

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 16-095

WHEREAS, On March 4, 1999, the United States Department of Transportation (DOT) 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 30, 2003, 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 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 DOT'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) of the DOT published guidance concerning the federal DBE program that applies to recipients of DOT 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 woman-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, the SFMTA submitted a request for a DBE Program waiver to the FTA to implement the recommendations of the Study and is awaiting a response from the FTA; and

WHEREAS, The Regulations require the SFMTA to (1) set an overall goal for DBE participation in its DOT-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 DOT-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 year (FFY) 2017-2019; and

WHEREAS, SFMTA staff followed one of the methodologies set forth in Part 26 and arrived at an overall annual goal of 15 percent for DBE participating in DOT-assisted contracts for FFY 2017-2019; and

WHEREAS, The SFMTA advertised the proposed overall DBE goal beginning April 23, 2016 for a 30-day public review period and a concurrent 45-day comment period, and received no comments; and

WHEREAS, The SFMTA, under authority delegated by the Planning Department, determined that the FFY 2017-2019 Disadvantaged Business Enterprise Overall Goal is not defined as 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 2017-2019 three-year overall Disadvantaged Business Enterprise goal for contracting by the SFMTA, and adopts a three-year overall goal of 15 percent for DBE participation in Federal Transit Administration-assisted contracts for Federal Fiscal Year 2017-2019; and be it

FURTHER RESOLVED, That pending the FTA's response to the SFMTA's DBE Program waiver request, the SFMTA Board of Directors authorizes the SFMTA to use exclusively race- and gender-neutral measures to achieve the DBE, including continuing to set Small Business Enterprise goals on federally assisted contracts to encourage greater participation by small business firms in SFMTA contracting, and utilizing methods identified in 49 CFR Section 26.51(b); and be it

FURTHER RESOLVED, That the SFMTA Board of Directors directs the Director of Transportation to transmit the FFY 2017-2019 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 19, 2016.

  
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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency