

# **San Francisco Bay Area Rapid Transit District**

*2150 Webster Street, P. O. Box 12688, Oakland, CA 94604-2688*



## **COMMITTEE MEETING AGENDA**

**Wednesday, August 17, 2022**

**10:00 AM**

**via Teleconference Only. Zoom Link:  
<https://us06web.zoom.us/j/86790754712>**

**Business Advisory Council**

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
2150 Webster Street, P. O. Box 12688, Oakland, CA 94604-2688

NOTICE OF MEETING AND AGENDA  
OFFICE OF CIVIL RIGHTS BUSINESS ADVISORY COUNCIL

Wednesday, August 17, 2022  
10:00 a.m. – 1:00 p.m.

A meeting of the Office of Civil Rights Business Advisory Council (BAC) will be held on Wednesday, August 17, 2022, from 10:00 a.m. to 1:00 p.m.

“Please note, pursuant to all necessary findings having been made by the Board of Directors of the San Francisco Bay Area Rapid Transit District (for itself as well as all subordinate legislative bodies) to continue remote public meetings in the manner contemplated under urgency legislation Assembly Bill No. 361, public participation for this meeting will be via teleconference only.”

Presentation materials will be available via Legistar at <https://bart.legistar.com>

You may join the BAC Meeting via Zoom by calling 833-548-0282 and entering access code 867 9075 4712; logging in to Zoom.com and entering access code 867 9075 4712; or typing the following Zoom link into your web browser: <https://us06web.zoom.us/j/86790754712>

If you wish to make a public comment:

- 1) Submit written comments via email to [jchacon@bart.gov](mailto:jchacon@bart.gov) using “public comment” as the subject line. Your comment will be provided to the BAC and will become a permanent part of the file. Please submit your comments as far in advance as possible. Emailed comments must be received before 12:00 p.m. on August 16, 2022 in order to be included in the record.
- 2) Call 833-548-0282, enter access code 867 9075 4712, dial \*9 to raise your hand when you wish to speak, and dial \*6 to unmute when you are requested to speak; log in to Zoom.com, enter access code 867 9075 4712, and use the raise hand feature; or join the BAC Meeting via the Zoom link (<https://us06web.zoom.us/j/86790754712>) and use the raise hand feature.

Public comment is limited to two (2) minutes per person.

**AGENDA**

1. Roll Call and Public Introductions

2. Approval of Meeting Minutes (For Action)  
a. June 15, 2022

**Attachments:**      [Approval of Meeting Minutes of the Meeting of June 15 2022 - Item 2](#)

3. BAC Recruitment Update (For Information)

Attachments: [BAC Recruitment Update - Item 3](#)

4. Good Faith Efforts (For Information)

Attachments: [Good Faith Efforts - Item 4](#)

5. Upcoming U.S. Supreme Court cases regarding affirmative action and relation to equity programs (For Information)

Attachments: [Upcoming U.S. Supreme Court Cases - Item 5](#)

6. Bylaw recommendations update (For Information)

7. General Discussion and Public Comment (an opportunity for members of the public to address the BAC on matters under their jurisdiction and not on the agenda) (For Information)

8. Future Agenda Items (For Information)

9. Adjournment

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address Committee matters. A request must be made within one and five days in advance of Board/Committee meetings, depending on the service requested. Please contact the Office of the District Secretary at (510) 464-6083 for information.

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
2150 Webster Street, P. O. Box 12688, Oakland, CA 94604-2688

**Business Advisory Council's Meeting Minutes**

Wednesday, June 15, 2022

10:00 a.m. – 1:00 p.m.

A regular meeting of the Office of Civil Rights Business Advisory Council was held on Wednesday, June 15, 2022, at 10:00 a.m., via Zoom videoconference.

**Members Present:** Cameryn Erickson, Carlos Solorzano, Sandra Escalante, Oscar Zavaleta, Darolyn Davis

**Absent Members:** Jesus Vargas, Lydia So, Gian Fiero, Philip Adams, Juliana Sommer

**Guests and Staff:** Maceo Wiggins, Johnny Kho, Crystal Matson, Thomas Le, Jotinesh Ram, John Mazza, Erin Hanigan, Ali Altaha

- Roll call and introductions from Business Advisory Council ("BAC") Members, District Staff and Guests.
- Approval of Meeting Minutes:
  - Meeting minutes for April 20 were not approved. No quorum present.
- 2022 BAC Recruitment Update (For Information)
  - Maceo Wiggins stated new members will be joining us in next BAC meeting. BAC has and will continue to foster a collaborative and ad hoc approach with the group.
- Core Capacity Project Presentation (For Information)
  - Johnny Kuo presented TCCCP goal of renewing aging system and increase future capacity by 30%, from 23 trains per hour to 30.
  - The project is made up of 4 major elements:
    - i. Communications-Based Train Control (CBTC)
    - ii. Hayward East Storage Yard
    - iii. 6 new traction power substations
    - iv. Purchase additional 306 vehicles
- Triennial Disadvantaged Business Enterprise Goal Update (For Information)
  - Maceo Wiggins provided an update to Triennial DBE goal due to FTA on August 1. Proposed goal is 23%, up from 16% after adjustments that include previous participation and consideration of rollover procurement contracts. Currently in the process of hosting and publicizing the Triennial DBE goal for comments.
  - Maceo mentioned previous FTA Semi-Annual achievement of 29% and attributed the success to the Analytics team, led by Joseph Towner, in building a robust

process to manage the inflow of data measuring various key performance indices in real time as part of a risk-based approach to contract management.

- Maceo shared ways the Office of Civil Rights can hold bidders and primes accountable to actively and aggressively meet goals or requirements. Maceo presented the idea of creating a Good Faith Effort (“GFE”) example exercise. BAC members will receive a sample GFE for review prior to the next meeting.
- BAC Bylaw update
  - Maceo presented the ongoing discussion of potentially modifying the member structure of BAC that included term limits on or permanent seats for designated communities. Possibly opening registration for all willing participants. Maceo will provide additional updates next meeting.
  - Carlos Solorzano proposed an extension of those who have completed their term on the BAC until new members are added.
- General Discussion and Public Comment (an opportunity for members of the public to address the BAC on matters under their jurisdiction and not on the agenda) (For Information)
  - Ali Altaha requested to open the BAC to general public and not restrict membership to certain groups. He discussed a caveat having community-based organizations (“CBO”) as members and raised concern regarding potential conflicts of interest because members could leverage positions in the BAC for advancing personal agendas. Ali also mentioned an LA agency abolished GFE on contracts. Ali presented information regarding fraudulent Disadvantaged Business Enterprises (“DBEs”) being awarded contracts in exchange for political contributions.
  - Sandra Escalante mentioned issues regarding GFEs where bidders are not taking the process seriously.
  - Maceo responded stating BART does not have GFE on non-federally funded contracts and all BAC members receive conflict of interest training. (Concurred by Legal – Crystal Matson). Maceo also mentioned BART has tools such as penalizing contractors for failing to show adequate proof of actively and aggressively meet goals.
- Future Agenda Items (For Information)
  - Reproductive rights – start having deeper discussion if the supreme court take certain action.
  - Race and gender participation in the achieving the DBE goals. Describing FTA goal setting process.
  - Update of demographics on quarterly basis.
- Adjournment
  - Cameryn – motion to close
  - Darolyn – second the motion

**The Council Meeting adjourned at 11:33 a.m. – Next Meeting August 17, 2022.**

**THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
2150 Webster Street, P. O. Box 12688, Oakland, CA 94604-2688

**AGENDA OF OFFICE OF CIVIL RIGHTS BUSINESS ADVISORY COUNCIL**

**2022 Meeting Schedule**

The Business Advisory Council will meet on the following dates in The San Francisco Bay Area Rapid Transit District - in the BART Board Room, 2150 Webster Street, Oakland, California 94612, unless noted otherwise.

DATE	TIME	LOCATION
<del>February 23</del>	<del>10:00am – 1:00pm</del>	<del>Via Zoom</del>
<del>April 20</del>	<del>10:00am – 1:00pm</del>	<del>Via Zoom</del>
<del>June 15</del>	<del>10:00am – 1:00pm</del>	<del>Via Zoom</del>
August 17	10:00am – 1:00pm	Via Zoom
October 19	10:00am – 1:00pm	Via Zoom
December 21	10:00am – 1:00pm	Via Zoom

# Business Advisory Council

August 17, 2022

# Recruitment Update

2022-24 Term



# Introductions – Special Guests

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Danelle Tucker    Fighting Back Partnership, Inc.

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Debra Roak    CRA Consultancy Group

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Emanuel Hyppolite    Hollins Consulting Group

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Erin Hanigan    East Bay Municipal Engineers  
Anchor Engineering Inc.

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Ethan Hartsell    JMA Civil, Inc.

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Leo Scott    Gray-Bowen-Scott

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Mahsa Azad    Azad Engineering PC

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Paola Santana    Social Glass Inc.

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Que Alicea    Q&A Consulting LLC

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Shaune Gbana    Glaziers Local 169  
All Bay Area Glass

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# Current Roster

FIRST NAME	LAST NAME	Organization	Term Start	Term End Date
Lydia	So	Asian American Architects and Engineers	Aug-20	Oct-22
Gian	Fierro	Acumen	Aug-20	Oct-22
Darolyn	Davis	Davis Communications	Aug-20	Oct-22
Oscar	Zavaleta	Oakland Latino Chamber of Commerce	Aug-20	Oct-22
Cameryn	Erickson	Filipino Architects, Contractors and Engineers	Aug-20	Oct-22
Phillip	Adams	PH Adams & Associates	Aug-17	Aug-21
Sandra	Escalante	Golden Gate Business Association	Aug-17	Aug-21
Juliana	Sommer	Asian American Contractors Association	Aug-17	Aug-21
Jesus	Vargas	COMTO	Aug-17	Aug-21
Carlos	Solorzano	SF Hispanic Chamber of Commerce	Aug-17	Aug-21

# Substitutions and Good Faith Efforts

By: Fernando Flores  
Contract Compliance Unit

# SUBSTITUTIONS

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Primes are expected to subcontract the work to Subcontractors and Suppliers as listed in the Bid.

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Additions, deletions, or substitutions of DBE/SBE, SB/LSB are approved by the Resident Engineer (RE) which confers to OCR.

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Must follow California Public Contract Code Section 4107.

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Substitution of DBEs/SBEs, SBs/LSBs and other Subcontractors or Suppliers must be approved by OCR. A DBE/SBE, SB/LSB must be substituted for another DBE/SBE, SB/LSB or demonstrate good faith efforts (GFE).

# SUBSTITUTIONS

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On Federal and Non-Federal Contracts, the Prime may neither perform the work nor subcontract the work of the DBE/SBE, SB/LSB until BART has approved the substitution.

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DBEs/SBEs, SBs/LSBs who are requested to be substituted shall be afforded a substitution hearing if so desired.

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The Prime shall provide completed DBE/SBE, SB/LSB certification documentation for each new DBE/SBE, SB/LSB , respectively.

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**The District may not pay for the performance of the scope of work of a listed DBE/SBE, SB/LSB Subcontractor that is performed by a firm other than the listed Subcontractor unless the substitution is approved by the District.**

# Examples of Good Cause

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The listed DBE/SBE, SB/LSB subcontractor fails or refuses to execute a written contract;

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The listed DBE/SBE, SB/LSB subcontractor fails or refuses to perform the work of its subcontract

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The listed DBE/SBE, SB/LSB subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal

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The listed DBE/SBE, SB/LSB is ineligible to receive DBE/SBE, SB/LSB credit for the type of work required

You can find more good causes on 49 CFR 26.53(f)(3)

# GFE and Substitutions: Substitute with another DBE/SBE, SB/LSB

Prime requests  
to substitute a  
DBE/SBE, SB/LSB

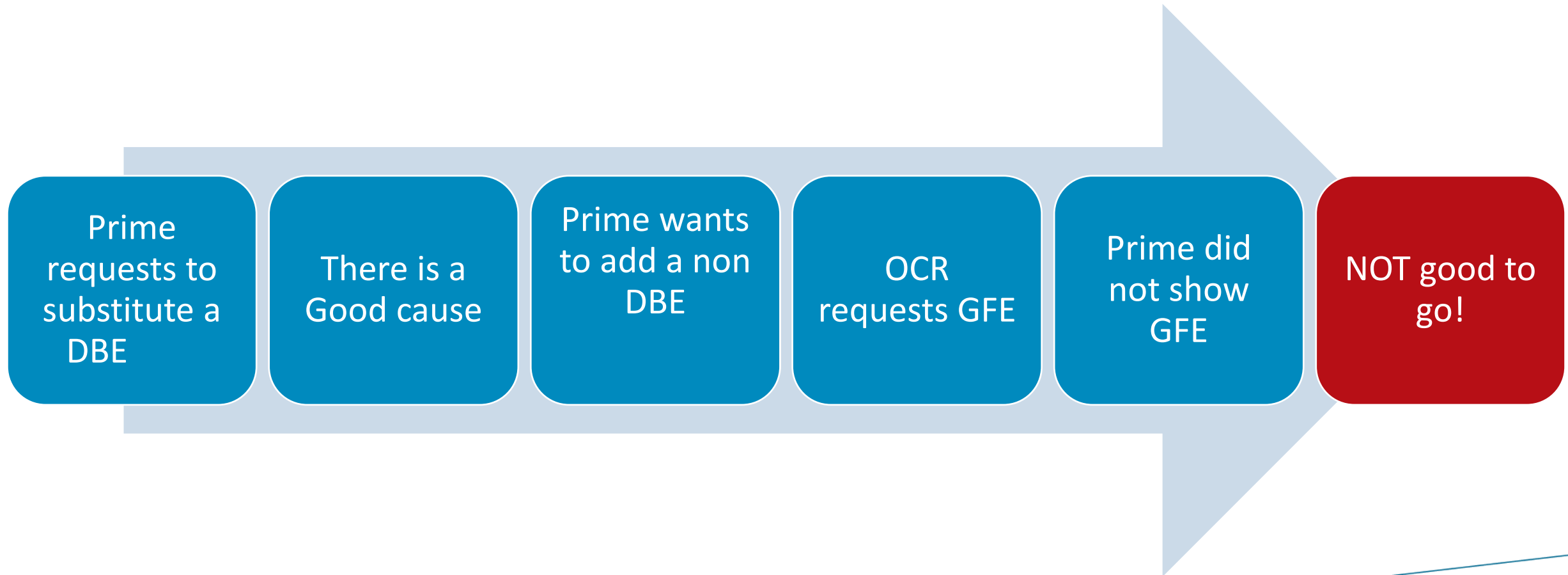
Is there a good  
cause?

Prime wants to  
use another  
DBE/SBE, SB/LSB

No need for GFE

Good to go!

# GFE and Substitutions: Substitute with non-DBE





# Examples of Insufficient GFE

Failure to Advertise to DBE/SBE, SB/LSB Emails

- Letters
- Phone calls

Failure to Offer assistance with regard to bonding requirements and insurance requirements

Failure to make plans and specifications available to DBE/SBE, SB/LSB

Failure to Follow up on solicitations

# Upcoming U.S. Supreme Court Cases

Race-Conscious Admissions

# Race-Conscious Admissions

- *Students for Fair Admissions v Harvard College*
- *Students for Fair Admissions v University of North Carolina*
- Oral Arguments scheduled for Oct 31, 2022.
- Argument to overrule *Grutter v Bollinger, 2003* which allowed for race-conscious admissions.
- Ruling expected in Spring 2023. Could lead to other race-conscious programs being impacted, such as FTA's DBE program.

