

## 59209

DATE: October 2, 2017

TO: Board of Acquisition and Contract

FROM: Sherlita Amler, M.D.  
Commissioner of Health

RE: Authority to enter into five (5) agreements that were procured on an accelerated basis, in accordance with Section 10 of the Procurement Policy.

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By a resolution approved on July 13, 2017, your Honorable Board authorized the County of Westchester (the “County”) to, among other things, enter into the following five (5) agreements (collectively, the “Five Agreements”) with TLC Transportation Corp. of Westchester (“TLC”) for transportation:

<u>Contract No.</u>	<u>Program(s)</u>
WCDH E/T 529	Guidance Center, New Rochelle
WCDH E/T 530	JCC of Mid-Westchester Nursery School/Toward Tomorrow, Scarsdale
WCDH E/T 532	Los Ninos Services, Valhalla
WCDH E/T 535	Westchester County Chapter NYSARC/CSED program locations in: Crompond, Ossining, Peekskill, Sleepy Hollow, and Tarrytown
WCDH E/T 536	Westchester County Chapter NYSARC/CSED program locations in: Hawthorne, Tuckahoe, and White Plains

Under each of the Five Agreements, TLC has repeatedly defaulted in its performance. TLC has received repeated communications from the County regarding the defaults, including both day-to-day communications in the course of business operations and a formal notice regarding possible termination for-cause that the County prepared and delivered to TLC pursuant to the terms of each of the Five Agreements. Despite those extensive communications and efforts by the County, TLC has failed to cure its defaults or satisfactorily commence to correct the defaults and diligently pursue all necessary and appropriate action to effect such cure of the defaults. TLC has continued to regularly default in many of the same terms, conditions, or covenants of each of the Five Agreements.

As Section 4410 of the New York State Education Law, and its implementing regulations in 8 NYCRR Part 200, and by Title IIA, Article 25 of the New York State Public Health Law, mandate payment for education and transportation of children with special needs, the County has an urgent, daily, continuing need for the transportation services presently provided under each of the Five Agreements. Accordingly, the County cannot terminate the Five Agreements until it has procured and executed a replacement agreement for each one.

Based upon the nature of TLC's defaults under each of the Five Agreements, including regularly failing to provide bus service to numerous children, being very late in picking up and dropping off children, buses that speed with children on them, failure to properly notify families, programs and the County, buses that have children on them for periods far exceeding the expected length of time, and children missing many of their mandated Early Intervention services and mandated preschool special education and related services, the County believes that relying upon TLC for these transportation services for the length of time required to perform a fully-competitive procurement would affect or endanger the health, safety, and/or well-being of the children with special needs who are being transported. Therefore, the County performed an accelerated procurement for the replacement agreements for the Five Agreements, in accordance with Section 10 of the Procurement Policy.

The County surveyed four (4) prospective replacement bus operators for the services that are currently being provided under the Five Agreements. As noted in the attached documentation, each of the bus operators surveyed informed the County that it was primarily interested in procuring a contract for the entire remaining term of each of the Five Agreements. However, each bus operator came to be willing to consider providing the services only through the end of this school year, which will be August 31, 2018.

Ultimately, only three (3) of the surveyed prospective replacement bus operators indicated any interest in any entering into a replacement contract for any of the Five Agreements. Based upon the need to obtain reliable, replacement transportation services for the children with special needs in the programs served by each of the Five Agreements, the County respectfully requests authority from your Honorable Board to enter into the following agreements, each of which shall be for a term commencing on October 16, 2017 and continuing through August 31, 2018, with the respective bus operators specified below, for the respective not-to-exceed amounts specified below, pursuant to each of which the specified bus operator shall provide transportation of children with special needs for the specific program(s) specified below:

<b>Contract Number</b>	<b>Program(s)</b>	<b>Bus Operator</b>	<b>Not-To-Exceed Amount</b>
WCDH E/T 540	Guidance Center, New Rochelle	Astra Transportation Corp.	\$488,880.00
WCDH E/T 541	JCC of Mid-Westchester Nursery School/Toward Tomorrow, Scarsdale	Phoenix Transportation Services Inc.	\$534,600.00

WCDH E/T 542	Los Ninos Services, Valhalla	All County Bus, LLC	\$1,155,000.00
WCDH E/T 543	Westchester County Chapter NYSARC/CSED program locations in: Crompond, Ossining, Peekskill, Sleepy Hollow and Tarrytown	Phoenix Transportation Services Inc.	\$1,393,200.00
WCDH E/T 544	Westchester County Chapter NYSARC/CSED program locations in: Hawthorne and Tuckahoe	Phoenix Transportation Services Inc.	\$714,600.00

After the award and execution of contract WCDH E/T 536, the Department of Health was notified by Westchester County Chapter NYSARC/CSED that its White Plains program had closed, and that transportation to this location is, therefore, no longer necessary. Accordingly, the County has omitted the White Plains program location from the proposed contract WCDH E/T 544, which is otherwise intended as the replacement for WCDH E/T 536.

The Replacement Agreements will serve a public purpose by providing safe transportation for children with special needs in Westchester County, to the special needs programs in which they daily participate.

The goal and objective of the Replacement Agreements is to provide safe transportation for children with special needs in Westchester County, to the special needs programs in which they daily participate.

The goal and objective of the Replacement Agreements is in the best interests of the County in terms of public health and safety, as providing safe transportation for children with special needs in Westchester County, to the special needs programs in which they daily participate, will allow these children to receive appropriate services in accordance with their respective approved Individualized Education Plan (“IEP”) or Individualized Family Service Plan (“IFSP”), and do so in the child’s least restrictive setting/natural setting.

The goal and objective of the Replacement Agreements will be tracked and monitored by the staff of WCDH, including through County pre-approval on all bus routes prior to implementation, random County inspections to ensure vehicle safety and staff compliance with applicable requirements and policies, and reviews of monthly billing to ensure the accuracy of submitted documentation.

I respectfully recommend the adoption of the attached resolution.

SA/RR/bdm/nn  
Attachment

**RESOLUTION**

Upon communication from the Commissioner of Health, it is hereby

**RESOLVED**, that the County of Westchester (the “County”) is hereby authorized to enter into the following agreements, each of which shall be for a term commencing on October 16, 2017 and continuing through August 31, 2018, with the respective bus operators specified below, for the respective not-to-exceed amounts specified below, pursuant to each of which the specified bus operator shall provide transportation of children with special needs for the specific program(s) specified below:

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; and be it further

**RESOLVED**, that each agreement is subject to County appropriations; and be it further

**RESOLVED**, that each agreement is also subject to further financial analysis of the impact of any New York State Budget (the “State Budget”) proposed and adopted during the term of each agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate any or all of the agreements or to renegotiate the amounts and rates approved herein for any or all of the agreements. If the County subsequently offers to pay a reduced amount to the contractor for one or more of the agreements, then the contractor for each such agreement shall have the right to terminate such agreement upon reasonable prior written notice; and be it further

**RESOLVED**, that the County Executive or his duly authorized designee is hereby authorized to execute any documents and take any actions reasonably necessary and appropriate to effectuate the purposes of this Resolution.

Department of Health  
 County of Westchester  
 145 Huguenot Street, 8<sup>th</sup> Floor  
 New Rochelle, New York 10801  
 October 2, 2017

Budget Year	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
2017	101	27	2700	4539		\$898,078
2017	101	27	2700	4541		\$122,465
2018	101	27	2700	4539		\$2,873,849
2018	101	27	2700	4541		\$391,888

Budget Funding Year(s): 2017-2018      Start Date: 10/16/17      End Date: 08/31/18  
 (must match resolution)

Funding Source  
\$4,286,280.00  
 (must match resolution)

Tax Dollars: \$2,186,002.80  
 State Aid: \$2,100,277.20  
 Federal Aid: \_\_\_\_\_  
 Other: \_\_\_\_\_

APPROVED BOARD OF ACQUISITION & CONTRACT - 10/05/2017 - LISA MRIJAJ, SECRETARY