

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 16-054

WHEREAS, On March 4, 1999, the United States Department of Transportation (DOT) issued its Disadvantaged Business Enterprise (DBE) Program Final Rule, which contained 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 San Francisco Public Transportation Commission (1) approved and adopted a DBE Program for implementation by the San Francisco Municipal Transportation Agency (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), in which the Court upheld DOT's DBE regulations, but struck down the Washington State Department of Transportation's DBE program as unconstitutional because Washington 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 FTA has also advised that recipients in the 9th Circuit conduct disparity studies to determine whether there is sufficient evidence of discrimination or its effects in the local market to justify race-conscious contracting; and

WHEREAS, In July of 2014, the SFMTA contracted with Rosales Business Partners/Exstare Federal Services Group, a Joint Venture, to conduct a disparity study (the Study) to determine the continuing existence of discrimination or its effects on SFMTA's procurement program; and

WHEREAS, On March 22, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the Study is not a "project," as defined under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and/or 15378(b), because the Study would not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; and

WHEREAS, The Study was completed in November of 2015, and found that woman-owned business enterprises (WBEs) are substantially underutilized on SFMTA FTA-funded contracts, which finding supports an inference of discrimination and the implementation of gender-conscious remedial measures; and

WHEREAS, The Study also found that Black American construction contractors are substantially underutilized on SFMTA FTA-funded construction contracts, which finding supports an inference of discrimination and the implementation of race-conscious remedial measures; and

WHEREAS, The Study recommends implementation of a WBE element to SFMTA's DBE Program for construction, professional services, and goods or other services contracts; and

WHEREAS, The Study also recommends implementation of a Black American construction contractor element to SFMTA's DBE Program for construction contracts; and


WHEREAS, In order to implement the these two programmatic recommendations, the SFMTA will need to seek a DBE Program waiver from FTA, and

WHEREAS, The Study also recommends that the SFMTA continue with its SBE Program for all other types of FTA-funded contracting; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors adopts the Disadvantaged Business Enterprise Availability, Utilization, and Disparity Study; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors approves seeking a Disadvantaged Business Enterprise Program waiver from the Federal Transit Administration for implementing the Study's programmatic recommendations.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of April 19, 2016.


Secretary to the Board of Directors
San Francisco Municipal Transportation Agency