

**THIS PRINT COVERS CALENDAR ITEM NO. 10.9**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Adopting the proposed federal fiscal year 2014-2016 Overall Goal of 19 percent for participation by Disadvantaged Business Enterprises in contracts financed with assistance from the Federal Transit Administration.

**SUMMARY:**

- The U.S. Department of Transportation (DOT) issued a Disadvantaged Business Enterprise (DBE) Program Final Rule, which requires all Federal Transit Administration (FTA) recipients who will award prime contracts in excess of \$250,000 in FTA funds in a Federal fiscal year to adopt a DBE Program.
- On August 17, 1999, the Public Transportation Commission adopted a DBE Program. On May 30, 2003, the San Francisco Municipal Transportation Agency (SFMTA) Board adopted a revised DBE Program, taking into consideration legislative and regulatory changes.
- On May 9, 2005, the U.S. Court of Appeals for the Ninth Circuit issued a decision which upheld DOT's DBE regulations, but struck down Washington's DBE program as unconstitutional.
- In response to the decision, the FTA published guidance that applies to grant recipients in states within the Ninth Circuit, including California. This guidance instructed that if a recipient does not currently have sufficient evidence that its contract awards have been affected by discrimination against disadvantaged businesses, the recipient must use race and gender-neutral means to attain its annual overall DBE goal, rather than setting race- and gender-conscious goals for its contracts.
- As a result of the decision and the FTA guidance, the SFMTA adopted a Small Business Enterprise (SBE) Program. Under this program, the SFMTA sets a contract goal for utilization of small businesses on its federally funded contracts. DOT issued amending regulations, requiring DOT grantees to establish, instead of annual DBE goal, an overall DBE goal as a percentage of all FTA funds expected to be expended in the three forthcoming federal fiscal years. For fiscal years 2014-2016, the SFMTA proposes a goal of 19 percent.
- Bu August 1, 2013, the SFMTA must submit its overall goal to the FTA, along with a description of the methodology used to establish the goal.
- The SFMTA intends to select a consultant to conduct a disparity study to determine the continuing existence of discrimination or its effects on SFMTA's procurement program.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Methodology

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_

July 8, 2013

SECRETARY \_\_\_\_\_

July 8, 2013

**ASSIGNED SFMTAB CALENDAR DATE:** July 16, 2013

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### PURPOSE

The purpose of this calendar item is for the SFMTA Board to approve an overall three-year DBE goal for submission to the FTA.

### GOAL

Adoption of the Overall DBE Goal for FTA funded contracts will further the following goal:

Goal 3: Improve the Environment and Quality of Life in San Francisco.

Objective 3.2: Increase the transportation system's positive impact to the economy.

### DESCRIPTION

#### **Background of the DBE Program**

The U.S. DOT issued a DBE Program Final Rule on March 4, 1999, codified in Part 26 of Title 49 of the Code of Federal Regulations. The DBE Regulations are intended to remedy past and current discrimination against DBEs, ensure a "level playing field," and foster equal opportunity in DOT-assisted contracts.

On August 17, 1999, in compliance with Part 26, the Public Transportation Commission (PTC) adopted a DBE Program for implementation by SFMTA in FTA-assisted contracts. DOT issued amending regulations, effective March 5, 2010, requiring DOT grantees to establish a DBE overall goal as a percentage of all FTA funds expected to be expended in the three forthcoming federal fiscal years. This contrasts with previous DOT requirements calling for the establishment of an annual overall goal.

Under the DBE Program, the SFMTA sets the three-year DBE goal on demonstrable evidence of "ready, willing and able" DBEs that are available to work on FTA-assisted contracts.

#### **The Western States Decision**

On May 9, 2005, the United States Court of Appeals for the Ninth Circuit issued a decision in *Western States Paving Co. v. Washington State Department of Transportation, et al.* (9th Cir. 2005) 407 F.3d 983. The court upheld DOT's DBE regulations on their face; however, the court struck down the Washington Department of Transportation's (WSDOT) DBE program as unconstitutional. The court held that WSDOT's DBE program was not narrowly tailored because it was not based on evidence of discrimination in the Washington State marketplace.

The court also suggested that a remedial program, such as the DBE program, is only narrowly tailored if it is limited to those minority groups that have actually suffered discrimination.

Specifically, the court noted that WSDOT had not conducted adequate statistical studies to establish the existence of discrimination in the highway contracting industry. Further, the court found that WSDOT's calculation of the capacity of DBEs to do work was flawed because it failed to take into account the effects of past race-conscious programs on current DBE participation. According to the court, the disparity between DBE participation on contracts with and without race-conscious goals did not provide any evidence of on-going discrimination<sup>1</sup>.

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<sup>1</sup>As used in this discussion, the terms "race-conscious", "race-neutral", and "race-based" included both race and gender.

Finally, the court noted that WSDOT did not present any anecdotal evidence of discrimination. Since this decision was issued by the U.S. Court of Appeals for the Ninth Circuit, it applies to all states comprising the Ninth Circuit, including California.

### **DOT Guidance in Response to the *Western States* Decision**

In response to the *Western States* decision, on March 23, 2006, FTA published DOT's guidance concerning the federal DBE program that applies to grant recipients in states within the Ninth Circuit. This guidance provides that if a recipient does not currently have sufficient evidence of discrimination or its effects, the recipient must meet its annual overall DBE goal solely through race-neutral measures. Since the SFMTA does not currently have sufficient evidence of discrimination or its effects to justify submission of race-conscious goals, the SFMTA has been using race-neutral measures to achieve its annual goal.

### **SFMTA's Small Business Enterprise (SBE) Program**

In 2006, the SFMTA Board approved a small business enterprise (SBE) program to be utilized for federally assisted contracts. An SBE is defined as a "for-profit, small business concern" that qualifies for the program by being certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("CUCP") ("the Federal DBE program"). The SFMTA will continue to use the SBE Program for FFY 2014 through 2016 to achieve the DBE goal until it finds sufficient evidence of discrimination in its contracting.

### **Disparity Study**

DOT's guidance also requested that recipients submit, along with their goal, a description of any plans to conduct a study to determine the existence of discrimination or its effects in the marketplace. Since the SFMTA now has substantial experience with race-neutral contracting through its SBE Program, the SFMTA will be preparing an RFP to select a consultant to perform the study. The SFMTA intends to select a consultant by the end of 2013.

### **Overall DBE Goal**

Part 26 requires the SFMTA Board to approve an overall goal for DBE participation in FTA-assisted contracts. As discussed above, DOT issued amending regulations, effective March 5, 2010, requiring DOT grantees to establish a DBE overall goal as a percentage of all FTA funds expected to be expended in the three forthcoming federal fiscal years. The three-year goal tracks each federal fiscal year, which starts on October 1 and ends on September 30. The three-year goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate in FTA-assisted contracts.

Part 26 requires that the goal reflect SFMTA's determination of the level of DBE participation expected absent the effects of discrimination.

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After adoption by the SFMTA Board, the SFMTA will submit its overall goal to the FTA for review along with a description of the methodology used to establish the goal.

The Contract Compliance Office (CCO) calculated availability estimates for minority-owned business enterprises (MBEs) using the US Census Bureau's Survey of Business Owners for 2007, the latest year for which there is complete data of this type.<sup>2</sup> CCO has produced weighted estimates of availability for Construction, Manufacturing, and Professional, Scientific & Technical Services. The calculated estimates give greater weight to availability in those industries that receive a larger share of SFMTA's federal contract dollars.

Following the methodology prescribed in Part 26, the CCO arrived at a proposed overall goal of 19 percent DBE participation in projected new FTA-assisted contracts for FFY 2014-2016. A description of the methodology and the overall goal is enclosed.

SFMTA published a notice announcing its proposed DBE Goal for FFY 2014-2016 in the following local and minority focused-publications:

- The Bay Area Reporter
- El Reportero
- San Francisco Bay View
- Sing Tao Dail,
- Small Business Exchange
- World Journal
- West Portal Monthly
- The Western Edition.

As required under Part 26, the notice informed the public of the proposed goal, that the rationale for the goal would be available for inspection and review during normal business hours for 30 days from the first publication date, and that comments on the proposed DBE goal would be accepted up to 45 days from the date of first publication of the notice. SFMTA received no comments relating to the proposed goal.

### **FUNDING IMPACT**

The SFMTA must comply with the federal funding regulations, in Title 49, Part 26.45, by having an approved DBE Program and setting a three-year overall goal for DBE participation on DOT-assisted contracts.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

In accordance with Title 49 Part 26.45 (f)(1), SFMTA's FFY 2014-2016 overall DBE goal must be submitted to the FTA for review by August 1.

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<sup>2</sup>This Census survey report does not include data for women-owned businesses.

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The City Attorney's Office has reviewed this calendar item.

**RECOMMENDATION**

Staff requests that the Board approve the proposed federal fiscal year 2014-2016 Overall DBE Goal of 19 percent.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

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.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

# SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

## FY 2014 – 2016 OVERALL DBE GOAL ANALYSIS REPORT FOR FEDERAL TRANSIT ADMINISTRATION

### I. INTRODUCTION

In Part 26 of Title 49 of the Code of Federal Regulations ("Part 26"), the Department of Transportation (DOT) sets forth regulations regarding Disadvantaged Business Enterprise (DBE) participation in federally assisted programs. The regulations include provisions pertaining to how a recipient should establish an overall goal. These provisions are intended to provide the maximum flexibility for recipients while ensuring that the recipients' goals are based on the availability of ready, willing and able DBEs in each recipient's relevant market area. These measures are intended to meet the DOT's obligation to ensure that the DBE program is narrowly tailored to remedy the effects of past discrimination.

In accordance with subsections 26.45(f)(2) and (3) of Part 26, the San Francisco Municipal Transportation Agency (SFMTA) proposes to adopt an overall goal of 19 percent for DBE contracting for federal fiscal years (FFY) 2014-2016. A description of the methodology and the project goal is enclosed.

### II. THE WESTERN STATES PAVING DECISION

On May 9, 2005, the United States Court of Appeals for the Ninth Circuit issued a decision in *Western States Paving Co. vs. Washington State Department of Transportation, et al.* (9<sup>th</sup> Cir. 2005) 407 F.3d 983. The court upheld DOT's DBE regulations on their face; however, the court struck down the Washington Department of Transportation's (WSDOT) DBE program as unconstitutional. The court held that WSDOT's DBE program was not narrowly tailored because it was not based on evidence of discrimination in the Washington State marketplace. The court also suggested that a remedial program, such as the DBE program, is only narrowly tailored if it is limited to those minority groups that have actually suffered discrimination.

Specifically, the court noted that WSDOT had not conducted adequate statistical studies to establish the existence of discrimination in the Washington highway contracting industry. Further, the court found that WSDOT's calculation of the capacity of DBEs to do work was flawed because it failed to take into account the effects of past race-conscious programs on current DBE participation. According to the court, the disparity between DBE participation on contracts with and without race-conscious goals did not provide any evidence of ongoing discrimination.<sup>3</sup> Finally, the court noted that WSDOT did not present any anecdotal evidence of discrimination. Since this decision was issued by the U.S. Court of Appeals for the Ninth Circuit, it applies to all states comprising the Ninth Circuit, including California.

### III. DOT GUIDANCE IN RESPONSE TO THE WESTERN STATES DECISION

In response to the *Western States* decision, on March 23, 2006, FTA published DOT's guidance concerning the federal DBE program that applies to grant recipients in states within the Ninth Circuit. This guidance provides that if a recipient does not currently have sufficient evidence of discrimination or its effects, the recipient must meet its annual overall DBE goal solely through race-neutral measures. Since the SFMTA does not currently have sufficient evidence of discrimination or its effects to justify submission of race-conscious goals, the SFMTA has been using race-neutral measures to achieve its annual goal.

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<sup>1</sup>As used in this discussion, the terms "race-conscious," "race-neutral," and "race-based" include both race and gender.



#### **IV. THE SFMTA'S SMALL BUSINESS ENTERPRISE (SBE) PROGRAM**

In 2006, the SFMTA Board approved a small business enterprise (SBE) program to be utilized for federally assisted contracts. An SBE is defined as a "for-profit, small business concern" that qualifies for the program by being certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program (CUCP) ("the Federal DBE program"). The SFMTA will continue to use the SBE Program to achieve the DBE goal until it has sufficient evidence to justify using race-conscious goals.

#### **V. DISPARITY STUDY**

DOT's guidance also requested that a recipient submit, along with its annual goal, a description of any plans to conduct a study to determine the existence of discrimination or its effects in the marketplace. Since the SFMTA now has substantial experience with race-neutral contracting through its SBE Program, the SFMTA will undertake a disparity study to determine whether there is now sufficient evidence of discrimination to warrant use of race- and gender-conscious contract goals.

#### **VI. METHODOLOGY**

In compliance with Section 26.45 of Part 26, the SFMTA has chosen the following methodology:

**STEP 1-CALCULATE BASE FIGURE:** Determine a base percentage figure for relative availability of DBEs in specific areas of expertise using the national 2007 U.S. Census Bureau (Table Three Availability by Minority Group and Industry for San Francisco Consolidated Metropolitan Statistical Area (CMSA), All firms, Survey of Business Owners). This figure will generally represent the ready, willing and able DBEs available to work on SFMTA FFYs 2014-2016 FTA-assisted contracts.

**STEP 2-ADJUST BASE FIGURE:** After the calculation of the base figure, examine other evidence available in our market area regarding DBE availability to determine if any adjustment is needed to the base figure in order to arrive at the overall goal. DOT has published "Tips for Goal-Setting in the Disadvantaged Business Enterprise Program." (See <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>). Under the heading "Adjustments Based on Past Participation," DOT cites several examples. One of the examples relates to using the median past participation as a means of adjusting the Step 1 Base Figure (see below under B).

Once applying any adjustments, the adjusted goal represents the anticipated DBE participation that will be achieved as a percentage of all SFMTA FFYs 2014-2016 FTA-assisted contracts.

##### **A. STEP 1 - DETERMINING A BASE FIGURE**

###### **1. Choice of Methodology**

In order to select the proper methodology to generate its overall goal, the SFMTA sought a method that, given the available data and evidence, would most accurately calculate the relative availability of DBEs to participate in SFMTA's DOT-assisted contracts. The SFMTA evaluated various methods for arriving at a base figure, as proposed in Section 26.45 of Part 26. The SFMTA determined the base figure by comparing the ratio of the total DBEs in its market to the total number of businesses in the relevant market (see 'Notes' below Table Three for description of relevant market). The SFMTA had access to all of the required data for this calculation, and was confident that the analysis

would most accurately provide a base figure of the relative availability of DBEs to participate in its FTA-assisted contracts.

## **2. Evidence Used to Calculate Base Figure**

The SFMTA's required DBE goal analysis uses only data from those contracts projected to be awarded under the procurement requirements of the FTA.

The SFMTA gathered data on the types of contracts, the dollar amount of each contract, the nature of work for each contract, and the appropriate North American Industry Classification System (NAICS) for that work. The SFMTA assigned a two-digit NAICS Code for every contract for FFYs 2014-2016 FTA-assisted contracts.

As mentioned above, the annual DBE goal includes only contracts that the SFMTA, at the time it sets the goal, expects to award during FFYs 2014 - 2016. Thus, the DBE goal analysis may not include all of the federally assisted contracts or subcontracts the SFMTA will actually award during this fiscal period. Conversely, the SFMTA may not award all the contracts that it expected to award when it calculated the goals.

**STEP 1 – BASE FIGURE**

These contracts in Table 1 are in applicable 5-digit NAICS Code. In Table 2, the contracts are summarized by 2-digit NAICS Code. Note that one contract may include participation in more than one NAICS Code.

**TABLE ONE  
FFY 2014-2016 FTA Contracting Opportunities**

Item #	Project Name	Target Date MM/YR	Civil Engineering Construction	Electrical Engineering Construction	Equipment	Track Material	Overhead Material	Other Material	Professional, Scientific & Technical Services	Fiscal Year 2014 - 2016 Total	% of Contracts
<b>NAICS Code</b>			<b>237990</b>	<b>238210</b>	<b>238290</b>	<b>333997</b>	<b>335121</b>	<b>335312</b>	<b>54</b>		
1	Muni Metro Turnback Water Intrusion Mitigation	Oct-13	\$600,000.00	\$300,000.00	\$75,000.00	\$0.00	\$0.00	\$300,000.00	\$225,000.00	\$1,500,000.00	<b>0.84%</b>
2	Cable Car Pulley Replacement Project	Oct-13	\$420,000.00	\$157,500.00	\$315,000.00	\$0.00	\$0.00	\$0.00	\$157,500.00	\$1,050,000.00	<b>0.59%</b>
3	Muni Metro Sunset Tunnel Rail Rehabilitation	Oct-13	\$9,030,000.00	\$6,020,000.00	\$0.00	\$6,020,000.00	\$3,010,000.00	\$1,505,000.00	\$4,515,000.00	\$30,100,000.00	<b>16.95%</b>
4	Cable Car Lines: Rebuild Track Switches at 16 Locations	Oct-13	\$211,200.00	\$422,400.00	\$105,600.00	\$0.00	\$0.00	\$158,400.00	\$158,400.00	\$1,056,000.00	<b>0.59%</b>
5	N-Line Travel Time Reduction	Oct-13	\$5,250,000.00	\$4,500,000.00	\$1,500,000.00	\$0.00	\$0.00	\$1,500,000.00	\$2,250,000.00	\$15,000,000.00	<b>8.45%</b>
6	5 Fulton Travel Time Reduction	Oct-13	\$5,250,000.00	\$4,500,000.00	\$1,500,000.00	\$0.00	\$0.00	\$1,500,000.00	\$2,250,000.00	\$15,000,000.00	<b>8.45%</b>
7	Cable Car Lines: Replace all Preempts with Magnetic Switches	Oct-13	\$260,000.00	\$520,000.00	\$130,000.00	\$0.00	\$0.00	\$195,000.00	\$195,000.00	\$1,300,000.00	<b>0.73%</b>
8	Cable Car Barn-Propulsion Gear Boxes	Oct-13	\$1,821,750.00	\$1,041,000.00	\$1,561,500.00	\$0.00	\$0.00	\$260,250.00	\$520,500.00	\$5,205,000.00	<b>2.93%</b>
9	Haight and Market Street Pedestrian Improvements	Oct-13	\$2,663,136.00	\$211,360.00	\$0.00	\$0.00	\$507,264.00	\$0.00	\$845,440.00	\$4,227,200.00	<b>2.38%</b>
10	Muni Metro Subway Track Fastener Replacement	Feb-14	\$6,458,670.00	\$717,630.00	\$0.00	\$5,741,040.00	\$0.00	\$0.00	\$1,435,260.00	\$14,352,600.00	<b>8.08%</b>

Item #	Project Name	Target Date MM/YR	Civil Engineering Construction	Electrical Engineering Construction	Equipment	Track Material	Overhead Material	Other Material	Professional, Scientific & Technical Services	Fiscal Year 2014 - 2016 Total	% of Contracts
NAICS Code			237990	238210	238290	333997	335121	335312	54		
11	Muni Metro Twin Peaks Track Replacement	May-14	\$11,287,200.00	\$7,524,800.00	\$1,881,200.00	\$7,524,800.00	\$3,762,400.00	\$0.00	\$5,643,600.00	\$37,624,080.00	21.19%
12	N & L Line Train Signal Prioritization	Jul-14	\$1,435,260.00	\$5,741,040.00	\$2,152,890.00	\$2,870,520.00	\$0.00	\$0.00	\$2,152,890.00	\$14,352,600.00	8.08%
13	Muni Metro West Portal Interlock Reconfiguration	Feb-15	\$619,920.00	\$1,084,860.00	\$464,940.00	\$0.00	\$0.00	\$464,940.00	\$464,940.00	\$3,099,600.00	1.75%
14	33 Stanyan Overhead Replacement Project	Mar-15	\$3,092,400.00	\$2,577,000.00	\$0.00	\$0.00	\$3,092,400.00	\$1,546,200.00	\$0.00	\$10,308,000.00	5.80%
15	49 Van Ness Overhead Replacement	Jan-16	\$5,523,000.00	\$4,602,500.00	\$0.00	\$0.00	\$5,523,000.00	\$2,761,500.00	\$0.00	\$18,410,000.00	10.37%
16	Rail Grinding	Jan-16	\$2,250,000.00	\$0.00	\$1,000,000.00	\$250,000.00	\$500,000.00	\$1,000,000.00	\$0.00	\$5,000,000.00	2.82%
<b>TOTAL:</b>			<b>\$56,172,536</b>	<b>\$39,920,090</b>	<b>\$10,686,130</b>	<b>\$22,406,360</b>	<b>\$16,395,064</b>	<b>\$11,191,290</b>	<b>\$20,813,530</b>	<b>\$177,585,080</b>	<b>100.00%</b>
<b>PERCENTAGE:</b>			<b>31.63%</b>	<b>22.48%</b>	<b>6.02%</b>	<b>12.62%</b>	<b>9.23%</b>	<b>6.30%</b>	<b>11.72%</b>		

**SUMMARY OF PROJECTED FTA FUNDING AVAILABILITY  
PER NORTH AMERICAN INDUSTRIAL CLASSIFICATION (NAICS) CATEGORIES**

**TABLE TWO  
FFY 2014-2016 FTA Dollars by NAICS Code**

Item #	Project Name	Target Date MM/YR	CONSTRUCTION	MANUFACTURING	PROFESSIONAL, SCIENTIFIC & TECHNICAL SERVICES	Fiscal Year 2014 - 2016 Total	% of Contracts
NAICS Code			<b>23</b>	<b>31-33</b>	<b>54</b>		
1	Muni Metro Turnback Water Intrusion Mitigation	Oct-13	\$975,000.00	\$300,000.00	\$225,000.00	\$1,500,000.00	<b>0.84%</b>
2	Cable Car Pulley Replacement Project	Oct-13	\$892,500.00	\$0.00	\$157,500.00	\$1,050,000.00	<b>0.59%</b>
3	Muni Metro Sunset Tunnel Rail Rehabilitation	Oct-13	\$15,050,000.00	\$10,535,000.00	\$4,515,000.00	\$30,100,000.00	<b>16.95%</b>
4	Cable Car Lines: Rebuild Track Switches at 16 Locations	Oct-13	\$739,200.00	\$158,400.00	\$158,400.00	\$1,056,000.00	<b>0.59%</b>
5	N-Line Travel Time Reduction	Oct-13	\$11,250,000.00	\$1,500,000.00	\$2,250,000.00	\$15,000,000.00	<b>8.45%</b>
6	5 Fulton Travel Time Reduction	Oct-13	\$11,250,000.00	\$1,500,000.00	\$2,250,000.00	\$15,000,000.00	<b>8.45%</b>
7	Cable Car Lines: Replace all Preempts with Magnetic Switches	Oct-13	\$910,000.00	\$195,000.00	\$195,000.00	\$1,300,000.00	<b>0.73%</b>
8	Cable Car Barn-Propulsion Gear Boxes	Oct-13	\$4,424,250.00	\$260,250.00	\$520,500.00	\$5,205,000.00	<b>2.93%</b>
9	Haight and Market Street Pedestrian Improvements	Oct-13	\$2,874,496.00	\$507,264.00	\$845,440.00	\$4,227,200.00	<b>2.38%</b>
10	Muni Metro Subway Track Fastener Replacement	Feb-14	\$7,176,300.00	\$5,741,040.00	\$1,435,260.00	\$14,352,600.00	<b>8.08%</b>
11	Muni Metro Twin Peaks Track Replacement	May-14	\$20,693,200.00	\$11,287,200.00	\$5,643,600.00	\$37,624,000.00	<b>21.19%</b>
12	N & L Line Train Signal Prioritization	Jul-14	\$9,329,190.00	\$2,870,520.00	\$2,152,890.00	\$14,352,600.00	<b>8.08%</b>
13	Muni Metro West Portal Interlock Reconfiguration	Feb-15	\$2,169,720.00	\$464,940.00	\$464,940.00	\$3,099,600.00	<b>1.75%</b>
14	33 Stanyan Overhead Replacement Project	Mar-15	\$5,669,400.00	\$4,638,600.00	\$0.00	\$10,308,000.00	<b>5.80%</b>
15	49 Van Ness Overhead Replacement	Jan-16	\$10,125,500.00	\$8,284,500.00	\$0.00	\$18,410,000.00	<b>10.37%</b>
16	Rail Grinding	Jan-16	\$3,250,000.00	\$1,750,000.00	\$0.00	\$5,000,000.00	<b>2.82%</b>
<b>TOTAL:</b>			<b>\$106,778,756.00</b>	<b>\$49,992,714.00</b>	<b>\$20,813,530.00</b>	<b>\$177,585,000.00</b>	<b>100.00%</b>
<b>PERCENTAGE:</b>			<b>60.13%</b>	<b>28.15%</b>	<b>11.72%</b>		<b>100.00%</b>

In establishing the Base Figure for the relative availability of DBEs in the San Francisco CMSA, SFMTA relied on the following information:

- 2007 US Census Bureau
- Table Three – Availability by Minority Group and Industry for San Francisco CMSA, All Firms, Survey of Business Owners.

**TABLE THREE**  
**Availability by Minority Group and Industry for San Francisco CMSA, All Firms**

Industry	NAICS	Black		Hispanic		Asian		AI/AN		DBE		Total
		Number	% of Total [A]	Number	% of Total [B]	Number	% of Total [C]	Number	% of Total [D]	Number	% of Total [E]	
Construction	23	1,046	1.78%	3,017	5.14%	13,183	22.47%	1232	2.10%	18,478	31.50%	58,660
Manufacturing	31-33	180	1.00%	2,036	11.32%	2,616	14.54%	45	0.25%	4,877	27.11%	17,989
Professional, scientific, & technical services	54	3,577	2.18%	6002	3.66%	35,412	21.57%	1,079	0.66%	46,070	28.06%	164,186

*Notes:*

- 1) This table represents data from the San Jose-San Francisco-Oakland, CA Combined Statistical Area (CSA) which is composed of the following core-based statistical areas (CBSAs): Napa, CA Metropolitan Statistical Area (MSA), San Francisco-Oakland-Fremont MSA, San Jose-Sunnyvale-Santa Clara MSA, Santa Cruz-Watsonville MSA, Santa Rosa-Petaluma MSA, Vallejo-Fairfield MSA.
- 2) The number of Hispanic and Woman-Owned firms is not provided by the Census Bureau. The number of Hispanic firms in each industry was calculated by adding together the number of Black, Asian and AI/AN firms, then subtracting that number from the number of DBE firms.
- 3) DBE availability was calculated for each industry using the following formula:  $[E]=[A] + [B] + [C] + [D]$

*Sources:*

- 1) Survey of Business Owners, 2007.

Narrow-Tailoring Factors to Availability Data

The U.S. DOT regulation refers to the procedure of using "Weighting" wherever possible to increase the accuracy of the base figure. The SFMTA made adjustments by weighting the relative availability of DBEs in various fields, giving more weight to the fields in which the SFMTA spends more contract dollars. Please refer to Table Four below.

**TABLE FOUR**  
**FFY 2014–2016 Summary of DBE Availability**  
**By NAICS Code and Weighted By FTA Dollars**

	<b>NAICS CODE</b>	<b>Scope of Work</b>	<b>TOTAL DBES</b>	<b>US CENSUS (all firms)</b>	<b>% DBE Availability</b>	<b>% of Dollar</b>	<b>Weighted % of DBE Availability</b>
1	23	Construction	18,478	58,660	31.50%	60.13%	18.94%
2	31-33	Manufacturing	4,877	17,989	27.11%	28.15%	7.63%
3	54	Professional, Scientific, & Technical Services	46,070	164,186	28.06%	11.72%	3.29%
<b>TOTAL:</b>						<b>100.00%</b>	<b>29.86%</b>

The formula used to calculate the Base Figure is:

Number of Ready, Willing, and Able DBEs in the San Francisco CMSA / Number of All Ready, Willing and Able Firms = Base Figure

**BASE FIGURE FORMULA**

**BASE FIGURE=**

18,478 Construction DBEs / 58,660 All Construction firms X .6013

+

4,877 Manufacturing DBEs / 17,989 All Manufacturing firms X .2815

+

46,070 Professional, Scientific & Technical Services DBEs / 164,186 All Professional Scientific, & Technical Services firms X .1172

**BASE FIGURE=**

(.3150)(.6013) + (.2711)(.2815) + (.2806)(.1172) = **relative availability**

**BASE FIGURE=**

(.1894) + (.0763) + (.0329) = **29.86%**

## **B. STEP 2 - ADJUSTMENT OF THE BASE FIGURE**

The regulations require examination of all of the evidence available in the recipient's jurisdiction in order to determine if, after the calculation of the base figure, any adjustment is needed. DOT has published "Tips for Goal-Setting in the Disadvantaged Business Enterprise Program" (Reference: <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>), which, in addition to the regulations, cite several examples of the types of evidence that recipients should consider. Such evidence includes disparity studies conducted anywhere in the recipient's jurisdiction, as well as the capacity of DBEs to perform work in a recipient's contracting program, measured by the number of DBEs that have actually performed work in recent years, and, if available, evidence from related fields that affect the ability of DBEs to form, grow and compete.

The SFMTA is aware of three disparity studies conducted by transit agencies in the greater San Francisco Bay Area: Santa Clara Valley Transportation Authority (VTA), Bay Area Rapid Transit District (BART), and San Mateo County Transportation District (SamTrans). Both VTA's and SamTrans' disparity studies examined data from 2002 through 2006. VTA's study, completed in 2007, included data from the San Jose-San Francisco-Oakland (SJ CSA), as well as Sacramento and San Joaquin counties. The SJ CSA is comprised of 11 Bay Area counties: Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma, Napa, San Benito and Solano. SamTrans' disparity study, which also included data from the SJ CSA, was completed in 2008. The study conducted by BART was completed in 2008 and examined data from Alameda, Contra Costa, San Francisco, and San Mateo counties from 2002 through 2007.

Due to significant differences in geographic marketplace and data timeframes, the SFMTA does not consider the disparity studies conducted by BART, VTA, or SamTrans to present relevant evidence that would lead to an adjustment of the SFMTA's overall goal. With regard to the studies conducted by VTA and SamTrans, the inclusion of counties outside of the SFMTA's relevant geographic marketplace (San Benito, Sacramento and San Joaquin) cast doubt on the relevance of VTA's contracting data to the SFMTA's overall goal analysis. Likewise, BART's inclusion of only four Bay Area counties, in comparison to the nine Bay Area counties that comprise the SFMTA's relevant geographical area (Alameda, Contra Costa, Santa Clara, San Francisco, San Mateo, Marin, Napa, Solano and Sonoma), raises concerns about the relevance of its statistical findings to the SFMTA. The bids for Contract No. 1300 Central Subway Stations, Surface, Track and Systems, for example, included firms from Santa Clara, Marin, Napa, Solano, and Sonoma counties. In addition, BART operates only one mode of transit – heavy rail - whereas the SFMTA operates five modes of transit – diesel (hybrid) bus, trolley bus, light rail, historic streetcar, and cable car. Finally and most significantly, all three studies examine data that is more than five years old, a time interval that greatly impacts the availability of DBEs and non-DBEs. For example, many of the DBE subcontractors and a non-DBE prime contractor who worked on Phase I of the Third Street Light Rail project, completed in 2006, are either out of business or no longer certified, or have moved to another jurisdiction (outside the Bay Area). Notably, the U.S. Commission on Civil Rights issued a Briefing Report in May 2006, recommending that state and local agencies discard data that more than five years old. See <http://www.usccr.gov/pubs/DisparityStudies5-2006.pdf> (p. 76, Recommendation No. 1). For these reasons, the BART, VTA, and SamTrans disparity studies do not present evidence that would cause the SFMTA to adjust its goal based on their data.

Regarding the capacity of DBEs to perform work on SFMTA projects, since the beginning of FFY 2010, 75 DBEs have participated on contracts with the SFMTA for a total DBE commitment of over \$182 million. Of those 75 DBEs, five were prime contractors. The number of DBEs that have actually performed



work in recent years, coupled with the dollar amounts awarded to those DBEs, does not present compelling evidence that would warrant an adjustment of the SFMTA's overall goal.

Another of 49 CFR Part 26's Step 2 adjustments is based on past participation of DBEs. The SFMTA examined the volume of work committed to DBEs on SFMTA's FTA-funded projects from 2010 – 2013 as follows:

FY 2012-13: Annual DBE goal was 22%, actual DBE commitments (1st semi-annual) equaled 7.9%

FY 2011-12: Annual DBE goal was 22%, actual DBE commitments equaled 6%

FY 2010-11: Annual DBE goal was 22%, actual DBE commitments equaled 12%

In DOT's "Tips for Goal-Setting in the Disadvantaged Business Enterprise Program," under the heading "Adjustments Based on Past Participation," DOT cites several examples. One of the examples relates to using the median past participation as a means of adjusting the Step 1 Base Figure. The SFMTA determined the median past participation was 7.9 percent. In using this figure to determine the adjustment for past participation, the following formula was used:

**Steps:**

1. Base Figure = 29.86%

2. Median Past Participation = 7.9%

3. Adjustment factor =

(base figure 29.86%) + (median past participation 8%) divided by 2 = 19%

The impact of past DBE participation has resulted in an adjustment to the base figure of 29.86% DBE participation for FTA-assisted contracts to be awarded in FFYs 2014-2016. The adjusted DBE participation goal is 18.9% or 19% for FFY 2014-2016.

## **VII. RACE NEUTRAL MEASURES**

The SFMTA intends to continue to employ the following race-neutral means to increase DBE participation:

- Arranging solicitations, times for presentation of bids, quantities, specifications and delivery schedules in ways that facilitate DBE and other small business participation. This includes evaluation of when it would be beneficial to unbundle contracts. The SFMTA has had success in creating opportunities for SBEs by unbundling contracts. The Central Subway Final Design project (CS-155), for example, was broken down into three separate contracts, which resulted in participation by more than 40 small businesses. The SFMTA will continue to evaluate contracts to determine the feasibility of unbundling.
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids and providing services to help DBEs and other small businesses obtain bonding and financing). On Contract No. 1300: Central Subway Stations, Surface, Track and Systems, the SFMTA implemented a surety bonding program that provided technical assistance to small businesses with regard to obtaining bonding or increasing bonding capacity. A similar program is being developed for all of the SFMTA's FTA-funded construction contracts.
- Ensuring distribution of the DBE directory to the widest group of potential prime contractors. The SFMTA includes the weblink to the DBE directory in all of its bid solicitations and offers all prime contractors assistance with accessing the directory.

- Providing technical assistance and other services. SFMTA staff worked closely with prime contractors seeking to enhance opportunities for small businesses on Contract No. 1300. SFMTA staff also meets individually with recently-certified DBEs to provide them information about contracting opportunities and processes at the SFMTA and other agencies.
- Providing information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders, ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors, and providing information in languages other than English, when appropriate). The SFMTA individually, and in partnership with the Business Outreach Committee (see below), hosts regular outreach events for the DBE and small business community. Since January 2009, the SFMTA has participated in more than 60 outreach events focusing on topics such as certification, contracting, and purchasing.
- Networking opportunities with local, state and federal agencies that provide contracting opportunities to the small business owner. As mentioned above, the SFMTA engages in extensive outreach to the small business and DBE community.
- Implementing Small Business Enterprise (SBE) goals on contracts to encourage greater participation by small business firms in public contracting. SFMTA staff establishes SBE goals on contracts on a case-by-case basis. Where appropriate, SBE Set-Asides are implemented, such as the trucking set-aside on Contract No. 1252 Central Subway Tunneling.

### **VIII. Public Participation Process**

To provide for public participation in this goal-setting process, the SFMTA, working in concert with the members of the Business Outreach Committee (BOC) conducted a regional public participation session on April 23, 2013 at the Metropolitan Transportation Commission (MTC) auditorium in Oakland, CA. The BOC membership is comprised of the Alameda-Contra Costa Transit District (AC Transit), Alameda County Transportation Commission (ACTC), Bay Area Rapid Transit District (BART), Central Contra Costa Transit Authority (CCCTA), City of Rio Vista, Golden Gate Bridge, Highway and Transportation District (GGBHTD), Metropolitan Transportation Commission (MTC), San Francisco Bay Area Water Emergency Transportation Authority (WETA), San Francisco Municipal Transportation Agency (SFMTA), San Mateo County Transit District (SamTrans/Caltrain), Santa Clara Valley Transportation Authority (VTA), Delta Breeze, Western Contra Costa Transit Authority (WESTCAT), and the Transbay Joint Powers Authority (TJPA).

The session was conducted to obtain pertinent input from businesses and trade group organizations that are most impacted by the DBE goals established for DOT-assisted contracts. It provided DBEs and other small businesses the opportunity to provide information about the availability of certified and potential DBEs ready, willing, and able to compete for DOT-assisted contracts, to discuss their concerns, and to provide their perspectives on how DOT recipients might more effectively administer their programs to improve DBE participation. The BOC and participating agencies sent invitations to small and DBE businesses in the region, as well as business support organizations. During the public participation session, the SFMTA, as did the other agencies, presented its DOT-assisted contracting opportunities for FFYs 2014-2016.

Prior to conducting the general public session, a meeting was held with members from various trade organizations. Among those in attendance were representatives from the San Francisco African American Chamber of Commerce, Asian American Architects and Engineers Association, Woman in Transportation Systems, Alameda Hispanic Chamber of Commerce, Asian American Contractors Association, and the Northern California Chapter of the National Association of Minority Contractors. The objective of the meeting was to gain insight into the availability of minority and women owned firms in trades that have historically been low in DBE participation.

The following comments were made by those in attendance:

- Agencies should identify and publicize trades or areas with no or low DBE participation.
- Agencies should break larger contracts into smaller contracts so that smaller firms can bid as primes.
- Owners of projects should consider supplying owner-furnished material for installation instead of having a small contractor bid on both material and installation.
- To address areas of underutilization, agencies and trade groups should determine areas where there is overcapacity and encourage firms to transfer skill sets from an area of overcapacity to an area of low DBE utilization.
- Agencies should set higher race-conscious goals with the intent that actual attainment may be less than the established goal but more in line with an expected goal.
- Agencies should consider setting separate goals for engineering/professional services and construction activities because these trades are so different, with significant differences in DBE availability.

During the general public participation session, DBE and small business owners made the following comments:

- The DBE program should be extended to non-federally assisted projects.
- There are too many certifications and designations (e.g. DBE, SBE, LBE, among others) and it is difficult for a small business to obtain and maintain these various certifications. Agencies should make efforts to create a one-stop shop for all these certifications.
- The overall consensus was that there is a lack of enforcement to ensure that a listed DBE is actually used on a project.

One business owner requested the BOC agencies publicize their DBE utilization data for the prior three years, to include both federalized and non-federalized projects. Consistent with comments made at prior meetings, concerns were expressed about how DBE firms continue to find it difficult to participate on DOT-assisted contracts. Attendees asked how they could better access opportunities.

The BOC provided information about how to access project solicitations for their respective agencies and encouraged small and DBE owners to seek assistance from agency representatives at the meeting. Each BOC agency provided information on contracts projected to be awarded during FFYs 2014 -2016. The information included breakdowns of anticipated scope on jobs with forecasts of when specific types of contractors would be needed.

In response to the comments expressed during the public participation session, the SFMTA will continue to review contracts to determine how to improve access by small and DBE businesses, such as encouraging prime contractors to subcontract portions of the work that they might otherwise perform with their own forces. Also, the SFMTA will encourage the unbundling of large contracts into smaller ones in order to give DBE and small businesses increased opportunities to bid as primes. With regard to enforcement, the SFMTA will continue to monitor participation by DBEs and small business by informing potential prime contractors of DBE program requirements at all pre-bid and pre-proposal meetings, reviewing monthly reports submitted by prime contractors to ensure that the primes are invoicing for work performed by DBEs and small businesses and are paying them promptly, and conducting site visits to ensure that the listed DBEs and other small businesses are actually performing work on the contract.

The SFMTA continues to outreach aggressively to small and DBE businesses, independently, and with the BOC and other public agencies. Outreach activities include providing advance notice of upcoming projects, three months to one year in advance. Other activities include conducting networking events that provide opportunities for small DBE business owners to meet prime contractors, DBE certification workshops, and events designed for small and DBE vendors to meet with buyers from BOC agencies and prime contractors. The SFMTA participates in the preparation of the quarterly BOC newsletter that provides listing of upcoming projects, outreach events, and guidance on how to participate in public contracting.

**Conclusion:**

The SFMTA has prepared this methodology report for submission to Region IX of the FTA, in compliance with the procedures outlined in 49 CFR Part 26 and DOT's recent amendments to Part 26, effective March 5, 2010 requiring DOT grantees to establish a DBE overall goal as a percentage of all FTA funds expected to be expended in the three forthcoming federal fiscal years. The overall goal has been narrowly tailored based on the 2007 minority census data available for SFMTA's geographical market and has been adjusted to reflect local spending patterns.

The SFMTA has established a 19 percent overall DBE goal for all FTA-funded contracts anticipated to be awarded for FFYs 2014-2016.

The SFMTA will monitor its DBE annual goals by tracking each individual contract throughout the term of the contract for DBE participation and payments respective to the federal fiscal year of award.