

**STAFF REPORT FOR CALENDAR ITEM NO.: 10.3  
FOR THE MEETING OF: August 8, 2019**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Approval of the Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL) for federal fiscal years 2019-20 through 2021-22 (FFY2019-22) and an agency Small Business Enterprise (SBE) goal of 14.5%.

**SUMMARY:**

- In accordance with Title 49 of the Code of Federal Regulations, Part 26 (49 CFR Part 26), the TJPA implements a DBE Program to ensure nondiscrimination in the award of federally funded contracts. As part of this program, the TJPA must establish a triennial target for DBE participation in all new contracts that are planned to be funded with Federal Transit Administration (FTA) funds. A DBE firm is defined as a for-profit “small business concern” that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. DBE firms are certified as such through Unified Certification Programs established in each state.
- TJPA’s FTA funds are largely expended, and no new contracts are currently anticipated to be funded with the remaining funds. FTA recipients that will spend less than \$250,000 in FTA funds to award contracts in a fiscal year are not required to have a DBE program. TJPA’s remaining funds will likely be spent on administrative costs over the remainder of the project such as salaries, benefits, insurance, office rent, and office supplies and equipment. While purchase of office supplies could be considered a contract opportunity, TJPA will not spend \$250,000 on such costs, and because there is no opportunity for DBE participation in these categories in any case the draft FFY2019-22 ADPL for FTA-funded contracts is 0%. Because TJPA will not exceed the FTA’s \$250,000 threshold, it is not necessary to submit the goal to FTA; rather, FTA has directed TJPA to complete and submit documentation in lieu of the DBE goal report.
- On May 9, 2019, the TJPA Board authorized the release of the draft ADPL of 0% (for FTA-funded contracts) for a 30-day public comment period. No comments were received.
- TJPA will continue to implement its approved Small Business Enterprise (SBE) Program to supplement DBE participation, and staff recommends setting an overall SBE participation target of 14.5% for all contracting activity regardless of funding source, but this programwide SBE goal and participation would not be reportable to the FTA.

**EXPLANATION:**

**Development of ADPL Percentage**

As an eligible recipient of federal-aid funding, TJPA is required to comply with 49 CFR Part 26, which states that grantees must establish and implement a DBE program and set triennial DBE participation targets.

The methodology to calculate the DBE participation target is a two-step process described in 49 CFR Part 26. This two-step process was described in the May 9, 2019 staff report requesting

Board authorization to release the draft ADPL for public comment, and is attached to this staff report in Attachment 2. The calculation using the prescribed methodology results in an FTA ADPL of 0% for FFY2019-22.

While the goal for new FTA-funded contracts is 0%, TJPA will continue to have DBE participation on on-going FTA-funded contracts. And, as noted in the May 9, 2019 staff report, TJPA will continue to seek DBE and other SBE participation to the maximum extent possible on contracts, regardless of funding source, and consequently has also calculated a programwide SBE target for agency reference of 14.5% of a planned \$179 million in contract awards through the remainder of the project. This target is based on the anticipated contracts to be let in the next three years weighted against the availability of SBEs and the level of SBE participation that has been achieved on similar TJPA contracts in the past. The calculation of the goal is shown in Attachment 2.

**Public Outreach**

The proposed ADPL was posted on the TJPA website for a more than 30-day comment period from May 10, 2019 through June 28, 2019. No comments were received.

**Past History**

In 2016, the TJPA Board approved an ADPL for FFY2016-19 of 0.0%. This was based on the anticipated contracting activity associated with the purchase of Stationery and Office Supplies. These purchases were made without DBE participation. However, the firm used for purchasing office supplies—Give Something Back—is based in Oakland, and has a mission of improving the quality of life in the communities it serves by donating an average of \$250,000 annually to local non-profit organizations.

Despite having no effective DBE goal, the TJPA has continued DBE and SBE participation on the contracts in place:

<b>Contract</b>	<b>DBE %</b>	<b>SBE %</b>
PMPC	0%	9%
Legal Services	0%	61%
Financial Services	19%	68%
Environmental Analysis	0%	19%
Real Estate Economics	0%	100%
Facility Services	8%	13%
Construction	7%	7%
Construction Management	37%	3%
Public Relations	100%	0%
Engineering	4%	1%

Overall for FFY 2016-18, counting all funding sources, TJPA awarded almost 6% of contract value to DBEs and 22% to SBEs.

**RECOMMENDATION:**

Approve the Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (ADPL) of 0% for federal fiscal years 2019-20 through 2021-22 (FFY2019-22) and an agency SBE goal of 14.5%.

**ATTACHMENTS:**

1. Resolution
2. FFY2019-22 ADPL Methodology

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Federal Transit Administration (FTA) approved the Transbay Joint Powers Authority (TJPA) as an eligible grantee for Federal financial assistance in January 2006; and

WHEREAS, In order to obtain federal funds for transportation projects from either the FTA or the Federal Highway Administration (FHWA), both operating administrations within the United States Department of Transportation (U.S. DOT), TJPA must implement an approved Disadvantaged Business Enterprise (DBE) Program in compliance with federal requirements (Title 49 Code of Federal Regulations Part 26) and update its DBE participation target on a triennial basis; and

WHEREAS, TJPA has largely expended its FTA and FHWA funds and does not anticipate awarding contracts with the remaining funds but rather plans to expend the funds on administrative-type costs such as salaries, benefits, office rent, insurance, and office supplies, where there are currently no opportunities for DBE participation; and

WHEREAS, Accordingly, the Anticipated DBE Participation Level (ADPL) established for federal Fiscal Years 2019-20 through 2021-22 for DBE participation in the performance of contracts to be awarded that are financed in whole or in part with U.S. DOT funds is proposed to be 0%; and

WHEREAS, The TJPA plans, however, to continue to take affirmative steps to achieve DBE participation through implementation of its separate Small Business Enterprise (SBE) Program, and staff recommends setting an overall SBE participation target of 14.5% considering all contracts to be awarded during the triennial period regardless of funding source; and

WHEREAS, A notice of the proposed ADPL was posted to the TJPA's website on May 10, 2019, for a more than 30-day public comment period and no public comments were received; now, therefore, be it

RESOLVED, That the TJPA Board approves the ADPL for FFY2019-22 of 0%; and be it further

RESOLVED, That the TJPA Board authorizes an agency SBE goal of 14.5%.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of August 8, 2019.

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Secretary, Transbay Joint Powers Authority

**FFY 2019-22**  
**ANTICIPATED DBE PARTICIPATION LEVEL (ADPL) METHODOLOGY**

The methodology to calculate an agency's DBE participation target is a two-step process described in 49 CFR Part 26. Step One of the methodology establishes a base figure for the anticipated new federally-funded contracts to be awarded during federal fiscal years 2019-20 through 2021-22 (FFY2019-22). As part of this program, the TJPA must establish a triennial target for DBE participation in all new contracts that are planned to be funded with Federal Transit Administration (FTA) funds, so this calculation has been done for contracts expected to be awarded between October 1, 2019 and September 30, 2022.

The base figure is derived from the relative availability of DBEs that are ready, willing, and able to participate on these anticipated contracts. Step Two relies on the agency's knowledge of its contracting markets and previous history of DBE participation to determine if an adjustment to the base figure is needed. The calculation using the two-step methodology results in an FTA ADPL of 0% for FFY2019-22 for the TJPA. This methodology, rationale and calculations are outlined below.

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

The initial step in developing an ADPL is to determine the market area for consultants who have demonstrated an interest or are anticipated to participate in TJPA contracts. The counties in the TJPA's market area consist of the nine (9) Bay Area counties:

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

The Transbay Transit Center will be a multi-modal transportation station serving the San Francisco Bay Area Region, which is made up of the nine counties above. It will be a hub for the transit systems from the surrounding counties that already bring thousands of workers into San Francisco daily. The Metropolitan Transportation Commission—the state designated regional transportation agency—defines its transportation planning and financing area as the nine-county Bay Area, and California Department of Transportation (Caltrans) District 4 is also made up of the nine-county Bay Area. MTC and Caltrans are funders of the Transbay Transit Center project, and the nine counties are represented in some fashion on the TJPA Board, each with an expectation of project benefits including work on the project during the design and construction phases. The nine-county San Francisco Bay Area is the most appropriate market area for TJPA to use in its goal-setting methodology.

Secondly, the work categories must be determined for the anticipated contracts. TJPA's FTA funds are largely expended, and no new contracts are currently anticipated to be funded with the remaining funds; remaining funds will likely be spent on administrative costs over the remainder of the project such as office supplies and equipment. Purchasing office supplies can be considered a contracting opportunity, and staff anticipates potentially spending up to an estimated \$60,000 on office supplies through the remainder of the project, based on historical spending.

The ratio of DBE firms to non-DBE firms must then be calculated by dividing the number of certified DBE firms ready, willing and able to work in the TJPA's market area by the total number of firms found in the same market area according to the US Census database.

Finally, the Step One Base Figure results from multiplying the DBE ratios for each work category by the estimated dollar amount for that category, and dividing the sum of those numbers by the total dollar amount estimated to be awarded.

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

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

This calculation is shown in Attachments 2 and 2.1. While there are a handful of office supply companies certified as DBEs in Southern California, there currently are none in Northern California according to the California Unified Certification Program (CUCP) database, which is updated daily with certification information from certifying agencies statewide. TJPA staff notes, however, that it purchases most of its office supplies and equipment from a local firm, Give Something Back, based in Oakland, with a mission of improving the quality of life in the communities it serves. Give Something Back has donated an average of \$250,000 annually in profits to local non-profit organizations over its 25 years in business.

### **Step Two Process: Adjustment to the Base Figure**

The purpose of the Step Two analysis is to determine if an upward or downward adjustment to the base ADPL is justified, based on relevant evidence available to TJPA. The TJPA's DBE participation history assists in determining whether an adjustment to the Step One Base Figure is warranted.

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

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

### **Small Business Enterprise Goal Calculation**

TJPA will continue to seek SBE participation to the maximum extent possible on contracts, regardless of funding source, and consequently has also calculated a program-wide SBE target for agency reference of 14.5% of \$179 million in planned contract awards. The same methodology is used to calculate the SBE goal.

The Step One base figure was derived from reviewing the relative availability of SBEs for the upcoming contract opportunities. TJPA staff reviewed the databases for the certifications accepted under TJPA's SBE Program: the California Unified Certification Program (DBE), California Department of General Services (S/DVBE), and the Contract Management Division of the Office of the City Administrator (formerly SF HRC) (L/M/W-SBE). The availability percentages are multiplied by the estimated dollar amount for that category, and the sum of those numbers is divided by the total dollar amount estimated to be awarded.

$$\text{Step One Base Figure} = \frac{\text{Sum of (SBE Ratio*Individual Contract Amount)}}{\text{Total Contract Amount}} = 16.4\%$$

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

Where there is previous participation by SBEs, the median percentage from that past participation is averaged with the Step One Base Figure for that particular contracting category. This results in an adjusted availability percentage that is included in the calculation. TJPA anticipates contracting for various services in the next several years and has thus made an adjustment based on past SBE participation of existing contracts for work categories that are anticipated.

$$\text{Step Two SBE Target} = \frac{\text{Sum of (Adjusted SBE Ratio*Individual Contract Amount)}}{\text{Total Contract Amount}} = 14.5\%$$

The overall SBE goal is therefore 14.5%. These calculations are shown in Attachments 2.2 through 2.4.