

11820

May 26, 2010

To: Honorable Board of Acquisition and Contract

From: Kevin M. Cheverko
Acting Commissioner of Correction

Re: Authority for the County of Westchester to enter into an agreement with New York Correct Care Solutions Medical Services, P.C. for comprehensive health care services to the inmates and detainees at the County's Department of Correction for a term July 26, 2010 through July 25, 2013, with the option to renew the agreement for two additional one-year terms upon mutual agreement of the parties.

Authority of your Honorable Board is sought for the County of Westchester to enter into an agreement with New York Correct Care Solutions Medical Services, P.C. ("NYCCS") for the provision of comprehensive medical, mental health, dental and ancillary services to inmates and detainees in the custody of the Westchester County Department of Correction.

As your Honorable Board is aware, these services have been provided for several years by the Westchester County Health Care Corporation ("WCHCC"). However, WCHCC has given the County notice of its intent to terminate the agreement effective July 26, 2010. In order to ensure uninterrupted health care services, the Department of Correction promptly contacted several firms specializing in correctional health care after researching their backgrounds, then conducted interviews and discussed pricing. WCHCC also made a new proposal at a higher base cost and upon other conditions unrelated to prisoner health care. As your Honorable Board knows, the contracts with WCHCC have required the County to indemnify the WCHCC for their malpractice, except for willful misconduct and gross negligence, which is an external cost that will not be borne under a contract with a private vendor.

Based on its review of the various interviews, experience and price proposals, the Department of Correction has determined that the proposal submitted by Correct Care Solutions, LLC ("CCS") offers the best combination of experience and cost control and is much less expensive than the WCHCC's new proposal. The services to be provided shall not be materially less than those services currently being provided

by WCHCC and shall be in accordance with all applicable laws, rules and regulations.

Pursuant to New York State law, medical services may only be provided by a physician owned corporation. Accordingly, CCS will enter into a management services agreement with a professional corporation, New York Correct Care Solutions Medical Services, P.C. ("NYCCS"), which is owned by a physician and which will provide the medical personnel and services pursuant to the agreement. However, CCS will fully guarantee NYCCS's obligations, including but not limited to their duty to defend and indemnify the County as set forth below, under the agreement.

Under the terms of the proposed agreement, NYCCS will provide health care services, including medical, dental, mental health and ancillary services to inmates and detainees in the custody of the Westchester County Department of Correction from July 26, 2010 through July 25, 2013. Upon mutual agreement of the parties, the agreement may be renewed for two additional one-year terms. NYCCS shall be paid a base amount of \$14,199,000 ("Base Amount") for the first year of the agreement, payable in equal monthly installments. The second and third year Base Amount and any renewal term Base Amounts shall be subject to an annual increase adjustment based on the change in the Consumer Price Index – All Urban Consumers, U.S. City Average, Medical Care, Series ID: CUUR0000SAM for the preceding year calculated using any increase in said CPI that occurs between April 1 of the preceding year and March 31 of the current year, provided that no annual increase adjustment shall exceed 4.5%. Additionally, if the average daily population at the facility increases by more than 10%, the parties agree to negotiate in good faith for an adjustment to the Base Rate. Pursuant to the proposed agreement, in each contract year NYCCS will be responsible for the initial \$2,500,000 in costs for services rendered outside of the Department of Correction's facilities ("Off-Site Services"). If the costs for Off-Site Services exceed \$2,500,000 in any contract year, the County shall reimburse NYCCS for 50% of the costs between \$2,500,001 and \$3,100,000. NYCCS will be responsible for 100% of any Off-Site Services costs in excess of \$3,100,000. During the initial term, either party will be permitted to terminate the agreement for convenience upon one year's written notice to the other party. During any renewal term, either party will be permitted to terminate the agreement for convenience upon 120 days' written notice to the other party.

Pursuant to the agreement, NYCCS agrees that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, its officers, employees and agents, NYCCS shall, at its sole expense, defend, indemnify and hold harmless the County, its officers, employees and agents from and against any and all claims, liabilities, damages, costs, judgments and losses arising directly or indirectly out of, and to the extent attributable to, the negligent acts or omissions of NYCCS, its officers, employees, agents and contract professional staff. There will be no County indemnification for NYCCS's malpractice as there was in the WCHCC agreement.

The goal of this agreement is to provide effective inmate health care. The performance by NYCCS will be monitored by Department of Correction staff utilizing regular reports.

This agreement is exempt from the Westchester County Procurement Policy and Procedures pursuant to section 3(a)(viii) thereof.

Accordingly, I recommend adoption of the annexed Resolution.

KMC/RPC/me

APPROVED BOARD OF ACQUISITION & CONTRACT - 5-28-2010 - JOMARY VIEIRA, SECRETARY

RESOLUTION

Upon a communication from the Acting Commissioner of Correction, be it hereby

RESOLVED, that the County of Westchester is authorized to enter into an agreement with New York Correct Care Solutions Medical Services, P.C. (“NYCCS”) for the provision of comprehensive medical, mental health, dental and ancillary services to inmates and detainees in the custody of the Westchester County Department of Correction, which shall be not materially less than those services currently being provided and in accordance with all applicable laws, rules and regulations for a three (3) year term from July 26, 2010 through July 25, 2013. Upon mutual agreement of the parties, the agreement may be renewed for two additional one-year terms; and be it further

RESOLVED, that NYCCS shall be paid a base amount of \$14,199,000 (“Base Amount”) for the first year of the agreement, payable in equal monthly installments. The second and third year Base Amount and any renewal term Base Amounts shall be subject to an annual increase adjustment based on the change in the Consumer Price Index – All Urban Consumers, U.S. City Average, Medical Care, Series ID: CUUR0000SAM for the preceding year calculated using any increase in said CPI that occurs between April 1 of the preceding year and March 31 of the current year, provided that no annual increase adjustment shall exceed 4.5%. Additionally, if the average daily population at the facility increases by more than 10%, the parties agree to negotiate in good faith for an adjustment to the Base Rate. Pursuant to the proposed agreement, in each contract year NYCCS will be responsible for the initial \$2,500,000 in costs for services rendered outside of the Department of Correction’s facilities (“Off-Site Services”). If the costs for Off-Site Services exceed \$2,500,000 in any contract year, the County shall reimburse NYCCS for 50% of the costs between \$2,500,001 and \$3,100,000. NYCCS will be responsible for 100% of any Off-Site Services costs in excess of \$3,100,000; and be it further

RESOLVED, that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, its officers, employees and agents, NYCCS shall, at its sole expense, defend, indemnify and hold harmless the County, its officers, employees and agents from and against any and all claims, liabilities, damages, costs, judgments and losses arising directly or indirectly out of, and to the extent attributable to, the negligent acts or omissions of NYCCS, its officers, employees, agents and contract professional staff; and be it further

RESOLVED, that during the initial term, either party shall have the right to terminate the agreement without cause by giving at least one year’s written notice to the other party. During any renewal term, either party will be permitted to terminate the agreement for convenience upon 120 days’ written notice to the other party; and be it further

RESOLVED, that Correct Care Solutions, LLC will fully guarantee NYCCS's obligations, including but not limited to their duty to defend and indemnify the County as set forth above, under the agreement

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

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

Account to be Charged/credited	Fund	Agency	Capital Project Or Org	Object/ Sub Object	Trust Account	Activity	Dollars
2010	101	35	1000	4380		3000	\$ 6,041,250
2011	101	35	1000	4380		3000	\$ 14,770,855
2012	101	35	1000	4380		3000	\$15,435,542
2013	101	35	1000	4380		3000	\$ 9,236,073

Budget Funding Year(s) 2010-2013 Start Date 7/26/2010 End Date 7/25/2013
 (must match resolution)

Funding Source Tax Dollars \$45,483,720
 State Aid _____
 Federal Aid _____
 Other _____

APPROVED BOARD OF ACQUISITION CONTRACT - 5-28-2010 JIMMY VEIRY, COUNTY EXECUTIVE