

46136

April 14, 2015

TO: Board of Acquisition and Contract

FROM: Jay T. Pisco, P.E.  
Commissioner of Public Works and Transportation

RE: Authority to enter into a Conciliation Agreement with the Federal Transit Administration which sets forth the measures that Westchester County, acting by and through its Department of Public Works and Transportation, must take in order to comply with the U.S. Department of Transportation's Disadvantaged Business Enterprise Regulations and continue to remain eligible to receive federal transit grants, loans and/or contracts. (Agreement No. DOTFTA01)

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Authority of your Honorable Board is requested to authorize the County of Westchester ("County"), acting by and through its Department of Public Works and Transportation ("Department") to enter into a Conciliation Agreement with the Federal Transit Administration ("FTA") which sets forth the measures that the Department must take to ensure compliance with the U.S. Department of Transportation's ("DOT") Disadvantaged Business Enterprise ("DBE") regulation at 49 C.F.R. Part 26 ("DBE Regulations"). The agreement will commence upon full execution thereof.

The County is the recipient of one or more federal grants, loans, and/or contracts that exceed \$250,000.00, and must therefore comply with the DOT's DBE Regulations. On January 13, 2015, the FTA issued a notice of reasonable cause to find the County in non-compliance with the DBE Regulations and afforded the County thirty (30) days to rebut the preliminary findings. In response, the County submitted a summary of its recent DBE program and the measures it has taken to address FTA's concerns and requested conciliation. FTA has accepted the County's request for conciliation. Should the County accept the terms of this Conciliation Agreement, this matter will be regarded as closed, the County will be deemed in compliance, and the Department will maintain its eligibility to receive Federal funds. If the County does not sign the Conciliation Agreement, the County will receive an official notice of non-compliance and FTA will begin enforcement proceedings in accordance with 49 C.F.R. 26.103(d)(4).

The public purpose of this agreement is to ensure non-discrimination in the award and administration of DOT assisted contracts.

The goals and objectives of this agreement are to create a level playing field on which DBE's can fairly compete for DOT assisted contracts and to ensure that the County remains eligible to receive Federal funds.

This program will be tracked and monitored by the FTA and the Department through quarterly reports which the County must send to the FTA outlining specific performance measures that must be accomplished and reported to the FTA by specific dates set forth in the Conciliation Agreement.

This agreement is exempt from the Westchester County Procurement Policy pursuant to Section 3(a)iii.

Wherefore, authority is respectfully sought for the County of Westchester to enter into this agreement.

# RESOLUTION

Upon a communication from the Commissioner of Public Works and Transportation, be it hereby

**RESOLVED**, that approval is hereby granted for the County of Westchester (“County”), acting by and through its Department of Public Works and Transportation (“Department”), to enter into a Conciliation Agreement with the Federal Transit Administration (“FTA”) which sets forth the measures that the Department must take to ensure compliance with the U.S. Department of Transportation’s (“DOT”) Disadvantaged Business Enterprise (“DBE”) regulation at 49 C.F.R. Part 26 (“DBE Regulations”) in a form materially similar to the draft agreement attached hereto as Exhibit A. The agreement will commence upon full execution thereof, and be it further

**RESOLVED**, that the County Executive or his authorized designee is authorized and empowered to execute and deliver all instruments and take all actions necessary or appropriate to effectuate the purposes hereof.

Agreement No. DCFTA01

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	N/A		N/A			N/A

Budget Funding Year(s):     N/A     Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_  
(must match resolution)

Funding Source: Tax Dollars \_\_\_\_\_

State Aid \_\_\_\_\_

    \$ N/A     Federal Aid \_\_\_\_\_  
(must match resolution)

Other \_\_\_\_\_

**EXHIBIT "A"**

**Westchester Conciliation Agreement**

The following sets forth the terms of Westchester's conciliation agreement with FTA. Westchester is required to submit the following information in a quarterly report to FTA. The First Quarter outlines specific performance measures that must be accomplished and reported to FTA by July 15, 2015. The Second and Third Quarters are FTA's efforts to monitor your implementation of this agreement and must also be reported in the manner prescribed below.

The First Quarter Report (April 1, 2015 – June 30, 2015) is due to FTA no later than July 15, 2015 and must include the following:

1. Develop a business development program (BDP) to foster DBE participation on FTA-assisted contracts. Your quarterly report must include a detailed description of the BDP and a timeline for implementing the BDP. (See attached sample BDP plan).
2. Review areas of work that have not traditionally included contract goals and establish mechanisms to implement goals on these projects. Your quarterly submission should include a process for regularly evaluating race-neutral and race-conscious measures; and the methods used to determine which projects will include contract goal.
3. Develop a mechanism for unbundling contracts to create additional opportunities for DBE firms to participate on FTA-assisted projects. Your quarterly report must include process for determining when unbundling projects is most appropriate.
4. Develop a process for determining relevant/appropriate outreach sessions. Your quarterly report must include a written process to determine appropriate outreach sessions for the small business community within your geographic market area; and, a schedule of outreach sessions you will hold in this quarter.
5. Develop a process to identify future FTA-assisted contracting opportunities (i.e., in fiscal years 2016-2018). Your quarterly report must include a written process to proactively identify FTA-assisted contracting opportunities for goal setting purposes as well as DBE participation. This process may include regular meetings with your procurement office, CEO, etc.
6. Identify the geographic area where you awarded a substantial majority of your FTA-assisted contract in FY2012-2014. Your quarterly report should identify the geographic market area and explain the process used to determine this area.
7. Establish formal and informal partnerships with small business advocacy organizations and general business groups to promote DBE objectives. Your quarterly report must include a list of all partnerships and a description of the meetings held with these partners throughout this quarter.

The Second Quarter Report (July 1, 2015 – September 30, 2015) is due to FTA no later than October 15, 2015 and must include the following:

1. Submit a list of projects that included a contract goal in FY2012-2014 and a list of projects you have or anticipate, including contract goals in this quarter and throughout FY2016-2018.
2. Submit a list of projects to be unbundled in this quarter and throughout FY2016-2018.
3. Submit a schedule of outreach sessions you will hold in the second and third quarter as well as throughout FY2015-2016.

The Third Quarter Report (October 1, 2015 – December 31, 2015) is due to FTA no later than January 15, 2016 and must include the following:

1. Submit the finalized business development plan, along with a list of active participants and a summary of the impact it has had on your DBE program.
2. As of December 31<sup>st</sup>, provide the number of small business set asides implemented, the dollar amount of each project, and the number of DBEs that participated on those projects.
3. As of December 31<sup>st</sup>, provide the number of contracts unbundled and the number of DBE participants.
4. Report the results of outreach events conducted during the fiscal year, along with the number of DBE participants, the number of potential DBEs and small businesses seeking certification, and the number of potential DBEs that are now receiving work from Westchester.
5. Report on the number of anticipated contract goals and corresponding percentages of DBE participation.

As per FTA's letter of March 26, 2015, if Westchester fails to adequately carry out the terms of this conciliation agreement, the agency will be considered in non-compliance with the DBE requirements.

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**County Executive**  
**Westchester County Bee-Line System**

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**Date**

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/21/2015 - JOMARY VIEIRA, SECRETARY