

In order to facilitate small business participation, TJPA has incorporated the following non-discriminatory element into its DBE Program to facilitate competition on DOT-assisted projects by small business concerns:

- 4) Review the scope of work and task list to determine if small business contracting opportunities exist.
- 5) Reduce the complexity and scope of large multiple-award contracts so that contracting opportunities encourage SBE participation as prime contractors.
- 6) Unbundle contracts by identifying work that is not significantly affected by schedule, delivery, price and operations.

- 7) The TJPA is a member of the Business Outreach Committee (BOC) that represents Bay Area transit and transportation agencies. The BOC assists DBEs and other small businesses with expansion of their businesses through training, technical assistance, and relationship-building with agency staff and the contracting community of the San Francisco Bay Area. These efforts help to create a level playing field on which DBEs and small businesses can compete fairly; enhance outreach and communication efforts with these firms; provide appropriate assistance and information for participation in DOT-assisted contracts; and develop joint resources among recipients. The BOC also works with NorCal APEX Accelerator as a resource for providing technical assistance and guidance to DBEs and small businesses. The TJPA's DBE Liaison Officer participates in meetings, trainings and workshops held by the BOC.

TJPA accepts several types of small business certifications, and DBEs are counted as SBEs under the Program. See TJPA Board Policy No. 015 for more information.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas (§26.43)

The TJPA does not use set-asides or quotas in any way in the administration of this DBE Program.

Overall Goals (§26.45)

The DBE Liaison shall calculate and establish TJPA's three-year overall Anticipated DBE Participation Level ("ADPL"). The ADPL shall be expressed as a percentage of the total amount of DOT funds (excluding the purchase of transit vehicles) the TJPA anticipates expending during the relative 3-year reporting period. The TJPA's ADPL will represent the amount of ready, willing and able DBEs available to participate in contracting opportunities and shall reflect the amount of DBE participation the TJPA would expect absent the effects of discrimination. The TJPA intends to meet the goal through race-neutral means. The TJPA shall use race-conscious means only if supported by the findings of an approved and authorized Availability and Utilization Study (Disparity Study), and the expressed authorization from FTA.

The TJPA will publish a notice of the proposed overall ADPL on the TJPA website (<https://www.tjpa.org/about-tjpa/items-public-comment>).

The notice will inform the public that the proposed ADPL and its rationale are available for inspection during normal business hours at the TJPA's principal office for 30 days following the date of the notice. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The draft goal is additionally publicized to the business community for input by sending notice to the Bay Area Chambers of Commerce and at the DBE Public Participation meeting hosted by the Business Outreach Committee (BOC), a working group of Bay Area

transportation agencies dedicated to assisting small disadvantaged and local firms in doing business with the agencies, a group of which TJPA is a member. The draft goal is also sent to the following TJPA project stakeholders and funders for comment: Alameda-Contra Costa Transit District, Caltrain/SamTrans, Metropolitan Transportation Commission, San Francisco Municipal Transportation Agency, and San Francisco County Transportation Authority.

By the June Board meeting triennially, the TJPA will present to the TJPA Board its draft overall ADPL and methodology (the amount of the overall ADPL and the method to calculate the ADPL). In accordance with §26.45(f), following completion of the 30-day notice for public comment, and approval by the TJPA Board, the TJPA will submit its ADPL goal to FTA by August 1 at three (3) year intervals, based on a schedule established by the FTA.

The TJPA will begin using the approved ADPL on October 1, the calendar year following the August 1 submission to FTA, unless other instructions have been received from FTA. If the TJPA receives approval from FTA to establish a goal on a project basis, the TJPA will begin using that goal by the time of the first solicitation for a DOT-assisted contract for the project.

Once established, if circumstances deem the overall ADPL Goal requires adjustment prior to the end of the three-year period, the TJPA will publish a notice of the proposed adjustment of the ADPL Goal on the [Doing Business page on the The TJPA website \(web\)](#) informing the public that the proposed goal and its rationale are available for inspection from 9:00am to 4:00pm, Pacific Standard Time, Monday through Friday, at the TJPA's administrative office and online on the TJPA website (<https://www.tjpa.org/about-tjpa/items-public-comment>) for 30 days following the date of the notice, and informing the public that the TJPA will accept comments on the goal for 30 days following the date of the notice. The TJPA will also provide notice to those constituent groups, community organizations, and other officials or organizations the TJPA consulted with when setting its initial ADPL Goal. The adjusted ADPL Goal will be approved by the Board of Directors, then submitted to FTA.

Meeting Overall Goals and Accountability (§26.47)

If the awards and commitments shown on TJPA's Uniform Report Form at the end of any Federal fiscal year are less than the overall goal applicable to that Federal fiscal year, the DBE Liaison Officer will, in accordance with 49 CFR §26.47(c) conduct a Shortfall Analysis. The Shortfall Analysis will analyze in detail the reasons for the difference between the overall goal and TJPA's awards and commitments in that Federal fiscal year and establish specific steps and milestones to correct the problems identified in the Shortfall Analysis. The TJPA will retain the Shortfall Analysis for three years and make it available to FTA upon request for review.

Transit Vehicle Manufacturers (§26.49)

TJPA is not a transit operating agency and does not procure transit vehicles. If transit vehicles are procured in the future, the TJPA will require each transit vehicle

manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49. TJPA's DBE Liaison Officer will submit to FTA within thirty (30) days of the TJPA becoming contractually required to procure a transit vehicle, the name of the transit vehicle manufacturer that was the successful bidder, and the Federal share of the contractual commitment at that time.

Breakout of Estimated Race-Neutral & Race-Conscious Participation (§26.51)(a-c)

The TJPA uses the following race-neutral means to achieve DBE participation:

- Making DBEs and other small businesses aware of opportunities.
- Submitting timely solicitations and developing clearly written plans and specifications to facilitate DBEs and other small business firms' participation.
- Posting invitations for bids and requests for proposals on the [Contract Opportunities page of the TJPA website \(web\)](#).
- Participating in the Business Outreach Committee (BOC) that represents Bay Area transit and transportation agencies. The BOC assists DBEs and other small businesses with expansion of their businesses through training, technical assistance, and relationship-building with agency staff and the contracting community of the San Francisco Bay Area.
- Including the TJPA's procurement opportunities in the quarterly Business Outreach Committee (BOC) newsletter.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals (§26.51)(d-g)

Contract goals are race-conscious, which means race is taken into consideration. Since the TJPA is a federal recipient located within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit and subject to *Western States Paving Co, Inc. v. Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005), The TJPA uses race-neutral means of achieving DBE participation. If the TJPA uses contract goals, it will get approval from FTA to set contract goals.

Good Faith Efforts Procedures Where There are Contract Goals (§26.53)

Good faith efforts procedures apply to contract goals. The TJPA uses race-neutral means of achieving DBE participation, not contract goals.

Counting DBE Participation (§26.55)

The TJPA will count DBE participation toward overall goals as provided in §26.55.

SUBPART E - CERTIFICATION PROCEDURES

Unified Certification Program Participation (§26.81)

The TJPA is a non-certifying member of the CUCP. As such, the TJPA does not provide certification procedures itself. Certifying agencies may be found online at: [California Unified Certification Program \(web\)](#).

Procedures for Certification Decisions (§26.83)

Re-Certification (§26.83)(a)(c)

The TJPA is a non-certifying member of the CUCP and currently does not re-certify or make certification decisions.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Compliance Procedures Applicable to the TJPA (§26.101)

The TJPA understands that if it fails to comply with any requirement of this part, the TJPA may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

ATTACHMENTS
1. Definitions
2. Bidders/Proposers Information Request Form
3. Progress Payment Report
4. Subcontractor Payment Declaration
5. Final Expenditure Report
6. Record of Commercially Useful Function
7. DBE Directory (hard copy version only)
8. Demonstration of Good Faith Efforts Form
9. Regulations: 49 CFR Part 26 (hard copy version only)

This content is from the eCFR and is authoritative but unofficial.

Title 49 –Transportation

Subtitle A –Office of the Secretary of Transportation

Part 26 –Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

Subpart A –General

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47113, 47123; Sec. 1101(b), Pub. L. 114-94, 129 Stat. 1312, 1324 (23 U.S.C. 101 note); Sec. 150, Pub. L. 115-254, 132 Stat. 3215 (23 U.S.C. 101 note); Pub. L. 117-58, 135 Stat. 429 (23 U.S.C. 101 note).

Source: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

§ 26.5 Definitions.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance means that a recipient has correctly implemented the requirements of this part.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Departmental Office of Civil Rights, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

FTA Tier I recipient means an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year.

FTA Tier II recipient means an FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian Tribe or Native American Tribe means any federally or State-recognized Tribe, band, nation, or other organized group of Indians (Native Americans), or an ANC.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Notice of decision or NOD means determination that denies a firm's application or decertifies a DBE.

Notice of intent or NOI means recipients letter informing a DBE of a suspension or proposed decertification.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth or PNW means the net value of an individual's reportable assets and liabilities, per the calculation rules in § 26.68.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available online on the U.S. Census Bureau website: www.census.gov/naics/.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business. The term does not include construction trailers or other temporary construction sites.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or that has applied for such assistance.

Secretary means DOT's Secretary of Transportation or the Secretary's designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- (3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer (TVM) means any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered TVMs.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

Unsworn declaration means an unsworn statement, dated and in writing, subscribed as true under penalty of perjury.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

[[64 FR 5126](#), Feb. 2, 1999, as amended at [64 FR 34570](#), June 28, 1999; [68 FR 35553](#), June 16, 2003; [76 FR 5096](#), Jan. 28, 2011; [79 FR 59592](#), Oct. 2, 2014; [89 FR 24963](#), Apr. 9, 2024]

Attachment 2

TRANSBAY JOINT POWERS AUTHORITY BIDDERS/PROPOSERS INFORMATION REQUEST FORM

To be completed by Prime Contractor and submitted as part of bid/proposal.

NAME OF PROJECT/PROPOSAL							PROJECT/PROPOSAL NUMBER					
PROPOSER BUSINESS NAME AND ADDRESS												
NAME OF PERSON SUBMITTING BID					SIGNATURE OF PROPOSER					DATE		
CONTACT PERSON NAME				CONTACT PHONE NUMBER				CONTACT EMAIL				
IMPORTANT: 1) Identify all DBE/SBE firms being claimed for credit. 2) List names of all DBE/SBE subcontractors and their respective items of work. 3) Attach a copy of the proof of DBE/SBE certification for each DBE/SBE subcontractor listed on this form. 4) Attach "Intent to Perform" letter signed by the subcontractor.												
LIST BUSINESS FIRM(s) List Name, Address, and Contact Person (if not the same as above)	Phone Number	Email Address	Age of Firm	Item of Work, Service or Materials Supplied	NAICS Code (if known) *	Annual Gross Receipts of Firm	DBE Participation				Award Amount	Percentage of Contract Participation
							Certified DBE (Y/N)	Certified SBE (Y/N)	DBE Certifying Agency	Type of DBE **		
A. PRIME Contractor												
B. Subcontractor/Vendor/Joint Venture												
TOTAL											\$0	0.00%

* NAICS Code: North American Industry Classification System Code. Codes can be found at <http://www.census.gov/naics/2007/NAICOD07.htm>.
 ** Type of DBE: (1) African-American (2) Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Indian (6) Female-Woman (7) Other (designated by the Small Business Administration)
 - DBEs must be certified by Caltrans or an agency participating in the California Unified Certification Program. Visit the Caltrans website at <http://dot.ca.gov/hq/bep/ucp.htm> for a list of participating agencies.
 - Important: Attach the proof of certification for each DBE firm used toward meeting the DBE goal.
 - This information will be used to create and maintain a federally-required Bidders List, regardless of DBE participation.
 - Use additional sheets as necessary.

Attachment 3

TRANSBAY JOINT POWERS AUTHORITY PROGRESS PAYMENT REPORT

To be completed by Prime Contractor and submitted to Project Manager with every monthly invoice.

PART 1: PROJECT SUMMARY

Contract Award Date:	TJPA Contract No.:	Contract Title:	
Prime Contractor:	Contact Person:	Contact Phone No.:	Contact Email:
Prime Contractor Address:		Signature:	
Invoice Date:	Invoice No.:	For the Period:	

1. Award amount of Prime Contract (including amendment)	
2. Amount of Authorized Work (NTP, RFS) including Amendments and Modifications to Date	
3. Total Amount for this Invoice	
4. Total Previously Invoiced Awaiting Payment	
5. Total Amount Paid to Date (not including Lines 3 and 4)	
6. Total Invoice Amount Requested to Date (Line 3 + Line 4 + Line 5)	\$ -
7. Percent Complete (Line 6/Line 2)	#DIV/0!

Attachment 4

**TRANSBAY JOINT POWERS AUTHORITY
SUBCONTRACTOR PAYMENT DECLARATION**

This form must be completed and submitted by the Prime Contractor for all subcontractors, vendors, and joint venture partners with every invoice submitted to TJPA within five (5) working days following actual payment to subconsultant. Payments to subconsultant shall be made no later than ten (10) working days following receipt of progress payment from TJPA. Use additional sheets if necessary. Failure to submit all required information may lead to partial withholding of progress payment.

Date: _____ Contract No.: _____

Contract Title: _____

Prime Contractor: _____

Invoice Date: _____ Invoice No.: _____

For the Period: _____

Total Amount of Invoice: _____ TJPA Check No.: _____

Subcontractor/ Vendor/JV	DBE (Y/N)	SBE (Y/N)	Business Address Payment Sent To	Amount Paid	Payment Date	Check Number

Total Amount Paid to Subconsultants (this Pay Period)	\$0.00
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I/We declare under penalty of perjury under the laws of the State of California that the above information is complete, and that the tabulated amounts paid to date are accurate and correct.

Signature of Contact Person

Date

Print Name

Phone

Attachment 5

TRANSBAY JOINT POWERS AUTHORITY FINAL EXPENDITURE REPORT

To be completed by Prime Contractor at the end of the contract.

CONTRACT TITLE/NO.	TOTAL CONTRACT AWARD AMOUNT	DATE OF AWARD
PRIME CONTRACTOR/CONSULTANT NAME AND ADDRESS	TOTAL EXPENDITURES AT END OF CONTRACT	DATE OF CONTRACT COMPLETION
PROJECT MANAGER NAME	PROJECT MANAGER SIGNATURE	DATE
CONTACT PERSON NAME RE: FINAL EXP. REPORT	CONTACT PHONE NUMBER	CONTACT EMAIL

IMPORTANT: 1) Identify all DBE firms being claimed for credit. 2) List names of all DBE subcontractors and their respective items of work.

LIST BUSINESS FIRM(s) List Name, Address, and Contact Person (if not the same as above)	Phone Number	Email Address	Item of Work, Service or Materials Supplied	NAICS Code (if known) *	DBE Participation				Date of Work Completed	Date of Final Payment	Total Amount Paid	% of Total Expenditures
					Certified DBE (Y/N)	Certified SBE (Y/N)	DBE Certifying Agency	Type of DBE **				
A. PRIME Contractor												
												#DIV/0!
B. Subcontractor/Vendor/Joint Venture												
												#DIV/0!
												#DIV/0!
												#DIV/0!
												#DIV/0!
												#DIV/0!
												#DIV/0!
												#DIV/0!
												#DIV/0!
TOTAL										\$ -		#DIV/0!

Comments/Notes: (Explain cost overruns or discrepancies; DBE firm substitutions, etc...)

* NAICS Code: North American Industry Classification System Code. Codes can be found at <http://www.census.gov/naics/2007/NAICOD07.htm>.
 ** Type of DBE: (1) African-American (2) Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Indian (6) Female-Woman (7) Other (designated by the Small Business Administration)
 - DBEs must be certified by Caltrans or an agency participating in the California Unified Certification Program. Visit the Caltrans website at <http://dot.ca.gov/hq/bep/ucp.htm> for a list of participating agencies.
 - Important: Attach the proof of certification for each DBE/SBE firm used toward meeting the DBE/SBE goal if different from "Bidders/Proposers Information Request Form."
 - This form will be compared for consistency with the "Bidders/Proposers Information Request Form."
 - Use additional sheets as necessary.

Attachment 6

Record of Commercially Useful Function Report

Contract Number:
Review Date:
Prime Contractor:
DBE Firm:
DBE Function:

Please mark "YES", "NO" or "N/A" for each question.

For any question marked "NO", please explain in the "COMMENTS" section below.

PERFORMANCE

1. Does the DBE have its own employees on the job to perform the work? _____
2. Does the DBE own the equipment being utilized to perform its work? (If there is a lease agreement, review information on lease document.) _____
3. Is the DBE self performing the subcontract defined task for a specific item of work on the contract? _____

HAULING FIRMS

1. Does the DBE hauling firm own and/or lease their trucks? (Review ownership/vehicle registration and/or lease documents to verify). _____
2. Does the DBE employ drivers for trucks owned by the company? (If leased trucks include operators, this should be indicated in the agreement/purchase order.) _____
3. Do the haul tickets and/or bills of lading associated with the project confirm that hauling is being performed by the DBE? _____

MATERIAL SUPPLIERS OR MANUFACTURERS/FABRICATORS

1. Does the DBE's name appear on all applicable invoices, haul tickets, and/or bills of lading? _____
2. Did the DBE provide documentation showing that the funds used to pay a supplier in fact came from the DBE's own funds? _____
3. If the DBE had any materials drop shipped to the project site, was the invoice addressed to the DBE? _____
4. Did the DBE deliver materials to the site with their own and/or leased trucks? _____

SUPERVISION

1. Is the DBE self performing work without assistance from the prime or another subcontractor? _____

2. Is the DBE providing supervision of its employees and their work? _____

3. Is the supervisor a full-time employee of the DBE? _____

Comments: _____

This summary serves as the certification that the above Commercially Useful Function review occurred on the project noted in accordance with 49 CFR Part 26.55.

Name/Signature

Date

Attachment 7 – DBE Directory (hard copy version only)

Attachment 8

**TRANSBAY JOINT POWERS AUTHORITY
SBE PARTICIPATION GOOD FAITH EFFORTS FORM**

This form must be completed and submitted along with compelling documentation detailing the good faith efforts made to meet the SBE participation goal if the information submitted on the **Bidders/Proposers Information Form indicates that the SBE goal has not been met.**

If the SBE participation goal is not met, and if this form, along with compelling documentation detailing the good faith efforts made to meet the goal, is not completed and returned with the bid or **proposal, the bid or proposal shall be deemed non-responsive and rejected.**

Even if the Bidders/Proposers Information Form indicates that the SBE goal has been met, bidders/proposers are still encouraged to submit good faith efforts documentation to protect their eligibility for the contract.

Contract No.: _____ **Contract Name:** _____

Bidder/Proposer: _____

Please supply the following information:

1. Attended any pre-solicitation, pre-proposal, or pre-bid meetings held to inform all bidders about the contract and SBE requirements

Meeting Date: _____
Attendee(s): _____

Meeting Date: _____
Attendee(s): _____

Meeting Date: _____
Attendee(s): _____

Meeting Date: _____
Attendee(s): _____

2. List below and/or on an attached sheet the names and dates of all certified SBEs solicited for this project. List the dates and methods used for initial contact and any follow-up contact. Attach copies of letters, faxes, emails and any other supporting documentation that you would like the Contract Compliance Manager to consider in determining good faith efforts.

3. Summarize below and/or on an attached sheet the items of work for which the Bidder requested subcontractor services of SBEs, the information furnished to interested SBEs regarding work requirements, and any breakdown of tasks into economically feasible units to facilitate SBE participation. Where there are SBEs available for doing portions of the work normally performed by the bidder with its own staff, the bidder will be expected to make portions of such work available for SBEs.

**TRANSBAY JOINT POWERS AUTHORITY
SBE PARTICIPATION GOOD FAITH EFFORTS FORM**

4. List below and/or on an attached sheet the names of any SBEs solicited for the work above, and a summary of the discussions or negotiations with them.

a. List solicited SBEs not available to participate on the contract, stating the reason.

b. List solicited SBEs chosen to participate, and the reasons for the choice.

c. List solicited SBEs not chosen to participate, reasons for the choice, and any actions taken by the bidder to assist the rejected SBEs in remedying deficiencies in their proposal.

If insurance or bonding is a reason for rejecting any potential SBE, a complete explanation including contact and discussions with insurance and surety firms must be provided.

Print Name: _____
Signature: _____
Company: _____
Address: _____
City, State, ZIP: _____

Date: _____
Phone: _____
Email: _____

Attachment 9 – Regulations: 49 CFR Part 26 (hard copy version only)

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 010

Category: Financial Matters

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PLAN

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~~View, La Oferta Review, Thai Bao, Philippine News, and China Press. The Program Plan is available on the TJPA website, www.transbaycenter.org > Doing Business with the TJPA, and notice of its availability is sent to over 100 Bay Area Chambers of Commerce. A list of the chambers is maintained by the DBELO.~~

Adam Van de Water
Executive Director

Date

SUBPART A – GENERAL REQUIREMENTS

Objectives (§26.1)

The objectives are found in the policy statement on page one of this DBE Program.

Applicability (§26.3)

Pursuant to 49 CFR §26.3, the TJPA, a recipient of federal financial assistance from the United States Department of Transportation (U.S. DOT), is required to implement a DBE Program in accordance with 49 CFR Part 26 (Regulations). The requirements of the Regulations are incorporated by reference. In the event of any conflicts or inconsistencies between the Regulations and the DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail. The DBE Program outlined herein applies to all TJPA contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance.

Definitions of Terms (§26.5)

The TJPA will adopt the definitions contained in §26.5 for this DBE Program. §26.5 definitions are outlined in Attachment 1.

~~The following terms used in this Program have meanings as defined in 49 CFR Part 26:~~

~~A. Disadvantaged Business Enterprise (DBE) is a for profit small business concern:~~

~~(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and~~

~~(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.~~

~~B. Socially and Economically Disadvantaged Individual is any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:~~

~~(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.~~

~~(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:~~

~~(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;~~

~~(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;~~

~~(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;~~

~~(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;~~

~~(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;~~

~~(vi) Women;~~

~~(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.~~

Nondiscrimination (§26.7)

The TJPA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering its DBE Program, the TJPA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating whose purpose is to defeat or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

Federal Financial Assistance Agreement Assurance Record Keeping Requirements **(§26.1311)**

1) Reporting to U.S. DOT (§26.11)(a)

~~The TJPA will sign report DBE participation on a semi-annual basis to FTA containing all information described in the Uniform Report. These reports will reflect payments actually made to DBEs on following assurance, applicable to all DOT-assisted contracts and their administration as part of the Program Supplement Agreement for each project.~~

- ~~• DBE participation from October 1 through March 31 (submitted by June 1).~~
- ~~• DBE participation from April 1 through September 30 (submitted by December 1).~~

2) Reporting to U.S. DOT (§26.11)(b)

~~The TJPA will continue to report DBE participation and overall goal-setting methods to FTA as directed. Statistical data will be maintained as advised to provide reports to DOT reflecting DBE participation in federally assisted procurement activities.~~

3) Bidders List (§26.11)(c)

~~The TJPA will obtain bidders list information to compile as accurate data as possible about the universe of DBE and non-DBEs who seek to work on TJPA's federally assisted contracts for use in helping set its overall goals, and to provide FTA with data for evaluating the extent to which the objectives of §26.1 are being achieved.~~

~~The TJPA will obtain the bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each federally assisted contract. The bidders list information will be submitted with the bid or initial response to negotiated procurements. The bidders list information will include:~~

- 1) Firm name;
- 2) Firm address including ZIP code;
- 3) Firm's status as a DBE or non-DBE;
- 4) Race and gender information for the firm's majority owner;
- 5) NAICS code applicable to each scope of work the firm sought to perform in its bid;
- 6) Age of the firm; and
- 7) The annual gross receipts of the firm.

The TJPA will enter this data in the centralized DOT database no later than December 1 following the fiscal year in which the relevant contract was awarded. In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the data will be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s). The TJPA will maintain the confidentiality of any proprietary information in accordance with applicable Federal, state, and local laws.

TJPA collects this information in the following ways:

The TJPA has incorporated a "Bidders/Proposers Information Request Form" (Attachment 2) into its solicitation documents, requiring that bidders/proposers provide all requested information for themselves and all firms who bid, quote, or provide a proposal to perform work, provide labor, render services or provide supplies in connection with the contract.

Assurance (§26.13)

The TJPA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance (§26.13)(a)

The TJPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The TJPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The TJPA's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this Program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the TJPA of its failure to carry out its approved Program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).

Required Contract Clauses (§§26.13, 26.29)

Contract Assurance (§26.13)(b)

The TJPA ensures that the following clause is placed in every DOT-assisted sub-recipient agreement, each contract the TJPA signs with a contractor and in each subcontract the prime contractor signs with a subcontractor:
~~contract and subcontract:~~

~~T~~The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the TJPA deems appropriate.; but it is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

All TJPA contractors must place the above clause in any subcontract. Additionally, the contractor must provide TJPA a copy of each subcontract within 10 days of contractor receipt of a Notice To Proceed.

Enforcement:

If a contractor, subcontractor, or sub-recipient fails or refuses to include the §26.13(a) and/or §26.13(b) assurances verbatim in all the DOT-assisted contracts, subcontracts, or sub-recipient agreements, the TJPA may impose penalties and administrative sanctions for non-compliance as documented in “Enforcement Actions for Noncompliance of Participants” on page 10.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Prompt Payment

~~The TJPA ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:~~

~~Prompt Progress Payment to Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than 10 days of~~

~~receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the TJPA's prior written approval. TJPA requires prime contractors or subcontractors to notify TJPA no later than 5 days after payment has been made. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.~~

~~Prompt Payment of Withheld Funds to Subcontractors. If the TJPA requires retainage from the prime contractor and prompt and regular incremental acceptances of portions, as determined by the TJPA of the contract work and retainage is paid to the prime contractor based on these acceptances, then the prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the TJPA. Any delay or postponement of payment may take place only for good cause and with the TJPA's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. TJPA requires prime contractors or subcontractors to notify TJPA no later than 5 days after payment of retainage has been made. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.~~

DBE Program Updates (§26.21)(a)(2)(i)

The TJPA intends to be an FTA Tier 1 recipient that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year. The TJPA will have a DBE Program meeting all of the requirements of §26.21.

~~The TJPA will continue to carry out this Program until the TJPA has established a new goal setting methodology or until significant changes to this DBE Program are adopted. The TJPA will provide to FTA a proposed Anticipated DBE Participation Level (ADPL) and methodology and other Program updates by August 1 triennially, or as required by FTA.~~

(§26.21)(b)(1)(2)

The TJPA will submit a conforming DBE Program to the FTA. The TJPA will submit an updated DBE Program to FTA when the DBE Program has significant changes, including those required by regulatory updates.

(§26.21)(c)

The TJPA will carry out its DBE Program until all funds from DOT financial assistance have been expended.

Policy Statement (§26.23)

The Policy Statement is on page one and two of this DBE Program. The Policy Statement is signed and dated by the TJPA's Executive Director.

~~H.~~ DBE Liaison Officer (DBELO) (§26.25)

The TJPA has designated the following individual as the DBE Liaison Officer (~~DBELO~~):

Procurement & Contract Compliance Manager
Chief Financial Officer
Transbay Joint Powers Authority
201-425 Mission Street, Suite 2100250
San Francisco, CA 94105
(415) 597-4620

In this capacity, the DBE Liaison Officer CFO is responsible for implementing all aspects of the DBE Program and ensuring that the TJPA complies with all provisions of Title 49 CFR Part 26, ~~“Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”~~. This is available on the Internet at the website ~~<http://osdbuweb.dot.gov/DBEProgram/index.cfm>~~. The DBE Liaison Officer CFO has direct, independent access to the TJPA Executive Director concerning DBE Program matters.

The DBE Liaison Officer DBELO is responsible for developing, implementing, and monitoring, and reporting the DBE Program, ~~in coordination with other appropriate officials and staff. Duties and responsibilities include the following:~~

- ~~a. Gather and report statistical data and other information as required.~~
- ~~b. Review third party contracts and purchase requisitions for compliance with this Program.~~
- ~~c. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.~~
- ~~d. Identify contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract-specific goals) and monitor results.~~
- ~~e. Analyze the TJPA's progress toward goal attainment and identify ways to improve progress.~~
- ~~f. Participate in pre-bid meetings.~~
- ~~g. Advise the TJPA Executive Director and Board of Directors on DBE matters and achievement.~~
- ~~h. Participate with legal counsel and project staff to determine contractor compliance with good faith efforts.~~
- ~~i. Provide DBEs with information and assistance in preparing bids and obtaining bonding and insurance.~~
- ~~j. Plan and participate in DBE training seminars.~~
- ~~k. Provide outreach to DBEs and community organizations to advise them of opportunities.~~

~~III. Information Collection and Reporting (§26.11)~~

~~a. Bidders List~~

~~The TJPA will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. The TJPA has incorporated a "Bidders/Proposers Information Request Form" into its solicitation documents, requiring that bidders/proposers provide all requested information in their submissions.~~

~~b. Reporting to DOT~~

~~The TJPA will continue to report DBE participation and ADPL setting methods to FTA as directed. Statistical data will be maintained as prescribed on a semi-annual basis to provide reports to DOT agencies reflecting the DBE participation on the TJPA's federally-assisted procurement activities. These~~

~~reports will provide DBE participation information on the TJPA's race-neutral contracts; race-conscious contracts; and the combined DBE participation on all federally-assisted procurement activities. The TJPA will report final DBE participation to DOT using data from "Final Expenditure Reports" collected from contractors at contract close.~~

~~e. Confidentiality~~

~~The TJPA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws.~~

DBE Financial Institutions (§26.27)

It is the policy of the TJPA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. Information on the availability of such institutions can be obtained on the Federal Reserve website at <http://www.federalreserve.gov/releases/mob/>. TJPA will consult the latest release of the list whenever it is seeking proposals for services from financial institutions, and will encourage TJPA vendors and contractors to do the same in its annual fiscal year billing deadline letter to vendors and contractors.

Prompt Payment Mechanisms (§26.29)

The TJPA requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local laws. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with §26.29, the TJPA will include the following clause in each DOT-assisted prime contract:

Prompt Progress Payment to Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than ten (10) days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The ten (10) days is applicable unless a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that Section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days of receipt of each payment may take place only for good cause and with the TJPA's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or

nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE/SBE and non-DBE/SBE prime contractors and subcontractors.

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the TJPA.

When the TJPA has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The TJPA ensures prompt and full payment of retainage from the prime contractor to the subcontractor. Pursuant to §26.29, the TJPA has selected the following method to comply with this requirement:

- For construction procurements: The TJPA will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after the TJPA's payment to the prime contractors.
- For professional services procurements: The TJPA will decline to hold retainage and prohibit prime contractors from holding retainage from subcontractors.

The TJPA will include the following clause in each DOT-assisted prime contract:

Prompt Payment of Withheld Funds to Subcontractors. If the TJPA requires retainage from the prime contractor and prompt and regular incremental acceptances of portions, as determined by the TJPA of the contract work and retainage is paid to the prime contractor based on these acceptances, then the prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the TJPA. Any delay or postponement of payment may take place only for good cause and with the TJPA's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or

deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE/SBE and non-DBE/SBE subcontractors.

If the TJPA determines that the prime contractor has failed to comply with the prompt payment provisions set forth above, the TJPA may give written notice to the prime contractor and the prime contractor's surety that, if the default is not remedied within 30 days, the contract may be terminated. The TJPA may also impose penalties and sanctions for non-compliance with the prompt payment clause contained in §26.37, Monitoring and Enforcement Mechanisms.

Directory (§26.31)

The TJPA will refer interested persons to the DBE directory available from the Caltrans Disadvantaged Business Enterprise Program website at www.dot.ca.gov/hq/bep. The TJPA is a non-certifying member of the California Unified Certification Program (CUCP). The TJPA uses the CUCP DBE Directory that is jointly maintained and updated by the CUCP certifying member agencies statewide and is hosted by the California Department of Transportation (Caltrans). The directory is updated in real time, as changes are made to the directory. The DBE database is available on the Caltrans' Disadvantaged Business Enterprise Program website at <https://caltrans.dbesystem.com/>. The TJPA will use the DBE directory as a primary resource in developing overall goals and conducting outreach and other activities to promote DBE participation in DOT-assisted contracts.

The directory is an online system that permits the public to search and/or filter for DBEs by:

- 1) Physical location;
- 2) NAICS code(s);
- 3) Work descriptions; and
- 4) All optional information added pursuant to paragraph (c) of §26.31, which includes additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, prequalifications, and bonding capacity.

The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

Over-concentration (§26.33)

TJPA will compare DBEs in certain types of work to non-DBEs in the same type of work on a regular triennial basis when setting its Program DBE goal, in order to determine if an over-concentration is occurring.

To address overconcentration, TJPA's measures may include the use of incentives, technical assistance, business development programs, and/or other appropriate measures designed to assist DBEs in performing work outside of the specific field in which it has

been determined that non-DBEs are unduly burdened. TJPA may also consider varying contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

If an over-concentration is determined to exist, TJPA will submit this concern to DOT for concurrence. ~~If concurrence is received, TJPA will further analyze the over-concentration and provide FTA with a proposal to address the over-concentration, which may include the use of incentives, technical assistance, business development programs, and/or other appropriate measures designed to assist DBEs in performing work outside of the specific field in which it has been determined that non-DBEs are unduly burdened.~~

If concurrence is received, the measures will become part of the DBE Program.

Business Development Programs (§26.35)

The TJPA does not have a business development or mentor-protégé program; ~~however, see Section XIV regarding TJPA's Small Business Enterprise Program.~~ If the TJPA identifies the need for a business development or mentor-protégé program in the future, the rationale for adopting such a program and a comprehensive description of it will be submitted to DOT.

The TJPA is a member of the Business Outreach Committee (BOC). The BOC represents the nine Bay Area counties, assisting DBEs and other small businesses with expansion of their businesses through training, technical assistance, and relationship building with Bay Area transportation agency staff and the contracting community.

Monitoring (§§26.37, 26.55)

The TJPA requires prime contractors to maintain records and documents of payments to DBEs for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the TJPA's financial assistance agreement, whichever is longer, following the performance of the contract. These records shall be made available for inspection upon request by any authorized representative of the TJPA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

The TJPA's DBE Program includes a monitoring and enforcement mechanism to ensure that work subcontracted to all DBEs at contract award or subsequently is performed by the DBEs to which the work was committed or subcontracted to, and such work is counted according to the requirements of §26.55.

The TJPA monitors and tracks the actual DBE participation through contractor and subcontractor reports of payments, by requiring a "Progress Payment Report" (Attachment 4) be completed and submitted by the prime contractor with every invoice. The TJPA will require a "Subcontractor Payment Declaration" (Attachment 5) be completed and

submitted by the prime contractor for all subcontractors for every invoice submitted to the TJPA within 5 days following actual payment to subcontractor. The TJPA will also require a “Final Expenditure Report” (Attachment 6) be completed and submitted by the prime contractor at the end of the contract. Data collected from contractors may include copies of cancelled checks.

To determine the Commercially Useful Function of a DBE, the TJPA completes the “Record of Commercially Useful Function Report” (Attachment 7) for all DBEs on each DOT-assisted contract. This is accomplished by conducting field reviews and DBE contractor interviews. The TJPA’s Project Manager or DBE Liaison Officer is responsible for completing the “Record of Commercially Useful Function Report” and for monitoring the DBE firm to provide a written certification that Commercially Useful Function requirements are being met.

1) ~~Monitoring Actual DBE Participation (§§26.37, 26.55)~~

~~The DBELO shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments. The DBELO will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments.~~

~~The DBELO shall ensure that DBE participation is counted toward contract availability advisories on DOT-assisted contracts and the ADPL in accordance with the DBE Program. Credit toward overall or contract goals may only be given upon satisfactory evidence that payments were actually made to DBEs.~~

2) ~~Monitoring Payments to DBEs (§26.37)~~

~~Prime contractors are required to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records shall be made available for inspection upon request by any authorized representative of the TJPA or DOT. This reporting requirement also extends to any certified DBE subcontractor.~~

~~Payments to DBE subcontractors will be reviewed by the TJPA to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation. TJPA contract compliance staff works in cooperation with TJPA finance staff to monitor when payments are made (including payments of released retention), and ensures that a “Subcontractor Payment Declaration” form is received from the prime contractor within the appropriate timeline.~~

Prompt Payment Dispute Resolution

The TJPA will take the following step to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

- The TJPA will hold a dispute resolution meeting between the prime contractor and subcontractor, along with TJPA's Project Manager, DBE Liaison Officer, or representative from the TJPA as appropriate. The meeting will include those individuals who are authorized to bind each interested party and a representative from the TJPA with authority to take enforcement action.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- Subcontractors are to contact the prime contractor to discuss payment discrepancies. If a resolution is not reached regarding the payment discrepancies, then the affected subcontractor may escalate the complaint to TJPA's Project Manager or DBE Liaison Officer. The TJPA will investigate and follow up with both the subcontractor and prime contractor involved in the complaint resolution within 10 days. If filing a complaint with The TJPA does not result in timely and meaningful action by the TJPA, the affected subcontractor may contact FTA:

Region 9 Office
Federal Transit Administration
888 S Figueroa St, Ste 440
Los Angeles, CA 90017 213-757-5999

- If a subcontractor is not comfortable contacting the prime contractor directly regarding payment discrepancies, the subcontractor may contact TJPA's Project Manager or DBE Liaison Officer. The TJPA will investigate and follow up with both the subcontractor and prime contractor involved in the complaint resolution within 10 days. If filing a complaint with the TJPA does not result in timely and meaningful action by the TJPA, the affected subcontractor may contact FTA:

Region 9 Office
Federal Transit Administration
888 S Figueroa St, Ste 440
Los Angeles, CA 90017 213-757-5999

Enforcement Actions for Noncompliance of Participants

The TJPA will provide appropriate means to enforce the requirements of §26.29. These means include:

- The TJPA will bring to the attention of the United States Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT

Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109.

- In the event of non-compliance with the DBE regulation by a participant in TJPA's procurement activities, including prompt payment and retainage requirements, under 49 C.F.R. §26.13 (b), the penalties imposed by the TJPA may include, but are not limited to, the following:
 - (a) Liquidated damages;
 - (b) Suspension of payment to the contractor of any monies held by the TJPA as retained on contract;
 - (c) The denial to the contractor of right to participate in future TJPA contracts for a specified time;
 - (d) Contract termination.

Fostering Small Business Participation (§26.39)

In 2009, the TJPA Board adopted the TJPA Small Business Enterprise (SBE) Program to facilitate participation by small business concerns. Steps the TJPA takes to eliminate obstacles to SBE participation include, but are not limited to, unbundling contracts, establishing race-neutral small business set-asides for contracts as appropriate, and placing enforceable contract goals on prime contracts for SBE participation.

In order to facilitate small business participation, TJPA ~~will perform the following~~ has incorporated the following non-discriminatory element into its DBE Program to facilitate competition on DOT-assisted projects by small business concerns:

- 3)1) Review the scope of work and task list to determine if small business contracting opportunities exist.
- 4)2) Reduce the complexity and scope of large multiple-award contracts so that contracting opportunities encourage SBE participation as prime contractors.
- 3) Unbundle contracts by identifying work that is not significantly affected by schedule, delivery, price and operations.
- 4) The TJPA is a member of the Business Outreach Committee (BOC) that represents Bay Area transit and transportation agencies. The BOC assists DBEs and other small businesses with expansion of their businesses through training, technical assistance, and relationship-building with agency staff and the contracting community of the San Francisco Bay Area. These efforts help to create a level playing field on which DBEs and small businesses can compete fairly; enhance outreach and communication efforts with these firms; provide appropriate assistance and information for participation in DOT-assisted contracts; and develop joint resources among recipients. The BOC also works with NorCal APEX Accelerator as a resource for providing technical assistance and guidance to DBEs and small businesses. The TJPA's DBE Liaison Officer participates in meetings, trainings and workshops held by the BOC.

TJPA accepts several types of small business certifications, and DBEs are counted as SBEs under the Program. See TJPA Board Policy No. 015 for more information.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas (§26.43)

The TJPA ~~will~~ does not use set-asides or quotas ~~or set-asides~~ in any way in the administration of this DBE Program.

Overall Goals ~~Triennial Anticipated DBE Participation Level~~ (§26.45)

a. ~~Anticipated DBE Participation Level (ADPL)~~

~~The TJPA sets an overall target for DBE participation in all DOT-funded contracts by federal fiscal year. This Anticipated DBE Participation Level is submitted to FTA, and subsequently monitored and reported on, on a triennial basis beginning in federal fiscal year 2010-11. The next TJPA submission will be for federal fiscal year 2013-14 through 2015-16.~~

b. ~~Methodology~~

~~See Appendix A.~~

c. ~~Process~~

~~By June 1 triennially, the TJPA will submit to the TJPA Board its draft overall ADPL and methodology (the amount of the overall ADPL and the method to calculate the ADPL).~~

~~The DBE Liaison shall calculate and establish TJPA's three-year overall Anticipated DBE Participation Level ("ADPL"). The ADPL shall be expressed as a percentage of the total amount of DOT funds (excluding the purchase of transit vehicles) the TJPA anticipates expending during the relative 3-year reporting period. The TJPA's ADPL will represent the amount of ready, willing and able DBEs available to participate in contracting opportunities and shall reflect the amount of DBE participation the TJPA would expect absent the effects of discrimination. The TJPA intends to meet the goal through race-neutral means. The TJPA shall use race-conscious means only if supported by the findings of an approved and authorized Availability and Utilization Study (Disparity Study), and the expressed authorization from FTA.~~

~~Once the TJPA Board has approved the draft overall ADPL for distribution, the~~ The TJPA will publish a notice of the proposed overall ADPL ~~in newspapers such as the San Francisco Chronicle, San Francisco Examiner, El Mensajero, Small Business Exchange, San Francisco Bay View, La Oferta Review, Thai Bao, Philippine News, and China Press,~~ and on the TJPA website (<https://www.tjpa.org/about-tjpa/items-public-comment>). (www.transbaycenter.org > Documents > Items for Public Comment).

The notice will inform the public that the proposed ADPL and its rationale are available for inspection during normal business hours at the TJPA's principal office for 30 days following the date of the notice, ~~and that comments will be accepted on the ADPL for 45 days following the date of the notice.~~ The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The draft goal is additionally publicized to the business community for input by sending notice to the Bay Area Chambers of Commerce and at the DBE Public Participation meeting hosted by the Business Outreach Committee (BOC), a working group of Bay Area transportation agencies dedicated to assisting small disadvantaged and local firms in doing business with the agencies, a group of which TJPA is a member. The draft goal is also sent to the following TJPA project stakeholders and funders for comment: Alameda-Contra Costa Transit District, Caltrain/SamTrans, Metropolitan Transportation Commission, San Francisco Municipal Transportation Agency, and San Francisco County Transportation Authority.

~~By the June Board meeting triennially, the TJPA will present to the TJPA Board its draft overall ADPL and methodology (the amount of the overall ADPL and the method to calculate the ADPL). In accordance with §26.45(f), following completion of the 30-day notice for public comment, and approval by the TJPA Board, the TJPA will submit its ADPL goal to FTA by August 1 at three (3) year intervals, based on a schedule established by the FTA. The TJPA will, on or before August 1 triennially, resubmit the final overall ADPL information to the TJPA Board for approval, along with a summary of information and any comments received during the public participation process and the TJPA's responses.~~

~~Following approval of the final overall ADPL by the TJPA Board, the TJPA will, on or before August 1 triennially, submit the final overall ADPL to DOT. The TJPA may will begin using the approved ADPL on October 1, the beginning of the next federal fiscal year, the calendar year following the August 1 submission to FTA, unless other instructions have been received from FTA. If the TJPA receives approval from FTA to establish a goal on a project basis, the TJPA will begin using that goal by the time of the first solicitation for a DOT-assisted contract for the project.~~

~~Once established, if circumstances deem the overall ADPL Goal requires adjustment prior to the end of the three-year period, the TJPA will publish a notice of the proposed adjustment of the ADPL Goal on the Doing Business page on the The TJPA website (web) informing the public that the proposed goal and its rationale are available for inspection from 9:00am to 4:00pm, Pacific Standard Time, Monday through Friday, at the TJPA's administrative office and online on the TJPA website (<https://www.tjpa.org/about->~~

tjpa/items-public-comment) for 30 days following the date of the notice, and informing the public that the TJPA will accept comments on the goal for 30 days following the date of the notice. The TJPA will also provide notice to those constituent groups, community organizations, and other officials or organizations the TJPA consulted with when setting its initial ADPL Goal. The adjusted ADPL Goal will be approved by the Board of Directors, then submitted to FTA.

Meeting Overall Goals and Accountability (§26.47)

If the awards and commitments shown on TJPA's Uniform Report Form at the end of any Federal fiscal year are less than the overall goal applicable to that Federal fiscal year, the DBE Liaison Officer will, in accordance with 49 CFR §26.47(c) conduct a Shortfall Analysis. The Shortfall Analysis will analyze in detail the reasons for the difference between the overall goal and TJPA's awards and commitments in that Federal fiscal year and establish specific steps and milestones to correct the problems identified in the Shortfall Analysis. The TJPA will retain the Shortfall Analysis for three years and make it available to FTA upon request for review.

Transit Vehicle Manufacturers (§26.49)

TJPA is not a transit operating agency and does not procure transit vehicles. If transit vehicles are procured in the future, the TJPA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49. TJPA's DBE Liaison Officer will submit to FTA within thirty (30) days of the TJPA becoming contractually required to procure a transit vehicle, the name of the transit vehicle manufacturer that was the successful bidder, and the Federal share of the contractual commitment at that time.

Breakout of Estimated Race-Neutral & Race-Conscious Participation (§26.51)(a-c)

The TJPA uses the following race-neutral means to achieve DBE participation:

- Making DBEs and other small businesses aware of opportunities.
- Submitting timely solicitations and developing clearly written plans and specifications to facilitate DBEs and other small business firms' participation.
- Posting invitations for bids and requests for proposals on the Contract Opportunities page of the TJPA website (web).
- Participating in the Business Outreach Committee (BOC) that represents Bay Area transit and transportation agencies. The BOC assists DBEs and other small businesses with expansion of their businesses through training, technical assistance, and relationship-building with agency staff and the contracting community of the San Francisco Bay Area.
- Including the TJPA's procurement opportunities in the quarterly Business Outreach Committee (BOC) newsletter.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals (§26.51)(d-g)

Contract goals are race-conscious, which means race is taken into consideration. Since the TJPA is a federal recipient located within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit and subject to Western States Paving Co, Inc. v. Washington State Department of Transportation, 407 F.3d 983 (9th Cir. 2005), The TJPA uses race-neutral means of achieving DBE participation. If the TJPA uses contract goals, it will get approval from FTA to set contract goals.

Good Faith Efforts Procedures Where There are Contract Goals (§26.53)

Good faith efforts procedures apply to contract goals. The TJPA uses race-neutral means of achieving DBE participation, not contract goals.

~~The TJPA will direct the transit vehicle manufacturer to the subject requirements located on the Internet at <http://osdbuweb.dot.gov/DBEProgram/index.cfm>.~~

Counting DBE Participation (§26.55)

The TJPA will count DBE participation toward overall goals as provided in §26.55.

~~5) Contracting and Tracking DBE Participation (§ 26.55)~~

~~Only the work actually performed by a DBE will be counted towards contract availability advisories and the ADPL. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted.~~

~~Work that a DBE subcontracts to a non-DBE firm does not count toward the ADPL. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force.~~

~~If materials or supplies are obtained from a DBE manufacturer, 100 percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, 60 percent (60%) of the cost will be counted.~~

~~DBE achievement will not be counted toward the ADPL until the DBE has been paid. Additionally, the DBELO will not count that portion of a DBE's participation that is achieved after the certification of the DBE has been removed during the performance of a contract, unless the certification is removed solely because the DBE has exceeded the size standards (i.e., "graduated" from the DBE Program).~~

~~6) Construction Contract Monitoring~~

~~The TIPA will assign, or engage under a professional services contract, a Resident Engineer (RE) or Contract Manager to monitor and track actual DBE participation through contractor and subcontractor reports of payments in accordance with the following:~~

~~A. After Contract Award~~

~~After the contract award, the TIPA will review the award documents for the portion of items each DBE and first-tier subcontractor will be performing and the dollar value of that work. With these documents, the RE/Contract Manager will be able to determine the work to be performed by the DBEs or subcontractors listed.~~

~~B. Pre-construction Conference~~

~~A pre-construction conference will be scheduled between the RE/Contract Manager and the contractor or its representative to discuss the work each DBE subcontractor will perform.~~

~~Before work can begin on a subcontract, the TIPA will require the contractor, supplier, vendors, or manufacturers to submit a completed "Bidders/Proposers Information Request Form." The RE/Contract Manager will ensure that the RE/Contract Manager's staff (inspectors) knows what items of work each DBE is responsible for performing based on the "Bidders/Proposers Information Request Form." Inspectors will notify the RE/Contract Manager immediately of apparent violations.~~

~~When a firm other than the listed DBE subcontractor is found performing the work, the RE/Contract Manager will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor's response, the RE/Contract Manager will take appropriate action. The DBELO will perform a preliminary investigation to identify any potential issues related to the DBE subcontractor performing a commercially useful function. Any substantive issues will be forwarded to the FTA Civil Rights Office (CRO). If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.~~

~~Providing evidence of DBE payment is the responsibility of the contractor. The TJPA will require the contractor to submit a "Progress Payment Report" with every invoice, which summarized the actual amounts due to every DBE and non-DBE subcontractor for services performed in that period. The contractor will also be required to submit to the TJPA a "Subcontractor Payment Declaration" as proof of payment to DBE and non-DBE subcontractors.~~

~~7) Substitution~~

~~When a DBE substitution is requested, the RE/Contract Manager will request a letter from the contractor explaining why substitution is needed. The RE/Contract Manager must review the letter to be sure names and addresses are shown, dollar values are included, and the reason for the request is explained. If the RE/Contract Manager agrees to the substitution, the RE/Contract Manager will notify the DBE subcontractor in writing regarding the proposed substitution and procedure for written objection from the DBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the RE/Contract Manager for local agency consideration.~~

~~If there is any doubt in the RE/Contract Manager's mind regarding the requested substitution, the RE/Contract Manager may contact the DBELO or the CRO for assistance and direction.~~

~~8) Record Keeping and Final Report~~

~~The contractor shall maintain records and prepare a "Final Expenditure Report" showing the name and address of each first tier subcontractor. The "Final Expenditure Report" shall also show:~~

- ~~a) The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials, and DBE trucking company; and~~
- ~~b) The date of final payment and the total dollar figure paid to each of the firms.~~

~~The DBE prime contractor shall also show the date of work performed by its own forces, along with the corresponding dollar value of the work claimed toward DBE goals.~~

~~When a contract has been completed, the contractor will provide the "Final Expenditure Report" and a summary of the records stated above. The RE/Contract Manager will compare the completed "Bidders/Proposers Information Request Form" to the contractor's completed "Final Expenditure Report." The DBEs shown on the completed records should be the same as~~

~~those originally listed unless an authorized substitution was made or the contractor used additional DBEs. The dollar amount should reflect any changes made in planned work done by the DBEs. The contractor will be required to explain in writing why the names of the subcontractors, the work items, or the dollar figures are different from what was originally shown on the completed "Bidders/Proposers Information Request Form" when:~~

- ~~a) There have been no changes made by the RE/Contract Manager; or~~
- ~~b) The contractor has not provided a sufficient explanation in the comments section of the completed "Final Expenditure Report."~~

~~The explanation will be attached to the completed "Final Expenditure Report" for submittal. The RE/Contract Manager will file this in the project records.~~

~~The DBELO will keep track of the DBE certification status on the Internet at <http://www.dot.ca.gov/hq/bep> and keep the RE/Contract Manager informed of changes that affect the contract. The RE/Contract Manager will require the contractor to act in accordance with existing contractual commitments regardless of decertification.~~

~~5. Legal Remedies~~

~~The TJPA will bring to the attention of the DOT through the CRO any false, fraudulent, or dishonest conduct in connection with the Program, so that the DOT can take the steps provided in §26.109 (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). The TJPA also will consider similar action under its own legal authority, including:~~

- ~~• Termination of the contract for convenience~~
- ~~• Determination that the contractor is in default~~
- ~~• Determination of non-responsibility of the contractor.~~

~~On and after any event of default, the TJPA shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate the agreement or to seek specific performance of all or any part of the agreement. In addition, the TJPA shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Contractor any Event of Default; the Contractor shall pay to the TJPA on demand all costs and expenses incurred by the TJPA in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The TJPA shall have the right to offset from any amounts due to Contractor under the relevant agreement or any other agreement between the TJPA and the Contractor all damages, losses, costs or expenses incurred by the TJPA as a result of such~~

~~Event of Default and any liquidated damages due from the Contractor pursuant to the terms of the relevant agreement or any other agreement.~~

~~All remedies provided for in the agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.~~

SUBPART E - CERTIFICATION PROCEDURES

Unified Certification Program Participation (§26.81)

~~The TJPA is a non-certifying member of the CUCP. As such, the TJPA does not provide certification procedures itself. Certifying agencies may be found online at: California Unified Certification Program (web).~~

Procedures for Certification Decisions (§26.83)

Re-Certification (§26.83)(a)(c)

~~The TJPA is a non-certifying member of the CUCP and currently does not re-certify or make certification decisions. The TJPA ensures that only DBE firms currently certified in the California Unified Certification Program (UCP) will participate as DBEs in the TJPA's DBE Program. The UCP directory can be found at the website: http://www.dot.ca.gov/hq/bep/dbe_query.htm.~~

SUBPART F – COMPLIANCE AND ENFORCEMENT

Compliance Procedures Applicable to the TJPA (§26.101)

~~The TJPA understands that if it fails to comply with any requirement of this part, the TJPA may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.~~

ATTACHMENTS

- | |
|--|
| <u>1. Definitions</u> |
| <u>2. Bidders/Proposers Information Request Form</u> |
| <u>3. Progress Payment Report</u> |
| <u>4. Subcontractor Payment Declaration</u> |
| <u>5. Final Expenditure Report</u> |
| <u>6. Record of Commercially Useful Function</u> |
| <u>7. DBE Directory (hard copy version only)</u> |
| <u>8. Demonstration of Good Faith Effort Form</u> |
| <u>9. Regulations: 49 CFR Part 26 (hard copy version only)</u> |

###

~~This Disadvantaged Business Enterprise Program Plan for the Transbay Joint Powers Authority is:~~

~~Recommended by:~~

~~Sara Gigliotti
Chief Financial Officer/DBELO~~

~~Date~~

~~Approved by:~~

~~Maria Ayerdi-Kaplan
Executive Director~~

~~Date~~

APPENDIX A
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 Federal Fiscal Year (October 1 – September 30). Per the new Rule issued in 2010, recipients of federal funding are now to submit overall goals for review every three years, so 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%.**~~

AWARDED OR PLANNED TO BE AWARDED – REVISED 2012 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	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%
		Total	-\$ 18,740,000	100.0%

~~AWARDED OR PLANNED TO BE AWARDED – REVISED 2012 CALCULATION~~

FY 2011-13 Federally Funded Contracts	No. DBE Firms / No. Total Firms	% of Total	Weighted Average
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%
	Total	100%	2.84%

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%
		Total	—\$ 25,800,000	100.0%

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%	
	Total	100.0%	21.38%	

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. This calculation is applied to items where participation in historical contracts is reasonably comparable to expected participation in future contracts. 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 and the scope of services is similar to those requested in prior solicitations. The financial consulting and public relations contract percentages are revised upwards, on the other hand, given similar scope of services requested and 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%.

AWARDED OR PLANNED TO BE AWARDED — REVISED 2012 CALCULATION			
Contract	Historical DBE Participation	Weighted Average (from above)	Adjusted DBE %
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%
		2.84%	8.3%

PLANNED TO BE AWARDED — ORIGINAL 2010 CALCULATION			
Contract	Historical DBE Participation	Weighted Average (from above)	Adjusted DBE %
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%
		21.38%	18.5%

Conclusion

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