

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 190716-093

WHEREAS, On March 4, 1999, the United States Department of Transportation (USDOT) issued its Disadvantaged Business Enterprise (DBE) Program Final Rule, codified in Part 26 of Title 49 of the Code of Federal Regulations (the Regulations); and

WHEREAS, In compliance with the Regulations, on August 17, 1999, the former Public Transportation Commission (now known as the San Francisco Municipal Transportation Agency (SFMTA)) (1) approved and adopted a DBE Program for implementation by the SFMTA in DOT-assisted contracts, (2) adopted a policy statement expressing the Commission's commitment to the DBE Program, stating the objectives of the DBE Program, and outlining responsibilities for its implementation; and (3) ordered distribution of the signed and dated Policy Statement throughout the SFMTA and to the business community, including DBEs and non-DBEs that perform work on DOT-assisted contracts for the SFMTA; and

WHEREAS, On May 9, 2005, the U.S. Court of Appeals for the Ninth Circuit issued a decision in *Western States Paving Co. v. Washington State Department of Transportation, et al.*, 407 F.3d 983 (9th Cir. 2005); and

WHEREAS, The Ninth Circuit upheld USDOT's DBE regulations, but the court struck down the Washington State Department of Transportation's (WSDOT) DBE program as unconstitutional because WSDOT did not have sufficient evidence of discrimination to justify a race- and gender-conscious contracting program; and

WHEREAS, In response to the *Western States* case, the Federal Transit Administration (FTA), an operating administration of USDOT, published guidance concerning the federal DBE program that applies to recipients of USDOT grants in states within the Ninth Circuit; and

WHEREAS, This guidance instructs that if a recipient does not currently have sufficient evidence of discrimination or its effects in the local market to justify race-conscious contracting, the recipient must meet its annual overall DBE goal solely through race-neutral measures; and

WHEREAS, In 2006, the SFMTA Board approved a Small Business Enterprise (SBE) program to encourage greater participation by small business firms, including DBEs, in SFMTA contracting; and

WHEREAS, The SFMTA has been taking affirmative steps to use race- and gender-neutral means to achieve DBE participating by establishing SBE goals on federally assisted contracts and utilizing methods identified in the Regulations for obtaining DBE participation; and

WHEREAS, After issuing a Request for Proposals for a DBE Availability, Utilization, and Disparity Study (Disparity Study), on July 1, 2014, the SFMTA entered into a contract with Rosales Business Partners/Exstare Federal Communications, a Joint Venture (the Study Team) to conduct the Study; the Study Team completed the Disparity Study in November 2015; and

WHEREAS, On April 19, 2016, the SFMTA Board of Directors adopted the results of the Disparity Study and approved the submission of a request for a DBE Program waiver to the FTA in order to implement the Study's recommendations, which included the ability to set goals for women-owned businesses for construction, goods, and professional and other services contracts, as well race-conscious goals designed to mitigate identified discriminatory practices and their effects on Black American construction contractors; and

WHEREAS, On April 21, 2016 the SFMTA submitted a request for a DBE Program waiver to the FTA to implement the recommendations of the Study; and

WHEREAS, On January 19, 2017, DOT granted the SFMTA's waiver request for federal fiscal years 2017, 2018 and 2019, requiring the SFMTA to submit a report, through the FTA, detailing the impact of the waiver on utilization of all disadvantaged groups and whether a need for the waiver would continue; and

WHEREAS, On March 21, 2017, the SFMTA Board of Directors approved and adopted a revised DBE Program, including a policy statement which it ordered distributed throughout the SFMTA and to the business community, including DBEs and non-DBEs that perform work on DOT-assisted contracts for the SFMTA; and

WHEREAS, On March 31, 2019, the SFMTA submitted a report to the FTA detailing the SFMTA's FTA-funded contracting activities since the approval of the waiver and requesting a continuation of the waiver for another three federal fiscal years due to the low number of contract opportunities during the initial three-year period, which did not provide a sufficient basis on which to draw definitive conclusions regarding the impact of the waiver; and

WHEREAS, The SFMTA has not received a response to the March 31, 2019, report and intends to continue to implement the terms of the waiver until otherwise directed by USDOT or the FTA; and

WHEREAS, The Regulations require the SFMTA to (1) set an overall goal for DBE participation in its FTA-assisted contracts; and (2) base the overall goal on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on FTA-assisted contracts; and

WHEREAS, The Regulations set forth a choice of methodologies that the SFMTA must use to determine, achieve and count its overall DBE Participation goal for federal fiscal years (FFYs) 2020-2022; and

WHEREAS, SFMTA staff followed one of the methodologies set forth in Part 26 and arrived at an overall goal of 22 percent for DBEs participating in FTA-assisted contracts for FFY 2020-2022, with a breakdown of 15% to be achieved by race-conscious means and 7% to be achieved by race-neutral means; and

WHEREAS, The SFMTA advertised the revised overall DBE goal beginning May 2, 2019 for a 30-day public review period and a concurrent 30-day comment period, and received no comments; and

WHEREAS, The SFMTA, under authority delegated by the Planning Department, determined that the Disadvantaged Business Enterprise Overall Goal for Fiscal Years 2020-2022 is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b), now therefore, be it

RESOLVED, That the SFMTA Board of Directors has reviewed the methodology used to determine the proposed FFY 2020-2022 three-year overall DBE goal for contracting by the SFMTA, and adopts a three-year overall goal of 22 percent for DBE participation in FTA-assisted contracts for FFYs 2020-2022, with a breakdown of 15% to be achieved by race-neutral means and 7% to be achieved by race-conscious means; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA to use race- and gender-neutral measures and race- and gender-conscious measures to achieve the Disadvantaged Business Enterprise (DBE) overall goal, including the establishment of Small Business Enterprise goals, goals for women-owned DBEs in construction and professional services, and goals for Black American-owned DBEs on FTA-funded construction contracts; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors directs the Director of Transportation to transmit the revised FFY 2020-2022 three-year overall DBE goal report to the Federal Transit Administration.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 16, 2019.



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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency