

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 13-183

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 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); and

WHEREAS, The Ninth Circuit upheld DOT's DBE regulations, but the court 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 SFMTA has been taking affirmative steps to use race- and gender-neutral means to achieve DBE participating by putting SBE goals on federally assisted contracts and utilizing methods identified in the Regulations for obtaining DBE participation; and

WHEREAS, Because the SFMTA does not currently have sufficient evidence of discrimination or its effects in the local market to justify race- and gender-conscious contracting, the SFMTA will undertake a disparity study to determine whether, after years of implementing its SBE program in FTA-funded contracts, there is now sufficient evidence of discrimination to meet its DBE goal through race- and gender-conscious means; 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, DOT 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”) 2014-2016; and

WHEREAS, SFMTA staff followed one of the methodologies set forth in Part 26 and arrived at an overall annual goal of 19 percent for DBE participating in DOT-assisted contracts for FFY 2014-2016; and

WHEREAS, As required under the Regulations, the proposed overall DBE goal was advertised beginning May 2013 for a 30-day public review period and a concurrent 45-day comment period, now therefore, be it

RESOLVED, That the SFMTA Board of Directors has reviewed the methodology used to determine the proposed FFY 2014-2016 three year overall Disadvantaged Business Enterprise (DBE) goal for contracting by the SFMTA, and adopts a three-year overall goal of 19 percent for DBE participation in FTA-assisted contracts for FFY 2014-2016; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA to use exclusively race- and gender-neutral measures to achieve the DBE goal, including continuing to utilize SBE 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 Direct of Transportation to transmit the FFY 2014-2016 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, 2013.

R. Bower

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency