
TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 010

Category: Financial Matters

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PLAN

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Transbay Joint Powers Authority Disadvantaged Business Enterprise (DBE) Program Plan

Objectives / Policy Statement (§26.1, §26.23)

The Transbay Joint Powers Authority (TJPA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 26. As a recipient of Federal financial assistance from the U.S. DOT the TJPA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the TJPA to ensure nondiscrimination on the basis of race, color, sex, or national origin in the award and administration of DOT-assisted contracts. It is the intention of the TJPA to create a level playing field on which DBEs can compete fairly and participate in the performance of DOT-assisted contracts.

TJPA's policies, procedures and goals in this area are detailed in its adopted DBE Program. The program is the result of TJPA's commitment to the participation of small businesses owned and controlled by socially and economically disadvantaged individuals, meeting eligibility standards set forth in 49 CFR Part 26, in purchasing and contracting opportunities funded, in whole or in part by U.S. DOT assistance. The objectives of the DBE Program are:

- a. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- b. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c. To ensure that the DBE Program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service in accordance with applicable law;
- d. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- e. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- f. To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by TJPA;
- g. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
- h. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Procurement & Contract Compliance Manager has been designated the DBE Liaison Officer (DBELO). The Procurement & Contract Compliance Manager has direct and independent access to TJPA's Executive Director concerning DBE matters. The Procurement & Contract Compliance Manager is responsible for the development,

implementation, and monitoring of the DBE Program in accordance with the TJPA's nondiscrimination policy. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the TJPA in its financial assistance agreements with its funders including DOT. It is the expectation of the Board of Directors and the Executive Director that all TJPA personnel shall adhere to the spirit, as well as the provisions and procedures of the program. The TJPA has disseminated this policy statement to its Board of Directors and to all divisions within the TJPA. This policy statement is disseminated to members of the DBE and non-DBE business communities that perform or are interested in performing work on the TJPA's DOT-assisted contracts. The policy statement is on the Doing Business page of the TJPA website (web).

Questions regarding the TJPA's DBE Program should be addressed to:

DBE Liaison Officer
Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
(415) 597-4620
DBE-SBE@TJPA.org



Adam Van de Water
Executive Director

3/12/26

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.

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) NAICS code applicable to each scope of work the firm sought to perform in its bid;
- 5) Age of the firm; and
- 6) 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 DBE-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:

- 1) Review the scope of work and task list to determine if small business contracting opportunities exist.
- 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 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 DBE-neutral means. The TJPA shall use DBE-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, California High Speed Rail Authority, 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.

Means Used to Meet Overall Participation Goals (§26.51)(a-c)

The TJPA uses the following DBE-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, DBE-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 must be established to meet any portion of the overall goal that cannot be met using DBE-neutral means. 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 DBE-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 DBE-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)

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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

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): _____

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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DRAFT

Transbay Joint Powers Authority Disadvantaged Business Enterprise (DBE) Program Plan

Objectives / Policy Statement (§26.1, §26.23)

The Transbay Joint Powers Authority (TJPA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 26. As a recipient of Federal financial assistance from the U.S. DOT the TJPA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the TJPA to ensure nondiscrimination on the basis of race, color, sex, or national origin in the award and administration of DOT-assisted contracts. It is the intention of the TJPA to create a level playing field on which DBEs can compete fairly and participate in the performance of DOT-assisted contracts.

TJPA's policies, procedures and goals in this area are detailed in its adopted DBE Program. The program is the result of TJPA's commitment to the participation of small businesses owned and controlled by socially and economically disadvantaged individuals, meeting eligibility standards set forth in 49 CFR Part 26, in purchasing and contracting opportunities funded, in whole or in part by U.S. DOT assistance. The objectives of the DBE Program are:

- a. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- b. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c. To ensure that the DBE Program ~~is narrowly tailored~~ operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service in accordance with applicable law;
- d. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- e. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- f. To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by TJPA;
- g. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
- h. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Procurement & Contract Compliance Manager has been designated the DBE Liaison Officer (DBELO). The Procurement & Contract Compliance Manager has direct and independent access to TJPA's Executive Director concerning DBE matters. The

Procurement & Contract Compliance Manager is responsible for the development, implementation, and monitoring of the DBE Program in accordance with the TJPA's nondiscrimination policy. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the TJPA in its financial assistance agreements with its funders including DOT. It is the expectation of the Board of Directors and the Executive Director that all TJPA personnel shall adhere to the spirit, as well as the provisions and procedures of the program. The TJPA has disseminated this policy statement to its Board of Directors and to all divisions within the TJPA. This policy statement is disseminated to members of the DBE and non-DBE business communities that perform or are interested in performing work on the TJPA's DOT-assisted contracts. The policy statement is on the [Doing Business page of the TJPA website \(web\)](#).

Questions regarding the TJPA's DBE Program should be addressed to:

DBE Liaison Officer
Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
(415) 597-4620
DBE-SBE@TJPA.org

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.

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)4) NAICS code applicable to each scope of work the firm sought to perform in its bid;~~
- ~~6)5) Age of the firm; and~~
- ~~7)6) 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 raeeDBE-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:

- 1) Review the scope of work and task list to determine if small business contracting opportunities exist.
- 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 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~~DBE-neutral means. The TJPA shall use ~~race~~DBE-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, [California High Speed Rail Authority](#), 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 Means Used to Meet Overall Participation Goals (§26.51)(a-c)

The TJPA uses the following ~~race~~DBE-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~~DBE-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 must be established to meet any portion of the overall goal that cannot be met using DBE-neutral means~~. 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 ~~DBE~~DBE-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 ~~DBE~~DBE-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

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): _____

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)