

# FTA

F E D E R A L T R A N S I T A D M I N I S T R A T I O N

Westchester County Department of Transportation  
DBE Compliance Review  
Final Report  
March 2016  
Federal Transit Administration



U.S. Department of Transportation  
Federal Transit Administration

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## **Attachments**

- A FTA Notification Letter to Westchester County Department of Transportation (WCDOT)
- B WCDOT Response to Draft Report
- C WCDOT DBE Program Plan
- D FTA-Westchester County DBE Conciliation Agreement

## Executive Summary

### Objective and Methodology

This report reviews Westchester County Department of Transportation's<sup>1</sup> (WCDOT's) Disadvantaged Business Enterprise (DBE) program. It examines WCDOT's DBE program procedures, management structure, actions, and documentation.

On behalf of FTA's Office of Civil Rights, the Collaborative, Inc. of Boston, Massachusetts, conducted the review in three stages:

1. Preparation: compilation of information covering policies, procedures and reported data
2. Site visit: a three-person review team's observation of WCDOT's DBE program
3. Analysis and reporting: identification of deficiencies requiring corrective actions and suggestions for effective practices in DBE programs

WCDOT's DBE program includes the following positive program elements:

#### Positive Program Elements

- WCDOT representatives are cooperative and forthcoming and indicate a willingness to implement a comprehensive DBE program despite having lost a number of employees with years of DBE experience to early retirement.
- The government of Westchester County demonstrates a commitment to conduct business with minority- and women-owned companies, and has a good public reputation for doing so.
- WCDOT includes appropriate clauses in its contracts to ensure DBE subcontractors are paid promptly.

WCDOT's DBE program has the following administrative deficiencies:

#### Administrative Deficiencies

- WCDOT's DBE financial institutions list is not updated annually and does not promote the use of these institutions.
- WCDOT does not maintain its published DBE goals or its DBE Policy Statement on the County website.
- WCDOT's DBE Program Plan organization chart does not properly illustrate the relationship of the DBE Liaison Officer (DBELO) with the employee responsible for daily DBE program implementation.

WCDOT's DBE program has the following substantive deficiencies:

#### Substantive Deficiencies

- WCDOT's current capacity to oversee and implement DBE program requirements is constrained due to recent staffing reductions; this limits the capacity to formulate, advertise, award, implement, and monitor FTA-funded contracts
- For several years, WCDOT fell short of its goal for identifying specific opportunities for DBE contractors.
- While WCDOT uses FTA funds to support transit operations, it excludes the Preventive Maintenance (PM) portion of these funds from its DBE goal calculations.

<sup>1</sup> WCDOT is now Westchester Department of Public Works and Transportation

In 2009, WCDOT established a 3.48 percent DBE goal for Fiscal Year (FY) 2010, and, because of FTA rule changes, retained the same goal for FY 2011, when the actual DBE participation rate was only 2.76 percent. In FY 2012 and FY 2013, the DBE participation rate dropped to zero. In its FY 2011 DBE Shortfall Analysis, WCDOT reported that the number and type of projects in 2011 were different from those planned for implementation that year. WCDOT identified a number of contributing factors:

- Too few activities were planned to meet the FY 2012 DBE goal.
- Too few FTA-funded projects were scheduled in 2014 and 2015.
- WCDOT substantially reduced staff capacity after many employees accepted buy-outs and early retirements in 2014.

See Section 4.3 for a discussion of the Conciliation Agreement between WCDOT and FTA regarding WCDOT's DBE program.

This report highlights several steps to help WCDOT implement its DBE program in good faith.

## 1 General Information

This section provides basic information concerning this compliance review of the Westchester Department of Transportation. Information on the grantee, the review team, and the dates of the review are presented below.

Grant Recipient:	Westchester County Department of Transportation (WCDOT)*
City/State:	Mount Vernon, New York
Grantee Number:	1803
Executive Official:	Robert P. Astorino
On-site Liaison:	George Oros
Report Prepared By:	The Collaborative, Inc., Boston, MA
Dates of Site Visit:	August 4–6, 2015
Review Team Members:	Shakira Abdul-Ali, Z. Wayne Johnson, Ian Kolesinskas

\*WCDOT is now the Department of Public Works and Transportation

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## 2 Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and sub recipients with Section 13 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

WCDOT is the recipient of one or more Federal transit grants, loans, and/or contracts that exceed \$250,000. WCDOT is therefore subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use FTA financial assistance pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in WCDOT’s DBE program and were the basis for this compliance review.

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## 3 Purpose and Objectives

This section discusses the purpose and objectives of FTA's DBE compliance reviews and the review process.

### 3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26.

The primary purpose of the compliance review is to determine the extent WCDOT has implemented 49 CFR Part 26 as represented in its DBE Program Plan. The compliance review is intended to be a fact-finding process to: (1) assess WCDOT's DBE Program Plan and its implementation, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

The compliance review is not solely designed to investigate whether there has been discrimination against disadvantaged businesses by WCDOT or its subrecipients or to adjudicate these issues in behalf of any party.

### 3.2 Objectives

The objectives of DOT's DBE regulations, as specified in 49 CFR Part 26, are to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Promote the use of DBEs on all types of Federally assisted contracts and procurement activities conducted by recipients.
- Assist with the development of firms that can compete successfully in the marketplace outside the DBE program.
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The objectives of this compliance review are to:

- Determine whether WCDOT is honoring its commitment to comply with 49 CFR Part 26.
- Examine the required components of WCDOT's DBE Program Plan against the compliance standards set forth in the regulations, DOT guidance, and FTA policies, and document the compliance status of each component.
- Gather information and data regarding the operation of WCDOT's DBE Program Plan from a variety of sources, including DBE program managers, other WCDOT management personnel, DBEs, prime contractors, and stakeholders as appropriate.

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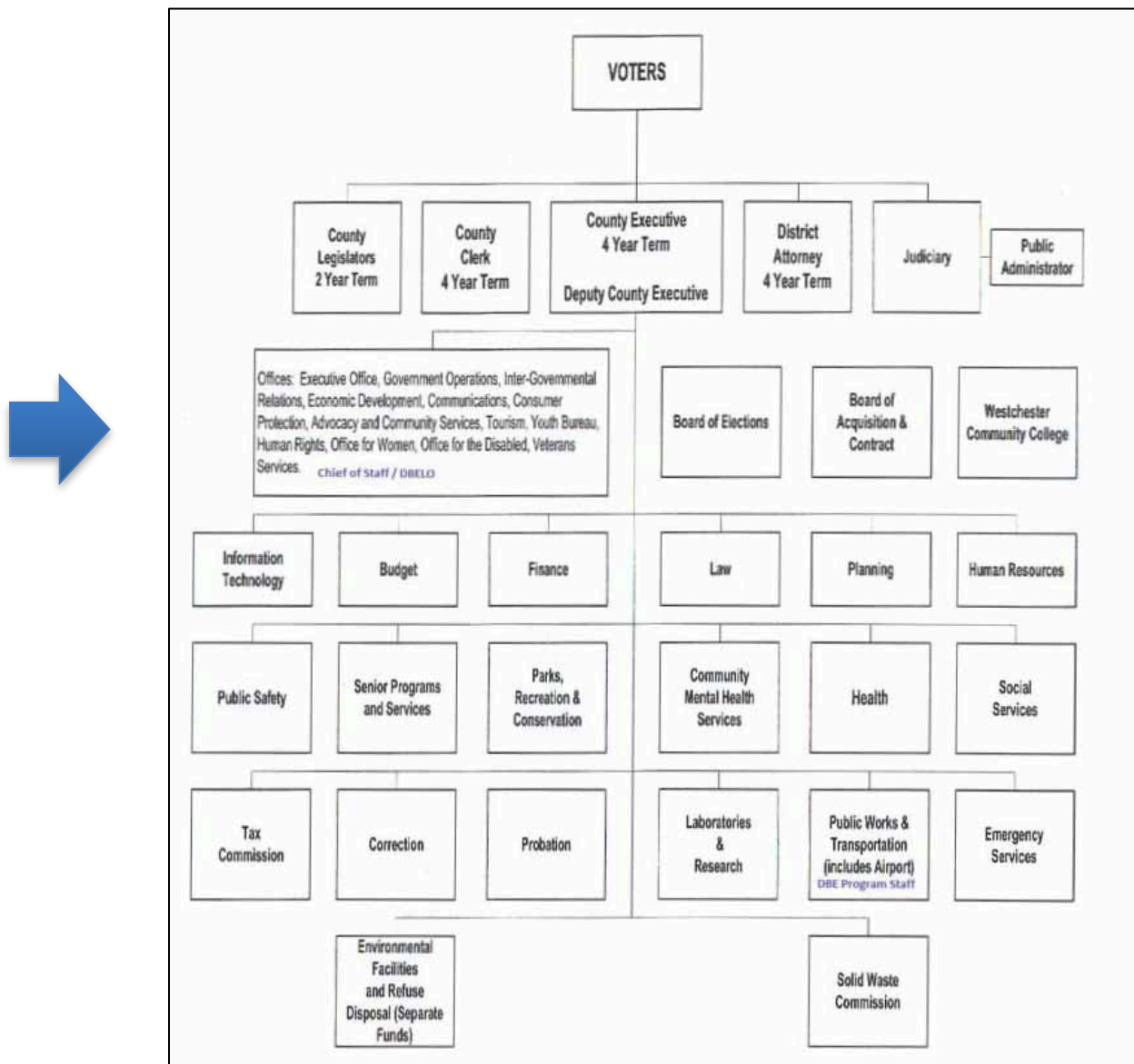
## 4 Background Information

The purpose of this section is to provide an understanding of WCDOT’s operations and scale. The section highlights WCDOT’s services, budget, and the history of its DBE program.

### 4.1 Introduction to WCDOT and Organizational Structure

Westchester County is comprised of 45 municipalities located across a 450-square mile area just north of New York City and Long Island Sound. In 2012, the population was estimated at 961,670 residents. First elected in November 2009, Mr. Robert P. Astorino is County Executive and chief executive officer.

Now a part of the Westchester County Department of Public Works and Transportation, WCDOT delivers public services to the residents and institutions located in the county. (See organization chart.)



Westchester County Organization Chart

The County has a budgeted workforce of approximately 4,860 with 240 positions in the combined Public Works and Transportation department. Approximately 220 positions are in Public Works, while the rest are in Transportation, as described below.

Mr. Astorino ran for County Executive pledging to not raise property taxes. This commitment, along with an unanticipated decline in tax revenues from gasoline sales, negatively affected the County budget. In 2015, with an anticipated \$56 million 2016 budget shortfall, the County offered retirement buyout incentives to its employees. The County projected that 70 employees would accept the buyout offer, but instead 162 employees took advantage of it. Board of Legislators Chair Michael Kaplowitz publicly stated, “The unfortunate correlation to the staffing reductions is the loss of many longtime employees who take with them immeasurable expertise and institutional knowledge.”

The early retirements affected WCDOT and its ability to properly implement its DBE program. Before the buyout, Ms. Patricia Chemka, Deputy Commissioner for the Department of Transportation, oversaw DBE activities. Ms. Chemka was very knowledgeable about DBE programming, goal setting, and managing projects with DBE participation requirements. With her retirement and other staff departures, Mr. Michael Swee, Transportation Project Coordinator and DBE Program Coordinator, is solely responsible for daily implementation of DBE program activities. (See Section 4.3.)

WCDOT manages the Westchester County Airport with a private sector management contract, utilizing FAA funding. WCDOT’s FTA funding is applied primarily to the County’s bus transportation services, including the countywide Bee-Line Bus fixed route system as well as complementary paratransit service. WCDOT rounds out local transportation services via operation of a specialized transit system for the County Department of Social Services.

Bee-Line Bus is an outgrowth of a network of private bus companies that operated from the 1950s through the mid-1970s. In 1978, following the New York State Transportation Operating Assistance initiative, Westchester County formed the Westchester Transit Department, which created the route network, schedules, and fares to meet the County’s needs, and qualify for Federal and state funds. Since the program’s inception, the County has contracted with private bus operators. Current contractors are Liberty Lines, Inc., PTLA Enterprise, Inc., and Port Chester-Rye Transit, Inc.

Based on 2013 data, Bee-Line’s 329-bus fleet operates on 59 routes with annual ridership of 32.4 million and average daily ridership of 107,000. The fleet consists of 78 60-foot articulated buses, 203 40-foot buses, 21 30-foot buses, and 27 commuter coaches. Bee-Line’s complementary paratransit program uses 89 vehicles, serves approximately 5,000 customers, and provides approximately 900 trips per day.

Bee-Line also connects to the New York City Transit system, to Putnam and Rockland County transit services, to Short Line’s Orange-Westchester Link (OWL), and to Connecticut Transit’s I-Bus. (See system map.)



Bee-Line System Map

## 4.2 Budget and FTA-Assisted Projects

WCDOT's budget comprises local, state, and Federal funds, as well as revenue from fares and other sources. In 2014, WCDOT's budget included \$115 million to operate the Bee-Line system, supported by anticipated farebox revenue of \$49 million, representing a farebox recovery ratio of 30–35 percent. Remaining revenues derive from the County tax levy, as well as state and Federal funds. WCDOT has not received Federal stimulus money from the American Recovery and Reinvestment Act.

Table 4-1 presents a breakdown of budgets for FY 2011–FY 2013, as well as FTA-funded projects during that timeframe. As shown, most of the FTA-funded projects in FY 2012–FY 2013 were for preventive maintenance (PM).<sup>2</sup> WCDOT has awarded three contracts for the current FY:

- Consultant services for procurement of articulated buses for \$119,644 (6.7% DBE participation)
- Rebuild of 30-foot buses for \$11.9M (1.7% DBE participation)
- Route 7 & 13 transit analysis for \$95,209 (DBE participation 10.1 percent)

<sup>2</sup> See Section 6.8 for a discussion regarding WCDOT's use of PM funds for meeting DBE participation goals.

**Table 4-1 – Westchester County DOT Budgets and FTA-Funded Projects**

Fiscal Year	Budgets		FTA-funded Projects	
	Federal & Local Budget Amounts		FTA Projects	
FY 2011	Federal	\$712,500	In-ground & portable lifts	\$755,000
	Local	\$178,125	Garage Rehabilitation	\$200,000
	Total	\$890,625		
FY 2012	Federal & Local Budget Amounts		FTA Projects	
	Federal	\$14,741,104	Preventive Maintenance (PM)	\$13,531,504
	Local	\$3,685,276	Planning Studies	\$200,000
	Total	\$18,426,380	Project Administration	\$800,000
			Maintenance & Supervision	\$209,600
FY 2013	Federal & Local Budget Amounts		FTA Projects	
	Federal	\$11,890,773	Preventive Maintenance (PM)	\$11,890,773
	Local	\$2,972,693		
	Total	\$14,863,466		

### 4.3 DBE Program

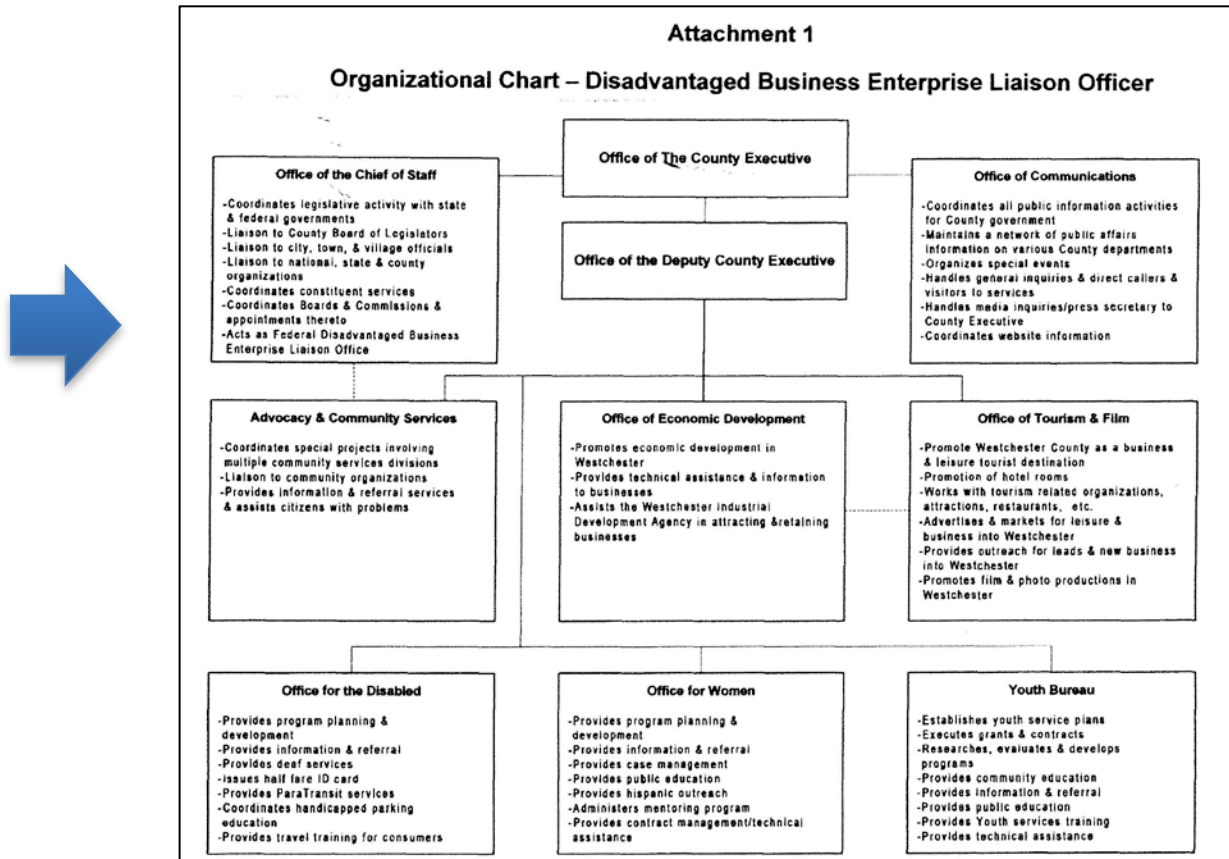
Mr. George Oros, Chief of Staff to County Executive Astorino, is WCDOT's designated DBE Liaison Officer (DBELO) responsible for monitoring and enforcing DBE compliance. Mr. Oros has regular and direct access to Mr. Astorino. While Mr. Oros serves as DBELO (see DBELO chart), Mr. Michael Swee, Transportation Project Coordinator and DBE Program Coordinator, is responsible for daily implementation of DBE program activities. See discussion in Section 6.1 regarding the organizational relationship between the DBELO and Mr. Swee.

Mr. Oros also serves as an advisor to the County Executive with responsibility for legislative and political relationships, as well as coordination with external stakeholders throughout the County. He provides oversight for all constituent and community services, as well as for various advisory boards and non-profit community groups. He is responsible for all emails, mail, phone inquiries and other incoming communications to the office of the County Executive.

As liaison to the Board of Legislators as well as to local governments, Mr. Oros maintains dialogue with high-level external stakeholders, meeting periodically with political leaders around the region. He also advocates on the County's behalf to the State of New York and the Federal government. It is from this vantage point that Mr. Oros oversees the DBE Program – as a spokesman for the County Executive to the DBE community, and to state and Federal agencies. As DBELO, Mr. Oros meets regularly with Mr. Swee regarding contract opportunities, goals, and compliance issues.

Mr. Oros also has executive authority over the County's Minority and Women Business Enterprise (MWBE) Program, housed within the County Office of Economic Development. The MWBE program has one half- and three full-time employees and offers a robust menu of activities to encourage the participation of minority- and women-owned firms on County contracts and purchase orders.





DBELO Organization Chart from DBE Program Plan

### DBE Program Staffing

At the time of the site visit, in addition to his other duties, Mr. Swee was the sole WCDOT employee responsible for WCDOT's DBE program. According to his job description, he is responsible for:

Supervising and participating in the capital procurement, contract, and grants management processes for the Bee Line Bus System and the Westchester County Airport. Responsibilities involve ensuring regulatory compliance with all Federal and New York State Department of Transportation laws, rules and regulations and maintaining substantive liaison with the Federal, state and local transportation and aviation agencies...

As discussed earlier in this section, the recent departure of 162 County employees included employees with long-time DBE experience. Beyond Mr. Swee, there are few remaining staff members with knowledge regarding DBE program requirements for procurement (contracts/purchase orders), finance (invoices and contract payments), or legal (contracts compliance). WCDOT's staffing issues limit the County's ability to meet its DBE program obligations, as discussed throughout Section 6.

### DBE Program Activities

WCDOT's DBE program is relatively small. It uses FTA funding to purchase buses and some equipment as well as facility construction, and occasionally contracts for professional services. In 2012, WCDOT submitted a 3.48 percent DBE goal to FTA based on a projection of \$14 million for 11 FTA-funded projects in FY 2013. However, major budget cuts led to WCDOT only contracting three small projects that year and planning very few projects for FY 2014 and FY 2015.

Most of the \$14 million in FTA funds was allocated to Bee-Line Bus Preventive Maintenance (PM) efforts within the Liberty Lines bus contract. Given that WCDOT was operating under the assumption that any PM expenditures were not subject to DBE participation goals, WCDOT did not include DBE goals in its bus contract and did not achieve its DBE goals for any year after FY 2010. (See Section 6.8, A – Calculation.)

### **DBE Certification**

WCDOT relies on the New York State Unified Certification Program (UCP) to conduct all DBE certifications, maintain records of certified companies, and to source DBE-certified businesses for race-neutral and race-conscious purchases. WCDOT uses UCP data in setting DBE goals for the FTA grant award process. WCDOT encourages any companies seeking DBE certification to apply through one of four certifying agencies in the UCP network:

1. Metropolitan Transportation Authority (MTA)
2. New York State Department of Transportation
3. Port Authority of New York and New Jersey
4. Niagara Frontier Transportation Authority

### **Conciliation Agreement**

Because WCDOT had not achieved its DBE goals since FY 2010, and only exceeded its goal in one quarter during FY 2014 (6.6 percent compared with the 3.46 percent goal in the FY 2014 June 1 uniform report), FTA and WCDOT entered into a Conciliation Agreement in lieu of being found in noncompliance with its DBE goal commitments. (See Section 6.9.) The April 29, 2015 agreement requires WCDOT to implement actions intended to increase the level of DBE participation. The agreement requires WCDOT to, among other things:

- Develop a business development program (BDP) to foster DBE participation on FTA-assisted contracts
- Review areas of work that have not traditionally included contract goals and establish mechanisms to implement goals on these projects
- Develop a process to identify contracts that could be unbundled to create additional opportunities for DBE firms to participate on FTA-assisted projects
- Develop a process to identify contracts that may be appropriate for competition only among small businesses, i.e. a small business set-aside
- Develop a process for determining relevant/appropriate outreach sessions
- Establish formal and informal partnerships with small business advocacy organizations and general business groups to promote DBE objectives

The agreement established quarterly reporting requirements with the first report due on August 31, shortly after the site visit. Messrs. Oros and Swee asked the review team questions during the site visit regarding unbundling contracts, selecting a market area for goal-setting purposes, and working to integrate its MWBE and DBE programs.

WCDOT utilizes the County's MWBE program to conduct outreach. The County Economic Development Office organizes technical assistance, workshops, and training programs, notifies businesses about potential opportunities with the County, provides information about starting a business, and maintains a database of MWBE companies. Its MWBE program has an extensive network of business organizations with whom they collaborate to deliver resources and support to the MWBE community, including:

- Business Council of Westchester
- Westchester Business Association

- County of Westchester Industrial Development Agency
- NYS Small Business Development Center
- Small Business Administration
- Community Capital Resources
- Service Corps of Retired Executives (SCORE)
- Women's Enterprise Development Center
- Westchester African American Chamber of Commerce
- Westchester Hispanic Chamber of Commerce
- Procurement Technical Assistance Center

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## 5 Scope and Methodology

The purpose of this review is to provide FTA with a tool for determining whether a recipient of FTA funding is in compliance with the 49 CFR Part 26 DBE requirements. However, the deficiencies identified and findings made in this report are by necessity limited to the information available to and the observations made by the review team at the time of the site visit. A lack of findings in a particular review area does not constitute endorsement or approval of an entity's specific policies, procedures, or operations; instead, it simply indicates that no deficiencies were observed at the time of the review.

The scope of the review and the methodology employed by the review team are described in detail below.

### 5.1 Scope

Implementation of the following DBE program components specified by the FTA are reviewed in this report:

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to WCDOT DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25]
- Efforts made to use DBE financial institutions, by WCDOT as well as prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers and types of work performed, must be made available to the public and updated at least annually [49 CFR 26.31]
- Determination that overconcentration does (not) exist and address this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on a recipient's DOT-assisted contracts; and proper mechanisms to implement the DBE goal [49 CFR 26.43 – 26.53]
- A shortfall analysis and corrective action plan when WCDOT did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include WCDOT seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- Nondiscrimination and prompt payment clauses are included in all FTA-assisted contracts and a prompt payment verification process is in place. [49 CFR 26.7, 26.13, and 26.29]
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, along with the proper supporting documentation [49 CFR 26.65 -26.71].
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86].

- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate use of breach of contract remedies [49 CFR Part 13]. The DBE program must also include monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award is actually performed by DBEs [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

## 5.2 Methodology

The FTA Office of Civil Rights sent a notification letter to Mr. Michael Swee, Westchester County's DBE Program Coordinator, on July 1, 2015 to confirm the time frame for the review and ask for information within 21 days. (See Attachment A.)

Before the site visit, the review team examined documents available from FTA's TEAM system, as well as the materials WCDOT provided. The review team also searched for relevant information that was available online, including a review of the County website. Table 5-1 lists the document reviewed prior to the site visit.

**Table 5-1 WCDOT Documents Reviewed before the Site Visit**

Document	Topic / Date
FTA Chronology of Events – provides timeline of events leading to Conciliation Agreement	Dated 1/9/15 Timeline from 3/13–12/14
Annual Assessment Summary	DBE Goal Attainment Summary - for FY 2011; FY 2012; and FY 2013
DBE Analysis & Corrective Actions for 2011	Corrective Actions Plan for FY 2011 (12/29/11)
DBE Analysis & Corrective Actions for 2012	Corrective Actions Plan for FY 2012 (6/12)
DBE Analysis & Corrective Actions for 2013	Corrective Actions Plan for FY 2013 (12/13)
FTA Shortfall Analysis Review – FY 2011 & FY 2012	Describes materials missing from WCDOT Corrective Plans for FY 12-FY 13
Memo from FTA re FTA Oversight of Sandy Relief Funds	Information about FTA Sandy Funding available to NY-NJ Agencies (11/20/13)
Letter from FTA to WCDOT	FY 11 & FY 12 DBE Shortfall Analysis (8/1/13)
Sandy Relief – Grantee Risk Assessment	General Review of Risk related Grantee's need for Sandy Relief Funds (5/8/13)
Letter from FTA to WCDOT	FY 13 DBE Shortfall Submission (April 8, 2014)
Letter from WCDOT to FTA	Response to FTA's Reasonable Cause Notice of Non-Compliance (1/12/15)
Memo from WCDOT Commissioner to WCDOT Board of Acquisition and Contract	Memo requests authority to enter into Conciliation Agreement with FTA (4/14/15)
Letter from WCDOT to FTA	Letter transmits executed copy of Conciliation Agreement (5/27/15)
WCDOT DBE Program	DBE Program – 3/13; Revised 5/13
Letter to FTA re Appendix to 2010 DBE Plan	Appendix provides Overall Goal for FY 2010
ARRA Report for 2011	ARRA funds were awarded 8/21/09
NYS UCP Proposal & MOU	6/04 – NYS UCP Agreement
FTA Funded Contracts - 2011 – Present	List of FTA-funded contracts
Response to Attachments 8, 9 & 10	Info re FTA request
Corrective Action Plans for 2011; 2012 and 2013	
Conciliation Agreement and associated letters and emails	
Email correspondence with DBEs and prospective DBEs	Correspondence to/from DBE vendors, related to inquiries for doing business with WCDOT

At the beginning of the site visit, FTA, WCDOT, and the review team held an opening conference with the following participants:

- George Oros, Chief of Staff, County Executive's Office (DBELO for WCDOT/DPW)
- Michael Swee, Planner, Transportation, Westchester County DPW&T
- Robert Notargiacomo, Program Administrator, Transportation, Westchester County DPW&T
- Robert Essick, Program Administrator, Westchester County DPW&T
- Naomi Klein, Director, Transportation Planning, Westchester County DPW&T
- Shakira Abdul-Ali, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative
- Ian Kolesinskis, Review Team Member, the Collaborative
- Brian Whitehead, Program Specialist/Contracting Officer, FTA Office of Civil Rights (by telephone)
- Britney Berry, Esq., DBE Program Coordinator, FTA Office of Civil Rights (by telephone)

Following the opening conference, the review team examined WCDOT's DBE Program Plan and other documents submitted by the DBELO. The team then interviewed procurement and finance staff regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. The review team then examined a sample of contracts for its DBE elements.

At the end of the site visit, FTA, WCDOT, and the review team convened for the exit conference to discuss initial findings and corrective actions with the following participants:

- George Oros, Chief of Staff, County Executive's Office (DBELO for WCDOT/DPW)
- Michael Swee, Associate Planner, Transportation, Westchester County DPW&T
- Jay Pisco, Public Works /Transportation Commissioner, Westchester County DPW&T
- Naomi Klein, Director, Transportation Planning, Westchester County DPW&T
- Joseph (Bud) Nioletti, Deputy Director of Public Works & Transportation, Westchester County DPW&T
- Shakira Abdul-Ali, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative
- Ian Kolesinskis, Review Team Member, the Collaborative
- Bill Schwartz, Project Manager, the Collaborative (by telephone)
- Brian Whitehead, Program Specialist/Contracting Officer, FTA Office of Civil Rights (by telephone)
- Britney Berry, DBE Program Coordinator, FTA Office of Civil Rights (by telephone)

FTA provided WCDOT with a draft copy of the report for review and response. A copy of WCDOT's correspondence regarding the draft report is included in Attachment B.

### **5.3 Stakeholder Interviews**

As stated earlier, WCDOT's DBE program is relatively small, with few FTA-funded contracts. Consequently, WCDOT's DBE outreach efforts are limited. However, the County demonstrates a strong commitment to doing business with MWBE firms. This commitment stems from legislative authority specifically focused on identifying, registering, and soliciting MWBE firms to do business with the County. Outreach on the County website is prominent and MWBE contract participation is substantive. Table 5-1 summarizes MWBE participation through the third quarter of 2015.

**Table 5-1 – MWBE Participation in Westchester County Contracts  
First 3 Quarters 2015**

<b>Contract Type</b>	<b>Percent MBEs</b>	<b>Percent WBEs</b>
Construction Contracts – Prime	3.7%	29.6%
Consultant Agreements – Prime	0.0%	3.4%
Construction Agreements – Subconsultants	16.4%	31.1%

The review team interviewed stakeholders and entity representatives regarding their experiences with WCDOT. The stakeholders included:

- Global Innovations – DBE subconsultant to STV conducting pre-award/post-delivery *Buy America* audits for bus purchases
- Urban Tusk – WCDOT MBE contractor – professional services plans and SMWBE outreach programs for WCDOT
- White Plains Library – Venue – Outreach Programs;
- Partners with SBDC, WEDC, SCORE, PTAC, Westchester County government
- Women’s Enterprise Development Center – helps women entrepreneurs to get registered for State and County government contracts
- Procurement Technical Assistance Center – assists small businesses in acquiring public sector contracts

**Global Innovations, Inc. (DBE subcontractor)**

Prime contractor STV, Inc. hired Global Innovations, for a contract to audit *Buy America* provisions (pre- and post-award) for a vehicle procurement program. Global Innovations has been in business since 1991 and contracted with STV previously; the firm has been DBE certified since 2003. Thus far, the firm has had a very positive experience and has received payments on submitted invoices within 90 days or less.

**Urban Tusk (MBE contractor)**

The representative’s interview suggests that WCDOT is not only prepared to extend an opportunity to a relatively unknown MBE firm, it also offers growth opportunities. The firm approached Mr. Oros about participating on the Tappan Zee Bridge project. Despite the fact that Mr. Oros did not know the firm, WCDOT engaged Urban Tusk with a \$5,000 contract to conduct an information outreach meeting, attended by 50 companies, which was a much larger-than-expected turnout. WCDOT re-engaged Urban Tusk for countywide outreach, which attracted 200 MWBEs. Urban Tusk and WCDOT are in discussions for additional services.

**White Plains Public Library (partners with SBDC, WEDC, SCORE, PTAC, Westchester County)**

A review team member spoke with a library representative at the White Plains Public Library, the venue for a series of monthly small business training and information workshops for an extensive network of partners who present on various business development topics. The representative stated the workshops generally attract anywhere from four to 20 participants. The network of partners includes:

- Women’s Enterprise Development Center
- SCORE
- NYS Small Business Development Center
- Westchester County Community – Gateway to Entrepreneurship
- Community Capital NY
- Westchester County



**Women's Enterprise Development Center**

WEDC is a non-profit effort organized to help women win public and private contracts by helping them become certified and registered with relevant companies and agencies. WEDC also provides various kinds of business development training. They serve approximately 2000 clients each year.

The interviewed representative indicated she is aware of Westchester County's small business development efforts. She asserted that when the County organizes business fairs, it brings in its buyers, and invites WEDC members. However, she is more familiar with the MWBE program than with the DBE program.

**Procurement Technical Assistance Center, Rockland County**

The Procurement Technical Assistance Center (PTAC) is a popular and well-known business development resource for local businesses. It is a Federally funded effort that partners with numerous organizations throughout the region.

The representative reiterated the remarks of other stakeholders and is aware of County efforts to do business with MWBEs, but is more tentative when discussing the DBE program. She said she wasn't sure it pursues DBE program efforts, although when any company comes to PTAC looking for DBE certification, she mentions WCDOT as an agency that might have opportunities. PTAC participates in the County's industrial development fairs as well as its MWBE outreach programming. The representative stated that the County government is conscientious about helping minority and women business owners to do business with the County.

Stakeholders the review team interviewed did not report any instances of the county misrepresenting or confusing its MWBE program with its DBE program. The programs require separate applications and have no direct relationship.

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## 6 Findings and Advisory Comments

This section details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to WCDOT's DBE program are provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements are also presented below.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review
- A statement concerning the DBE requirements being violated or potentially being violated
- A statement concerning the required corrective action to resolve the issue

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

### 6.1 DBE Program Plan

**Basic Requirement (49 CFR Part 26.21):** Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the agency's implementation of the DBE Program. Recipients do not have to submit regular updates of DBE program. However, significant changes in the program must be submitted for approval.

**Discussion:** During this compliance review, a deficiency was found with this requirement.

In 2013, a consultant (the Wicks Group) assisted WCDOT with the development of the DBE Program Plan. (See Attachment C.) Although WCDOT's DBE Program Plan includes all of the required elements, the relationship between the DBELO and the staff responsible for DBE program implementation is not properly defined. As discussed in Section 4.3, County Chief of Staff Mr. George Oros is the DBELO. As Chief of Staff, he directly reports to the County Executive. The Office of Chief of Staff presides over Advocacy and Community Services and has lateral relationships with six other offices within the Office of the County Executive.

Mr. Swee is responsible for implementing the DBE program under the Department of Public Works and Transportation (formerly WCDOT). He reports to Mr. Oros on DBE matters and also reports to Director of Planning Naomi Klein. While Mr. Swee's reporting responsibilities to Mr. Oros appear reasonable, his placement in a different department is awkward, at best. Furthermore, the DBE Program Plan's organization chart (Attachment 1) does not illustrate Mr. Oros' authority over the DBE program's daily operations

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must develop procedures to ensure a clear and transparent placement of the DBE program within the County's organization structure. WCDOT must revise its DBE organization chart to clarify current DBE-related roles and identify the department responsible for implementing the DBE program.

## 6.2 DBE Policy Statement

**Basic Requirement (49 CFR Part 26.23):** Recipients must formulate and distribute a signed and dated DBE policy, stating objectives and commitment to the DBE program. This policy must be circulated throughout the recipients' organization and to the DBE and non-DBE business communities.

**Discussion:** During this compliance review, deficiencies were found with this requirement.

49 CFR 26.23 states:

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

WCDOT's Policy Statement is present in the DBE Program Plan and contains all of the required assertions. The Statement, "expresses . . . commitment to . . . [the] DBE program, states its objectives, and outlines responsibilities for its implementation." Mr. Swee, the principal author of the DBE Program Plan, distributes the Statement to all staff members who would have a role in purchasing or procurements.

The County Executive signs the Statement. According to WCDOT staff, they publish the Statement in both the local newspaper and on the County website. Since they did not keep a copy of the newspaper with the published statement, they could not provide it to the review team. To comply with this requirement, WCDOT must maintain records demonstrating it properly circulates its DBE Policy Statement upon publication.

In addition, at the time of the site visit, the Statement was not available on the County website. In order to comply with this requirement, WCDOT must actively maintain a copy of this policy on the County website.

**Corrective Action Plan and Schedule:** Within 60 days of the issuance of the final report, WCDOT must post and maintain its DBE Policy Statement on the County website. WCDOT must also establish procedures to maintain records of DBE Policy statements placed in local publications, and save copies for subsequent review.

## 6.3 DBE Liaison Officer

**Basic Requirement (49 CFR Part 26.25):** Recipients must have a designated DBE Liaison Officer (DBELO) who has direct and independent access to the CEO. This Liaison Officer is responsible for implementing all aspects of the DBE program and must have adequate staff to properly administer the program.

**Discussion:** During this compliance review, deficiencies were found with the requirement for adequate staffing. No deficiencies were found with the role of the DBELO. An advisory comment is made regarding WCDOT's capacity for DBE program implementation and a potential conflict of interest.

Mr. Oros has served as the DBELO since 2010. Mr. Oros' resume includes service as a Westchester County legislator for twelve years. As Chief of Staff to the County Executive, Mr. Oros serves as the County's legislative/governmental liaison and works with the County's 45 municipalities and with all County elected officials. Constituent Services and Advisory Boards Office staff report to Mr. Oros, as do the 3.5 positions that manage the MWBE program in the Office of Economic Development. In effect, Mr. Oros is responsible for engaging all external stakeholders, including the small business community. Given these roles, the County designated him as DBELO.

Before 2010, Commissioner Jay Pisco had staff support for the DBE program within his department. In 2010, Ms. Chemka was promoted to Deputy Commissioner and assumed broader responsibility for the DBE program. Mr. Swee stepped in to work more closely with Ms. Chemka to implement program goals and reporting requirements. When Ms. Chemka retired in July 2015, Mr. Swee became the only employee with day-to-day responsibility for DBE compliance.

The review team identified other DBE knowledge deficiencies within WCDOT. For example, a team member spoke with Mr. Robert Essick, now responsible for WCDOT-related purchasing with Mr. Swee and one other procurement professional. Until the buyout, Mr. Essick was responsible for the County's contract with Clear Channel covering advertising sales on buses and bus shelters and was not trained on meeting DBE requirements.

Regarding the organizational arrangement of having Mr. Oros as the DBELO but residing outside of WCDOT, this is not a deficiency per se. However, as discussed throughout this section of the report, DBE program oversight and recordkeeping is deficient in a number of areas. The recent dramatic reduction in staff resources to administer WCDOT's DBE program, which occurred just as FTA and the County signed a Conciliation Agreement raises a concern regarding the County's and WCDOT's capacity to address previous issues and deficiencies noted in this report. It also raises concerns about the County's and WCDOT's ability to properly administer the DBE program.

At the time of the site visit, the County was unable to commit to any hiring schedule for filling vacant positions with WCDOT.

With respect to conflicts of interest, there is a remote potential for a conflict to arise in the process of establishing or meeting DBE goals. Mr. Oros might find himself in a difficult position in instances of political advantage related to decisions that favor a contractor's interests over the interests of a prospective DBE subconsultant or perhaps favoring a non-DBE prime over a DBE prime.

**Corrective Actions and Schedule:** Within 60 days of issuance of the final report, WCDOT must develop a plan for dedicating additional resources to its DBE program, including training of all staff involved in DBE-related activities. This must include a plan to closely monitor compliance with DBE requirements. (See Section 6.14.) WCDOT must submit this plan to the FTA Office of Civil Rights.

**Advisory Comment:** It is an effective practice to establish a clear and transparent process for circumventing any possibility of a conflict of interest or political influence in the DBELO position.

## 6.4 DBE Financial Institutions

**Basic Requirement (49 CFR Part 26.27):** Recipients must investigate the existence of DBE financial institutions and make efforts to use them. Recipients must encourage prime contractors to use these DBE financial institutions.

**Discussion:** During this compliance review, a deficiency was found with the requirement to update the list of DBE financial institutions or make efforts to use them.

WCDOT engaged the Wicks Group to identify and organize a list of DBE financial institutions (see attachment 10 in WCDOT's DBE Program Plan), which it encourages prime contractors to use. The County does not use any DBE financial institutions for its own banking. Mr. Swee acknowledged WCDOT hasn't updated the list in the past year and a half, contrary to "annually or as needed" as stated in the published DBE Program.

To comply with this requirement, "reasonable efforts" to use DBE financial institutions involve ongoing (i.e., annually) activities such as updating lists of banks, communicating the requirements with prime contractors, and encouraging prime contractors to use DBE financial institutions.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must implement a procedure to evaluate the availability of DBE financial institutions on a regular basis (at least annually). WCDOT must communicate this requirement to prime contractors and promote the use of DBE financial institutions. WCDOT must also make efforts to use these DBE financial institutions by for example, depositing Federal funds with one such institution. WCDOT must document these procedures and submit them to the FTA Office of Civil Rights.

## 6.5 DBE Directory

**Basic Requirement (49 CFR Part 26.31):** A DBE directory must be available to interested parties, including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. Advisory comments are made regarding ease of access to the DBE directory, as well as the use of nearby states' DBE directories.

As discussed in Section 4.3, WCDOT relies on the New York State UCP to identify DBE-certified businesses, make race-neutral purchases, and set goals. WCDOT encourages those seeking DBE certification to apply through one of four certifying agencies in the UCP network, all within the State of New York. WCDOT does not use DBE directories from New Jersey or Connecticut.

The County website link, "[Doing Business with the DOT](#)," provides a [Disadvantaged Businesses](#) link. Once users click to the DBE page, they click through to DBEs certified by the region's UCP along with information on obtaining certification. Links from the County's Economic Development page take users to the MWBE program, which also includes a list of prospective vendors and a link to register for the County bidders' list. The website listing [business opportunities](#) does not identify specific opportunities with established DBE contract goals

**Advisory Comments:** It is an effective practice to prominently display website links to lists of DBE firms as well as information on how to obtain DBE certification. It is also an effective practice when located in a multi-state region to expand DBE outreach and goal-setting practices to include DBEs from adjacent states.

## 6.6 Overconcentration

**Basic Requirement (49 CFR Part 26.33):** The recipient must determine if overconcentration of DBE firms exists and address the problem, if necessary.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. According to the DBE Program Plan, WCDOT states that the "County has not identified that overconcentration exists in the types of work that DBE's perform." With a relatively small program, most of WCDOT's DBE opportunities fall under contracted bus operations. As shown in Table 6-1, WCDOT identified seven North American Industry Classification System (NAICS) codes from which it draws goods and services for its bus operation. Within these seven industry areas, DBE firms comprise less than two percent of firms in six categories and 29.2 percent of firms in one category (Highway, Street and Bridge Construction). Few DBE firms provide services within the applicable NAICS codes for bus operations supplies and equipment, further minimizing the threat of over-concentration.

**Table 6-1 DBE Firms Available in WCDOT-Identified NAICS Categories**

NAICS Code	NAICS Category	All Firms	DBE Firms	Percent
236220	Commercial and Institutional Building Construction	1,582	28	1.8%
237310	Highway, Street, and Bridge Construction	277	81	29.2%
238220	Plumbing, Heating, and Air-Conditioning Contractors	4,326	18	0.4%
238320	Painting and Wall Covering Contractors	1,720	25	1.5%
336112	Light Truck and Utility Vehicle Manufacturing	2	0	0%
336399	Other Motor Vehicle Parts Manufacturing	14	0	0%
441110	New Car Dealers	559	0	0%
<b>Total</b>		<b>8,480</b>	<b>152</b>	<b>1.8%</b>

While WCDOT did not cite any studies, the review team identified a 2010 [disparity study](#) commissioned by New York State Department of Economic Development. According to this report,

The 2010 study finds both statistical and anecdotal evidence of business discrimination against M/WBE's in the State's relevant market area...[Further,] current M/WBE availability levels in the New York State market area...are substantially lower than those that we would expect to observe if commercial markets operated in a race- and gender-neutral manner and that these levels are statistically significant.

This report confirms WCDOT's assertion of low availability and no overconcentration.

## 6.7 Business Development Programs

**Basic Requirement (49 CFR Part 26.35):** The recipient may or must (upon FTA's direction) establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

**Discussion:** During this compliance review, no *additional* deficiencies were found with this requirement. Among other requirements, the 2015 Conciliation Agreement requires WCDOT to "develop a [BDP] to foster participation on FTA-assisted contracts," with quarterly reports to describe the BDP in detail with an implementation timeline.

Since the site visit, WCDOT has submitted two progress reports to FTA on August 31, 2015, and December 15, 2015. In the August submittal, WCDOT provided responses to the following FTA requirements:

- 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.
- 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.
- Develop a process to identify contracts that could be unbundled to create additional opportunities for DBE firms to participate on FTA-assisted projects. Specifically, review contracts from the past 3 years and identify areas where two or more contracting opportunities have been consolidated into a single contract. Your quarterly report must list the types of projects (i.e., from the last 3 years) that were reviewed and include process for determining when unbundling projects is most appropriate.
- Develop a process to identify contracts that may be appropriate for competition only among small businesses, i.e. a small business set-aside. Your quarterly report must explain how your agency

determined appropriate small business size standards as well as how individual set-aside contract selections will be made.

- 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.
- Develop a process to identify future FTA-assisted contracting opportunities (i.e., in FY 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.
- Identify the geographic area where you awarded a substantial majority of your FTA- assisted contracts in FY 2012–2014. Your quarterly report should identify the geographic market area and explain the process used to determine this area.

In the December submittal, WCDOT provided responses to the following FTA requirements:

- Apply the small business set-aside identification process to contracting opportunities throughout FY 2016–2018.
- Apply the unbundling process to contracting opportunities throughout FY 2016–2018. Submit a list of projects to be unbundled in this quarter and throughout FY 2016–2018.
- Submit a list projects that included a contract goal in FY 2012–FY2014 and a list of projects you have or anticipate including contract goals in this quarter and throughout FY 2016–2018.
- Submit a schedule of outreach sessions you will hold in the second and third quarter as well as throughout FY 2015–FY2016.

## 6.8 Determining/Meeting Goals

### A) Calculation

**Basic Requirement (49 CFR Part 26.45):** To begin the goal-setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is calculated, the recipient must examine all other available evidence to determine whether an adjustment is warranted. Adjustments are not required and should not be made without supporting evidence.

**Discussion:** During this compliance review, deficiencies were found with this requirement with respect to WCDOT not including FTA funds for preventive maintenance (PM) portion of its Bee-Line bus contract with Liberty Lines. No deficiencies were found with RIDOT’s goal calculation methodology.

According to 49 CFR 26.21, “FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year” must have a DBE program meeting Part 26. This includes establishing DBE goals and a methodology.

WCDOT’s DBE goal for FY 2013–2015 is 3.46 percent. In its 2013 DBE Program Plan, WCDOT laid out the process for calculating this overall goal.

#### *Step 1: Determining the Base Figure*

WCDOT projected an approximate value of \$14.4 million for eleven projects during FY 2013–2015, as summarized in Table 6-2, and used seven NAICS codes to analyze all available businesses based on the New York State UCP Directory and US Census Bureau Data (2009 County Business Patterns-North American Industry Classification System). WCDOT used the following New York counties: Bronx,



Dutchess, Kings, Nassau, New York, Orange, Putnam, Rockland, Suffolk, Sullivan, Richmond, Ulster and Westchester.

WCDOT identified 8,480 total firms from the seven NAICS sectors, including 153 ready, willing, and able DBE firms. From here, WCDOT calculated a base figure of 1.79 percent.

**Table 6-2 – Projects Included in WCDOT’s 2013–2015 DBE Goal Setting Methodology**

Project	Years*	NAICS Code	NAICS Category	\$M Cost*	Percent
Articulated bus rehabilitation	2013-2015	336399	Other Motor Vehicle Parts Manufacturing	\$2.6	18%
Bus stop enhancements	2013-2015	237310	Highway, Street, and Bridge Construction	\$1.5	10%
Raise roof – CMF	2015	236220	Commercial and Institutional Building Construction	\$3.0	20%
Clean/paint ceiling CMF	2015	238320	Painting and Wall Covering Contractors	\$0.75	6%
HVAC – Cerrato	2014	238220	Plumbing, Heating, and Air-Conditioning Contractors	\$2.7	17%
Paint booth air system – Cerrato	2013	238220	Plumbing, Heating, and Air-Conditioning Contractors	\$0.1	1%
Paint booth air system – CMF	2015	238220	Plumbing, Heating, and Air-Conditioning Contractors	\$0.5	4%
Sanding/vacuum system – CMF	2015	238220	Plumbing, Heating, and Air-Conditioning Contractors	\$0.23	1%
Body shop air system – CMF	2015	238220	Plumbing, Heating, and Air-Conditioning Contractors	\$0.28	2%
Paratransit vehicles	2014	336112	Light Truck and Utility Vehicle Manufacturing	\$2.0	14%
Maintenance & supervisor vehicles	2013-2015	441110	New Car Dealers	\$0.78	7%
<b>Total</b>				<b>\$14.4</b>	<b>100%</b>

\* Forecast

### *Step 2: Adjusting Base Figure*

WCDOT adjusted its 1.79 percent base figure by using the percentage of contracts it expected to let during FY 2013–2015 to and weighting the availability of DBE firms. Table 6-3 details the weighting methodology.

Based on the availability of DBE firms in the seven NAICS categories, and weighted based on percent of total contracts, WCDOT adjusted its goal for the 2013 DBE Program Plan to 3.46 percent. However, WCDOT didn’t anticipate a significant reduction in the County’s tax base, which is why it didn’t pursue most of the projects outlined in the DBE Program Plan.

As discussed in Section 4.2, WCDOT uses FTA funds to support its contractor-operated Bee-Line bus service. This contract includes FTA PM funds but does not include the PM funds in its DBE goal-setting methodology, which is a deficiency. Including the Bee-Line contract in WCDOT’s DBE goal calculation can significantly expand the potential for DBE opportunities. WCDOT stated that during the last procurement for the service, the contractor (Liberty Lines) used MWBE vendors. However, because WCDOT did not required DBE participation in the most recent RFP, no DBE firms were included.

**Table 6-3 – WCDOT FY 2013–2015 DBE Goal-Setting Methodology Firm Availability**

NAICS Code	All Firms	DBE Firms	Relative Availability	Percent of Total	Weighted Percentage
336399	14	0	0%	18%	0%
237310	277	81	29.24%	10%	2.92%
236220	1,582	28	1.77%	20%	0.35%
238320	1,720	25	1.45%	6%	0.09%
238220	4,326	18	0.42%	25%	0.10%
336112	2	0	0%	14%	0%
441110	559	0	0%	7%	0%
<b>Total</b>	<b>8,480</b>	<b>152</b>	<b>32.88%</b>	<b>100%</b>	<b>3.46%</b>

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must develop a procedure to ensure that it considers *all* contracting opportunities (including PM funding) in its triennial goal and must revise its DBE goal calculations accordingly. WCDOT must submit the revised procedure and its updated goal methodology to the FTA Office of Civil Rights.

## B) Public Participation

**Basic Requirement (49 CFR Part 26.45):** In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A notice announcing the overall goal must be published on the recipient’s official website and may be published in other media outlets with an optional 30-day public comment period.

**Discussion:** During this compliance review, deficiencies were found with this requirement. Although WCDOT engaged with several stakeholder groups, exposure for the DBE program is limited and recordkeeping is insufficient.

DOT’s [Official FAQs on DBE Program Regulations \(49 CFR 26\)](#), state,

By definition, the process of consultation involves a scheduled face-to-face conference or meeting of some kind with individuals or groups of interested persons for the purpose of developing and/or assessing a proposed goal and methodology and seeking information or advice before a decision is made. Publication of the proposed goal to the general public is not synonymous with, or a substitute for, consultation with interested or affected groups.

Recipients should identify groups within their contracting market that are likely to have information relevant to the goal setting process or that have a stake in the outcome of the process. Those groups should be contacted and invited to participate in a face-to-face exchange (which may occur at a public meeting) aimed at obtaining the kind of information set out in the regulation regarding establishing the overall DBE goal. Efforts should be made to engage in a dialogue with as many interested stakeholders as possible. An advisory committee may be one method of consultation (but not the exclusive method, since this could lead to a recipient talking only to the same people all the time). A description of the consultation process and its purpose should be provided to all invitees.

WCDOT announced its DBE goal by publishing it on the County website and in the local newspaper. However, WCDOT’s DBE goal is no longer available on the County website.

As discussed in Section 5.3, the review team interviewed several stakeholders who confirmed that the County offers MWBE information and opportunities; these stakeholders are generally unaware of the

County's DBE program.<sup>3</sup> One stakeholder (PTAC) is familiar with the DBE program but describes the MWBE program as more robust. This lack of familiarity with the DBE program is another indication that WCDOT is not meeting the 49 CFR 26.45 public participation requirements.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must maintain DBE goal information on the County website. WCDOT must also ensure that its public participation activities related to its DBE program goals involve consultation with appropriate individuals or groups consistent with the 49 CFR 26.45 requirements.

### C) Race-Neutral DBE Participation

**Basic Requirement (49 CFR Part 26.51):** The recipient must meet the maximum feasible portion of the overall goal by using race-neutral means of facilitating DBE participation. As of 2011, the small business element described in 49 CFR 26.39 is a mandatory race-neutral measure. Additional examples of how to reach this goal amount are listed in the DBE regulations.

**Discussion:** During this compliance review, no deficiencies were found with this requirement.

WCDOT operated a race-neutral DBE program for FY 2011–2013. According to their DBE Program Plan, WCDOT implemented the following race-neutral methods in an effort to meet their goals:

- Locating and identifying DBEs and other small businesses that may want to participate under 49 CFR Part 26
- Notifying DBEs of opportunities and encouraging them to compete, when appropriate
- When practical, structuring activities to encourage and facilitate DBE participation
- Providing technical assistance to DBEs to overcome limitations, such as the inability to obtain bonding or financing
- Informing competitors for contracting opportunities during pre-construction meetings about how the sponsor's DBE program will affect the procurement process
- Providing information how to reach out to DBE firms to assist them in ensuring DBE participation

In addition, WCDOT included such race-neutral activities as:

- Conducting outreach seminars (see Section 5.3 – Urban Tusk)
- Sending out emails to all small business vendors
- Conducting surveys
- Providing assistance and information about obtaining DBE certifications

The review team examined emails to and from DBE contractors with invitations from WCDOT to get on their bidders list, or to participate in bids for contract opportunities. Emails showed WCDOT was responsive to contractors who had questions about bidding on WCDOT opportunities. WCDOT invites DBEs to participate in their MWBE programs to learn about doing business with WCDOT, as well as to how to secure bonding and financing resources. Further, WCDOT's RFP templates encourage Prime contractors to reach out to DBE subconsultants.

After not meeting its goal and consulting with FTA Region II, WCDOT transitioned to a race-conscious program.

WCDOT's DBE Program Plan contains the required small business element and includes the following discussion as the first clause in attachment 8:

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<sup>3</sup> The review team attempted to interview the African American Chamber of Commerce and the Hispanic Chamber of Commerce regarding WCDOT's DBE program, but was unable to make contact with representatives of either group.

### Fostering Small Business Participation – Small Business Policy

Westchester County will continue its commitment to help Small Business Enterprises. In a coordinated effort through its various departments, Westchester County offers opportunities for small businesses through the purchase of goods, the provision of services and construction projects. These efforts include specific measures to encourage small business participation in US Department of Transportation-assisted projects / contracts as described in this Small Business Participation Plan.

Based on documents the review team examined and interviews with County personnel as well as external stakeholders (see Section 5.3), the Westchester County Small Business Participation Policy is both viable and effective.

## **D) Race-Conscious DBE Participation**

**Basic Requirement (49 CFR Part 26.51):** The recipient must establish contract goals to meet any portion of the goal it does not project being able to meet using race-neutral measures.

**Discussion:** During this compliance review, a deficiency was found with this requirement regarding subcontracting goals on WCDOT projects.

49 CFR 26.51(e)(1) states, “You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.”

WCDOT operated a race-neutral program for FYs 2011–2013. However, WCDOT’s FTA-funded program only resulted in 2.7 percent DBE goal attainment in FY 2011 and no attainment in FY 2012 or FY 2013. After not meeting its goals, WCDOT, in consultation with FTA Region 2, transitioned to a race-conscious program in FY 2014 with a 3.46 percent DBE goal.

In establishing contract goals, WCDOT lets allied departments identify project values and contractable work segments. Then WCDOT reviews the opportunities and applies DBE availability per a unified DBE list, typically falling within the seven NAICS codes discussed in Section 6.6.

As discussed in Section 4.2, WCDOT uses FTA funds to support its contractor-operated Bee-Line bus service. While FTA PM funds support this service, WCDOT does not include PM funds in its DBE goal-setting methodology. As noted previously, including PM funds from the Bee-Line contract in WCDOT’s DBE goal calculation would significantly expand the potential for DBE opportunities and help to address WCDOT’s DBE shortfalls.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must begin including Preventative Maintenance (PM)-funded subcontracts when establishing race-conscious DBE goals.

## **E) Good Faith Efforts**

**Basic Requirement (49 CFR Part 26.53):** The recipient may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFE) to meet the goals. Bidders must submit a DBE Utilization Plan or Schedule of DBE Participation (i.e., the names and addresses of the DBE firms that will participate on the contract; a description of the work each DBE will perform; the dollar amount of DBE participation; written commitment to use DBE submitted in response to the contract goal; written confirmation from each DBE listed); or good faith efforts as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 7 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach will be used in its DBE program plan.

**Discussion:** During this compliance review, a deficiency was found with WCDOT's requirements that contractors exercise good faith efforts (GFE) when soliciting products and services from DBE vendors.

49 CFR 26.53(f) states:

(1)(i) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(ii) You must include in each prime contract a provision stating:

(A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and

(B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

The WCDOT DBE Program Plan notes that prime contractors must submit the following information with bids as a matter of responsiveness:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform
- The dollar amount of the participation of each DBE firm participating
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment, and
- If the contract goal is not met, evidence of good faith effort

WCDOT uses the responsiveness approach. The DBE Program Plan states that the DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. The DBE Program Plan identifies the DPWT Commissioner as the reconsideration official and outlines the process for bidders/offerors to request reconsideration.

The DBE Program Plan also requires GFEs when a contractor makes a decision to replace a DBE that has been terminated, or has otherwise failed to complete its work on a contract, with another certified DBE, to the extent needed to meet the contract goal. The DBE Program Plan states the County will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, the County requires the prime contractor to obtain the County's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of GFE. If the contractor fails or refuses to comply in the time specified, [WCDOT] will issue an order stopping all or part of payment / work until satisfactory action has been taken. If the contractor still fails to comply, [WCDOT] may issue a termination for default proceeding.

Although WCDOT has such GFE language on file and includes the requirement in its DBE Program Plan as Attachment 6, it does not consistently include this language in its Requests for Proposals (RFPs) and

WCDOT contracts. For example, a contract for bus stop improvements contained the GFE language, but an RFP for a study of the Bee-Line vehicle maintenance program did not include GFE language.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must establish procedures to confirm that all RFPs and contracts contain the required provisions before finalization. WCDOT must provide examples of revised templates and internal policy memos describing these changes to the FTA Office of Civil Rights

## F) Protecting Against Termination for Convenience

**Basic Requirements (49 CFR 26.53 and 26.13):** Recipients must implement appropriate mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform the work of the terminated subcontract with its own forces or those of an affiliate, or reducing the scope of DBE contract) without the transit agency's prior written consent. Failure to obtain written consent is a material breach of contract.

**Discussion:** During this compliance review, a deficiency was found with WCDOT's standard contract language that prevents terminations for convenience.

49 CFR 26.53(d)(4) states:

Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

49 CFR 26.53(h) states:

You must include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.

The review team examined three contracts: 1) Liberty Lines Service and Maintenance, 2) 30' Orion Bus Rehabilitation Project, and 3) Bus Stop Improvements/Various Locations. None of these three contracts contains the clause prohibiting termination for convenience. The review team also examined WCDOT's RFP template, which does not specify that prime contractors can't terminate DBE subcontractors without WCDOT's prior written consent.

While the contract and RFP documents refer to termination, they relate only to WCDOT's relationship with prime vendors, not prime vendors' relationships with DBE firms. The review team did not see any evidence of termination for convenience in its examination of WCDOT files.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must include the required provisions in all RFPs and contracts using Federal funds to protect against terminations for convenience. WCDOT must provide examples of these revised templates to the FTA Office of Civil Rights.

## G) Counting DBE Participation

**Basic Requirement (49 CFR Part 26.55):** The recipient must count only the value of work actually performed by the DBE when assessing the adequacy of DBE participation submitted in response to a contract. The recipient must review a bidder's submission to ensure the type and amount of participation is consistent with the items of work and quantities in the contract and that the bidders are only counting work performed by the DBE's own forces in accordance with the DBE requirements.

**Discussion:** During this compliance review, deficiencies were found with this requirement.

49 CFR 26.55(a) states:

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

49 CFR 26.55(c) states:

Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

The review team determined that WCDOT does not properly verify the level of DBE participation in its contracts. While the DBE Program Plan states, “[The] County will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55,” the DBE Program Plan does not explain WCDOT’s procedures for verifying DBE participation.

In addition, according to Mr. Swee, WCDOT does not have a process for reporting DBE participation. Based on the staffing issues identified elsewhere, WCDOT does not currently have the capacity to perform these activities.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must develop a process for accurately verifying DBE participation in bidder submissions, and a strategy for verifying that bidders are only counting work performed by a DBE’s own forces in accordance with the DBE requirements. WCDOT must submit this process and strategy to the FTA Office of Civil Rights.

## H) Quotas

**Basic Requirement (49 CFR Part 26.43):** The recipient is not permitted to use quotas. The recipient may not use set-aside contracts unless no other method could be reasonably expected to redress egregious instances of discrimination.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. WCDOT’s DBE Program Plan indicates that WCDOT does not use quotas in administering the DBE program. The review team did not find evidence of quotas or set-asides when it examined the following three WCDOT’s contracts:

- Consultant services for procurement of articulated buses for \$119,644 (6.7% DBE participation)
- Rebuild of 30-foot buses for \$11,9M (1.7% DBE participation)
- Route 7 & 13 transit analysis for \$95,209 (DBE participation 10.1 percent)

## 6.9 Shortfall Analysis and Corrective Action Plan

**Basic Requirement (49 CFR Part 26.47):** The recipient must conduct a shortfall analysis and corrective action plan in any fiscal year it does not meet its overall DBE goal.

**Discussion:** During this compliance review, no *additional* deficiencies were found with the requirement to conduct a shortfall analysis and develop corrective action plans.

49 CFR 26.47(c) states:

If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

In 2012, WCDOT submitted a 3.46 percent DBE goal to FTA, based on a \$14 million projection for 11 FTA-funded projects in FY 2013. However, it only contracted three projects that year and planned very few projects in FY 2014 and FY 2015. As such, WCDOT has not achieved its DBE goals for any year since then and only exceeded its goal in one quarter in FY 2014.

WCDOT identified these shortfalls and submitted analyses and corrective action plans. FTA reviewed these documents and requested additional or missing information both in 2013 and 2014, and ultimately determined in a January 2015 there was reasonable cause that WCDOT failed to demonstrate full implementation of the corrective actions outlined in its previous shortfall submissions.

As discussed in the Section 4.3, FTA found WCDOT's previously submitted corrective action plans for prior shortfalls insufficient ultimately leading to the conciliation agreement between FTA and WCDOT May 27, 2015, requiring WCDOT to provide quarterly reports to FTA beginning August 31, 2015. (See Attachment D.) WCDOT agreed to meet and adhere to several specific courses of action designed to improve their performance relative to meeting DBE participation goals.

**Advisory Comment:** WCDOT must comply with the terms of its conciliation agreement and implement them in good faith in order to remain compliant with DOT's DBE regulations.

## 6.10 Transit Vehicle Manufacturers (TVMs)

**Basic Requirement (49 CFR Part 26.49):** The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases.

**Discussion:** During this compliance review, deficiencies were found with the requirement for TVM certification.

49 CFR 26.49 states:

- (a)(1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.



WCDOT provided the review team with copies of certification documents for three TVM procurements:

- Orion Bus Industries, Inc. (FY 2000–2001) – Orion’s certification documents included a checkmark in the “not approved” box
- Neoplan USA Corporation (FY 2003) Neoplan’s certification documents included a checkmark in the “not approved” box
- North American Bus Industries, Inc. (FY 2007–2008) – NABI’s certification included FTA’s approval

The absence of certification letters for two of these procurements (Orion and Neoplan) indicates that WCDOT accepted bids from manufacturers who had not first received FTA approval of their DBE plan, which constitutes a deficiency.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must modify its procurement requirements for TVMs to have FTA-approved DBE goals in its vehicle procurement documents, and must ensure that FTA has approved each TVM’s DBE goals before procuring transit vehicles.

## 6.11 Required Contract Provisions and Enforcement

### A) Contract Assurance

**Basic Requirement (49 CFR Part 26.13):** Each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include a nondiscrimination clause detailed in the regulations.

**Discussion:** During this compliance review, deficiencies were found with this requirement.

49 CFR 26.13(b) states:

Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

WCDOT’s “Required Contract Provisions for Professional Services” contract template states:

Section 1.2.9. - Title VI: Civil Rights Assurance

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act...the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability...

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part by with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

By not requiring prime contractors to provide copies of subcontracts upon WCDOT's request, WCDOT may not be able to enforce the 49 CFR 26.13 provisions. Furthermore, WCDOT did not have subcontract documents for the review team to examine during the site visit.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, WCDOT must modify its contract documents to require prime contractors to provide copies of subcontracts upon WCDOT request. WCDOT must establish a process for reviewing DBE subcontract documents to confirm that prime contractors include nondiscrimination language in subcontractor agreements. WCDOT must submit sample contract language and evidence of the review process to the FTA Office of Civil Rights.

## B) Prompt Payment

**Basic Requirement (49 CFR Part 26.29):** The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed.

**Discussion:** During this compliance review, no deficiencies were found with this requirement.

The following sections are included in WCDOT's contract templates for Construction, Professional Services and Materials and Supplies:

Section 1.2.11 - Disadvantaged Business Enterprises (DBE)

"Required on all contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBE's...

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the County of Westchester. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the County of Westchester and contractor's receipt of the partial retainage payment related to the subcontractor's work."

Between FY 2011 and FY 2015, WCDOT had just three contracts that included DBE subcontracts:

- Consulting Services for the Procurement of Articulated Buses with STV, Inc.; Global Innovations (DBE subcontractor)
- 30-Foot Bus Rebuild Components using multiple contractors and DBE participation
- Route 7 & 13 Transit Analysis with Nelson Nygaard; Reinhard-Madison Approach Staffing, Inc., (DBE subcontractor)

The review team examined the bus rebuild and transit analysis prime contracts. Both documents included the required prompt payment and retainage clauses. As noted in Section 5.3, Global Innovations, subcontractor on the articulated bus procurement contract has not experienced any payment issues. Finally, there were no complaints on file regarding payment issues.

## C) Legal Remedies

**Basic Requirements (49 CFR Part 26.37):** Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state, and local law. Breach of contract remedies should be used as appropriate.

**Discussion:** During this compliance review, no deficiencies were found with this requirement.

According to WCDOT's DBE Program Plan, WCDOT holds to a codified standard of practices for reporting to USDOT any false, fraudulent, or dishonest conduct in connection with the DBE program so that DOT can take the steps provided in Part 26.109.

WCDOT's DBE Program Plan further states that the County will consider similar action, under its own legal authorities, including responsibility determinations for future contracts. WCDOT identifies various mechanisms for enforcement of DBE requirements, including but not limited to:

- Breach of contract action, pursuant to terms of the contract
- New York State Constitution: Article 1, Section 11 of the NYS Constitution, which prohibits discrimination against anyone because of race, color, creed, or religion by any other person or by any firm
- New York State Executive Law: Section 296 details the types of discrimination that are unlawful in New York. Sections 297 and 298 contain the review and enforcement of procedures available through the Human Rights Division or the courts
- New York Labor Law, Article 8, Section 220-E: every contract for or on behalf of the state or a municipality for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment or supplies shall contain provisions by which a contractor with the state or municipality agrees, among other things, that it will not discriminate in the hiring of employees (Subparagraph (a)), and that there may be deducted from any amount payable to the contractor by the state or municipality under the contract a penalty of \$50 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the contractual provision (Subparagraph (c))

All contracts the review team examined contained appropriate language covering legal remedies. There was no indication that any contractor improprieties occurred in the past five years.

## 6.12 Certification Standards

**Basic Requirements (49 CFR Parts 26.67–26.71):** The recipient must have a certification process in place to determine whether a potential DBE firm is legitimately socially and economically disadvantaged according to the regulatory standards. The DBE applicant must submit the required DOT application and personal net worth (PNW) form with appropriate supporting documentation, as needed.

**Discussion:** This requirement is not applicable because WCDOT does not process any DBE certifications, nor does it maintain lists of certified firms. Instead, WCDOT relies on the New York State UCP directory to identify available DBEs and set goals for its DBE program. The review team received a copy of the UCP MOU that was originally prepared in April 2004 and was signed by all initiating partners in June 2004. The most recent signature from the WCDOT to this MOU was on July 17, 2013. Mr. Swee signed on WCDOT's behalf as a state UCP partner.

## 6.13 Certification Procedures

### A) Onsite Visits and Document Review

**Basic Requirement (49 CFR Part 26.83):** The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation.

**Discussion:** This requirement is not applicable because WCDOT does not process any DBE certifications, but instead relies on the New York State UCP.

## B) Annual Affidavit

**Basic Requirement (49 CFR Part 83):** DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process.

**Discussion:** This requirement is not applicable because WCDOT does not process any DBE certifications, but instead relies on the New York State UCP.

## C) Interstate Certification

**Basic Requirement (49 CFR 26.85):** The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR 26.85(c)-(g).

**Discussion:** This requirement is not applicable because WCDOT does not process any DBE certifications, but instead relies on the New York State UCP.

## D) Certification Appeals

**Basic Requirement (49 CFR 26.86):** The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial. The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the DOT.

**Discussion:** This requirement is not applicable because WCDOT does not process any DBE certifications, but instead relies on the New York State UCP.

## 6.14 Record Keeping and Enforcements

**Basic Requirements (49 CFR Parts 26.11 and 26.37):** The recipient must provide to FTA data about its DBE program on a regular basis. The recipient must submit Semi-Annual Uniform Reports on June 1st and December 1st of each fiscal year using the FTA Transit Award Management System (TrAMS) (formerly TEAM), unless otherwise notified by FTA. In addition, the recipient must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. The monitoring and enforcement measures must be conducted in conjunction with monitoring contract performance for purposes such as close out reviews for contracts. Lastly, the recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

**Discussion:** During this compliance review, deficiencies were found with this requirement related to semi-annual reporting and with monitoring DBE participation and verifying DBE payments. Deficiencies were also found with the completeness of WCDOT's bidders list.

### Semi-Annual Uniform Reporting

As discussed earlier in this report, while WCDOT tallies its FTA awards for FTA reporting purposes, WCDOT does not have processes in place for tracking DBE payments. (See Section 6.8, Subsection G – Counting DBE Participation.) The review team consulted FTA's TEAM system to determine if WCDOT submitted its required Semi-Annual Uniform Reports on time and found reports for FY 2009 and 2010 to be on time. From FY 2011 through FY 2013 WCDOT submitted all of its semi-annual reports late. WCDOT submitted the first FY 2014 report on time but did not submit the 2nd FY 2014 report at all. The review team examined WCDOT's Excel spreadsheets covering FY 2011–2014 provided as part of the

pre-review package, including the missing 2nd FY 2014 report; the reports contained complete information, which is consistent with FTA's approval of the reports WCDOT submitted.

### **Compliance Monitoring**

49 CFR 26.37 states:

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

Though WCDOT's DBE Program Plan outlines a substantive process for conducting compliance and monitoring procedures, the review team did not see evidence that WCDOT is undertaking compliance and monitoring activities. The DBE Program Plan states:

- Westchester County will perform periodic site visits to monitor DBE compliance and procedures at...project sites, including whether work designated for DBEs is actually being performed by DBEs.
- Westchester County will keep a running tally of actual payments made to DBE firms for work committed to them at the time of contract award through the County's record-keeping process.
- The County will perform interim audits of contract payments to DBEs, reviewing payments to DBE subcontractors to ensure that the actual amount paid equals or exceeds the dollar amounts called for in the schedule of DBE participation.

Global Innovations, the subcontractor the review team interviewed (see Section 5.3), stated that no one from WCDOT contacted the company for an assessment, to determine whether they were actually working on the project, or whether they were promptly paid. While this finding is not surprising given WCDOT's very limited staffing resources, monitoring is nevertheless required. Further, Mr. Swee acknowledged that WCDOT had not implemented monitoring before the aforementioned major staffing reduction.

### **Bidders List**

The review team examined WCDOT's bidders list. The list contains subcontractor names, addresses, phone numbers, and email addresses. The list does not include the required information on DBE status, age, or annual gross receipts as required by 49 CFR 26.11. WCDOT has been expanding its list from submitted prime contractor responses, which it requires in all bid and proposal documents.

**Corrective Actions and Schedule:** Within 60 days of the final report, WCDOT must upload to TrAMS (formerly TEAM) its missing FY 2014 Semi-Annual Uniform report due June 1, and must upload all future reports on time. WCDOT must begin monitoring and enforcing procedures outlined in its DBE Program Plan to ensure that DBE firms are performing the work tasks on WCDOT contracts. This evidence must certify that WCDOT has reviewed contracting records and visited work sites. WCDOT must provide evidence of such monitoring to the FTA Office of Civil Rights. WCDOT must revise its bidder's list to also include DBE status, age, and annual gross receipts.

## 7 Summary Table of Compliance Review Findings

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	1 deficiency	Relationship between DBELO and DBE-program staff not properly explained in Program Plan	60/*
2.	Policy Statement	26.23	1 deficiency	DBE Policy Statement is not maintained on WCDOT website	60/*
3.	DBE Liaison Officer	26.25	1 deficiency 1 advisory comment	Adequate resources are not in place to administer a compliant DBE program	60/*
4.	Financial Institutions	26.27	1 deficiency	DBE financial institutions list is not regularly updated and use of these institutions is not promoted	60/*
5.	DBE Directory	26.31	No deficiencies 2 advisory comments		
6.	Overconcentration	26.33	No deficiencies		
7.	Business Development Programs	26.35	No additional deficiencies**		
8.	Determining / Meeting Goals	26.45	See 8a–8h below		
8a	Calculation	26.45	1 deficiency	Goal-setting process does not account for the preventive maintenance (PM) funds from private bus contract	60/*
8b	Public Participation	26.45	1 deficiency	Public participation for goal-setting is not sufficiently broad and the goal is not maintained on the County website	60/*
8c	Race-Neutral	26.51	No deficiencies		

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
8d	Race-Conscious	26.51	1 deficiency	Preventive Maintenance (PM) subcontracts are not included when establishing race-conscious DBE goals	60/*
8e	Good Faith Efforts	26.53	1 deficiency	GFE language is not consistently included in contract documents and RFPs	60/*
8f	Protecting Against Termination for Convenience	26.53 and 26.13	1 deficiency	Protection against termination for convenience language is not consistently included in contract documents and RFPs	60/*
8g	Counting DBE Participation	26.55	1 deficiency	DBE participation levels are not verified in contracts or through other oversight activities	60/*
8h	Quotas	26.43	No deficiencies		
9	Shortfall Analysis and Corrective Action Plan	26.47	No additional deficiencies**		
10	TVM	26.49	1 deficiency	Two vehicle procurements occurred without FTA certification of TVM DBE plans	60/*
11	Required Contract Provisions	26.13	See 11a–11c below		
11a	Contract Assurance	26.13	1 deficiency	No process is in place for tracking DBE subcontract documents to ensure inclusion of nondiscrimination clause.	

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
11b	Prompt Payment	26.29	No deficiencies		
11c	Legal Remedies	26.37	No deficiencies		
12	Certification Standards	26.67-26.71	No deficiencies – not applicable		
13	Certification Procedures		No deficiencies – not applicable		
13a	Onsite Visit	26.83	No deficiencies – not applicable		
13b	Annual Affidavit	26.83	No deficiencies – not applicable		
13c	Interstate Certification	26.85	No deficiencies – not applicable		
13d	Certification Appeals	26.86	No deficiencies – not applicable		



Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
14	Record Keeping and Enforcements	26.11 and 26.37	4 deficiencies	Semi-Annual Uniform Reports submitted late; FY 2014 June 1 report missing No process is in place to verify DBE payments No process is in place to confirm DBEs are actually performing work Bidder's list does not include DBE status, age, or gross receipts	60/* 60/* 60/* 60/*

\* Date to be provided in transmittal letter

\*\* See Conciliation Agreement

**Attachment A**  
**FTA Notification Letter to**  
**Westchester DOT**



U.S. Department  
Of Transportation  
**Federal Transit  
Administration**

Headquarters

East Building, 5th Floor, TCR  
1200 New Jersey Ave., SE  
Washington, D.C. 20590

July 1, 2015

Mr. Michael Swee  
Program Coordinator  
Westchester County Department of Public Works and Transportation  
100 East First Street  
Mount Vernon, NY 10550

Dear Mr. Swee:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the Westchester Department of Transportation (Westchester DOT) has been selected for a review if its overall DBE program to take place Tuesday, Wednesday, and Thursday August 4–6, 2015.

The purpose of this review will be to determine whether Westchester DOT is honoring its commitment, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of the Collaborative, Inc., of Boston, MA, to conduct this compliance review. The Collaborative team and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled at **Tuesday, August 4, 2015 at 9:00 a.m.**, to introduce the Collaborative team and FTA representatives to Westchester DOT staff members. Attendees should include you, the DBE Liaison Officer (DBELO), and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. Please let us know if you will designate a member of your staff to serve as Westchester DOT's liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Please forward these materials to the following contact person:

Ms. Shakira Abdul-Ali  
the Collaborative, Inc.  
c/o 53 General Greene Avenue  
Trenton, NJ 08618  
609-271-3821  
[sabdul-ali@thecollaborative.com](mailto:sabdul-ali@thecollaborative.com)

We request the exit conference be scheduled for **Thursday, August 5, 2015 at 2:00 p.m.**, to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to Westchester DOT, will be considered public documents subject to release under the Freedom of Information Act, upon request.

Westchester DOT representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Brian Whitehead, Program Manager for this compliance review, at 202-366-3051 or via e-mail at [brian.whitehead@dot.gov](mailto:brian.whitehead@dot.gov).

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day  
Program Manager for Policy & Technical Assistance

cc: Marilyn G. Shazor, FTA Region II Administrator  
Lynn Bailey, Acting FTA Region II Civil Rights Officer

Westchester Department of Transportation  
Disadvantaged Business Enterprise Program Compliance Review

**Enclosure 1**

**You must submit the following information to the [insert contractor name] contact person within 21 calendar days from the date of this letter.**

1. Current DBE Program Plan (which should include Westchester DOT's organization chart).
2. Fiscal years (FYs) 2010, FY 2011 - FY 2013, and the FY 2014 goal methodology submissions.
3. Any ARRA reports for FY2011. The reviewers are able to access Westchester DOT's other ARRA and DBE semi-annual reports through FTA's TEAM system or as attachments to the TEAM recipient screen.
4. Current Memorandum of Understanding or similar documents for Westchester DOT's participation in the Unified Certification Program.
5. Any additional certification criteria/guidelines used by Westchester DOT in determining DBE eligibility, if applicable.
6. The identification of firms, if any, that have worked on Westchester DOT's projects and have graduated from Westchester DOT's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified as a DBE.
7. Information identifying FTA-funded contracts awarded during FY2011 to present by Westchester DOT and its subrecipients. The federal fiscal year begins October 1 and ends September 30. The information should identify the names and contact information (i.e., telephone and email address) of Prime and DBE participants, the DBE schedule of participation or good faith efforts submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE
8. Good Faith Efforts review criteria established by Westchester DOT.
9. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms).
10. Mechanisms to track and monitor DBE participation generally and DBE participation based on the award of Sandy Relief Funds.
11. Small Business element as implemented by Westchester DOT

Westchester Department of Transportation  
Disadvantaged Business Enterprise Program Compliance Review

12. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the complete/executed contract between your agency and the transit vehicle manufacturer.
13. FTA-assisted transit vehicle requests for proposals (RFPs) for the last five (5) years.
14. List the names of all transit vehicle manufacturers that submitted bids for the RFPs provided in response to Item 14.
15. Shortfall analysis and corrective action plan for the last three (3) years.
16. Any responses prepared on submitted to FTA regarding the DBE conciliation agreement dated April 29, 2015.
17. Names of interested parties (external stakeholder organizations) with which Westchester DOT has interacted on the DBE program issues.
18. Any complaints received concerning Westchester DOT's DBE program over the past five (5) years.
19. The DBELO official position description.
20. Other pertinent information determined by Westchester DOT's staff to shed light on its DBE compliance efforts.



**Attachment B**  
**WCDOT Response to Draft Report**





Robert P. Astorino  
County Executive

George Oros  
Chief of Staff

January 22, 2016

Anita Heard  
Equal Opportunity Specialist  
Internal EEO Program Coordinator  
Federal Transit Administration  
Office of Civil Rights, TCR  
1200 New Jersey Ave.  
E54-420, East Bldg.  
Washington, DC 20590

Via email [ANITA.HEARD@dot.gov](mailto:ANITA.HEARD@dot.gov)

RE: Westchester County DOT DBE Review Draft Report

Dear Ms. Heard,

This letter is in response to the Westchester County Department of Public Works & Transportation (DPW&T) DBE Compliance Review Draft Report dated December 2015. A copy of the draft report was received via e-mail on January 11, 2015.

First, thank you for providing the County with a revised draft copy of the report and particularly for the additional time to present the County's comments.

The following includes factual comments and additional information concerning the findings in the draft report. The comments are broken down by section as numbered in the report, and include the proposed FTA Corrective Action followed by Westchester County's response. The response should be considered to address the proposed corrective action.

**Section 6.3 DBE Liaison Officer**

**FTA Corrective Action:**

*WCDOT must develop a plan for dedicating additional resources to its DBE program, including training of all staff involved in DBE-related activities. This must include a plan to closely monitor compliance with DBE requirements. (See Section 6.14.) WCDOT must submit this plan to the FTA Office of Civil Rights.*

Page 10 states that "the early retirements affected WCDOT and its ability to properly implement its DBE program."

**DPW&T Comment:**

The compliance review was held from August 2 - 4, 2015. As this was only two business days after the staff departures that resulted from the early retirements, the County believes it was premature of the FTA to conclude that our ability to implement the DBE program was affected by them. To support this point, note that WCDOT has met all requirements related to DBE since the staff departures. These include:

- Meeting the milestones of the Conciliation Agreement;
- Submitting a DBE goal for the 2016-2018 timeframe;
- Reporting on DBE participation for 2015; and
- Submitting a Corrective Action Plan for 2015.

Pages 13 and 25 state that there is only one staff member with DBE experience. For the record there are other County personnel with DBE experience. Donna Proft, formerly a Program Specialist with DPW&T and also the FAA DBE Liaison, retired in January 2013, however immediately returned to a part time position in the County Executive's office to assist in both the DBE program and the County's MWBE program. Also, Naomi Klein has been with the Department since 1997 and has served as the Director of Planning since 2010. In that capacity, she has attended Triennial Review Training sessions which have covered DBE. As recently as 2014, she attended a meeting with the FTA Civil Rights Officer to discuss approaches to enhancing our ability to meet our DBE goal. Therefore consider the County to be in compliance per the corrective action.

**Section 6.8 – Determining/Meeting Goals - A) Calculation****FTA Corrective Action:**

*WCDOT must develop a procedure to ensure that it considers all contracting opportunities (including PM funding) in its triennial goal and must revise its DBE goal calculations accordingly. WCDOT must submit the revised procedure and its updated goal methodology to the FTA Office of Civil Rights.*

**DPW&T Comment:**

The County believes this finding was addressed in as much as the most recent DBE goal calculation for FFY 2016-2018 included PM funding in the goal calculation. That goal was approved by the FTA on November 19, 2015. Copies of the goal and approval letter are attached (Attachments 1 & 2). Therefore consider the County to be in compliance per the corrective action.

**Section 6.8 – Determining/Meeting Goals – B) Public Participation****FTA Corrective Action:**

*WCDOT must develop a procedure to record public notices of its DBE program goals and maintain DBE goal information on the County website. WCDOT must also ensure that its public participation activities related to its DBE program goals involve consultation with appropriate individuals or groups consistent with the 49 CFR 26.45 requirements.*

**DPW&T Comment:**

Records of public notices for recent FTA goals that were submitted prior to the DBE review are attached. These include legal notices published in newspapers, notification of the goal as posted on the County website and also copies of outreach e-mails that were sent to appropriate/interested parties

(Attachments 3-9). These records were in the WCDOT's files however, were not requested during the on-site review. Therefore consider the County to be in compliance per the corrective action.

**Section 6.8 – Determining/Meeting Goals – D) Race Conscious DBE Participation**

**FTA Corrective Action:**

*WCDOT must begin including Preventative Maintenance (PM)-funded subcontracts when establishing race-conscious DBE goals.*

**DPW&T Comment:**

The 2016-2018 DBE goal which was approved by the FTA in November 2015 (see Attachment 1) included PM funded subcontracts as race neutral. The approved goal and methodology included a race conscious/race neutral split. The projects directly administered by DPW&T are race conscious and the service contracts/agreements administered by our operator (Liberty Lines) are race neutral. Therefore consider the County to be in compliance per the corrective action.

**Section 6.10 Transit Vehicle Manufacturers (TVMs)**

**FTA Corrective Action:**

*WCDOT must modify its procurement requirements for TVMs to have FTA-approved DBE goals in its vehicle procurement documents, and must ensure that FTA has approved each TVM's DBE goals before procuring transit vehicles.*

**DPW&T Comment:**

DPW&T is currently in the process of preparing specifications for the procurement of articulated buses. The bid documents for this procurement will include the appropriate DBE/TVM language. A copy of the TVM language is included in Attachment 10 for your information. Therefore consider the County to be in compliance per the corrective action.

**Other Comments: These comments are provided to clarify and correct certain factual data and information**

**Cover Page** - Why does the cover say, "Revised Draft Report?" This is the first draft report that was submitted to the County. Was there an earlier draft that we should have received?

**Section 4.1 - Page 9** – County Executive Astorino was elected in November 2009 taking office on January 2, 2010 (document states 2010)

**Section 4.1 - Page 10** – there was a decline in the sales tax due in large part to the decline in gasoline prices since the tax is based upon the dollar amount and not per gallon (document states "...decline in tax revenues from gasoline taxes...")

**Section 6.1 - Page 25** - It is not clear what is meant by the sentence, "The County planned to convert from part-time to full-time the role of Director of the combined Department of Public Works and Transportation." Note that the First Deputy Commissioner, Joseph "Bud" Nicoletti, began employment with the county in July 2015 and was part-time in 2015, becoming a full-time employee in January 2016.

**Section 6.3 – Page 24** – Westchester is comprised of 45 municipalities (document states 43 municipalities)

**Section 6.3 – Page 25** – Commissioner Pisco was not the DBELO prior to 2010

**Section 6.3 - Page 23** – The following sentence should be revised to read, "He (Mr.Swee) reports to Mr. Oros on DBE matters and also reports to Naomi Klein."

**Section 6.3 - Page 25** - Patty Chemka became the Deputy Commissioner in 2010, not 2014.

We respectfully request that the above comments be incorporated into the final report as appropriate.

## **DBE Compliance Review Exit Conference August 8, 2015**

While we are aware that the findings presented at the exit conference were preliminary, we were surprised that the number of deficiencies increased so significantly.

The DBE Compliance Review Exit Conference was attended by the following individuals:

Westchester County - George Oros, Jay Pisco, Bud Nicoletti, Naomi Klein,  
FTA (via phone) – Brian Whitehead, Britney Berry, Lynn Bailey, Janelle Hinton  
The Collaborative - Shakira Abdul-Ali, Z. Wayne Johnson, Ian Kolesinskas

At the exit conference, representatives from the Collaborative verbally presented the findings of their review. The findings as presented at the exit conference were as follows:

### **DBE Program Plan (Advisory Comment)**

- Organization Chart should be clarified
- DBE should be made more prominent on the website

### **DBE Policy Statement – No findings**

### **DBELO (Advisory Comment)**

- Staffing issues due to retirements are a concern

### **Financial Institutions (Advisory Comment)**

- Westchester should consider utilizing DBE financial institutions

### **DBE Directory - No findings**

### **Overconcentration - No findings**

### **Business Development Plan - No findings (Being addressed as part of Conciliation)**

### **Goals (Deficiency)**

- PM funded contracts should be included in the DBE goal calculation. To this end, PM contracts were included in the DBE goal which was approved in November 2015.

### **Public Participation – No findings**

### **Race Neutral DBE Participation – No findings**

### **Race Conscious Participation – No findings**

### **Good Faith Efforts – No findings**

### **Termination for Convenience – No findings**

**Counting DBE Participation** – No findings

**Quotas** – No findings

**Shortfall Analysis and Corrective Action Plan** – No findings

**TVM** (Advisory Comment)

- TVM Certificates should be included in the files for all future bus procurements

**Required Contract Provisions and Enforcement – Prompt Payment** (Advisory Comment)

- FTA forms E and E2 should be included in all FTA funded procurements

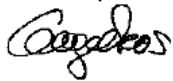
**Legal** – No findings

**Certification Standards** – No findings

**Record Keeping** – No findings

Finally, we stand ready to meet or discuss on the phone all of these findings in more detail so we can continue to ensure the County's full compliance.

Sincerely,



George Oros  
Chief of Staff/DBELO

GO/MS  
Attachment

c.c. Michael Swee, WCDPW&T  
Naomi Klein, WCDPW&T  
Donna Proft, WCCEO  
Yolanda Mitchell DOT



**Attachment C**  
**WCDOT DBE Program Plan**



**WESTCHESTER COUNTY DEPARTMENT OF PUBLIC  
WORKS & TRANSPORTATION**

**FEDERAL TRANSIT ADMINISTRATION  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

In Compliance with 49 CFR Part 26 - United States Department of Transportation

MARCH 2013  
REVISED - MAY 2013

## POLICY STATEMENT

### **Section 26.1, 26.23 - Objectives/Policy Statement**


The County of Westchester (the "County") has established a Disadvantaged Business Enterprise ("DBE") program in accordance with regulations of the U.S. Department of Transportation ("DOT"), 49 CFR Part 26. The County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving such assistance, the County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the County to ensure that DBEs as defined in part 26 have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the County's policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT – assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

George Oros has been delegated as the DBE Liaison Officer. In that capacity, George Oros, Chief of Staff to the County Executive is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the County in its financial assistance agreements with the Department of Transportation.

The County will disseminate this policy statement to all of the components of its organization. The County will also distribute this statement to DBE and non-DBE business communities which perform work for it on DOT-assisted contracts through postings in the media and on the Internet.

  
\_\_\_\_\_  
Robert P. Astorino  
Westchester County Executive

3/18/13  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

**Section 26.1** - The objectives are found in the policy statement on the first page of this program.

**Section 26.3** - The County is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

The County is also the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, SATETEA-LU, Pub. L. 105-178.

**Section 26.5** - The County has adopted the definitions contained in Section 26.5 for this program. The County adopted these definitions through the approval of a policy promulgated by the Commissioner of the Department of Public Works and Transportation.

**Section 26.7** - The County will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the County will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 - Record-Keeping Requirements**

#### Reporting to DOT: 26.11(b)

The County will report DBE participation to DOT as follows:

The County will submit annually DOT Form 4630, as modified for use by FAA recipients.

The County will report DBE participation to the FTA on a semi-annual basis, using DOT Form 4630, which reports will reflect payments actually made to DBEs on DOT-assisted contracts.

#### Bidders List: 26.11(c)

The County has begun maintaining a bidders list, consisting of information about all DBE and non-DBE firms which bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The County will collect the following information about all DBE and non-DBE firms which bid or quote on DOT-assisted contracts.

- 1) Firm Name
- 2) Firm Address
- 3) DBE Status

The County collects this information by inserting a clause requiring prime bidders to furnish the above-listed information for themselves and for sub contractors. The clause is included as a separate "Bidders List Response Form." (See Attachment 10)

Following the award of each bid, the County will conduct a follow-up survey of bidders to find out the other more sensitive information as follows:

- 1) Age of Firm, and
- 2) Annual Gross Receipts (This information will be obtained by asking each firm to indicate which of the following annual gross receipts bracket they fit - Less than \$500,000; \$500,000 to \$1,000,000; \$1,000,000 to \$2,000,000; \$2,000,000 to \$5,000,000; over \$5,000,000)

### **Section 26.13 - Federal Financial Assistance Agreement**

The County has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

(The following language (Assurance: 26 13(a) and (b) will be used in all AIP/FTA federally funded contracts under 49 CFR Part 26.)

Assurance: 26.13(a)

The County of Westchester shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The County of Westchester shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The County of Westchester DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the County of Westchester of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: 26.13b

The County will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 - DBE Program Updates**

Since the County has received a grant of \$250,000 or more for airport planning or development, it will continue to carry out this program until all funds from DOT financial assistance have been expended. The County will provide to DOT updates representing significant changes in the program.

The County has also received a grant of \$250,000 or more in FTA planning capital, and/or operating assistance in a federal fiscal year; the County will continue to carry out this program until all funds from DOT financial assistance have been expended. The County will provide to DOT updates representing changes in the program.

**Section 26.23 - Policy Statement** - The Policy Statement is elaborated on the first page of this program.

### **Section 26.25 - DBE Liaison Officer (DBELO)**

The County has designated the following individual as its DBE Liaison Officer:

George Oros, Chief of Staff to the County Executive, 148 Martine Avenue, White Plains, NY 10601, 914 995-2934, goo1@westchestergov.com.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the County complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the County Executive of Westchester County concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO and designated DBELO staff members are responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has access to various staff within Westchester County's departments to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall triennial goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

4. Identifies contracts and procurements so that DBE goals are included in solicitations.
5. Analyzes the County's progress toward attainment and identifies ways to improve progress.
6. Advises the County Executive's office on DBE matters and achievement.
7. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
8. Plans and participates in DBE training seminars.
9. Provides outreach to DBEs and community organizations to advise them of opportunities.
10. Maintains the County's updated directory on DBEs.
11. Reviews third party contracts and purchase requisitions for compliance with this program.
12. Participates in pre-bid meetings.

**Section 26.27 - DBE Financial Institutions**

Westchester County periodically investigates and updates the full extent of services offered by DBE financial institutions in the area and makes reasonable efforts to use these institutions. The area investigated is the same area used for the FTA DBE goal calculation and includes the following counties: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Richmond, Rockland, Suffolk, Sullivan, Ulster and Westchester.

A list of the DBE financial institutions currently located in this area is included as Attachment 10. The institutions listed in Attachment 10 were found on the Federal Reserve Bank website as of September 30, 2012. Once a year (or as needed) Westchester County annually reviews the Federal Reserve Bank - Minority Bank Depository, <http://www.federalreserve.gov/releases/mob/current/default.htm> for financial institutions owned, controlled, and managed by socially and economically disadvantaged individuals. This list of institutions is made available to staff in the Department of Finance for use as appropriate. The list is also posted on the Department of Finance website.

The County of Westchester encourages prime contractors to use the full extent of services offered by DBE financial institutions in their communities for all FTA or FAA funded contracts. Language to this effect is included in all appropriate bid/proposal documents.

**Section 26.29 - Prompt Payment Mechanisms** - The County will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the County of Westchester. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County of Westchester. This clause applies to both DBE and non-DBE subcontracts.

**Section 26.31 - Directory**

The County, through the New York State Uniform Certification Program (UCP) maintains a directory identifying all firms eligible to participate as DBEs. This directory is available at: <http://50.63.177.149/productions/nysdot/biznet/mainmenu.asp> The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. (See Attachment 2)

**Section 26.33 - Overconcentration**

The County has not identified that overconcentration exists in the types of work that DBEs perform.

**Section 26.35 - Business Development Programs**

The County has not established a DBE business development program other than development of a Small Business Participation Plan. (See Attachment 8)

**Section 26.37 - Monitoring and Enforcement Mechanisms** - The County will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The County will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

2. The County will consider similar action under its own legal authorities, including responsibility determinations for future contracts. (See Attachment 3)
  3. The County will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs upon contract award is actually performed by the DBEs. This will be accomplished by site checks. (See Attachment 3)
  4. The County will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award through the County's record-keeping process. (See Attachment 3)
- Any false, fraudulent or dishonest conduct by a contractor in connection with the program will be reviewed by the Commissioner of Public Works and Transportation. The Commissioner will make a determination concerning possible actions against the contractor.

**§ 26.39 - Fostering small business participation**

The County has established a Small Business Participation Plan. The plan can be found in Attachment 8 to this program.

**SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

**Section 26.43 - Set-asides or Quotas**

The County does not use quotas in any way in the administration of this DBE program.

**Section 26.45 - Overall Goals**

A description of the methodology to calculate the overall FAA and FTA goals and the goal calculations can be found in Attachments 4 and 4A to this program. These sections of the program will be updated every three years.

The County conducts on-going outreach efforts to identify and obtain information concerning the availability of DBE and non-DBE businesses. These efforts include attending or initiating several DBE outreach events each year. During these events, the County consults with businesses and interest groups to promote DBE use. This approach is used to assist in establishing the overall DBE triennial FTA and FAA goals.

The County will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at 148 Martine Avenue, White Plains, NY 10601 for 30 days following the date of the notice, and informing the public that Westchester County and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, the County will issue this notice by June 1. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The County's overall goal submission to DOT will include a summary of information and comments received during this public participation process and the County's responses.

The County will begin using its overall goal on October 1 of each year, unless it has received other instructions from DOT. If the County establishes a goal on a project basis, it will begin using its goal by the time of the first solicitation for a DOT-assisted contract for the project.

**Section 26.49 - Transit Vehicle Manufacturers Goals**

The County will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the County may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the Transit Vehicle Manufacturer complying with this element of the program.

**Section 26.51(a-c) - Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated when the goal calculation is updated.

**Section 26.51(d-g) - Contract Goals**

The County will use contract goals to meet any portion of the overall goal the County does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal

applies, the contract goals will cumulatively result in meeting any portion of the overall goal which is not projected to be met through the use of race-neutral means.

The County will establish contract goals only on those DOT-assisted contracts which have subcontracting possibilities. The County need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

The County will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

### **Section 26.53 - Good Faith Efforts Procedures**

#### Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The DBE Liaison Officer is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The County will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before the County commits to the performance of the contract by the bidder/offeror.

#### Information to be submitted (26.53(b))

The County treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

#### Administrative reconsideration (26.53(d))

Within 60 days of being informed by the County that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Commissioner of the Department of Public Works & Transportation, 148 Martine Avenue, 5<sup>th</sup> Floor, White Plains, NY, 10601, 914-995-2546. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the County's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The County will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The County will require a contractor to make good faith efforts to replace a DBE which is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The County will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the County will require the prime contractor to obtain the County's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the County's Commissioner of Public Works and Transportation will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Commissioner of Public Works and Transportation may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the County of Westchester to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

The forms found in Attachment 6 can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements.

**Section 26.55 - Counting DBE Participation**

The County will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

**SUBPART D – CERTIFICATION STANDARDS**

**Section 26.61 – 26.73 Certification Process**

The County is a member of a Unified Certification Program (UCP) administered by New York State which will make certification decisions on behalf of the County with regard to DBEs in DOT-assisted contracts.

For information about the certification process firms should contact New York State Unified Certification Partner. Information on the New York State Unified Certification Program (NYSUCP) is available at <https://www.dot.ny.gov/main/business-center/civil-rights/ucp-directory>.

**SUBPART E – CERTIFICATION PROCEDURES**

**Section 26.81 - Unified Certification Programs**

The County is a member of a Unified Certification Program (UCP) administered by New York State. **New York State is responsible for meeting all of the requirements of this section SUBPART E – CERTIFICATION PROCEDURES.**

**Section 26.83 - Procedures for Certification Decisions**

**Section 26.85 - Denials of Initial Requests for Certification**

**Section 26.87 - Removal of a DBE's Eligibility**

**Section 26.89 - Certification Appeals**



## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 - Information, Confidentiality, Cooperation**

The County will safeguard from disclosure to third parties information which may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, the County will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

### **Monitoring Payments to DBEs**

The County will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the County or DOT. This reporting requirement also extends to any certified DBE subcontractor.

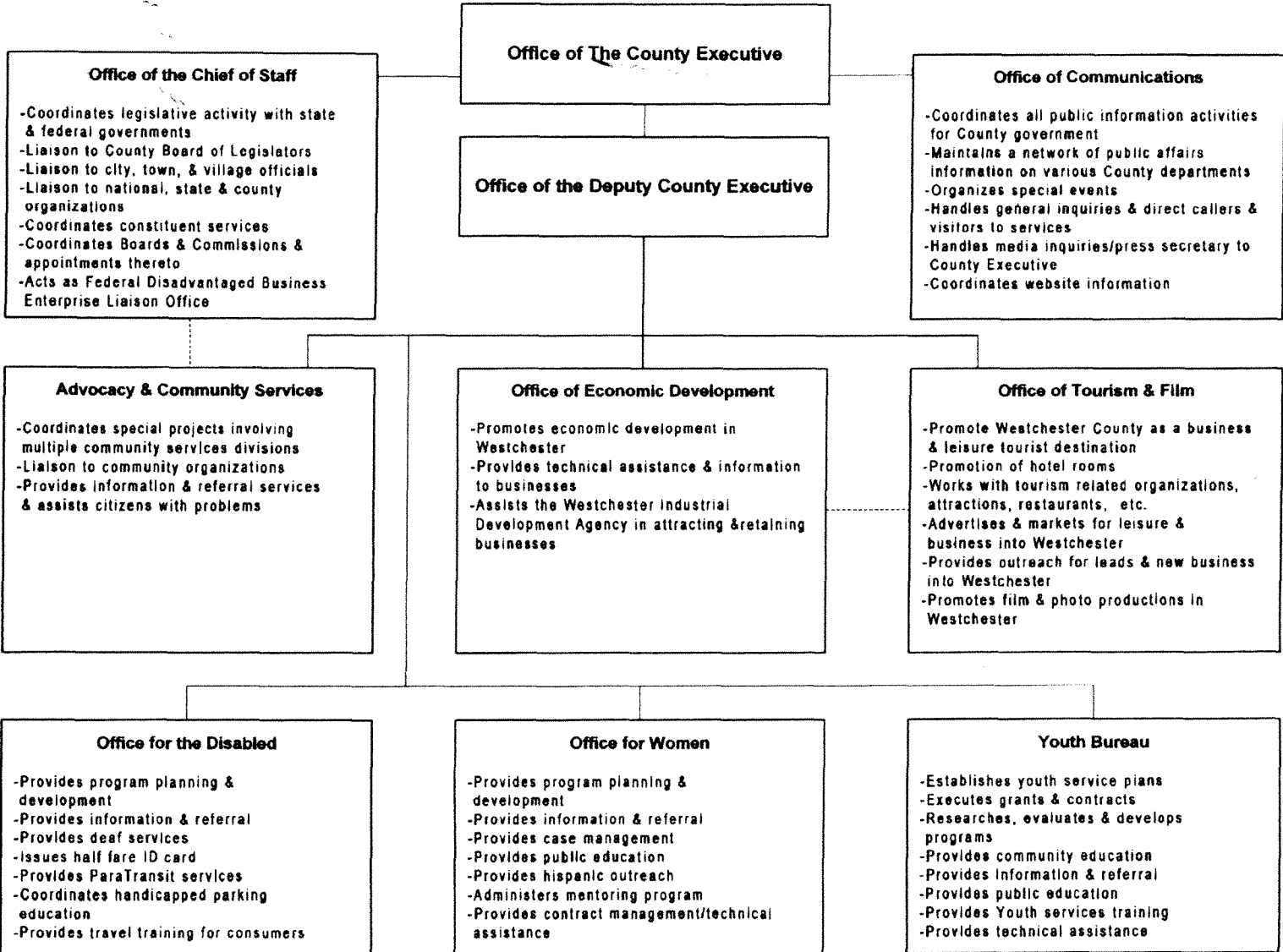
The County will perform interim audits of contract payments to DBEs. Such audits will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

## ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculation (FTA)
Attachment 5	Breakout of Estimated Race-Neutral & Race-Conscious Participation (FTA)
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Procedures for Removal of DBE's Eligibility
Attachment 8	Small Business Participation Plan
Attachment 9	Bidders List Response Form
Attachment 10	DBE Financial Institutions

# Attachment 1

## Organizational Chart – Disadvantaged Business Enterprise Liaison Officer



**ATTACHMENT 2**

**DBE Directory**

Westchester County uses the following directory at the following website:

- UCP Site
- <http://50.63.177.149/productions/nysdot/biznet/mainmenu.asp>

## ATTACHMENT 3

### Monitoring and Enforcement Mechanisms

Westchester County has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. New York State Constitution: Article 1, Section 11, of the NYS Constitution prohibits discrimination against anyone because of race, color, creed, or religion by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision thereof. NY Executive Law Section 296 substantially extends Article 1, Section 11 of the NY State Constitution to employment relationships.
3. New York State Executive Law: Section 296 details the types of discrimination that are unlawful in New York. Sections 297 and 298 contain the review and enforcement procedures available through the Human Rights Division or the courts.
4. New York Labor Law, Article 8, Section 220-E: every contract for or on behalf of the state or a municipality for the construction, alteration, or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies shall contain provisions by which a contractor with the state or municipality agrees, among other things, that it will not discriminate in the hiring of employees (Subparagraph (a)), and that there may be deducted from any amount payable to the contractor by the state or municipality under the contract a penalty of \$50 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the contractual provision (Subparagraph (c)).

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26;
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

Westchester County will implement various mechanisms to monitor program participants to ensure they comply with Part 26, including, but not limited to the following:

1. The County will insert language in its contracts involving DBEs requiring that work is actually performed by DBEs and that the contractor must notify the County in the event of a change of circumstances or other event which prevents work from being completed by DBEs.
2. The County will insert language in any contract involving DBE participation requiring the prime contractor to maintain records and documents of payments to DBEs for three years following the performance of the contract and make them available for inspection upon request by any authorized representative of the County of DOT.
3. The County will implement the following additional monitoring and compliance procedures:
  - a. Site visits to determine if work is actually being completed by DBEs
  - b. Tracking of payments to DBEs
  - c. Interim audits of payments to DBEs
4. The County will implement its compliance and monitoring procedures as follows:
  - a. Westchester County will perform periodic site visits to monitor DBE compliance and procedures at these project sites, including whether work designated for DBEs is actually being performed by DBEs.
  - b. Westchester County will keep a running tally of actual payments made to DBE firms for work committed to them at the time of contract award through the County's record-keeping process.
  - c. The County will perform interim audits of contract payments to DBEs, reviewing payments to DBE subcontractors to ensure that the actual amount paid equals or exceeds the dollar amounts called for in the schedule of DBE participation.

**ATTACHMENT 4**

**Section 26.45: Overall Goal Calculation - FTA**

**WESTCHESTER COUNTY  
DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION  
2013-2015 DISADVANTAGED BUSINESS ENTERPRISE  
PROPOSED (DBE) GOAL SUBMISSION TO THE FEDERAL TRANSIT ADMINISTRATION**

Overall Goal

The Westchester County Department of Public Works and Transportation's ("DPW&T") overall DBE goal for fiscal years 2013, 2014 and 2015 is **3.46%** of the financial assistance the County will expend in Federal Transit Administration (FTA) assisted contracts for projects related to the Westchester County Bee-Line bus system.

Proposed Program of Projects

The Westchester County DPW&T's proposed DBE eligible FTA-assisted contracts for Federal Fiscal years 2013, 2014 and 2015, are as follows:

- |   |                  |
|---|------------------|
| 1) Articulated Bus Rehabilitation Program           | 2013, 2014, 2015 |
| 2) Purchase Maintenance & Supervisory Vehicles      | 2013, 2014, 2015 |
| 3) Bus Stop Enhancements                            | 2013, 2014, 2015 |
| 4) Replace Paint Booth Air System – Cerrato Garage  | 2013             |
| 5) Purchase Paratransit Vehicles                    | 2014             |
| 6) Replace HVAC System – Cerrato Garage             | 2014             |
| 7) Roof Alterations – CM Facility                   | 2015             |
| 8) Clean and Paint the Ceiling – CM Facility        | 2015             |
| 9) Replace the Paint booth Air System – CM Facility | 2015             |
| 10) Replace Sanding/Vacuum System – CM Facility     | 2015             |
| 11) Replace Body Shop Air system – CM Facility      | 2015             |

Note that these projects and dates are *proposed* and the scope and dates of this program are subject to change. Please see **Attachment 1** for a detailed list of these projects.

The total amount of FTA assisted contracts WCDPW&T expects to let during fiscal years 2013, 2014 and 2015 is approximately \$14,440,000. This means that the County has set a goal of spending \$501,068 in funds with DBE firms during FFYs 2013, 2014 and 2015.

METHOD

The following is a summary of the method used to calculate this goal:

Base Figure Calculation

The method used to calculate the relative availability of DBEs was based on the available DBE lists (New York State UCP Directory) and US Census Bureau Data (2009 County Business Patterns-North American Industry Classification System). Information from both lists was gathered from the following counties in New York: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Rockland, Suffolk, Sullivan, Richmond, Ulster and Westchester.

For an analysis of all available businesses the following NAIC codes were used:

336399	All other motor vehicle parts manufacturing
237310	Highway, street and bridge construction
236220	Commercial and Institutional Building Construction

238320	Painting and Wall covering Contractors
238220	Plumbing, Heating and Air Conditioning Contractors
336112	Light Truck and Utility Vehicle Manufacturing
441110	Automobile Dealers

A "base figure" was calculated using the percentage of contracts expected to be let during fiscal years 2013, 2014 and 2015.

READY, WILLING AND ABLE DBES	152
ALL FIRMS	8,480

**Relative Availability of DBEs for the Bee-Line = 1.79%**

Adjustments to Base Figure

The "base figure" was adjusted by weighting the availability of DBE firms to the specific projects that are proposed over the next three years. As a result the overall goal is **3.46%**. Please see **Attachment 2** for a detailed description of the weighting methodology.

PUBLIC PARTICIPATION

PUBLIC NOTICE  
WESTCHESTER COUNTY DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION  
DISADVANTAGE BUSINESS ENTERPRISE GOAL FOR FEDERAL TRANSIT ADMINISTRATION (FTA) FUNDED  
PROJECTS  
FEDERAL FISCAL YEARS 2013, 2014 AND 2015

In accordance with US Department of Transportation Regulations 49 CFR Part 26, the Westchester County Department of Public Works and Transportation (DPW&T) announces a proposed Federal Transit Administration (FTA) Disadvantaged Business Enterprise (DBE) goal of 3.46% for Federal Fiscal Years 2013, 2014 and 2015. The goal is calculated in accordance with FTA regulations. DPW&T's proposed goal and the methodology used to determine that goal will be available for inspection for 30 days from the date of this notice, Mon-Fri, 9:00am to 5:00pm (excluding holidays) at the DPW&T's Commissioner's Office, 148 Martine Ave., 5<sup>th</sup> Floor, White Plains, NY, 10601. Comments on the program goal will be accepted for 45 days after the publication of this notice. Comments should be directed to Michael Swee, Westchester County Department of Public Works and Transportation, 100 East First Street, 9<sup>th</sup> Floor, Mount Vernon, NY, 10550.

RACE CONSCIENCE Vs RACE NEUTRAL SPLIT

Westchester County will meet the maximum feasible portion of its overall goal by using race-neutral means to facilitate DBE participation. All projects are advertised in periodicals targeting minority areas and request that perspective bidders submit a plan using good faith efforts to hire DBEs for the project. Recently, Westchester County has been enhancing its race neutral methods by conducting outreach seminars, sending out e-mails, conducting surveys and providing assistance in obtaining necessary certification.

The County of Westchester has had very positive feedback concerning this outreach. At the seminars DBEs are provided information on the following items:

- Learn how to become a State certified DBE
- Learn how leading financial/insurance institutions can assist your business
- Performance Bonding
- Insurance
- Loans
- Learn what business resources are available
- Networking Opportunities
- Meet County Contract Representatives

**ATTACHMENT #1**  
**Westchester County Department of Public Works and Transportation**  
**Proposed FTA funded Capital Projects - 2013, 2014 and 2015 - DBE Goal**  
**August 2012**

<b>Project</b>	<b>Estimated Year</b>	<b>NAICS CODE</b>	<b>Classification</b>	<b>Estimated Cost</b>	<b>Percent of Total Program (rounded)</b>
Artic Bus Rehab	2013-2015	336399	All other motor vehicle parts manufacturing	\$2,600,000	18%
Bus Stop Enhancements	2013-2015	237310	Highway, street and bridge construction	\$1,500,000	10%
Raise Roof – CMF	2015	236220	Commercial and Institutional Building Construction	\$3,000,000	20%
Clean/Paint Ceiling – CMF	2015	238320	Painting and Wallcovering Contractors	\$750,000	6%
HVAC – Cerrato	2014	238220	Plumbing, Heating and Air Conditioning Contractors	\$2,700,000	17%
Paint booth air system – Cerrato	2013	238220	Plumbing, Heating and Air Conditioning Contractors	\$100,000	1%
Paint booth air system – CMF	2015	238220	Plumbing, Heating and Air Conditioning Contractors	\$500,000	4%
Sanding/Vacuum system – CMF	2015	238220	Plumbing, Heating and Air Conditioning Contractors	\$230,000	1%
Body shop Air sytem – CMF	2015	238220	Plumbing, Heating and Air Conditioning Contractors	\$285,000	2%
Paratransit Vehicles	2014	336112	Light Truck and Utility Vehicle Manufacturing	\$2,000,000	14%
Maint & Super Vehicles	2013-2015	441110	Automobile Dealers	\$775,000	7%
<b>TOTAL</b>				<b>\$14,440,000</b>	<b>100%</b>

25%



**ATTACHMENT #2**  
**Westchester County Department of Public Works and Transportation**  
**DBE Goal Base Figure Weighting Methodology**  
**August 2012**

<b>NAICS CODE</b>	<b>Number of All Firms</b>	<b>Number of DBE Firms</b>	<b>Relative Availability</b>	<b>Percent of Total</b>	<b>Weighted Percentage</b>
336399	14	0	0.00%	18.00%	0.00%
237310	277	81	29.24%	10.00%	2.92%
236220	1582	28	1.77%	20.00%	0.35%
238320	1720	25	1.45%	6.00%	0.09%
238220	4326	18	0.42%	25.00%	0.10%
336112	2	0	0.00%	14.00%	0.00%
441110	559	0	0.00%	7.00%	0.00%
	<b>8480</b>	<b>152</b>	<b>32.88%</b>	<b>100.00%</b>	<b>3.46%</b>

## ATTACHMENT 5

### Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation - FTA

Westchester County will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Westchester County uses the following race-neutral means to increase DBE participation:

1. Locating and identifying DBEs and other small businesses which may be interested in participating under 49 CFR Part 26
2. Notifying DBEs of opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring activities so as to encourage and facilitate the participation of DBEs;
4. Providing technical assistance to DBEs to facilitate overcoming limitations, such as inability to obtain bonding or financing;
5. Ensuring that competitors for contracting opportunities are informed during pre-construction meetings about how the sponsor's DBE program will affect the procurement process;
6. Providing information concerning how to reach out to DBE firms to assist them in obtaining DBE participation; and

For FTA contracts, Westchester County estimates that, in meeting its overall goal of 3.46%, the County will obtain 100% from race-neutral participation and 0% through race-conscious measures.

To help meet its DBE goal and to foster stronger ties with DBE firms in general, Westchester County has taken several steps to improve outreach to DBE firms and to increase DBE participation in all County projects. Westchester County initiated the following measures in 2011:

- Enhanced Website: <http://business.westchestergov.com/business-assistance/minority-and-women-owned-businesses>
- Appointment of new DBE Compliance Officer in May, 2011
- Development of new DBE program outreach forms for distribution at various outreach events (see attached)
- Subscription to DBE Good Faith newsletter <http://www.dbegoodfaith.com/>
- Staff attended NTI DBE course in March 2011

Westchester County also initiated and/or participated in several DBE related outreach events in 2011. These included the following:

1. Hudson Valley Entrepreneurial Conference & Expo – Fishkill, NY – 5/5/11
2. Professional Woman of Westchester – White Plains, NY – 5/10/11
3. Westchester County Minority and Woman Owned Business Outreach Program - Mount Vernon, NY – 5/24/11
4. New York Power Authority Purchasing Exchange – White Plains, NY – 6/9/11
5. PTCA<sup>1</sup> - How to do Business with the Hudson Valley Municipal Purchasing Group – Suffern, NY – 6/10/11
6. PTCA – How to do Business with the U.S. small Business Administration & NY State MWBE Certification Program – Orangeburg, NY – 9/16/11
7. PTCA – How to do Business with New York State – Valhalla, NY – 10/7/11
8. Westchester County's Shared Municipal Service Expo '11 – White Plains, NY 10/11/11
9. PTCA - How to do Business with Westchester County – Valhalla, NY - 11/17/11

Based on the above action plan, Westchester County is taking a proactive and aggressive approach to increase DBE participation and meet its FTA DBE goal.

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<sup>1</sup> Procurement Technical Assistance Center (PTCA) Rockland County Economic Development Corporation  
<http://www.redc.org/>.

**ATTACHMENT 6**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**  
**(To be used with Contracts which have established goals)**

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_  
(Signature)

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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-----  
-----  
-----

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_  
(Signature) (Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

(Submit this page for each DBE subcontractor.)

## **ATTACHMENT 7**

### **Procedures for Removal of DBEs Eligibility**

As the County is not responsible for determining DBE eligibility, it shall not accept responsibility for removing such eligibility, but rather shall defer to the judgment of the State of New York/Unified Certification Program.

#### Ineligibility complaints:

As the County does not make determinations of DBE eligibility, the County will not consider any allegations or complaints that a firm is ineligible.

#### County-initiated proceedings:

If, based on information provided by the firm, the County determines that there is reasonable cause to believe that a currently certified firm is ineligible, the County may advise the proper State authority responsible for certifying such firm.

#### Effects of removal of eligibility:

When the State removes a firm's eligibility, the following shall apply:

When a prime contractor has made a commitment to using the ineligible firm, or the County has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before the notice of decertification is issued, the ineligible firm does not count toward the contract goal or overall goal. The prime contractor must meet the contract goal with an eligible DBE firm or demonstrate to the County that it has made a good faith effort to do so.

If a prime contractor has executed a subcontract with the firm that is later notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where the County has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of its ineligibility was issued shall not count toward the County's overall goal, but may count toward the contract goal.

However, if the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the County may continue to count its participation on that contract toward overall and contract goals.

## **ATTACHMENT 8**

### **Small Business Participation Plan**

#### **WESTCHESTER COUNTY SMALL BUSINESS PARTICIPATION PLAN**

**United States Department of Transportation**

**2/28/12**

#### **1. Fostering Small Business Participation – Small Business Policy**

Westchester County will continue its commitment to help Small Business Enterprises. In a coordinated effort through its various departments, Westchester County offers opportunities for small businesses through the purchase of goods, the provision of services and construction projects. These efforts include specific measures to encourage small business participation in US Department of Transportation-assisted projects/contracts as described in this Small Business Participation Plan.

#### **2. Definition of Small Business**

Whether a business is a “Small Business” is determined in accordance with the U.S. Small Business Administration’s definition and size standards noted in 13 CFR 121.103 as well as size standards defined pursuant to Section 3 of the Small Business Act. In addition, pursuant to 49 C.F.R. § 26.65, a business concern is only considered a small business concern where average annual gross receipts over the preceding three fiscal years do not exceed \$22.41 million.

#### **3. Certification of Small Business**

Firms must conform to the US Small Business Administration’s definition of a small business, must be listed in the Central Contractor Registration (CCR), and must have represented itself in the federal Online Representations and Certifications Application (ORCA) system as a small business for the goods or services being procured.

To the extent the County establishes any type of advantage for a small business in procurements for DOT-assisted projects/contracts, a bidding firm will be required to provide documentation that it meets the definition of Small Business set forth in Section 2 (above) as part of its bid submission.

#### **4. Purchasing Responsibility for Westchester County**

The Westchester County Bureau of Purchase and Supplies is responsible for purchasing materials, equipment and supplies for all Westchester County departments. Westchester County-sponsored projects vary in complexity and include building facilities, recreational facilities, airport facilities, public transit rolling stock, roads and bridges, equipment purchases, wastewater treatment plants and sewer systems.

#### **5. Small Business Participation Encouragement Measures**

Westchester County will implement several new measures, as well as support ongoing measures, to proactively encourage small business participation in its procurement of DOT-assisted project/contract vendors. The measures include changes to procurement practices as well as ongoing outreach and training efforts, as described below.

##### **5.1 New Small Business Check-List and Revised Procurement Procedures**

In the third quarter of 2013 Westchester County will develop a “small business” checklist/tool to assess each DOT-assisted project/contract in terms of applicability/suitability for small firms. The checklist will include steps to ensure that projects/contracts suitable for small firms do not contain unnecessary solicitation provisions or requirements that would make it difficult for small businesses to bid. The checklist will be included in all procurement files to document a good faith effort on behalf of the County and, as applicable, primary bidders/proposers, to encourage small business participation. This checklist will also be made part of the County’s formal procurement procedures, which are currently being drafted.

##### **5.2 Assessment of Contract Type and Structure**

Part of the checklist process will include an assessment of whether the particular DOT-assisted project/contract can be unbundled to encourage small business participation. It is anticipated that most projects will be of a size and magnitude (less than \$1 Million) that are suited to accommodate small business participation. Projects that are multi-year in duration and in excess of \$5 Million will be considered “mega projects”. Such projects will be

assessed to identify any contract elements or sub contracts that can be separated out to encourage small business participation.

### 5.3 Purchasing Preference

In exercising sound business judgment and in accordance with a Westchester County's Procurement Policy, which requires written or oral quotations "from no fewer than 3 persons customarily providing such goods and services," Westchester County will specifically inquire as to the existence and qualifications of small businesses capable of providing the subject goods or services in the marketplace as part of the procurement process for DOT-assisted projects/contracts and make it advantageous for small businesses to provide an offer.

### 5.4 Procurement Personnel Training

Information meetings will be held with all staff involved in procurement to educate them on the small business participation program for DOT-assisted projects/contracts. Information presented will include the reason for the program, the key program elements, and how the measures – including the commitment to unbundling of large projects/contracts will affect the way they do their jobs. Once the checklist has been developed, specific training on the proper use of the checklist also will be provided.

### 5.5 Ongoing Outreach and Training

Westchester County works through various organizations in the area to recruit small businesses to participate in its DOT-assisted and other projects/contracts. Westchester County will continue with this type of outreach and training effort as part of its Small Business Participation Plan. Ongoing outreach and support measures/arrangements include:

- Maintenance of a Small Business link on County Website: <http://business.westchestergov.com/starting-a-small-business>

Westchester County's regular participation in outreach and training conferences and programs targeted to small businesses. Examples of such conferences/programs attended in 2011-Present are:

- Hudson Valley Entrepreneurial Conference & Expo – Fishkill, NY – 5/5/11
- Professional Women of Westchester – White Plains, NY – 5/10/11
- Westchester County Minority and Woman Owned Business Outreach Program - Mount Vernon, NY – 5/24/11
- New York Power Authority Purchasing Exchange – White Plains, NY – 6/9/11
- PTCA<sup>2</sup> - How to do Business with the Hudson Valley Municipal Purchasing Group – Suffern, NY – 6/10/11
- PTCA – How to do Business with the U.S. Small Business Administration & NY State MWBE Certification Program – Orangeburg, NY – 9/16/11
- PTCA – How to do Business with New York State – Valhalla, NY – 10/7/11
- Westchester County's Shared Municipal Service Expo '11 – White Plains, NY 10/11/11
- PTCA - How to do Business with Westchester County – Valhalla, NY - 11/17/11
- MWBE, DBE and Small Business Seminar -- White Plains – 3/30/12
- Presentation for Minority and Woman Business Owners – White Plains – 4/27/12
- NY Power Authority Purchasing Exchange -- White Plains – 6/6/12
- PTCA<sup>3</sup> - How to do Business with the Hudson Valley Municipal Purchasing Group – 11/8/12
- Westchester Grow Forum for Entrepreneurs – 11/13/12
- Tri-State/Rosevelt Square Business Network – 1/11/2013

Westchester County also has taken several steps to improve outreach to Disadvantaged Business Enterprises (DBEs), which are by definition small businesses, and will continue these types of efforts as well. Examples include:

- Development of new DBE program outreach forms for distribution at various outreach events

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<sup>2</sup> PTCA – Procurement Technical Assistance Center – Rockland County Economic Development Corporation  
<http://www.redc.org>.

- Subscription to DBE Good Faith news letter <http://www.dbegoodfaith.com/>
- Attendance at the National Transit Institute DBE course in March 2011

The County recognizes that such efforts are to be considered part of its race-neutral DBE program, but mentions them here as these efforts also assist a portion of the overall small business community.

#### 5.6 New Outreach and Training Measures

Westchester County also plans to take the following two actions to enhance its outreach and training with respect to small business participation in DOT-assisted and other projects/contracts:

- develop an outreach form specifically targeted to small businesses and distribute it through appropriate conferences/meetings
- assess the possibility of adding a “Small Business Opportunities with Westchester County” link to the County website (subject to local procurement rules)

#### 6. Implementation of Small Business Participation Plan

Overall responsibility for implementing the Small Business Participation Plan lies with the County Department of Public Works and Transportation, working in conjunction with the County Bureau of Purchase and Supplies and the County Department of Law. The County will move forward with implementation of the Small Business Participation Plan as follows.

##### 6.1 Develop and Carry Out Collaborative Detailed Implementation Plan

Over the 60-day period following approval of the County Small Business Participation Plan, the three County Departments/Bureau identified above will collaborate to develop a detailed implementation plan encompassing all aspects of the Small Business Participation Plan. It will delineate major and sub-tasks, identify the individual or departments having responsibility for completing each task, specify task timelines, and identify task interdependencies. It will provide for full implementation of the new or enhanced Small Business participation measures within 9 months of the Small Business Participation Plan approval date.

The Department of Public Works and Transportation will be responsible for leading the development of the detailed implementation plan, regularly monitoring progress against the plan, and taking action as needed to address any task obstacles or delays in task completion. All County agencies whose cooperation is required to accomplish the plan will be expected to provide the necessary cooperation.

##### 6.2 Perform Review of Small Business Participation Plan Outcomes

Once the Small Business Participation Plan has been implemented and new measures have been in use for nine months, the Department of Public Works and Transportation will review County procurement activities related to DOT-assisted projects/contracts during that period to assess the effectiveness of the new and ongoing measures. Consideration will be given at that time to the need for additional or different measures.



ATTACHMENT 9

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
BIDDERS LIST RESPONSE FORM**

**\*\*TO BE FILLED OUT BY THE PRIME CONTRACTOR AND ALL SUB-CONTRACTORS\*\***

Please provide the following information:

1. Business Name: \_\_\_\_\_

2. Business Address:

\_\_\_\_\_

Street	City	State	Zip
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3. Is this business certified as a Disadvantaged Business Enterprise? a. Yes  b. No

4. Name of Contact Person: \_\_\_\_\_

5. Phone: \_\_\_\_\_ 5. Email \_\_\_\_\_

6. Will you subcontract any of your work? a. Yes\*  b. No   
(\* If "Yes," the subcontractor(s) must complete an individual Bidders List Form also.)

The undersigned declares that the information set forth on this page is current, complete and accurate.

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

## ATTACHMENT 10

DBE Financial Institutions in the area as of September 30, 2012  
(Assets and Deposits in Thousands)

	Bank/Branch Name	Location	ID	Minority Ownership Date	Established Date	Assets	Deposits
1	BNB BK NA , FIFTH AVE BR	NEW YORK, NY	3219595	10/3/2003	10/3/2003	--	--
2	CITY NB OF NJ , EAST NEW YORK BR	BROOKLYN, NY	1847873	6/18/2001	11/16/1990	--	--
3	CITY NB OF NJ , HARLEM BR	NEW YORK, NY	3366293	6/30/2005	6/30/2005	--	--
4	CITY NB OF NJ , HEMPSTEAD BR	HEMPSTEAD, NY	3140336	9/20/2002	9/20/2002	--	--
5	CITY NB OF NJ , ROOSEVELT BR	ROOSEVELT, NY	1728758	5/12/2000	12/31/1979	--	--
6	INDUS AMER BK , HICKSVILLE BR	HICKSVILLE, NY	3925056	12/8/2008	12/8/2008	--	--
7	EASTBANK NA	NEW YORK, NY	98717	11/26/1984	11/26/1984	\$182,766	\$146,687
8	FIRST AMER INTL BK	BROOKLYN, NY	2857794	11/15/1999	11/15/1999	\$536,289	\$450,774
9	FIRST AMER INTL BK , 107-50 QUEENS BLVD BR	FOREST HILLS, NY	3461022	5/1/2006	5/1/2006	--	--
10	FIRST AMER INTL BK , 40 48 MAIN ST BR	FLUSHING, NY	3472756	9/25/2006	9/25/2006	--	--
11	FIRST AMER INTL BK , 4208 MAIN ST FLUSHING BR	FLUSHING, NY	3204247	7/28/2003	7/28/2003	--	--
12	FIRST AMER INTL BK , 8TH AVE BR	BROOKLYN, NY	3248193	1/15/2004	1/15/2004	--	--
13	FIRST AMER INTL BK , BOWERY BR	NEW YORK, NY	3080526	1/11/2002	1/11/2002	--	--
14	FIRST AMER INTL BK , EAST BRDWAY BR	NEW YORK, NY	3350498	4/28/2005	4/28/2005	--	--
15	FIRST AMER INTL BK , ELMHURST BR	ELMHURST, NY	3657320	7/26/2006	7/26/2006	--	--
16	FIRST AMER INTL BK , GRAND ST BR	NEW YORK, NY	3373152	8/8/2005	8/8/2005	--	--
17	UNITED CENTRAL BK , PORT RICHMOND BR	STATEN ISLAND, NY	58618	8/1/2009	1/4/1971	--	--

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**Attachment D**  
**Conciliation Agreement**



Robert P. Astorino  
County Executive

Office of the County Attorney

Robert F. Meehan  
County Attorney

**BY EMAIL AND UPS EXPRESS**

May 27, 2015

Ms. Linda Ford  
Director, Office of Civil Rights  
Federal Transit Administration  
East Building 5<sup>th</sup> Floor – TCR  
1200 New Jersey Avenue, SE  
Washington DC 20590

**Re: Conciliation Agreement**

Dear Ms. Ford:

On behalf of the County of Westchester I am transmitting one executed copy of the conciliation agreement which was attached to your letter dated April 29, 2015.

Sincerely,

Erin M. O'Shea  
Assistant County Attorney

cc: Robert P. Astorino, County Executive  
Kevin J. Plunkett, Deputy County Executive  
George Oros, Chief of Staff  
Jay T. Pisco, Commissioner, DPW&T  
Patricia Chemka, Deputy Commissioner, DPW&T  
Robert Meehan, Esq. County Attorney  
James Robertson, Esq. Deputy County Attorney  
Michael Swee, DPW&T  
Britney Berry, FTA Office of Civil Rights  
Janelle Hinton, FTA Office of Civil Rights  
Jennifer Reiss, FTA Office of Civil Rights

## 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 August 31, 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 (May 15, 2015 – August 15, 2015) is due to FTA no later than August 31, 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 process to identify contracts that could be unbundled to create additional opportunities for DBE firms to participate on FTA-assisted projects. Specifically, review contracts from the past 3 years and identify areas where two or more contracting opportunities have been consolidated into a single contract. Your quarterly report must list the types of projects (i.e., from the last 3 years) that were reviewed and include process for determining when unbundling projects is most appropriate.
4. Develop a process to identify contracts that may be appropriate for competition only among small businesses, i.e. a small business set-aside. Your quarterly report must explain how your agency determined appropriate small business size standards as well as how individual set-aside contract selections will be made.
5. 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.
6. 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.

7. 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.
8. 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 during throughout this quarter.

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

1. Submit a list projects that included a contract goal in FY2012-FY2014 and a list of projects you have or anticipate including contract goals in this quarter and throughout FY2016-2018.
2. Apply the unbundling process to contracting opportunities throughout FY 2016-2018. Submit a list of projects to be unbundled in this quarter and throughout FY2016-2018.
3. Apply the small business set-aside identification process to contracting opportunities throughout FY 2016-2018.
4. Submit a schedule of outreach sessions you will hold in the second and third quarter as well as throughout FY2015-FY2016.

The Third Quarter Report (December 1, 2015 – February 29, 2016) due to FTA no later than March 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 February 29, 2016, provide the number of small business set asides implemented, the dollar amount of each project, and the number of DBEs participated on those projects thus far.
3. As of February 29, 2016, provide the number of contracts unbundled and the number of DBEs 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 April 29, 2015, if Westchester fails to adequately carry out the terms of this conciliation agreement, the agency will be considered in noncompliance with the DBE requirements.

Robert P. Antoino

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

5/27/15

**Date**